

# CITY OF COCKBURN

## SUMMARY OF MINUTES OF ORDINARY COUNCIL MEETING HELD ON THURSDAY, 12 APRIL 2012 AT 7:00 PM

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# CITY OF COCKBURN

## MINUTES OF ORDINARY COUNCIL MEETING HELD ON THURSDAY, 12 APRIL 2012 AT 7:00 PM

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### PRESENT:

#### ELECTED MEMBERS

Mr L Howlett	-	Mayor (Presiding Member)
Mr K Allen	-	Deputy Mayor
Mr Y Mubarakai	-	Councillor
Mr S Portelli	-	Councillor
Ms L Smith	-	Councillor
Mrs C Reeve-Fowkes	-	Councillor
Mr T Romano	-	Councillor
Mr S Pratt	-	Councillor
Mrs V Oliver	-	Councillor
Mr B Houwen	-	Councillor

#### IN ATTENDANCE

Mr S. Cain	-	Chief Executive Officer
Mr D. Green	-	Director, Administration & Community Services
Mr S. Downing	-	Director, Finance & Corporate Services
Mr M. Littleton	-	Director, Engineering & Works
Mr D. Arndt	-	Director, Planning & Development
Mrs L. Jakovich	-	PA to Dirs. Planning and Development & Engineering and Works
Ms L. Boyanich	-	Media Liaison Officer

### 1. DECLARATION OF MEETING

The Presiding Member declared the meeting open at 7.02 p.m. and made the following announcements.

'I acknowledge the Noongar people who are the Traditional Custodians of the Land on which we are meeting tonight.' I pay respect to the Elders both past and present of the Noongar Nation and extend that respect to other Indigenous Australians who may be present'.



Before moving to the Agenda proper I would like to make comment on the following:

I welcome Mr Dale Smith, A/Director Engineering & Works;

Mr Greg Bowering, A/Director Planning & Development; and

Mr Andrew Trosic, Manager Strategic Planning to tonight's meeting.

### **Mrs Lucy Garbin – 100<sup>th</sup> Birthday Celebrations**

On Tuesday, 17 April 2012 Mrs Lucy Garbin (nee Bavich) will turn 100 years of age. The City extends its best wishes to Mrs Garbin on this milestone event and to the many members of her family and friends who will be attending the birthday celebrations.

Mrs Garbin has lived all of her life in the City of Cockburn and both the Garbin and Bavich families are highly respected members of our community.

### **Metropolitan Local Government Review**

The Metropolitan Local Government Review was due to be released tomorrow; however, advice has now been received that the draft findings will not be released for at least two weeks.

This is disappointing news given that the metropolitan mayors had only received a letter from the Chairman of the Panel yesterday stating that the report would be released for comment tomorrow and urging all mayors to promote the need for feedback from their respective communities.

I understand that there will still be a 4 week public comment period and I urge all ratepayers and residents of the City to forward their comments to the Metropolitan Local Government Review Panel.

On the closing of public submissions the Panel will then consider the submissions and formulate their final report to the State Government for consideration.

## **2. APPOINTMENT OF PRESIDING MEMBER (If required)**

Nil.

## **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 (OCM 12/04/2012) - ACKNOWLEDGEMENT OF RECEIPT OF WRITTEN DECLARATIONS OF FINANCIAL INTERESTS AND CONFLICT OF INTEREST**

- Clr Kevin Allen – Conflict Interest in Item 14.4
- Clr Bart Houwen – Proximity Interest in Item 19.1

**5. APOLOGIES AND LEAVE OF ABSENCE**

Nil

**6. ACTION TAKEN ON PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**

Nil.

**7 (OCM 12/04/2012) - PUBLIC QUESTION TIME**

ITEMS IN WRITING, ON THE AGENDA

**Robyn O'Brien, Munster**

*Item 19.1 – Woodman Point Waste Water Treatment Plant Odour Buffer*

Q1. *Officers apparently told Councillors at the briefing last week that the PAE report was not a scientific study but just a review of the Corp's OMMR. Officers of the City are not odour experts so who did they seek advice from in making that statement, if anyone, or did they make their own conclusion from their reading of the report?*

A1. The content of Councillor Briefing Sessions is confidential and the content of these briefings cannot be discussed.

Q2. *Has any officer read a Buffer Definition Study before, to make a judgement like that?*

A2. I refer you to my previous answer, the contents of the briefing session is confidential.

A2. *I could not answer that question, I don't know if officers or which officers have read the Buffer Definition Study or not.*

Q3. *Then, has any officer read a Buffer definition study that is not relating to the confidential briefing session that is just relating to the question.*



- Q3. *The PAE Report is confidential and was marked so in November 2011 in the letter attached to the report. Can you confirm that Council has not distributed the PAE report to anyone other than the planning officers and the Councillors, especially not to Water Corp?*
- A3. The PAE Holmes Report was submitted to the City as an attachment to Development Application DA11/0983 received on 5 December 2011 for conversion of a single house and ancillary accommodation into two grouped dwellings. The application and information attached was attached and referred to Department of Water, Water Corporation and the Department of Environment and Conservation for comment as part of the assessment process.
- Q4. *Did the planning officers seek any advice from DEC or the EPA since November 2011 on the PAE Report and if so can this advice be tabled and a copy given to all Councillors please and a copy to me please tonight before the meeting.*
- A4. The DEC did not provide any comment on the PAE Holmes Report when responding to the referral on Development Application DA11/0983.
- Q5. *Did the Water Corp provide any copy, and if so, can I have a copy of that.*
- A5. No they did not address the PAE Homes report in their written submission to us.

**Robyn O'Brien, Munster**

*Item 19.1 – Woodman Point Waste Water Treatment Plant Odour Buffer*

- Q1. *Why has the officer or CEO replaced Councillor Pratt's motion with a motion/recommendation of his own? When I was on Council the formal motion requested by the Councillor would be in bold print at the top of the agenda item, then the officer's report would be below and would include the officer's recommendation. In this case the Councillor's motion is included in small type within the officer's report.*
- A1. The recommendation of the officer is listed as the recommendation for Council to consider first. If the officer's recommendation is lost or lapses for lack of support then The Council may consider an alternative motion such as the notice of motion by Cr Pratt. An officer's report requires an independent unbiased officer's recommendation which arises from their assessment.





- Q2. *So was Clr Pratt's motion replaced with one of the officers, is that what you are saying.*
- A2. With the City's Standing Orders, Clr Pratt submitted a Notice of Motion within the requisite period. That Notice of Motion did generate some requirements of the staff to draft a report. The report then includes a copy of the Notice of Motion that was provided generally in Item 19.1.
- Q3. *Why does the officer's report contain no information what so ever quoted from either the Water Corp's Odour report regarding their scientific justification for a 750 metre buffer being retained in the Local Planning Strategy map or our PAE report.*
- A3. An Officer's report needs to provide sufficient information to Councillors to enable a decision to be made. In this instance, the report focuses on the role of local government in amending a Local Planning Strategy and its Town Planning Scheme. The Local Government scheme amendment process is not directly based on an assessment of the science of the matter. The scientific assessment process is undertaken by the relevant State agencies such as the WAPC and DEC. Any decisions they make based on their assessments will then inform the City as to its potential to amend the TPS and Local Planning Strategies.

Part 3 of the officer's recommendation seeks to request the Department of Environment and Conservation finalise their review of the Water Corporation's Odour Monitoring and Modelling study for the Woodman Point Waste Water Treatment Plant. The Department is also requested to provide their formal advice as to the relocation of the odour buffer. Quoting from the aforementioned study is not necessary for Councillors to support the officer recommendation as proposed.

- Q4. *Why doesn't the officer's report contain any mention or direct quotes from the Buffer definition study commissioned by the community called the PAE Holmes Report 2011 which states in several places categorically that there is no scientific justification for a 750 metre buffer?*
- A4. As in my response to your second question, the officer's reports needs to provide sufficient information for Councillors to enable a decision to be made.

The officer's recommendation requests the WAPC and DEC take action to resolve the issue of the Woodman Point Waste Water Treatment Plant odour buffer. The Officer' recommendation and previous Council resolution are supportive of a reduction in the buffer if consistent with a finalised buffer definition study conducted by the WAPC.



The presentation to Councillors related to the Water Corporation's Odour Monitoring and Modelling study. This is the focus of the advice proposed to be sought from the Department of Environment and Conservation; therefore, is no need to also discuss the PAE Holmes Report 2011 as well.

Q5. *Isn't the officer supposed to write for the Councillors help and information, a balanced, unbiased report which given our request was to amend the LPS and TPS based on 2011 scientific evidence, should include specific references to the two odour reports that are available to the City that are supposed to show whether there is any scientific justification for the City of Cockburn's WPWWTP Odour Buffer?*

A5. As per the response to questions 2 and 3, officer reports need to provide sufficient information to Councillors to enable a decision to be made.

As per the response to question 3, the officer recommendation does not seek to mount a case against the designation of the Woodman Point Waste Water Treatment Plant odour buffer. The presentation to Councillors related to the Water Corporation's Odour Monitoring and Modelling study. This is the focus of the advice proposed to be sought from the Department of Environment and Conservation. Therefore, there is no need to also discuss the PAE Holmes Report 2011 as well.

This question (and question 5) appears to cast some (albeit indirect) aspersions as to the professionalism of the officer report. These are objected to most strongly. As can be noted by the responses to these questions, the assumptions the author of these questions has made about the relevance of other material to the content of the officer recommendation are not correct.

Q6. *Given that the officer is not an odour expert should he not at least quote hopefully in an unbiased way in summary for the Councillors what both reports say, as he asks the Councillors to change the Clr Pratt's motion to one of the officer's choosing?*

A6. As per the response to question 3 and 4, the officer recommendation does not seek to mount a case against the designation of the Woodman Point Waste Water Treatment Plant odour buffer. The presentation to Councillors related to the Water Corporation's Odour Monitoring and Modelling study. This is the focus of the advice proposed to be sought from the Department of Environment and Conservation; therefore, there is no need to also discuss the PAE Holmes Report 2011 as well.



This question (and question 4) appears to cast some (albeit indirect) aspersions as to the professionalism of the officer report. These are objected to most strongly. As can be noted by the responses to these questions, the assumptions the author of these questions has made about the relevance of other material to the content of the officer recommendation are not correct.

In terms of the relationship between the officer recommendation proposed, and the original notice of motion, there is an obvious change in wording. It is an ordinary part of the Council officer role to provide professional advice as to the wording of a Council recommendation. The nature of the change in wording recognises the role local government have in undertaking change to its Local Planning Strategy and Town Planning Scheme. This is contrasted with the role of the State Government in such matters to ensure Councillors are clear as to legislative environment they must operate within. This is why there is a clear description of this context in the officer report.

Q7. *Can the Councillors please be asked before the discussion takes place if they have read the packet given to them by Mrs O'Brien in full prior to tonight's meeting and if they haven't will they excuse themselves from voting?*

A7. (CEO to ask Councillors)

Q8. *Will the CEO please undertake an investigation of the Manager of Strategic Planning Andrew Trosic's report on this agenda item on Council's agenda for accuracy as I allege that the report is inaccurate in many material ways and is biased and not an independent and accurate summary of information available to the officer whose job is to inform Councillors of all available information prior to voting on a motion?*

A8. I have every confidence in the officer's report and that it has been prepared in an unbiased nature. However, if you believe that this is not correct you are welcome to make a complaint to the CCC or to the Local Government Ombudsman who will investigate items of this nature.

**Robyn O'Brien, Munster**

*Item 14.2 – Sale of Land Lots 300 and 301 Hamilton Road, Munster*

Q1. *Why has a motion been put to Council again this month to sell two lots owned by ratepayers for the same \$205,000 when the value of each block is conservatively over \$240,000?*

A1. Council at its meeting held on 8 March 2012 resolved not to proceed with the sales in order to seek alternative valuations. Valuation reports



for both lots have been obtained from Opteon Property which confirmed the selling price.

- Q2. *Kevin Allen in March meeting asked that this not be agreed upon. Have any other valuations been undertaken by other valuers to compare the valuation by Opteon since March meeting? If not, why not?*
- A2. The original valuation reports obtained by the City are the two reports prepared by Opteon Property for the two lots. As the valuation report prepared by Opteon confirmed the value determined by the initial valuation report by McGees there was no benefit in seek and third set of reports by another valuer. There is also the selling agent who has confirmed this price as well.
- Q3. *In the comment section of the valuation report in last paragraph, it says "We are aware the subject property is currently under Contract of Sale for \$205,000 which is supported by the sales evidence analysed and is considered to be within an acceptable market value range. We have sighted a copy of the contract. We have adopted the contract price as market value". Also the valuer says in the preceding paragraph that "our investigations revealed an absence of recent sales of directly comparable residential properties within the immediate locality. Consequently, the market value for properties such as the subject is largely untested deeming our assessment to be more subjective than normal." That means not objective. This means that the valuer has not undertaken a proper valuation but has said that they have adopted the contract price as the valuation although the next page has 4 sold properties of comparison, three of which are from \$245K, \$260K and \$280K in 2011 and 2012 for two smaller lots than the ones we are talking about and one slightly bigger. To look at recent sales figures in Munster for lots as comparison is reasonable as the Rockingham Road address is more desirable. This evidence shows that to sell the lots for \$205,000 is depriving the ratepayers of Cockburn of the proper sales price for the lots and a loss of at least \$80,000 or more. Will Council not approve the sale and instead put the lots up for sale for \$250,000 each with a real estate agency for three months before deciding to sell at a lower cost in order to maximise the return to ratepayers?*
- A3. The Valuation report was prepared by a licensed valuer. Licensed valuers are guided by strict professional standards in providing their expert advice to the City. It is expected that Council will now be able to make its decision based on the information contained in the officer's report and attachments. The lots require additional earth works which has to be factored into the selling price of the lots and the lots are sitting on a limestone ridge which will detract from their price substantially.



**8. CONFIRMATION OF MINUTES**

**8.1 (MINUTE NO 4735) (OCM 12/04/2012) - ORDINARY COUNCIL MEETING - 8 MARCH 2012**

**RECOMMENDATION**

That Council adopt the Minutes of the Ordinary Council Meeting held on Thursday, 8 March 2012, as a true and accurate record.

**COUNCIL DECISION**

MOVED Clr C Reeve-Fowkes SECONDED Clr V Oliver that the recommendation be adopted.

**CARRIED 10/0**

**8.2 (MINUTE NO 4736) (OCM 12/04/2012) - SPECIAL COUNCIL MEETING - 29 MARCH 2012**

**RECOMMENDATION**

That Council adopt the Minutes of the Special Council Meeting held on Thursday, 29 March 2012, as a true and accurate record.

**COUNCIL DECISION**

MOVED Clr C Reeve-Fowkes SECONDED Clr B Houwen that the recommendation be adopted.

**CARRIED 10/0**

**9. WRITTEN REQUESTS FOR LEAVE OF ABSENCE**

Nil

**10 (OCM 12/04/2012) - DEPUTATIONS AND PETITIONS**

Michael Swift & Associates (Town Planners – Item 19.1

Mr Michael Swift (speaker)

Mr Doug Tolj

Mr Philip Tolj



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

Nil

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

Nil.

NOTE: AT THIS POINT IN THE MEETING, THE TIME BEING 7.42 PM THE FOLLOWING ITEMS WERE CARRIED BY AN "EN BLOC" RESOLUTION OF COUNCIL:

13.1	14.3	15.2
13.2		15.3
13.3		
13.4		

**13. COUNCIL MATTERS**

**13.1 (MINUTE NO 4737) (OCM 12/04/2012) - MINUTES OF THE DELEGATED AUTHORITIES, POLICIES AND POSITION STATEMENTS COMMITTEE MEETING - 22 MARCH 2012 (CC/P/001) (D GREEN) (ATTACH)**

**RECOMMENDATION**

That Council receive the Minutes of the Delegated Authorities, Policies and Position Statements Committee Meeting held on 22 March 2012, as attached to the Agenda and adopts the recommendations contained therein.

**COUNCIL DECISION**

MOVED Clr C Reeve-Fowkes SECONDED Clr S Pratt that the recommendation be adopted.

**CARRIED 10/0**



**Background**

The Delegated Authorities, Policies and Position Statements Committee conducted a meeting on 22 March 2012. The Minutes of the meeting are required to be presented to Council and its recommendations considered by Council.

**Submission**

The Minutes of the Committee meeting are attached to the Agenda. Items dealt with at the Committee meeting form the basis of the Minutes.

**Report**

The Committee recommendations are now presented for consideration by Council and if accepted, are endorsed as the decisions of Council. Any Elected Member may withdraw any item from the Committee meeting for discussion and purpose an alternative recommendation for Council's consideration. Any such items will be dealt with separately, as provided for in Council's Standing Order.

**Strategic Plan/Policy Implications****Governance Excellence**

- To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices.

**Budget/Financial Implications**

As contained in the Minutes.

**Legal Implications**

N/A

**Community Consultation**

As contained in the Minutes.

**Attachment(s)**

Minutes and attachments of the Delegated Authorities, Policies and Position Statements Committee Meeting – 22 March 2012.

**Advice to Proponent(s)/Submissioners**

N/A



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

Nil.

**13.2 (MINUTE NO 4738) (OCM 12/04/2012) - PROPOSED AMENDMENT - CITY OF COCKBURN (LOCAL GOVERNMENT ACT) AMENDMENT LOCAL LAW 2010, (PART II - ANIMALS AND PART V - DANGEROUS AND OFFENSIVE THINGS) (CC/P/099) (N JONES/P WESTON) (ATTACH)**

**RECOMMENDATION**

That Council:

- (1) proceed to amend the City of Cockburn (Local Government Act) Amendment Local Law 2010 (Part II – Animals and Part V – Dangerous and Offensive Things); and
- (2) in accordance with Section 3.12 of the Local Government Act, 1995, advertise the amendments, as shown in the attachment to the Agenda, for a minimum period of six(6) weeks.

**COUNCIL DECISION**

MOVED Clr C Reeve-Fowkes SECONDED Clr S Pratt that the recommendation be adopted.

**CARRIED 10/0**

**Background**

The City's Health Services has undertaken a review of the City of Cockburn Consolidated Local Government (Local Government Act) Amendment Local Law 2010 as it relates to the relevant Parts administered by the service area. Specifically Parts II and Parts V have been reviewed and amendments are recommended.

**Submission**

N/A





## Report

The purpose of the amendments is to provide clarity and to enable the City to control nuisances as a result of:

1. the keeping of animals; and
2. through land clearing and development to reduce the effects of dust and sand drift.

The effect of the amendments is intended to:

1. Reduce ambiguity to the meaning of the term 'nuisance'.
2. Simplify provisions for the keeping of various animals (bees, pigeons and cats).
3. Sand Drift and Dust Management clauses have been revised to allow for the efficient application of these dust control provisions.
4. Other minor changes – mainly typographical in nature.

Some new penalties relating to the keeping of cats and dust management plans have been introduced. The penalties for non-compliance remain the same for other similar clauses. No increased penalties are proposed.

The proposed amendments have been drafted in consultation with relevant Council staff that have the responsibility for the administration and enforcement of such laws. Legal advice has also been sought from the City's solicitors who assisted with the initial drafting of the proposed amendments.

If Council resolves to proceed with this matter, an advertisement will be placed in the "*West Australian*" newspaper giving notice of Council's intention to amend the Local Laws.

Interested parties will be able to inspect a copy of the proposed amendments or obtain a copy from Council or from the City's Libraries and may make a representation to Council. The submission period is 42 days from the date of the advertisement.

## Strategic Plan/Policy Implications

### Governance Excellence

- To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices.



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

### **Budget/Financial Implications**

The cost of amendment and implementation of the changes proposed will be absorbed through Health Services operational budget.

### **Legal Implications**

Section 3.12 of the Local Government Act refers.

### **Community Consultation**

Advertisement of the proposed amendments to be placed in a state wide public notice.

### **Attachment(s)**

Copy of the draft gazette notice.

### **Advice to Proponent(s)/Submissioners**

N/A

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

Nil.

**13.3 (MINUTE NO 4739) (OCM 12/04/2012) - PROPOSED AMENDMENT - CITY OF COCKBURN HEALTH LOCAL LAWS 2000 (PARTS 1 - 9 VARIOUS AMENDMENTS) THROUGH THE ADOPTION OF THE CITY OF COCKBURN HEALTH AMENDMENT LOCAL LAW 2011 (CC/P/009) (N JONES/ PWESTON) (ATTACH)**

#### **RECOMMENDATION**

That Council:

- (1) proceed to amend the Health Act 1911- *City of Cockburn Health Local Laws 2000* by adopting the *City of Cockburn Health (Amendment) Local Law 2012 in accordance with Section 342 of the Health Act 1911*; and
- (2) in accordance with section 3.12 of the *Local Government Act, 1995*, advertise the amendments, as shown in the attachment to the Agenda, for a minimum period of six (6) weeks.



**COUNCIL DECISION**

MOVED Clr C Reeve-Fowkes SECONDED Clr S Pratt that the recommendation be adopted.

**CARRIED 10/0**

**Background**

The City's Health Services has undertaken a review of the City of Cockburn Health Local Laws 2000 as it relates to Parts 1 to 9 administered by the service area and various amendments are recommended.

**Submission**

N/A

**Report**

The purpose of the amendments is to provide clarity and to enable the City to control various matters as they relate to the day to day operations of the Health Services area as well as updating due to the introduction of the *Building Code of Australia 2011* and the *Food Act 2008*.

The effect of the amendments:

1. Change of the title of the "Principal Environmental Health Officer" to be the "Manager Environmental Health".
2. Delete clauses relating to the requirements for Outdoor Festivals which are now covered by other more recent statutory guidelines.
3. A new division is included on the control of flies.
4. Change to the provisions for Lodging Houses relating to safety.

There have been no changes to the penalties provisions.

The proposed amendments have been drafted in consultation with relevant Council staff that have the responsibility for the administration and enforcement of such laws.

If Council resolves to proceed with this matter, an advertisement will be placed in the "West Australian" newspaper giving notice of Council's intention to amend the Local Laws.



Interested parties will be able to inspect a copy of the proposed amendments or obtain a copy from Council or from the City's Libraries and may make a representation to Council in response. The submission period is 42 days from the date of the advertisement.

Council staff have proposed to amend Parts 1 to 9 of the City of Cockburn Health Local Laws 2000 through the adoption of the City of Cockburn Health (Amendment) Local Law 2012 in the format attached.

### **Strategic Plan/Policy Implications**

#### **Governance Excellence**

- To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices.
- To provide effective monitoring and regulatory services that administer relevant legislation and local laws in a fair and impartial way.

### **Budget/Financial Implications**

The cost of amendment and implementation of the changes proposed will be absorbed through Health Services operational budget.

### **Legal Implications**

Section 3.12 of the Local Government Act 1995 and Section 342 of the Health Act 1911 refer.

### **Community Consultation**

Advertisement of the proposed amendments to be placed in a state wide public notice.

### **Attachment(s)**

Copy of the Draft Gazette Notice.

### **Advice to Proponent(s)/Submissioners**

N/A

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

Nil.



**13.4 (MINUTE NO 4740) (OCM 12/04/2012) - PROPOSED ADOPTION OF THE CITY OF COCKBURN FENCING LOCAL LAW 2012, (CC/P/099) (J WEST/P WESTON) (ATTACH)**

**RECOMMENDATION**

That Council :

- (1) pursuant to Section 3.13 of the Local Government Act 1995 recommence the proposed adoption process of the *City of Cockburn Fencing Local Law 2012 in lieu of the City of Cockburn (Local Government Act) Amendment Local Law 2010 (Part IV Fencing)*; and
- (2) in accordance with Section 3.12 of the Local Government Act, 1995, advertise the proposed amendments, as shown in the attachment to the Agenda, for a minimum period of six(6) weeks.

**COUNCIL DECISION**

MOVED Clr C Reeve-Fowkes SECONDED Clr S Pratt that the recommendation be adopted.

**CARRIED 10/0**

**Background**

At its Ordinary Meeting of 8 September 2011 Council resolved to adopt amendments to the City's (Local Government Act) Local Laws 2010 by repealing Part V - Building of that local law and inserting proposed amendments covering fencing.

Subsequently state wide notice was given in accordance with section 3.12(3) of the *Local Government Act 1995* and on 10 November 2011 Council resolved to proceed with the adoption of the local law.

Following liaison with the Department of Local Government and prior to advertising the proposed amendments in the *Government Gazette* a number of anomalies were located in the proposed gazette notice

**Submission**

N/A



## Report

The proposed gazette notice did not include references to the *Dividing Fences Act 1961*, being a contemporary requirement of the Parliamentary Joint Standing Committee on Delegated Legislation (JSCDL).

Further, the notice did not provide specific references to the Australian Standards being another contemporary requirement of the JSCDL.

It was discovered that a metropolitan local government was required to provide an undertaking to the JSCDL to amend its Fencing Local Law 2010 as follows:

1. *amend clause 1.4 so that it states: "AS" means Australian Standard or Australian/New Zealand Standard published by Standards Australia; and*
2. *amend clause 5.1(e) so that it states: "No person shall erect an electric fence in the district unless - (e) the fence is constructed and maintained in accordance with AS/NZS 3016:2002 Electrical installations - Electric security fences as amended from time to time."*

Such requirements are now reflected in the proposed local law.

The previous amendment also referred to 'City' and 'Council' where it is a requirement of the JSCDL to use the term 'local government'.

The Committee had been previously advised by the Minister for Local Government that the Department of Local Government have accepted the view of the Committee and the Department of Local Government advises local government to use the term 'local government' rather than 'City' or 'Council', in its Local Laws.

Accordingly, it is recommended that Council resolve to re-commence the process, pursuant to section 3.13 of the Local Government Act as the proposed local law is significantly different to that first proposed.

Therefore, Council in accordance with section 3.12(2) of the Local Government Act 1995 is to give notice of the purpose and effect of the proposed local law as follows:

- (1) The purpose of this local law is to provide for the regulation, control and management of fences within the district.
- (2) The effect of this local law is to:
  - (a) regulate, manage and control fences; and



- (b) establish the standard of a “sufficient fence” according to land use.

Following, an advertisement will be placed in the ‘West Australian’ newspaper giving notice of Councils’ intention to adopt the proposed local law.

Interested parties will be able to inspect a copy of the proposed amendment or obtain a copy from Council or from one of the City’s Libraries and may make a representation to Council. The submission period for representations is 42 days from the date of the advertisement.

It is proposed to repeal Part IV of the consolidated (Local Government Act) Amendment Local Law 2010 and adopt the Fencing Local Law 2012 in the format attached.

### **Strategic Plan/Policy Implications**

#### **Governance Excellence**

- To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices.
- To provide effective monitoring and regulatory services that administer relevant legislation and local laws in a fair and impartial way.

#### **Budget/Financial Implications**

N/A

#### **Legal Implications**

Section 3.12 of the Local Government Act refers.

#### **Community Consultation**

N/A

#### **Attachment(s)**

Copy of Draft Gazette Notice.

#### **Advice to Proponent(s)/Submissioners**

N/A



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

Nil.

**14. PLANNING AND DEVELOPMENT DIVISION ISSUES**

**14.1 (MINUTE NO 4741) (OCM 12/04/2012) - CONSIDERATION TO PREPARE CONSOLIDATION OF CITY OF COCKBURN TOWN PLANNING SCHEME NO. 3 - LOCATION: CITY OF COCKBURN DISTRICT - APPLICANT: CITY OF COCKBURN (9485) (A TROSIC) (ATTACH)**

**RECOMMENDATION**

That Council:

1. in accordance with Section 88(1) of the *Planning and Development Act 2005* ("Act"), resolves to prepare a consolidation of City of Cockburn Town Planning Scheme No. 3 ("Scheme");
2. in accordance with Section 89(1) of the Act, requests approval of the Scheme consolidation by the Western Australian Planning Commission ("WAPC");
3. following approval of the Scheme consolidation by the WAPC, invites submissions from the public (for a period of 42 days) regarding the effectiveness of the Scheme, the need for amendment of the Scheme and the need for the making of a new Scheme. Following this process a report to be presented back to Council for consideration in accordance with Section 90 of the Act; and
4. consider in the next iteration of the Plan For The District (Strategic Community Plan), the timing for development of a new Local Planning Strategy and Town Planning Scheme within the next five years to replace the current operative document.

**COUNCIL DECISION**

MOVED Cllr L Smith SECONDED Cllr C Reeve-Fowkes that the item be deferred and be considered at the May 2012 Ordinary Council Meeting.

**CARRIED 10/0**





## Reason for Decision

To give Council more time to consider this item.

## Background

The purpose of this report is to seek Council resolution to prepare a consolidation of City of Cockburn Town Planning Scheme No. 3 ("Scheme"). This consolidation is being sought to comply with the Scheme review requirements specified under Section 88 of the *Planning and Development Act 2005* ("Act"), and in acknowledgement that the current Scheme and its associated Local Planning Strategy continue to plan effectively for the strategic land use matters of the City of Cockburn ("City").

Under the Act a Scheme consolidation is advocated for when there is limited need for strategic or land use changes to the current Scheme, and where there is a need to comply with the Scheme review requirements specified by the Act. The City's Scheme is considered to meet these key criteria in that it continues to effectively plan for the strategic land use of the City, and should be consolidated to operate for a further five years.

This consolidation will importantly grant an appropriate period of time for the Scheme to continue, during which the Local Planning Strategy will be comprehensively reviewed and renewed, allowing it to be used to inform a new Scheme prior to the five year time period being reached.

This report will effectively seek to justify to Council why a Scheme consolidation is appropriate considering:

1. The currency and successful operation of the Local Planning Strategy which underpins the Scheme.
2. The ability to which the Scheme addresses the state and regional planning context.
3. The realisation that previous and planned amendments to the Scheme will not be seeking to substantively alter the Scheme, and will importantly reflect the direction provided within the Local Planning Strategy.

A consolidation copy of the Scheme can be referenced via the WAPC's website. It is not included as an attachment to this item, due to the size of the document.

## Submission

N/A.



## Report

### Background to Town Planning Schemes

Town Planning Schemes are made under Part 5 of the Act, which sets out the general objects of schemes, the matters which may be addressed in schemes and the requirements for review of schemes. Where schemes involve the zoning or classification of land, they are required to reflect the format prescribed by the Model Scheme Text ("MST"), contained within the *Town Planning Regulations 1967*. The City's Scheme has been based upon this prescribed format of the MST.

The MST sets out the following as purposes of a scheme:

1. Set out the local government's planning aims for the scheme area, and implement the local planning strategy.
2. Set aside land as reserves for public purposes, in accordance with the aims of the scheme and the local planning strategy.
3. Zone land within the scheme area in accordance with the aims of the scheme and the local planning strategy.
4. Control and guide land use and development in accordance with the aims of the scheme and the objectives of the respective zones and reserves.
5. Make provision for the administration and enforcement of the scheme where necessary to supplement the provisions in the Act.
6. Provide for such other matters as set out in Schedule 7 of the Act as are necessary and appropriate to the local area.

These are replicated in basically the same wording under Clause 1.5 of the City's Scheme.

In respect of the City's Scheme and its relationship to the MST, various provisions relating to local planning matters are prescribed. These cover the following areas:

1. Zoning
2. Development standards and controls
3. Special control areas including structure planning
4. Development agreements and cooperation including cost sharing arrangements
5. Other general and ancillary matters.

Schemes need to also be consistent with relevant region schemes (which for the City is the Metropolitan Region Scheme) and have due regard to State Planning Policies ("SPP's") which affect the local area. The primary State Planning Policies affecting the City, and which are covered by the Scheme, are as follows:

#### Environment and Natural Resources Policy (SPP 2)

##### SPP 2.3 - Jandakot Groundwater Protection Policy



SPP 2.4 - Basic Raw Materials  
 SPP 2.5 - Agricultural and Rural Land Use Planning  
 SPP 2.6 - State Coastal Planning Policy  
 SPP 2.7 - Public Drinking Water Source Policy  
 SPP 2.8 - Bushland Policy for the Perth Metropolitan Region  
 SPP 2.9 - Water Resources

Urban Growth and Settlement (SPP 3)

SPP 3.1 - Residential Design Codes  
 SPP 3.4 - Natural Hazards and Disasters  
 SPP 3.5 - Historic Heritage Conservation  
 SPP 3.6 - Development Contributions for Infrastructure

Economy and Employment (SPP 4)

SPP 4.1 - State Industrial Buffer Policy  
 SPP 4.2 - Activity Centres for Perth and Peel

Transport and Infrastructure (SPP 5)

SPP 5.2 - Telecommunications Infrastructure  
 SPP 5.3 - Jandakot Airport Vicinity  
 SPP 5.4 - Road and Rail Transport Noise and Freight Considerations in Land Use Planning.

Schemes are also subject to environmental assessment by the Environmental Protection Authority, with reference to relevant environmental policies, principals, plans and strategies. This was undertaken as part of the development of the current Scheme.

The basic tools of land use planning which the City's Scheme utilises at the local planning level are:

1. Local planning policy
2. Local reservation
3. Local zoning
4. Additional and restricted uses
5. Non-conforming uses
6. Special use zones
7. Special control areas
8. Structure planning and development contribution cost sharing arrangements
9. Heritage provisions and listing.

As mentioned in the introductory section, Schemes require timely review either by consolidation or by the preparation of a new Scheme. As per the introduction to this report, the City is seeking to consolidate its current Scheme on the basis of limited need for major strategic and/or land use changes, with the main aim being to comply with the Scheme review timeframe as outlined in the Act.



### Scheme Consolidation Versus Review

Under the Act there is a requirement to review Schemes. The Act provides two avenues by which to review a Scheme - being either by consolidation of an existing Scheme and all its amendments (effectively continuing the current Scheme), or by the preparation of a new Scheme.

A consolidation is an appropriate path to consider if there is little need for major strategic or land use change under the current Scheme. This has a direct relationship back to the associated Local Planning Strategy as explained following.

The Local Planning Strategy provides the strategic vision and framework for planning over a time period usually between five to 15 years into the future. It is not uncommon for this to be even as far out as 20 to 30 years. The key point being that provided a Local Planning Strategy has been prepared in a very robust manner, which considers and responds to the local and regional planning context appropriately, then there is no practical reason why the Strategy cannot run for at least 10 to 15 years without being re-written. Accordingly, a Scheme based upon its Local Planning Strategy should be able to be consolidated at least one, provided it has been prepared appropriately based upon the Local Planning Strategy.

Where there is a need to comprehensively update the strategic and land use direction under the Scheme, then a new Scheme will be required. This also necessitates the preparation of a new Local Planning Strategy, to provide the strategic and policy basis to inform the new Scheme's preparation.

### Rationale For Scheme Consolidation

While it would seem attractive to pursue a Scheme consolidation in the first instance, it is important that this decision not be taken just because of its relative ease compared to a Scheme review. Decision between either a Scheme consolidation or Scheme review needs to take into account the following specific criteria:

1. Age of Scheme
2. Number of amendments
3. Whether Scheme aims are being achieved
4. Any limitations in administration and effectiveness of Scheme provisions in controlling land use and development
5. Extent to which the Scheme complies with the Metropolitan Region Scheme ("MRS")
6. Extent to which Scheme is fulfilling strategic vision under the Local Planning Strategy.



These form the basis of assessment following:

Age of Scheme

The Scheme was gazetted on 20 December 2002, based upon an associated Local Planning Strategy. This places the Scheme at under 10 years old, with the effective age of the Local Planning Strategy at approximately 15 years old. This reveals in an initial sense scope for consolidation of the current Scheme for a further five year period.

The age of the Scheme is also an important consideration in respect of the timing of key changes to the *Town Planning Regulations 1967* ("Regulations"). In October 1999, the *Town Planning Amendment Regulations 1999* were gazetted which gave effect to the Model Scheme Text - MST. The MST is set out in Appendix B of the Regulations and is prescribed under the Act as a set of general provisions for Schemes.

In its approach, the MST allows the separation of the strategic component of Schemes (the Local Planning Strategy) from the legal and administrative component (the Scheme Text and Map). The Regulations require Schemes to comply with the MST except where otherwise approved by the Minister.

The MST utilises conventional zoning as the content of Schemes but enables the incorporation of other planning approaches into the Scheme especially through the use of special control areas. The standardised format also enables the adoption of planning policies, precinct plans, performance planning and standardised layout throughout WA. The MST forms the structure of the Scheme but does neither dictate nor guide land use content of Schemes - this remains a function for local government to consider and determine, based upon the strategic and policy based vision and framework created through the Local Planning Strategy.

In respect of the City's Scheme, this has been based entirely on the prescribed format of the MST. Its local content provisions have been drawn from the strategic and policy based content of the Local Planning Strategy, and specifically expressed through the following key parts:

Part 1 - Specifically Clause 1.6 identifying the aims of the Scheme with a relationship back to the Local Planning Strategy vision/strategic objectives.

Part 4 - Specifically Clause 4.2, which specifies Scheme zones and their associated objectives. This then leads on to the zoning table, contained under Table 1. This provides the control over whether certain land uses are permitted within certain zones, and what form of approval is required.



Part 5 - This sets out the general requirements which apply to land use and development within the Scheme area, and the specific requirements which apply to particular uses and forms of development. The City's Scheme includes criteria such as site requirements, access, parking, building design, setbacks and landscaping, residential, industrial uses, commercial uses etc. Similar to the aims of the Scheme and arrangement of zones and objectives, these general Scheme requirements have been informed by the strategic basis of the Local Planning Strategy.

Part 6 - This sets out the Scheme's special control areas. This is particularly pertinent to the City's Scheme, through the use of Development Area and Development Contribution Area provisions in order to guide land use, development and subdivision. This occurs through the basis of structure planning and associated development contribution planning to enable comprehensive planning of large areas for development, and the equitable sharing of common infrastructure (both civil and community based) for development.

In essence, the City's Scheme reflects the content and expectations of the MST as established through the Regulations and the Act. This establishes a basic test to determine that the Scheme is capable for consolidation.

In terms of the age of the Scheme, it is useful to consider this against similar growing outer metropolitan local governments. Accordingly the City's Scheme dated December 2002 compares to the following:

- City of Wanneroo Town Planning Scheme No. 2 - July 2001
- City of Gosnells Town Planning Scheme No. 6 - February 2002
- City of Armadale Town Planning Scheme No. 4 - November 2005
- Town of Kwinana Town Planning Scheme No. 2 - November 1992
- City of Rockingham Town Planning Scheme No. 2 - November 2004

This simple age comparison reveals the City's Scheme being generally in line with the age of other Schemes from similar growing local government areas.

#### Number of Scheme Amendments

To date 92 amendments to the Scheme have taken place, with seven still currently in process. These amendments cover a wide spectrum of purposes, and importantly reflect the ongoing management and improvement of the Scheme. The Scheme amendments are strategically informed through the Local Planning Strategy, providing broader level guidance to consider when an amendment should or should not be contemplated.



Scheme amendments have also been undertaken to ensure the Scheme maintains statutory compliance with the Act and associated *Town Planning Regulations 1967*. This places significant importance upon Scheme consistency with the following:

1. Section 69 of the Act, which provides the general objectives of Schemes.
2. Schedule 7 of the Act, which provides the matters which may be dealt with by Schemes.
3. The MRS, which represents the statutory form of regional town planning for the Perth Metropolitan Area. and
4. State Planning Policies, which provide the key policy guidance relevant to general planning and facilitating the coordination of planning throughout the State by local government Schemes.

These represent tests to which an amendment must comply before it will be granted final approval by the WAPC and Hon Minister. In terms of the alignment of Scheme amendments to the City's Local Planning Strategy, Attachment 1 contains a table identifying how each Scheme amendment undertaken has addressed strategic actions contained within the City's Local Planning Strategy.

Attachment 2 further shows the status of current Scheme amendments which are in their final stages of progress. These are specifically awaiting determination by the WAPC.

The Scheme amendments undertaken have kept the City's Scheme valid and up-to-date in terms of the statutory requirements placed upon it under the Act. The scope of the Scheme amendments are aligned with the Local Planning Strategy, and accordingly the Scheme continues to implement this going forward. This is considered to support the capability of the Scheme to be consolidated for a further five year, as is recommended by this report.

#### Whether Scheme aims are being achieved

Schemes are made up of a variety of zones and accompanying statutory planning provisions which combine to provide for control of land use and development. This combination reflects a set formula of land use possibilities and zoning arrangements, with the intent being that the formula achieves the aims of the Scheme, which itself is derived from the strategic vision of the Local Planning Strategy.

Schemes function as regulatory devices, and therefore come under significant statutory interpretation focussed commonly at one or a group of clauses. This narrow view of Schemes is a common and expected occurrence, recognising the need for statutory instruments to have regard for principles of statutory interpretation in all aspects.



Taking a narrow view of Schemes as is often the case in statutory assessment does drive home the need to reflect about how the whole Scheme is helping achieve (or otherwise) its stated aims. The ideology and vision for the Scheme area is captured at its highest level through the Scheme aims, derived from both planning theory and community values held. Provided that such aims are being supported through the statutory application of the Scheme, then the narrow aspects of land use and development control should be helping achieve such aims as measured in a broad sense.

In terms of the City's Scheme, its aims are as follows:

- (a) *ensure that development and the use of land within the district **complies** with accepted standards and practices for public amenity and convenience; and*
- (b) *ensure that the future development and use of land within the district occurs in an **orderly and proper** way so that the quality of life enjoyed by its inhabitants is not jeopardised by poor planning, unacceptable development and the incompatible use of land.*

The Scheme is considered to be fulfilling these aims, with examples as follows:

1. Zoning maintains an appropriate spatial allocation of land uses.
2. Scheme controls provide an appropriate balance between being prescriptively based (absolute controls) versus performance based (which seek to promote and encourage innovation in development).
3. The approach to zoning, while still cognisant of the protection of residential and public amenities, has provided the opportunity for the mixing of compatible uses.
4. Scheme controls have not remained static, but have evolved through associated amendments, local planning policy and design guidelines to respond to drivers for change.
5. Scheme controls have helped balance both local and regional planning interests. The embracing of medium to high density zoning based around activity centres has been embraced by the Scheme, consistent with the associated Local Planning Strategy and State Planning Policy.
6. Scheme controls have been supported through local planning policies and design guidelines which place a focus on both the use acceptability as well as the quality of design and built outcome.

These are key conclusions taken from the current assessment of how the Scheme is achieving its associated aims.





Any limitations in administration and effectiveness of Scheme provisions in controlling land use and development

There are no current limitations in administration associated with the Scheme. Being based upon the MST, the Scheme utilises conventional zoning and development controls as the statutory basis for administration and implementation. Unique aspects of the Scheme are best reflected by the rigorous use of Special Control Areas under Part 6 of the Scheme.

The City has been a leader in respect of the use and application of both Development Areas and Development Contribution Areas to enable the comprehensive development of otherwise fragmented land to achieve identified outcomes. This is best reflected through the use of Structure Plans and their associated Development Contribution Plans as a statutory mechanism akin to the Scheme to help to coordinate the equitable arrangement of land uses as well as the equitable sharing of infrastructure costs.

The standardised format of the City's Scheme has also enabled the adoption of local planning policies to help inform the application and administration of Scheme provisions providing for discretion to be exercised. Accordingly while the MST forms the structure of the City's Scheme, it neither dictates nor guides land use content - this remains a function for the City to consider and determine, based upon the strategic and policy based vision and framework created through the Local Planning Strategy.

In terms of land use control, it is worth emphasising that the Scheme maintains an appropriate focus upon the protection of public health and amenities from inappropriate land use and development taking place - a clear purpose behind the reason for local planning. The preparation and administration of Schemes to control land use and development has remained as the primary responsibility for local government planning.

Recent planning reforms however, passed as the *Approvals and Related Reforms (No. 4) (Planning) Act 2010*, have somewhat started to erode this through the introduction of Development Assessment Panels ("DAPs"). DAPs have been introduced to effectively remove the decision making responsibilities for certain (qualifying) development types from local government, and placing this decision making responsibilities within an allocated DAP made up by a majority of 'technical experts'. While this impacts upon local planning in respect of decision making responsibilities for certain development types, in all cases the Scheme still provides the statutory mechanism by which development is assessment and determined - whether that is by the City or a DAP.



Extent to which the Scheme complies with the Metropolitan Region Scheme ("MRS")

This has been effectively ensured by the strengthening of relevant provisions contained within the *Planning and Development Act 2005*, as well as the recent reforms introduced as part of the *Approvals and Related Reforms (No. 4) (Planning) Act 2010*. Scheme compliance with the MRS is achieved through the following key provisions:

1. Planning Control Area provisions of the Act prevail over a Local Scheme to the extent of any inconsistency.
2. The provisions of the Act relating to Region Schemes prevail over any inconsistent provision of the Act relating to Local Schemes.
3. A Local Scheme or amendment is not to be approved unless the provisions are in accordance with any relevant Region Scheme.
4. If a Region Scheme/amendment is made which renders a Local Scheme inconsistent with it, the local government must within 90 days resolve to prepare a new Local Scheme/amendment to be consistent with the Region Scheme.
5. The Minister may direct a local government to prepare a Local Scheme/amendment to ensure consistency with a Region Scheme/amendment.
6. Amendment of a Region Scheme reserve automatically amends the relevant Local Scheme to reflect the reservation.

Extent to which Scheme is fulfilling strategic vision under the Local Planning Strategy

The extent of consistency with the Local Planning Strategy is an important aspect which needs final consideration. As mentioned, the Scheme is the statutory tool which is used by the City to set out the planning aims for the Scheme area, and implement the Local Planning Strategy as the Scheme area's primary strategic plan. The Local Planning Strategy has a strategic purpose, addressing medium to long term planning and strategies which guide land use, development control and infrastructure management. Broad environmental, social and economic goals are integrated into these strategies.

The Local Planning Strategy provides the strategic vision and framework for planning over a time period usually between five to 15 years. Provided the Local Planning Strategy it is not uncommon for this to be even as far out as 20 to 30 years. The key point being that provided a Local Planning Strategy has been prepared in a very robust manner, which considers and responds to the local and regional planning context appropriately, then there is no practical reason why the Strategy cannot run for at least 10 to 15 years without being re-written. Accordingly, a Scheme based upon its Local Planning Strategy



should be able to be consolidated at least one, provided it has been prepared appropriately based upon the Local Planning Strategy.

The City's Local Planning Strategy was developed in conjunction with the Scheme, and accordingly has been used to provide the strategic planning consideration as part of the statutory administration of the Scheme. In respect of the relationship between the Local Planning Strategy and Scheme, Clause 1.1 of the Local Planning Strategy states that it supports and is to be read in conjunction with the Scheme. Clause 1.2.2 then states that the Local Planning Strategy is particularly pertinent for "providing the planning context for...statutory provisions contained in the town planning scheme" and that it "will become a central part of the scheme, being a consideration the Council will have to have regard to in making planning decisions, and will carry significant weight in planning appeals".

This portrays the emphasis placed upon strategy in respect of the preparation and administration of Schemes. In a statutory context, Clause 2.1.1 of the City's Scheme states:

"Except to the extent that the Local Planning Strategy is inconsistent with this Scheme, determinations of the local government under the Scheme are to be consistent with the Local Planning Strategy."

This makes the Local Planning Strategy a living document, whereby applicants are particularly directed to carefully review the Local Planning Strategy prior to the lodgement of any planning proposal. This helps establish both strategic planning aims and objectives the City is pursuing, as well as highlighting planning obstacles that impact upon land use and development taking place.

In respect of how the Local Planning Strategy has been functioning as a living document to inform planning actions of the City, Attachment 3 contains an analysis of the action plan associated with the Local Planning Strategy. This discusses how the various strategies remain relevant to the City's planning, and also how the Scheme has implemented the actions.

### **Conclusion**

As mentioned previously, it is considered that the Local Planning Strategy was developed with an effective life of between 10 to 15 years. Accordingly this places the need for review of the Local Planning Strategy within the coming 5 years, and in association with a new Scheme should be a key action for Council to pursue over the next five year period. But to ensure consistency with the requirements of the Act, the Council should in the meantime consolidate the current Scheme to operate for a further five year period. This will provide adequate time in which to develop both the Local Planning Strategy and Scheme



together, undertake the required public participation in both documents, and proceed through the statutory processes prescribed by the Act and *Town Planning Regulations 1967*.

### **Strategic Plan/Policy Implications**

#### **Demographic Planning**

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

#### **Governance Excellence**

- To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices.

### **Budget/Financial Implications**

Nil.

### **Legal Implications**

The Scheme consolidation process comprises of [Sections 88(1); 89(1); 89(2); 90; 91(1); 92(1); 92(2); and Section 95 of the Planning and Development Act].

### **Community Consultation**

Should Council resolve to proceed with a Scheme consolidation, approval will be required from the WAPC. Following approval, advertising of the Scheme consolidation will take place inviting submissions from the public (for a period of 42 days) regarding the following aspects:

1. The effectiveness of the Scheme;
2. The need for amendment of the Scheme;
3. The need for the making of a new Scheme.

Following this process, a report needs to be presented back to Council within six months for consideration in accordance with Section 90 of the Act. This report will be required to include:

1. All submissions received during advertising.
2. Recommendations in respect of the submissions received.
3. Recommendations as to whether or not the Scheme is satisfactory in its existing form; should be amended; should be



repealed and a new Scheme prepared in its place, or; should be repealed.

#### **Attachment(s)**

1. Table identifying scheme amendments.
2. Table showing status of current Scheme amendments awaiting determination by WAPC.
3. Table showing analysis of Local Planning Strategy.

#### **Advice to Proponent(s)/Submissioners**

N/A.

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

Nil.

#### **14.2 (MINUTE NO 4742) (OCM 12/04/2012) - SALE OF LAND - LOTS 300 AND 301 HAMILTON ROAD, MUNSTER - OWNER: CITY OF COCKBURN (6009342, 6009343) (K SIM) (ATTACH)**

#### **RECOMMENDATION**

That Council:

- (1) accept the offers to purchase:
  1. Lot 300 Hamilton Road Hamilton Hill, for a consideration of \$205,000, from K V Fong.
  2. Lot 301 Hamilton Road Hamilton Hill, for a consideration of \$205,000 from K V Fong.
- (2) allocate proceeds of the sales to the Land Development Reserve Fund.

**TO BE CARRIED BY AN ABSOLUTE MAJORITY OF COUNCIL**

#### **COUNCIL DECISION**

MOVED Clr T Romano SECONDED Clr C Reeve-Fowkes that the recommendation be adopted.

**CARRIED BY ABSOLUTE MAJORITY OF COUNCIL 10/0**



## Background

Council at its meeting of 8 March 2012 resolved to not proceed with the sale of Lots 300 and 301 Hamilton Road, Munster for a consideration of \$205,000 each exclusive of GST from K.V. Fong, in order to seek alternative valuations.

## Submission

Valuation Reports for each of the lots have been received from Licensed Valuer Jason Du Plessis from Opteon Property. Valuation reports for the two lots have been included in the attachments.

## Report

Following the decision of Council at the 8 March meeting, Opteon Property was instructed to provide Valuation Reports for each of the lots. The valuation report identifies 4 recent sales that give a guide to the lots market value, 3 in the vicinity of the subject lots and one in Atwell. The lot in Atwell at \$ 190,000 is deemed to be inferior due to an inferior location. Two sales in Munster one in Aptium Mews and the other in Kirk Close at \$245,000 and \$280,000 respectively and a third in Nemagold Grove, Coogee are deemed to be superior due to superior locations.

The report notes that the land rises from the street and has a cross fall across the lots. Site works including retaining walls will be required prior to any construction on the site. The presence of subsurface limestone could have an impact on the cost of the required site works. The lots referred to in the valuation reports are level lots not requiring any site works. The real estate agent marketing the lots notes that site works for similar land have been estimated at around \$50,000. The agent reports that unknown earthwork costs can be a major disincentive for potential purchasers of residential lots.

Lot 301 has an area of 292 square metres which equates to \$702 per square metre. Lot 300 has an area of 421 square metres which equates to \$486 per square metre. This disparity can be explained in that Lot 300 is a rear battleaxe lot that is also affected by a sewer easement. The area of the battleaxe leg and sewer easement cannot be built on. The average price for the combined lots equates to \$528 per square metre (ex. GST).

Further to the City's valuation advice, the City's officers have identified that there are currently several vacant blocks of land for sale in the Munster area. The breakdown is provided below.



1. Lot Size (sqm)	2. Sale Price	3. Sale Price per sqm (inc. GST)	4. Sale Price per sqm (ex. GST)
559	\$322,000	\$576	\$524
569	\$322,000	\$566	\$514
465	\$310,000	\$667	\$606
2,750	\$1,250,000	\$455	\$413
516	\$298,000	\$578	\$525
648	\$440,000	\$679	\$617
730	\$350,000	\$479	\$436
524	\$245,000	\$468	\$425
358	\$264,000	\$737	\$670

The offer and acceptance contracts submitted included a finance condition. This condition has now been satisfied and settlement can be completed subject to Council's endorsement of the offer. This is recommended by officers.

Advertising as required by Section 3.58 of the *Local Government Act 1995* has been undertaken. No objections were received in response to the newspaper advertising.

### **Strategic Plan/Policy Implications**

#### **Demographic Planning**

- To ensure the planning of the City is based on an approach that has the potential to achieve high levels of convenience and prosperity for its citizens.

#### **Governance Excellence**

- To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices.

### **Budget/Financial Implications**

Proceeds of the sale totalling \$410,000 will be transferred to the Land Development Reserve Fund.

### **Legal Implications**

Provisions of Section 3.58 of the *Local Government Act 1995* apply.

### **Community Consultation**

Details of the sale were advertised in a newspaper for State wide publication, as required by Section 3.58 of the *Local Government Act 1995*. No objections were received.



**Attachment(s)**

1. Valuation Report – Lot 300
2. Valuation Report – Lot 301

**Advice to Proponent(s)/Submissioners**

N/A

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

Nil.

**14.3 (MINUTE NO 4743) (OCM 12/04/2012) - CONSIDERATION TO INITIATE SCHEME AMENDMENT NO. 91 - LOTS 101, 104 AND PORTION OF LOT 103 JANDAKOT ROAD, JANDAKOT - OWNER: SCHAFFER CORPORATION LTD - APPLICANT: MGA TOWN PLANNERS (93091) (C HOSSEN) (ATTACH)**

<b>RECOMMENDATION</b>			
That Council:			
(1) in pursuance of Section 75 of the <i>Planning and Development Act 2005</i> ("Act"), initiate an amendment to City of Cockburn Town Planning Scheme No. 3 ("Scheme") for the purposes of:			
<ol style="list-style-type: none"> <li>1. extending the existing Additional Use AU1 ("AU1") over the whole of Lots 101 and 104 and portion of Lot 103 Jandakot Road, Jandakot as depicted on the Scheme Amendment Map;</li> <li>2. replacing the existing AU1 provisions contained under Schedule 2 of the Scheme Text with the following:</li> </ol>			
<u>Schedule 2 Additional Uses</u>			
No.	Description of land	Provisions	Conditions
AU1	Lots 101 and 104 and portion of Lot 103 Jandakot Road, Jandakot	<ul style="list-style-type: none"> <li>• Nursery;</li> <li>• Masonry Production;</li> <li>• Warehouse only where ancillary to Masonry Production;</li> <li>• Showroom only where ancillary to Masonry Production</li> </ul> <p>Use Class Definitions: Use classes are defined in Schedule 1 of the Scheme.</p>	Planning Approval subject to compliance with the approved Staging Plan (Detailed Area Plan) and subject to the preparation and implementation of an Urban Water Management Plan.





		<p>1. Environmental Requirements</p> <p>Industrial Wastewater: All wastewater produced from activities on-site must be disposed of to a system approved by the Local Government and in liaison with the Department of Water.</p> <p>Groundwater: The operator must undertake investigations and reporting on groundwater quality from monitoring bores positioned down-gradient of the site to detect any change in water quality against the National Health and Medical Resource Council and Department of Water Drinking Water Guidelines that may occur over time while the plant continues to operate over the Jandakot Groundwater Mound. Groundwater reports must be submitted to the Local Government and Department of Environment and Conservation on an annual basis.</p> <p>Site Chemical Risk: A Site Chemical Risk Assessment Report being prepared and implemented and regularly updated.</p> <p>Dust Management: No visible dust generated by any aspect of operations on-site is to leave the subject land. The operator is required to submit to the Local Government, after consultation with the Department of Environment and Conservation, a Dust Management Plan. The Dust Management Plan must be to the satisfaction of the Local Government, and upon approval by the Local Government, is to be implemented and all times.</p> <p>Noise Emissions: The development is to comply with the <i>Environmental Protection Act 1986</i>, which contains penalties where noise limits exceed those, prescribed by the <i>Environmental Protection (Noise) Regulations 1997</i>. If noise emissions from loading operations and the block plant fail to comply with the <i>Environmental Protection Act 1986</i>, additional acoustic measures must be carried out as soon as reasonably practical to ensure the use complies</p>	
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	<p>with the Act.</p> <p>Lighting: The installation and maintenance of lighting must at all times comply with the requirements of Australian Standard AS 4282-1997 "Control of the Obstructive Effects of Outdoor Lighting".</p> <p>Complaints: The operator must prepare a "Complaints Handling Procedure" to ensure that there is a process for administering any complaints including the recording, investigation and response to any concern regarding the operation.</p> <p>2. Design Requirements</p> <p>Building design and location shall minimise the visual impact of the development from surrounding residents.</p> <p>Building materials and colours must be clad or coloured to complement the surroundings, and/or adjoining developments in which it is located, and shall use non-reflective materials and colours.</p> <p>Product storage areas must be screened from view from the public at all times.</p> <p>Staging Plan in the form of a Detailed Area Plan shall be prepared by the applicant and approved by the Local Government detailing the timing of development across the Additional Use area.</p>	
<p>3. Amending the Scheme Map accordingly.</p> <p>(2) entirely consistent with Regulation 25(2) of the <i>Town Planning Regulations 1967</i> ("Regulations"), and upon receipt of the necessary amendment documentation, the amendment be referred to the Western Australian Planning Commission ("WAPC") with a request that it consider giving its consent for the amendment to be advertised for public inspection;</p> <p>(3) subject to the consent of the WAPC being received first as required by 2., the amendment be referred to the Environmental Protection Authority ("EPA") as required by</p>		



Section 81 of the Act, and on receipt of a response from the EPA indicating that the amendment is not subject to formal environmental assessment, be advertised for a period of 42 days in accordance with the Regulations. In the event that the EPA determines that the amendment is to be subject to formal environmental assessment, this assessment is to be prepared by the proponent prior to advertising of the amendment; and

- (4) amend the documentation and this be prepared in accordance with the standard format prescribed by the Regulations.

#### **COUNCIL DECISION**

MOVED Clr C Reeve-Fowkes SECONDED Clr S Pratt that the recommendation be adopted.

**CARRIED 10/0**

#### **Background**

The land subject of the Scheme amendment request comprises Lots 101 and 104 and portion of Lot 103 Jandakot Road, Jandakot (refer to Attachment 1 Proposed Scheme Amendment Map). The subject land is zoned 'Rural - Water Protection' under the Metropolitan Region Scheme ("MRS") and 'Resource' zone under City of Cockburn Town Planning Scheme No. 3 ("Scheme").

The subject land is located broadly on the corner of Jandakot Road and Berrigan Drive, and is commonly known as the 'Urbanstone' site. Jandakot Airport is situated directly to the north of the subject land, with a Bush Forever Site on the subject land bordering the Jandakot Airport Site.

This Scheme amendment request relates to modifying the existing Additional Use AU1 under the Scheme which currently coincides with Lot 101. The proposal is to extend the AU1 designation to cover Lots 101 and 104 and portion of Lot 103, as shown in Attachment 1. The purpose of this report is to consider the Scheme amendment for initiation.

#### **Submission**

The Scheme amendment request has been lodged by MGA Town Planning on behalf of the landowner, Schaffer Corporation Ltd.



The proposal seeks to extend AU1 over the entirety of Lots 101 and 104, and portion of Lot 103 Jandakot Road, Jandakot. The proposal also seeks to extend the number and type of additional uses allowed on the site. In addition to the current additional use of 'Masonry Production', the additional uses of 'Nursery', 'Showroom' and 'Warehouse' are proposed. It should be noted however that the proposed 'Showroom' and 'Warehouse' uses are subject to then being ancillary to the 'Masonry Production' use.

## **Report**

### Background

Lot 101 is 6.4009ha in area and is occupied by the 'Urbanstone' factory producing masonry products. Lot 103, being 4.2582ha, sits at the corner of Jandakot Road and Launderers (Lancaster) Street road reserve, and is currently occupied by a nursery. The remainder of the subject site is located on Lot 103, located north and east of the 'Urbanstone' plant, and is 46.6239ha in size and predominantly cleared, having been previously mined for sand resources and revegetated. The northern portion of Lot 103 is occupied by Bush Forever Site 388, which has an area of 12.97ha.

An approved subdivision exists for previous Lot 102 (now Lots 103 and 104) which will see the 'Nursery' site separated from the remainder of the site.

AU1 of the Scheme is located over the majority of Lot 101 and allows for the use of the land for 'Masonry Production' subject to a number of Environmental and Design Requirements.

### Showroom/Warehouse

The subject land is located within the 'P2 area' of the Department of Environment and Conservation's Land Use Compatibility in Public Drinking Water Source Areas ("PDWSA") as part of the Jandakot Underground Water Pollution Control Area ("JUWPCA") policy. The use of 'Showroom' within such an area is deemed 'Incompatible' with the PDWSA policy.

Within the PDWSA 'incompatible' is defined as a land use that does not meet management objectives of the priority classification area. The Department of Environment and Conservation states that these uses would normally be considered as incompatible uses. Further to this, the PDWSA Policy states that should such uses be approved, the Department of Environment and Conservation should be advised and



be directly involved with the planning decision makers on issues related to water quality protection.

The 'Showroom' use is proposed to be ancillary to the existing 'Masonry Production' use, being a use that predates the PDWSA. This, along with the proposed environmental requirements of the 'Additional Use', provides confidence that in this instance initiating the amendment can still occur in light of the guidance provided through the PDWSA policy. Note that the Environmental Protection Authority, Department of Environment and Conservation and Department of Water will be consulted should the amendment be initiated by Council.

The use of 'Warehouse' within the 'P2 area' of the PDWSA policy is listed as 'Compatible with Conditions'; this allows for conditional approval where the facility is consistent with approved State and Local Government Planning Strategies or Schemes.

Any future proposal for a 'Showroom' or 'Warehouse' would therefore be subject to Planning Approval, and be subject to a number of restrictions - the most significant being only where such is ancillary to the 'Masonry Production' use. This Planning Approval would also be subject to compliance with an approved Detailed Area Plan and Urban Water Management Plan, as outlined in Schedule 2 of the proposed Scheme amendment text. Comments and advice would be sought from Department of Environment and Conservation for any future development application also.

This approach is further appropriate considering the operation of State Planning Policy No. 2.3 (Jandakot Groundwater Protection Policy) ("SPP2.3"). Both the 'Showroom' and 'Warehouse' uses are not permitted under SPP2.3, and given SPP2.3 is integrated by way of reference into the Scheme, it is necessary to only contemplate these additions of use via a formal Scheme amendment process. It should be noted that the requirements of the *Planning and Development Act 2005* and *Town Planning Regulations 1967* are such that consent to advertise the Scheme amendment will first need to be granted by the Western Australian Planning Commission.

### Nursery Site

As noted above, the proposal includes the addition of 'Nursery' to AU1. Currently a 'Nursery' operates under the proviso of Clause 5.10.11(d) of the Scheme, where a plant nursery may operate on land within the Resource Zone where there is a land area not smaller than 4 hectares.

The proponent advises that although new lot 103 is greater than 4ha in size, future widening of the Launderers (Lancaster) Street road reserve will see the lot decrease below the required 4ha. Thus making it non



compliant with the Scheme. The Additional Use is included to allow the 'Nursery' operations to continue without the reliance on non-conforming use rights.

It is deemed appropriate in this case to allow the Additional Use of 'Nursery' to be included in 'AU1' as part of this Scheme amendment.

#### Environmental Impact

The expansion of AU1 and indicative use of the land shows the need for remnant vegetation removal. A Level 1 Flora and Fauna Assessment indicated that the impact on native flora and fauna from this proposal is limited. The expansion of the Additional Use area has no impact on Bush Forever Site 388 whatsoever.

Extensive environmental requirements are included as requirements of the Additional Use and do not vary from the existing environmental requirements. These requirements relate to noise, dust and water management.

As also mentioned, due to the inconsistencies with SPP2.3 both the *Planning and Development Act 2005* and *Town Planning Regulations 1967* require the Western Australian Planning Commission ("WAPC") to exercise its discretion to grant consent for the Scheme amendment to be advertised. In addition to this the Scheme amendment will also be referred to the Environmental Protection Authority, as per Clause 81 of the *Planning and Development Act 2005*, to ascertain if assessment is required under the *Environmental Protection Act 1986* before the Scheme amendment can be advertised by the City.

Should both the WAPC and Environmental Protection Authority consent to the initiation of advertising for the Scheme amendment, the Department of Environment and Conservation and the Department of Water will be consulted on the proposal.

#### Traffic

A traffic study has been prepared by Porter Consulting Engineers on behalf of the applicant to allow for a better assessment of the proposed future uses of the subject land.

The report outlined a number of feasible access options to the site, following assessment by the City's Transport Engineer.

The appropriate access to the subject land takes into consideration the following aspects. Jandakot Road, Berrigan Drive and the surrounding road network have been subject to continuing growth in the number of vehicles per day and this is predicted to grow going forward. Further to



this, the future Lancaster (Launders) Road is anticipated, by Main Roads, to carry some 21,500 vehicles per day in 2031.

The exact location of access and egress points from the site will be conducted in close cooperation with the City and this matter can further be addressed through the future Detailed Area Plan and subsequent Development Application to be submitted for the proposed additional uses.

### **Strategic Plan/Policy Implications**

#### **Demographic Planning**

- To ensure the planning of the City is based on an approach that has the potential to achieve high levels of convenience and prosperity for its citizens.

#### **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**

The Scheme amendment fee for this proposal has been calculated in accordance with the *Planning and Development Regulations 2009*, including the cost of advertising and this has been paid by the applicant.

### **Legal Implications**

N/A

### **Community Consultation**

In accordance with the *Town Planning Regulations 1967* consultation is to be undertaken subsequent to the local government adopting the Scheme amendment and both the WAPC and Environmental Protection Authority giving their respective consents for advertising to occur. This requires the amendment to be advertised for a minimum of 42 days.



**Attachment(s)**

1. Scheme Amendment Map
2. Local Context Plan
3. Indicative Site Development

**Advice to Proponent(s)/Submissioners**

The Proponent(s) have been advised that this matter is to be considered at the 12 April 2012 Council Meeting.

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

Nil.

CLR ALLEN LEFT THE MEETING AT THIS POINT, THE TIME BEING 7.46 PM.

**DECLARATION OF INTEREST**

The Presiding Member advised the meeting that he had received a Declaration of Interest as follows:

**CLR ALLEN**

Declared a conflict of interest in Item 14.4 "Consideration to Initiate Scheme Amendment No. 92 – Bush Fire Prone Areas and Endorsement of Methodology for Identification of Bush Fire Prone Areas", pursuant to Section 5.62(1) of the Local Government Act 1995.

The nature of the interest is that relatives own property that backs onto a "Bushfire Prone Area".

- 14.4 (MINUTE NO 4744) (OCM 12/04/2012) - CONSIDERATION TO INITIATE SCHEME AMENDMENT NO. 92 - BUSH FIRE PRONE AREAS AND ENDORSMENT OF METHODOLOGY FOR IDENTIFICATION OF BUSHFIRE PRONE AREAS - APPLICANT: CITY OF COCKBURN -- OWNER: VARIOUS (93092) (C HOSSEN) (ATTACH)**

**RECOMMENDATION**

That Council in pursuance of Section 75 of the *Planning and Development Act 2005* ("Act"), initiate an amendment to City of Cockburn Town Planning Scheme No. 3 for the purposes of:

1. Modifying Clause 8.2.1(b) of the Scheme Text by including an additional sub-clause as follows:





- (v) *the development is included in a Bushfire Prone Area, as defined by clause 6.6.1 of the Scheme;*
2. Modifying Clause 6.1.1 of the Scheme Text by including an additional sub-clause as follows:
- (c) ***Bushfire Prone Areas, being all land in the Rural Zone, Rural Living Zone, Resource Zone and Conservation Zone, shown on the Scheme Map as BPA;***
3. Amending the Scheme Map and Legend to introduce the Bushfire Prone Area Special Control Area designation.
4. Including a new Clause 6.6 in the Scheme Text as follows:

### **6.6 Bushfire Prone Areas**

- 6.6.1 *For the purposes of this clause, a Bushfire Prone Area means any area located in the Rural Zone, Rural Living Zone, Resource Zone and Conservation Zone, identified by the Local Government and shown on a Bushfire Hazard Assessment Map.*
- 6.6.2 *The purpose of Bushfire Prone Areas are to:*
- (a) *implement State Planning Policy 3.4 Natural Hazards and Disasters;*
- (b) *identify land that is subject, or likely to be subject, to bushfire hazard;*
- (c) *ensure a bushfire attack level assessment is carried out on land that is subject, or likely to be subject, to bushfire hazard;*
- (d) *ensure that development effectively addresses the level of bushfire hazard applying to the land.*
- 6.6.3 *A Bushfire Hazard Assessment Map shall indicate Bushfire Prone Areas.*
- 6.6.4 *If a Local Government resolves to prepare a Bushfire Hazard Assessment Map, the Local Government:*
- (a) *is to notify in writing the owner and occupier of all the properties in the affected area;*
- (b) *is to publish a notice once a week for two consecutive weeks in a newspaper circulating in the Scheme area, giving details of:*
- a. *where the draft Map may be inspected;*
- b. *the subject nature of the draft Map;*



*Area, that does not comply with an approved bushfire hazard assessment undertaken as part of the structure planning or subdivision of an area or is inconsistent with the WAPC's and FESA's Planning for Bush Fire Protection Guidelines (Latest Edition).*

*6.6.12 In determining an application to carry out development in the Bushfire Prone Area, the Local Government may refuse the application, or impose conditions on any planning approval as to:*

- (a) the provision of a fire fighting water supply;*
- (b) the provision of fire services access;*
- (c) the preparation of a fire management plan in accordance with the Planning for Bush Fire Protection Guidelines (Latest Edition) and implementation of specific fire protection measures set out in the plan;*
- (d) the implementation of measures to ensure that prospective purchasers are aware of the relevant Scheme provisions, fire management plan and publications addressing fire safety.*

*6.6.13 An application for development approval must be accompanied by:*

- (a) a bushfire attack level assessment carried out in accordance with the methodology contained in the Planning for Bush Fire Protection Guidelines (Latest Edition);*
- (b) a statement or report that demonstrates that all relevant bushfire protection acceptable solutions, or alternatively all relevant performance criteria, contained in the Planning for Bush Fire Protection Guidelines (Latest Edition) have been considered and complied with, and effectively address the level of bush fire hazard applying to the land.*

*6.6.14 If, in the opinion of the Local Government, a development application does not fully comply with the bushfire protection acceptable solutions contained in the Planning for Bush Fire Protection Guidelines (Latest Edition), the application shall be referred to the FESA for advice prior to a decision being made.*

*6.6.15 Despite any existing assessment on record, the Local Government may require a bushfire risk assessment to be carried out prior to the approval of any development*



*proposed within a Bushfire Prone Area as designated on the Bushfire Hazard Assessment Map.*

5. As the amendment is in the opinion of Council consistent with Regulation 25(2) of the *Town Planning Regulations 1967* ("Regulations"), and upon the preparation of the necessary amendment documentation, the amendment be referred to the Environmental Protection Authority ("EPA") as required by Section 81 of the Act, and on receipt of a response from the EPA indicating that the amendment is not subject to formal environmental assessment, be advertised for a period of 42 days in accordance with the Regulations. In the event that the EPA determines that the amendment is to be subject to formal environmental assessment, this assessment is to be prepared by the proponent prior to advertising of the amendment.
6. That the amendment documentation be prepared in accordance with the standard format prescribed by the Regulations.
7. Endorse the following methodology for the identification of Bushfire Prone Areas on any future Bushfire Hazard Assessment Maps:
  - (a) Inclusion of identified native vegetation of 1 ha or greater (by aerial photography).
  - (b) Identification of native vegetation less than 1 ha in size but within 50 m of identified native vegetation (>1 ha).
  - (c) Buffering of all of the above by 100 m (shown in a different colour from main hazard area).
  - (d) For the purpose of registering an accurate assessment of bushfire risk; the identification of bushfire prone areas includes land meeting criteria 'a' and 'b' but not within area covered by a Bushfire Hazard Assessment Map, including areas of native vegetation on Council Reserves, Department of Environment and Conservation Reserves, neighbouring Local Government Areas and any other area deemed a bushfire risk by the City.



**COUNCIL DECISION**

MOVED Clr T Romano SECONDED Clr C Reeve-Fowkes that the recommendation be adopted.

**CARRIED 9/0**

**Background**

Australia and Western Australia specifically is a land mass prone to incidences of bushfire. In recent times a number of fire events have come under scrutiny from various State Governments to ascertain the cause, appropriateness of response and need for change. The need for the City of Cockburn to identify Bushfire Prone Areas and take reasonable and appropriate responses to this issue is in direct response to these reports.

In Western Australia, unlike other states, the declaration of bushfire prone areas is currently at the discretion of Local Government. Local Government can indicate a Bushfire Prone Area by a number of mechanisms, these include:

- Within a Town Planning Scheme; and
- By powers conferred by the Local Government Act 2005;

Only two Local Governments in Western Australia have used legislative powers available to them to designate Bushfire Prone Areas. A number of Local Governments have included Bushfire Prone Areas within their Town Planning Schemes.

The purpose of this report is to have Council consider initiating an amendment to City of Cockburn Town Planning Scheme No. 3 ("Scheme"), in order to deal with Bushfire Prone Areas as a relevant planning, subdivision and development consideration.

**Submission**

This amendment proposes additions of a number of provisions related to Bushfire Protection and Management. The intent of these changes is to:

1. identify land that is subject, or likely to be subject, to bushfire hazard;
2. to ensure a bushfire attack level assessment is carried out on land that is subject, or likely to be subject, to bushfire hazard; and



3. to ensure that development effectively addresses the level of bushfire hazard applying to the land.

The Amendment will include the introduction of a Bushfire Hazard Assessment Map(s), a map that will sit outside the Scheme and indicate the level of fire hazard for land located within the Rural Zone, Rural Living Zone, Resource Zone and Conservation Zone. These maps will be independently approved by Council and will be subject to their own community consultation process.

## **Report**

### Background

A Shared Responsibility: The Report of the Perth Hills Bushfire February 2011 Review ("Keelty Report") and The Major Incident Review – Lake Clifton, Red Hill and Roleystone Fires – June 2011 ("MIR") offered a number of critical reviews of the role of Local Government. In the view of the MIR on the Red Hill fire, the MIR stated that there is no doubt that the areas burnt out, being the Darling Scarp, are a bushfire prone area. The MIR labelled the Local Government irresponsible for not declaring the area so. The MIR went on to state that "failing to declare these areas bushfire prone inhibits the effectiveness of FESA's operational response".

Within both the MIR and the Keelty Report it is noted that Local Governments are hesitant to designate Bushfire Prone Areas due to potential for increased liabilities, lowering property prices, insurance issues and potential developers viewing the imposition of additional construction standards as a disincentive to invest in their area. Both the Keelty Report and the MIR state this stance is unacceptable and should not remove any consideration as to the need to appropriately respond to bushfire risks.

On 22 March 2012 the Delegated Authorities, Policies and Position Statements Committee (DAPPS) recommended Council adopt a new position statement, PSPD22 'Fire Management Plans'. The Position Statement noted that in the absence of any identified Bushfire Prone Areas and until the Scheme is amended, it is recommended that Council adopt a position that clearly articulates that a precautionary approach will be taken. Therefore the Position Statement calls on Council to clearly communicate to the community that approved Fire Management Plan recommendations and requirements will be implemented through the issue of a building permit whether or not the subject land is within a declared bushfire prone area.

The City is proactively seeking to deal with bushfire risks, through ensuring the risk posed by bushfire prone areas are recognised and



dealt with through all relevant planning, subdivision and development considerations.

### Special Control Area

The Scheme amendment proposes to create an additional Special Control Area of the Scheme, named Bushfire Prone Areas. This area specifically applies to the entirety of the Rural Zone, Rural Living Zone, Resource Zone and Conservation Zones of the Scheme. It is proposed that Clause 6.1.1 be modified to show the entirety of the Rural Zone, Rural Living Zone, Resource Zone and Conservation Zones on the Scheme Map as BPA. This Special Control Area would be Clause 6.6 of the Scheme.

The purpose of a Bushfire Prone Areas is to:

- (a) implement State Planning Policy 3.4 Natural Hazards and Disasters;
- (b) identify land that is subject, or likely to be subject, to bushfire hazard;
- (c) ensure a bushfire attack level assessment is carried out on land that is subject, or likely to be subject, to bushfire hazard; and
- (d) ensure that development effectively addresses the level of bushfire hazard applying to the land.

The Scheme amendment will allow for the creation of a Bushfire Hazard Assessment Map. This map and Clause 6.6.3 states that only a Bushfire Prone Assessment Map shall indicate Bushfire Prone Areas. Although Clause 6.1.1 will designate all areas on the Scheme Map via the BPA Special Control Area, it is only the identification of land as Bushfire Prone on a Bushfire Hazard Assessment Map that initiates the various requirements of proposed Clause 6.6.

The Bushfire Hazard Assessment Map will sit outside the Scheme and be separately approved by Council as required. The process for approval and modification of a Bushfire Hazard Assessment Map is set out in Clause 6.6.

As stated above, the Bushfire Hazard Assessment Map will sit outside the Scheme, though be directly referenced by the Scheme. Placing the Hazard Assessment Map outside the Scheme is in response to the need for flexibility in the process of identification and the changing nature of the urban/rural and natural environment of the City. By placing the Map outside the Scheme it allows Council to adapt the map as situations require and new information comes to hand.

Bushfire Prone Areas, as a norm will require development to be subject to the construction standards set out in *Australian Standard 3959-2009: Construction of buildings in the bushfire-prone areas (AS3959-2009)*.



Properties in fire prone areas will also require a Fire Management Plan, as identified in proposed Clause 6.6.12 of the Scheme, as a condition of planning approval. These conditions may be imposed as reference in the proposed clause below:

*6.6.12 In determining an application to carry out development in the Bushfire Prone Area, the Local Government may refuse the application, or impose conditions on any planning approval as to:*

- (a) the provision of a fire fighting water supply;*
- (b) the provision of fire services access;*
- (c) the preparation of a fire management plan in accordance with the Planning for Bush Fire Protection Guidelines (Latest Edition) and implementation of specific fire protection measures set out in the plan;*
- (d) the implementation of measures to ensure that prospective purchasers are aware of the relevant Scheme provisions, fire management plan and publications addressing fire safety.*

Proposed development within the new Special Control Area that has previously undergone a fire assessment, compliant with the WAPC's and FESA's *Planning for Bush Fire Protection Guidelines (Latest Edition)*, at either the Subdivision or Structure Planning stage, will not be required to undergo additional fire assessment. This is subject to such development complying with the previous assessment for that area.

#### Identification of Bushfire Prone Land

For the purpose of the Bushfire Hazard Assessment Map, the following protocol is utilised when identifying an area of bushfire prone land:

- Inclusion of identified native vegetation of 1 Ha or greater (by aerial photograph).
- Identification of native vegetation less than 1 Ha in size but within 50m of identified native vegetation (>1 Ha).
- Buffering of all the above by 100m (shown in different colour from main hazard area).

For the purpose of registering an accurate assessment of bushfire risk; the identification of bushfire prone areas includes land meeting the first two criteria but not within area covered by Bushfire Hazard Assessment Map, including areas of native vegetation within neighbouring Local Government Areas.

The above methodology was developed by the Shire of Busselton, a leading Western Australian Local Government in planning for bushfire risk, as part of a recent review of their bushfire prone areas. The





methodology has been amended slightly to better reflect the nature of native vegetation and topography found in the City of Cockburn.

Point two has been altered from the Busselton methodology from 100m to 50m. This was done in response to tendency in the City of Cockburn for native vegetation to be sparser and also the nature of the topography. In that the areas subject to the proposed amendment are considerably flatter than those found in Busselton.

This report requests endorsement from Council of the proposed methodology outlined above to guide mapping of future Bushfire Hazard Assessment Maps.

### Bushfire Hazard Assessment Map

The processes and mechanism for the creation of a Bushfire Hazard Assessment Map is set out in Clause 6.6. Minimum levels of community consultation; including, advising all affected landowners directly and notice in a local publication (for two consecutive weeks) is required. Review of any map is then necessary prior to consideration for final adoption.

A landowner may at anytime dispute the assessment of their land in writing to the Local Government. The onus would be on the landowner to provide evidence to support their claims.

A draft version of a Bushfire Hazard Assessment Map, covering the southern section of Banjup has been included as Attachment 2. This map was created using the methodology outlined in Point 7 of the Recommendations. The map is a guide only and subject to change both from further analysis and any submissions received through future community consultation. Final approval of any Bushfire Hazard Assessment Map would be at the discretion of Council.

### Requirements for Planning Approval

Clause 8.2 of the Scheme sets out the types of development that are exempt from planning approval, referred to as Permitted Development. The amendment proposes changes to Clause 8.2(b) that deals with the erection of a single house on a lot, including any extension, ancillary outbuilding and swimming pools. This Scheme amendment introduces an additional exception to Clause 8.2(b) where:

- (v) *the development is included in a Bushfire Prone Area, as defined by clause 6.6.1 of the Scheme.*

Historically within the areas subject to the proposed amendment planning approval has not been required for the development of a



single house within a designated building envelope (should one exist). Planning approval has been required for development outside and/or relocation of building envelopes. The amendment proposes a major shift in the approval process of residential development in these areas.

For the purpose and intent of the amendment to be fulfilled it is deemed necessary to alter the status quo in these areas. The development approval process is the appropriate stage of the development assessment process to ensure that the requirements outlined in proposed Clause 6.6 are adhered to.

It would be envisioned that the requirement for landowners to apply for development approval in these areas will place an additional financial and time constraint on those individuals. However, as both the Keely Report and the MIR identified, these hesitations have existed and continue to exist within Local Government, and that not exercising these power for the reasons outlined earlier in this document is unacceptable.

The disincentives of imposing higher building costs thorough bush fire designation must be carefully weighed against the wider responsibility of Local Government. Local Government through building and planning controls can have a significant impact on the survivability of individuals during a fire event.

Bushfire Building Cost Comparison

By designating an area bush fire prone it places an additional upfront financial encumbrance on the owners of that land in that they need to comply with AS3959-2009. The amendment proposes to require planning approval for the erection of a single house, including any extension, ancillary outbuildings and swimming pools where the lot is identified as Bushfire Prone on a Bushfire Hazard Assessment Map. A requirement of said approval will be for the application to be built to AS3959-2009, with the provision for additional bush fire related conditions as outlined in Clause 6.6.12 of the proposed amendment.

FESA in their submission to Keely Report produced the following table derived from the Australian Building Codes Board publication the “*Final Regulatory Impact Statement for Decision (RIS 2009-02)*”.

*Table: Cost of Compliance with AS3959-2009*

Category of bush fire attack	Predicated bush fire attack and level of exposure.	Base house	Large two story	Elevated light weight construction
BAL – Low	Insufficient risk to warrant specific construction requirements.	\$0	\$0	\$0



BAL – 12.5	Ember attack.	\$11,535	\$14,981	\$21,428
BAL – 19	Increasing levels of ember attack and burning debris ignited by windborne embers together increasing heat flux.	\$11,535	\$14,981	\$21,428
BAL – 29	Increasing levels of ember attack and burning debris ignited by windborne embers together increasing heat flux.	\$15,471	\$17,095	\$35,024
BAL – 40	Increasing levels of ember attack and burning debris ignited by windborne embers together increasing heat flux with the increased likelihood of exposure to flames.	\$17,107	\$19,751	\$62,357
BAL – FZ	Direct exposure to flames from fire front in addition to heat flux and ember attack.	\$20,885	\$28,905	\$76,679

Alternatively to the table above, the Shire of Busselton in Council Agenda dated 11 May 2011 on a matter concerning the identification of bushfire prone areas provided the following information that estimated the costs (above standard constructing standards) of compliance with AS3959-2009:

- BAL – 12.5 – 3-4%
- BAL – 19 – 4-5%
- BAL – 29 – 6-6.5%
- BAL – 40 – 6-10%
- BAL – FZ – 8-10%

An application for Planning Approval on land subject to the proposed amendment would be required to provide a bush fire attack level assessment carried out in accordance with the methodology contained in the *Planning for Bush Fire Protection Guidelines (2010)*; and a statement or report that demonstrates that all relevant bush fire protection acceptable solutions, or alternatively all relevant performance criteria, contained in the *Planning for Bush Fire Protection Guidelines (2010)* have been considered and complied with, and effectively address the level of bush fire hazard applying to the land.

It would be anticipated that due to the prevailing geology, topography and built form of the City of Cockburn and specifically the areas subject to the proposed amendment; the majority of dwellings subject to increased AS3959-2009 standards would fall within the base house and large two story categories.

The disincentives of imposing higher building costs thorough bush fire designation; such as lowering property prices, insurance issues and potential developers viewing the imposition of additional construction standards as a disincentive to invest must be carefully weighed against



the wider responsibility of Local Government. Local Government through building and planning controls can have a significant impact on the survivability of individuals during a fire event.

### Conclusion

It is considered that the proposed Scheme amendment will provide better bushfire safety and prevention within the City of Cockburn's more vulnerable areas. It will designate bushfire prone zones, showing where higher building standards and fire management plans are needed.

In endorsing the suggested methodology for the identification of Bushfire Prone areas on any future Bushfire Hazard Assessment Map

It is therefore recommended that Council proceed to initiate the Scheme Amendment and endorse the methodology as outlined.

### **Strategic Plan/Policy Implications**

#### **Demographic Planning**

- To ensure the planning of the City is based on an approach that has the potential to achieve high levels of convenience and prosperity for its citizens.

#### **Infrastructure Development**

- To construct and maintain parks and bushland reserves that are convenient and safe for public use, and do not compromise environmental management.

#### **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**

There are nil direct financial impacts faced by the Local Government. It is noted however throughout the report financial impacts associated with higher building costs in order to address fire prone areas.

### **Legal Implications**

Planning and Development Act 2005  
City of Cockburn Town Planning Scheme No. 3  
Town Planning Regulations 1967  
Local Government Act 1995  
Bush Fires Act 1954



## Community Consultation

In accordance with the *Town Planning Regulations 1967* consultation is to be undertaken subsequent to the local government adopting the Scheme Amendment and the Environmental Protection Authority (EPA) advising that the proposal is environmentally acceptable. This requires the amendment to be advertised for a minimum of 42 days.

## Attachment(s)

1. Scheme Amendment Map 1 and 2
2. Example Bushfire Hazard Assessment Map

## Advice to Proponent(s)/Submissioners

N/A

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

Nil.

CLR ALLEN RETURNED TO THE MEETING AT THIS POINT, THE TIME BEING 7.50 PM.

THE PRESIDING MEMBER ADVISED CLR ALLEN OF THE RESOLUTION OF COUNCIL.

## 15. FINANCE AND CORPORATE SERVICES DIVISION ISSUES

### 15.1 (MINUTE NO 4745) (OCM 12/04/2012) - LIST OF CREDITORS PAID - FEBRUARY 2012 (FS/L/001) (N MAURICIO) (ATTACH)

#### RECOMMENDATION

That Council receive the List of Creditors Paid for February 2012, as attached to the Agenda.

#### COUNCIL DECISION

MOVED Mayor L Howlett SECONDED Cllr C Reeve-Fowkes that that Council receive the List of Creditors Paid for February 2012, as attached to the agenda, subject to the deletion of the top line of each page, except the first mention page within the 'List of Creditors Paid', that duplicates Councillor Val Oliver as the payee – cheque/EFT reference EF0623208.

**CARRIED 10/0**



### **Reason for Decision**

The duplicated listing of Councillor Val Oliver as a payee in the List of Creditors Paid' for February 2012 needs to be amended.

### **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**

The List of Accounts for February 2012 is attached to the Agenda for consideration. The list contains details of payments made by the City in relation to goods and services received by the City.

### **Strategic Plan/Policy Implications**

#### **Governance Excellence**

- To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices.

### **Budget/Financial Implications**

N/A

### **Legal Implications**

N/A

### **Community Consultation**

N/A

### **Attachment(s)**

List of Creditors Paid – February 2012.

### **Advice to Proponent(s)/Submissioners**

N/A



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

Nil.

**15.2 (MINUTE NO 4746) (OCM 12/04/2012) - STATEMENT OF FINANCIAL ACTIVITY AND ASSOCIATED REPORTS - FEBRUARY 2012 (FS/S/001) (N MAURICIO) (ATTACH)**

**RECOMMENDATION**

That Council receive the Statement of Financial Activity and associated reports for February 2012, as attached to the Agenda.

**COUNCIL DECISION**

MOVED Clr C Reeve-Fowkes SECONDED Clr S Pratt that the recommendation be adopted.

**CARRIED 10/0**

**Background**

Regulations 1996 prescribes that a local government is to prepare each month a Statement of Financial Activity.

Regulation 34(2) requires the Statement of Financial Activity to be accompanied by documents containing:–

- (a) details of the composition of the closing net current assets (less restricted and committed assets);
- (b) explanations for each material variance identified between YTD budgets and actuals; and
- (c) any other supporting information considered relevant by the local government.

Regulation 34(4)(a) prescribes that the Statement of Financial Activity and accompanying documents be presented to Council within 2 months after the end of the month to which the statement relates.

The regulations require the information reported in the statement to be shown either by nature and type, statutory program or business unit. The City chooses to report the information according to its organisational business structure, as well as by nature and type.



Financial Management Regulation 34(5) requires Council to annually set a materiality threshold for the purpose of disclosing budget variance details. To this end, Council has adopted a materiality threshold variance of \$100,000 for the 2011/12 financial year.

### **Submission**

N/A

### **Report**

The February report is inclusive of the mid-year budget review (MYBR) as adopted at the February Council meeting.

Formatting and presentation changes have also been made this month to the principal Statement of Financial Activity in order for it to align better with the Statement of Comprehensive Income by Nature and Type. Specifically, this means the total operating income and expenditure numbers are now consistent between the two statements.

### Closing Funds

The City's closing municipal funds of \$52.9M were \$18.3M higher than the YTD revised budget. However, this includes \$10.3M of transfers to reserves not yet made. The cash flow budget will be adjusted in March to defer most of these transfers into May. The balance of the variance represents favourable operating revenue and expenditure positions and the impact of delayed spending within the capital program.

The full year revised budget is showing a closing funds position of \$390k, up from \$156k last month and includes the net impact from the MYBR.

The budgeted closing funds position will fluctuate moderately throughout the year as it is impacted by various Council decisions and minor system adjustments and corrections. Details of these are outlined in Note 3 to the financial report.

### Operating Revenue

Overall, operating revenue is tracking ahead of budget by \$3.1M, which is less than last month's variance by \$0.8M due to the MYBR. This continues to be impacted by the regular items. Interest earnings on investments were \$0.7M ahead of YTD budget due to the strong cash flow position. Rates revenue was \$0.3M ahead of budget. Revenue from the Henderson Waste Recovery Park was also \$1.0M ahead of the YTD budget despite the MYBR. This will reduce as the increased budget target is activated during the remainder of the year.





### Operating Expenditure

Operating expenditure is showing an overall underspend of \$2.1M, being 3% of the YTD budget and the same amount as last month. Key contributors to this result include:

- A YTD under spend of the Council grants program of \$0.4M.
- General budget under spend within Parks and Environmental Services of \$0.6M.
- Overall budget under spend within Roads Maintenance and Construction Services of \$1.1M, including an allocation of \$0.8M for underground power and \$0.4M in street lighting.
- Henderson Waste Park is showing an unfavourable variance of \$0.6M in the cost of the landfill levy.

The following table shows the budgetary performance from a nature or type perspective:

Nature or Type Classification	Actual	Amended YTD Budget	Variance to YTD Budget
	\$	\$	%
Employee Costs	\$23.56M	\$23.96M	1.6%
Materials and Contracts	\$19.17M	\$20.48M	6.4%
Utilities	\$2.03M	\$2.70M	25.0%
Insurances	\$1.74M	\$1.67M	- 4.2%
Other Expenses	\$4.34M	\$4.88M	11.0%
Depreciation (non cash)	\$14.20M	\$13.55M	- 4.8%

There is traditionally a lag effect in the incurring of materials and contracts and utility expenses. The basis for street lighting costs is currently being disputed with Synergy, which is impacting the variance. This expense is not currently being accrued or in the financial statements, but there is capacity within the budget to meet the liability if and when the cost is finalised.

Depreciation is tracking ahead of budget due to the impact of the revaluation on road infrastructure performed during the 2011/12 end of year financial reporting.

### Capital Program

The City's capital budget is showing an overall under spend of \$11.6M against a YTD budget of \$29.0M and full year budget of \$60.2M. This is little changed from the January result and has benefited from project cashflow revisions included in the MYBR. The City's largest infrastructure projects are now under construction, which will lead to an increased rate of expenditure over the remainder of the year.

Capital related funding sources are conversely down \$9.1M against the ytd budget; largely as a result of the capital expenditure underspend. The main impacts are Council's cash reserves at \$7.7M and proceeds from the sale of assets (land) of \$2.8M.

The more significant project spending variances are disclosed in the attached CW Variance analysis report.

### Cash & Investments

Council's cash and current/non-current investment holdings increased to \$109.6M (from \$108.2M in January). This is \$22.8M ahead of YTD budget estimates mainly due to the impact of the capital budget variances, as well as the favourable operating budget. This continues to boost the City's interest earning capacity.

Of this total cash and investment holding, \$48.8M represents the City's cash reserves, whilst another \$5.8M is held for other restricted purposes such as bonds and capital contributions. The balance of \$55.0M represents the cash and investment component of the City's working capital, available to fund ongoing operations and the municipal funded portion of the capital program.

The City's investment portfolio made an annualised return of 6.03% for the month, versus the benchmark BBSW performance of 4.27%. The Reserve Bank failed to reduce interest rates in March, thus allowing the City to continue investing its funds at yields of around 6%.

The majority of investments held continue to be in term deposit products placed with highly rated APRA (Australian Prudential Regulation Authority) regulated Australian banks. These mainly range in terms of up to six months, as this is where the current value in the yield curve lies.

### Description of Graphs and Charts

There is a bar graph tracking Business Unit operating expenditure against budget. This provides a very quick view of how the different units are tracking and the comparative size of their budgets.

The Capital Expenditure graph tracks the YTD capital spend against the budget. It also includes an additional trend line for the total of YTD actual expenditure and committed orders. This gives a better indication of how the capital budget is being delivered, rather than just purely actual cost alone.

A liquidity graph shows the level of Council's net current position (adjusted for restricted assets) and trends this against previous years.



This gives a good indication of Council's capacity to meet its financial commitments over the course of the year.

Council's overall cash and investments position is provided in a line graph with a comparison against the YTD budget and the previous year's position at the same time.

Pie charts included show the break-up of actual operating income and expenditure by nature and type and the make-up of Council's current assets and liabilities (comprising the net current position).

### **Strategic Plan/Policy Implications**

#### **Governance Excellence**

- To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices.

### **Budget/Financial Implications**

Material variances identified of a permanent nature (i.e. not due to timing issues) may impact on Council's final budget position (depending upon the nature of the item).

### **Legal Implications**

N/A

### **Community Consultation**

N/A

### **Attachment(s)**

Statement of Financial Activity and associated statements – February 2012.

### **Advice to Proponent(s)/Submissioners**

N/A

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

Nil.



**15.3 (MINUTE NO 4747) (OCM 12/04/2012) - FEES FOR UNDERGROUND POWER SERVICES IN COOLBELLUP (ES/M/008) (S DOWNING) (ATTACH)**

**RECOMMENDATION**

That Council retain the existing fee structure for the Underground Power Project in Coolbellup.

**COUNCIL DECISION**

MOVED Clr C Reeve-Fowkes SECONDED Clr S Pratt that the recommendation be adopted.

**CARRIED 10/0**

**Background**

At the Ordinary Council Meeting held on 8 March 2012, Mayor Howlett requested that:

*A report be provided to the April 2012 Council meeting addressing the charging of certain fees for the provision of underground power services to property owners in the vicinity of Lennox Link, Leontes Way and Florizel Street, Coolbellup who are already connected to underground power.*

**Submission**

N/A

**Report**

The Council imposed a charge on all ratepayers in the Coolbellup Underground Power (UGP) Area in the 2011/12 Municipal Budget that comprised of the following:

- Connection Fee - \$550
- Infrastructure Fee - \$2,550
  
- Total Fees - \$3,100 per dwelling

The Connection Fee was for the cost of connecting the properties electricity Meter box to the green dome on the property's boundary.



The Infrastructure Fee was for the removal of power poles and overhead cables, overhead transformers, relocating and increasing the number of transformers to provide for more users of the power network, new street lighting infrastructure to Australian Design standards and replacement of the street lights with the superior decorative light range rather than the grey standard western power street light pole.

The City provided the following discounts:

- 50% for registered pensioners
- 50% for those with High Voltage power line remaining
- 100% for connection fee where an existing dome is in place

The Council also provided a 10% for those who pay the UGP charge in full. Those who opt for the payment plan, ratepayers are provided with a five year timeframe to pay the UGP charge in annual instalments.

The 36 ratepayers in the two blocks of 18 lots (encompassed by Florizel Street and Leontes Way – see attached map) have an existing connection to the power network so no \$500 Connection Fee was charged. An Infrastructure Fee was applied but a discount of 50% was granted as the existing power poles and cables had already been removed. The original developer would have paid or contributed to the work done to date. However, the revenue raised from the Infrastructure Fee was the cost to remove not only the wooden poles and overhead power cables and transformers but also underground power cables to increase the capacity of the network for the whole of the project area including the 36 properties in the Florizel Street and Leontes Way block of properties. As noted above, Council will also improve on the existing street lighting infrastructure in both quantum and design, so as to improve the amenity of the area.

The cost for doing this work was calculated for the whole of the area and not just parts of the project area. Using this method, the City was able to offer a lower cost for all ratepayers. In addition, all of the property owners will enjoy better amenity with the power lines removed including a more reliable power supply through the increased capacity that the underground power project will provide. This is the benefit that will be enjoyed by the property owners in Leontes Way.

The affected ratepayers in the 76 properties will pay \$1,275 over the five years as compared to \$3,100 for a property not in the affected area or a 59% overall discount.

As to the 40 properties on the northern part of Florizel Street, the Council offered the property owners the same fee structure as Leontes Way even though these owners did not contribute to any of the



developers original costs but on principal, where the infrastructure is removed a 50% discount would be provided.

The cost of providing underground power in Coolbellup has been calculated so it is to recoup the project cost equitably over all affected properties in the project area thus lowering the cost to all property owners. Property owners have been allocated 27% of the Project cost with Council, Western Power and the State Government paying the balance of the project cost, equivalent to a total cost (approximately) of \$12,000 per lot.

The owners of the collective 76 affected properties are contributing a lesser amount to the UGP project but they are also receiving a benefit in increased capacity of the network and improved street lighting. The former is important as more higher density development is approved, bringing within higher demands on the power network.

It should be noted that the City of Canning did likewise for the Bentley UGP, in that they too had an area similar to Leontes Way and Canning charged a discounted infrastructure fee.

In conclusion, the Council should retain the existing fee structure for the 76 affected properties based on the reasons noted above.

### **Strategic Plan/Policy Implications**

#### **Governance Excellence**

- To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices.
- To develop and maintain a financially sustainable City.

#### **Budget/Financial Implications**

To waive the fee for the 76 properties, the cost would be \$96,900 which would have to be recovered from the balance of the affected properties or \$107 per property.

To waive the fee for the 36 properties in Leontes Way and Lennox Link the cost would be \$45,900. This would mean an increase for other properties of \$51 per property.

#### **Legal Implications**

Local Government Act, Section 6.38 and Regulation 54 of the Local Government (Financial Management) Regulations 1996.



**Community Consultation**

N/A

**Attachment(s)**

Map of Florizel Street, Leontes Way and Lennox Link.

**Advice to Proponent(s)/Submissioners**

N/A

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

Nil.

**16. ENGINEERING AND WORKS DIVISION ISSUES**

Nil

**17. COMMUNITY SERVICES DIVISION ISSUES****17.1 (MINUTE NO 4748) (OCM 12/04/2012) - AMENDMENT TO CITY OF COCKBURN LOCAL LAWS 2010, SEC.2A - FIREBREAKS AND RELATED MATTERS (CC/P/099) (R AVARD/P WESTON) (ATTACH)****RECOMMENDATION**

That Council:

- (1) proceed to amend the City of Cockburn (Local Government Act) Local Laws, 2010 Section 2A, as follows:
  1. Clause 2A.2 (1) – Delete ‘October’ and insert ‘November’.
  2. Clause 2A.2 (3) – Delete ‘30 November’ and insert ‘1 November’ and delete ‘March’ and insert ‘May’.
  3. Clause 2A.3 (1) – Delete ‘31 October’ and insert ‘1 October’.
- (2) in accordance with Section 3.12 of the Local Government Act, 1995, the above amendments, as shown in the attachment to the Agenda, be advertised for a minimum period of 6 weeks.

**COUNCIL DECISION**

MOVED Mayor L Howlett SECONDED Cllr C Reeve-Fowkes that Council:

- (1) proceed to amend the City of Cockburn (Local Government Act) Local Laws, 2010 Section 2A, as follows:
  - 1. Clause 2A.1 – Delete the words after “between” and insert “1 November in any year until 31 May in the year following”.
  - 2. Clause 2A.2 (1) – Delete “1 October” and insert “1 November”.
  - 3. Clause 2A.2 (3) – Delete ‘30 November’ and insert ‘1 November’ and delete “31 March” and insert “31 May”.
  - 4. Clause 2A.3 (1) – Delete “31 October” and insert “1 October”.
- (2) in accordance with Section 3.12 of the Local Government Act, 1995, the above amendments, as shown in the attachment to the Agenda, be advertised for a minimum period of 6 weeks.

**CARRIED 10/0**

**Reason for Decision**

To amend Clause 2A.1 – 'Interpretation' and correct the dates shown in the respective clauses that are subject to the proposed amendment.

**Background**

The City of Cockburn Local Laws, 2010, Sec 2A, stipulates the dates by which firebreaks and fire mitigation measures on land within the district must be completed and maintained. The relevant sections of the local laws are as follows:

**Construction of Firebreaks**

**“2A.2 Construction of Firebreaks**

All owners and occupiers of land within the district shall clear flammable matter from the land in accordance with the following requirements:

- (1) As to land which is 2032m<sup>2</sup> or less in area, or which is zoned “Residential” under the town planning scheme, the owner or





occupier is to remove all the flammable matter from the whole of the property, except living trees, shrubs, plants under cultivation and lawns, by slashing or mowing the matter to a height of not more than 50 millimetres, or otherwise to the satisfaction of the local government or an authorised person, and the property is to be maintained to the standard so stated in this subsection for the duration of the period 1 October to 31 May each year.

- (2) As to land, which is greater than 2032m<sup>2</sup> in area, shall have a trafficable firebreak three (3) metres in width cleared to mineral earth subject to the following requirements:
- (a) immediately inside all external boundaries of the land;
  - (b) immediately surrounding buildings (if any) situated on the land;
  - (c) immediately surrounding all fuel dumps and ramps (if any) on the land; and
  - (d) in any event, clear the firebreaks to the satisfaction of the local government or an authorised person.
- (3) In reference to subsection (2) all firebreaks must be cleared by the owner or occupier of the land on or before 30 November in any year, and thereafter be maintained by the owner or occupier clear of flammable mater up to and including 31 March in the following year.
- (4) Where and owner occupier of land fails or neglects to comply with this Part of the Local Laws within the time specified, an authorised person may with such employees and/or contractors, vehicles and machinery as the authorised person deems necessary enter upon the land and do all such things as necessary to comply with this Local Law and may recover costs and expenses of doing so as a due debt from the owner or occupier of the land pursuant to the Act, in addition to any penalty which might be imposed.

#### Variation to Fire prevention Measures

2A.3. (1) If for any reason an owner or occupier considers it impractical to clear firebreaks in accordance with subsection (2) of section 2A.2, the owner or occupier may apply in writing to Council or an authorised person no later than 31 October in any year for approval to construct a firebreak in an alternative position on the land.”

Any person who fails to comply with any provisions of this Section commits an offence and a penalty shall be prescribed by the Bushfire Act 1954. The maximum fine is \$5,000.



## Submission

N/A

## Report

The purpose of the amendment is to change the dates applicable to the installation of fire prevention measures to vacant and rural properties within Cockburn.

The effect of the amendment will be to standardise the dates by which these measures will be required to conform and be consistent with similar provisions of neighbouring local governments.

There is a significant amount of time spent in the administration and inspection of fire breaks and block clearance. As there are two different dates (depending on the nature of the property) by which fire breaks and block clearance needs to be completed there is some confusion for land owners in the district. Accordingly, it is opportune for Council to consider procedures and practices that have been long standing and developed when the District had an extensive number of rural properties and limited residential areas.

As can be seen from the information provided above owners of land of less than 2032m<sup>2</sup> or which is zoned residential must have their land prepared in accordance with the requirements from the 1 October year to the 31 May.

Owners of land of greater than 2032m<sup>2</sup> must have their land prepared in accordance with the requirements of the act from the 30 November to the 31 March of each year.

The varying dates between the types of properties are confusing and inconsistent with adjoining local authorities, as noted below;

### City of Rockingham

Rural land on or before the 30 November until 31 May of the following year.

Urban areas on or before the 30 November and until the 31 May of the following year.

### City of Gosnells

Rural land on or before the 30 November until 30 April of the following year.



Other land

All times throughout the year are required to clear and maintain the land free of flammable matter.

Town of Kwinana

All areas 3001m<sup>2</sup> or greater require owners to provide fire breaks to be in place by the 30 November to the 31 May of the following year.

All areas 3000m<sup>2</sup> or less in residential areas or special residential areas to be in place by 30 November to 31 May of the following year.

The common date for the provision of firebreaks and fire mitigation measures is from the 30 November to the 31 of May of the following year.

It is considered that the greater fire risk is in the rural areas and these areas ought to have a requirement for their firebreaks to be in before the residential areas which is not the current requirement of the local law.

There is some anecdotal evidence that the rains are continuing later into the year with the result that firebreaks and clearing of land done in accordance with the times currently stipulated can result in regrowth which requires the works to be redone. While regrowth resulting from unseasonal rain can occur at any time during the 'fire break period' it would be of great benefit to reduce the opportunity of this occurring by making the start date for the 'fire break period' later in the year.

At its meeting of the 6 December 2011 the Cockburn Bushfire Reference Group supported the fire break period being 1 November to the 31 of May for all areas in the City.

On balance the most beneficial arrangement is for the 'fire break period' to be the same across the City and consistent with other adjoining local authorities. The proposed period is from the 1 of November to the 31 May each year. There will also be a requirement to amend the section of the Local law that refers to the variation to fire prevention measures to allow time for officers to inspect properties that apply to have a variation to fire prevention measures to properties over 2032m<sup>2</sup> which previously had a fire break required by the 30 November, but will now be required by the 1 November of each year.

Any land owner wishing to apply for a variation date to this requirement will now be required to do so by 1 October each year, instead of 31 October which previously applied.



Should Council resolve to amend the local law as proposed there will an impact on the inspection regime currently in place. Currently the appointed ranger carries out the inspections in the residential areas first then moves to the rural areas when these areas are due to have their firebreaks in place. As the residential properties are less of a fire risk than the rural properties it is proposed that the inspection be focussed on the rural areas and known high risk areas in the residential areas (such as large undeveloped properties and reserves). The inspection of small undeveloped residential lots will be performed as a result of complaints and by observation of rangers on normal patrol duties.

Owners of properties are advised of their responsibilities in relation to fire control through the provision of a copy of the Fire Notice in their rates notice and an advertisement in the local and state papers. There has been significant public awareness of the risks of fire through the media and the City has initiated a number of fire awareness programs. Land owners have ample opportunity to be advised of their responsibilities in relation to fire control.

The long standing process in relation to 'fire break' infringements is as follows:

- Inspections are commenced by the appointed ranger for the various areas on the due dates (ie. 1 October and the 1st December of each year).
- If the owner's fire breaks were non-compliant in any of the last 3 years they are issued an infringement and given 14 days to comply. If the property owner has been compliant before they are given 14 days to comply. The property is reinspected and if not compliant a contractor is brought for the work to be done and the ranger makes another inspection.

Where a property owner is not compliant and a contractor has to be brought in the ranger visits the property at least 3 times. This process currently in place requires a ranger to be taken of regular duties and to be put on fire break duties for the best part of 6 months. Further the process takes so long that there are properties without compliant fire breaks well into February of each year which is an obvious fire risk. To allow for the fire break inspections to be done more quickly, additional staff would be required unless the system can be streamlined. The technology used by the appointed ranger allows for ready identification of property owners and the ability to generate correspondence. The primary reason for the time taken to carry out fire break inspections is the number of inspections required each year.

The risks of wild fires are well publicized and owners of properties are well informed through rates notices and public advertising of their



responsibilities in relation to fire mitigation measures they must take on their properties. It is strongly recommended that the City put the responsibility to adhere to the requirements of the Fire Order back on the owner, and it not be the responsibility to continually remind the owner of their legal responsibilities.

In summary, it is proposed that the following procedure be put in place in relation to fire break inspections in the district.

1. The City of Cockburn Local Law 2010 be amended to require all properties in the district to have fire mitigation requirements in place from the 1 November of each year to 31 May of the following year.
2. Authorised Officers carry out inspections of all properties in rural and semi rural areas and other known high risk areas in the district to ensure compliance with the requirements of the Local Law related to fire mitigation. All property owners found not to be compliant will be issued an infringement. Property owners can appeal against the infringement by application to the City of Cockburn Chief Bushfire Control Officer. If they are unsuccessful in this appeal they have recourse to the courts.
3. Firebreak and fire mitigation requirements in residential areas be monitored through reports from other parties and by observation by rangers while performing their usual duties.

### **Strategic Plan/Policy Implications**

#### **Infrastructure Development**

- To construct and maintain parks and bushland reserves that are convenient and safe for public use, and do not compromise environmental management.

#### **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**

Implementation of changes to the local laws related to firebreaks can be dealt with in current budget allocations.

### **Legal Implications**

The *Local Government Act 1995* stipulates the process for amendments to local laws with section 3.12 of the Act stating the



requirement for proposed amendments to local laws to be advertised for a period of at least 6 weeks prior to Council formally adopting and gazetting changes to the local laws.

### **Community Consultation**

The amendment to a local Law requires public advertising and notification. The Cockburn Bushfire Volunteer Reference Group has advised on the proposals and their views are reflected in the report.

### **Attachment(s)**

Proposed amendment – Local Law Gazette Notice.

### **Advice to Proponent(s)/Submissioners**

N/A

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

Nil.

## **18 EXECUTIVE ISSUES**

Nil.

CLR HOUWEN LEFT THE MEETING AT THIS POINT, THE TIME BEING 7.53 PM.

### **DECLARATION OF INTEREST**

The Presiding Member advised the meeting that he had received a Declaration of Interest as follows:

#### **CLR HOUWEN**

Declared a Proximity interest in Item 19.1 “Woodman Point Waste Water Treatment Plant – Odour Buffer” pursuant to Section 5.60(B) of the Local Government Act 1995.

The nature of the interest is that he is a landowner within the current odour buffer area.



## 19. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

### 19.1 **(MINUTE NO 4749)** (OCM 12/04/2012) - **WOODMAN POINT WASTE WATER TREATMENT PLANT ODOUR BUFFER (A TROSIC) (3400024) (ATTACH)**

#### **RECOMMENDATION**

That Council:

- (1) reaffirms its position for the existing odour buffer associated with the Woodman Point Waste Water Treatment Plant to be reduced to the eastern foreshore of Lake Coogee;
- (2) advises the Western Australian Planning Commission of its position in relation to the odour buffer, for consideration in finalising the Kwinana Air Quality Buffer Review;
- (3) seek the Department of Environment and Conservation to finalise its review of the Odour Monitoring and Modelling study for the Woodman Point Waste Water Treatment Plant, and to advise formally whether there is scientific evidence to support a relocation of the odour buffer or whether the odour buffer should remain in its current position, consistent with the process contained under Section 4 of State Planning Policy 4.1; and
- (4) subject to the above, require a further report to be presented back to Council for its consideration.

#### **COUNCIL DECISION**

MOVED Cllr S Pratt SECONDED Cllr T Romano that Council:

- (1) immediately advises the WAPC and the State Planning Minister of:
  1. Council's long standing policy position to support landowners in reducing WPWWTP odour buffer back to the eastern edge of Lake Coogee, if possible.
  2. Council's intention to reduce the 750m buffer guideline back to the eastern edge of Lake Coogee (approx 500m) immediately if there is no scientific objection to do so.
- (2) immediately write to the EPA and DEC to give notice that, if there is no scientific justification to maintain the 750m buffer, it is the City's intention to amend the local planning strategy as soon



as possible to reflect the new buffer definition at the eastern edge of Lake Coogee and remove the provision which restricts development on DA5 in Schedule 11 of TPS3."

**CARRIED 9/0**

### **Reason for Decision**

This motion more closely reflects the expectations of the landowners.

The 750m odour buffer was a precautionary planning guideline to restrict residential development in DA 5 of TPS3 ahead of three major upgrades to the plant which have now been completed. Those include the WA21 Environmental Enhancement project; and two subsequent upgrades, the most recent reducing odours by more than 50% to meet license conditions.

### **OFFICER'S COMMENT**

As contained in the Officer's report, the alternative motion does not follow the legislative process which the City and the WAPC will need to follow in order to successfully amend the Scheme at this time. Commencing an amendment, before the Kwinana Air Quality Buffer Definition Study is completed and the WAPC and DEC (and their respective Ministers) form a view on the outcomes, is premature. Acting to amend the Scheme now would not result in an effective outcome for the City or the affected land owners; neither would proposing to amend the Scheme advance the resolution of the matter of the buffer alignment. Resolution and publication of the buffer alignment by the WAPC is required before any action to amend the Scheme can be effectively taken.

### **Background**

The following notice of motion was lodged by Cr Steve Pratt on 2 April 2012:

*"That Council:*

- (1) *immediately advise the WAPC and the State Planning Minister of:*
  1. *Council's long standing policy position to support landowners in reducing WPWWTP odour buffer back to the eastern edge of Lake Coogee, if possible.*





2. *Council's intention to reduce the 750m buffer guideline back to the eastern edge of Lake Coogee (approx 500m) immediately if there is no scientific objection to do so.*

*The 750m odour buffer was a precautionary planning guideline to restrict residential development in DA 5 of TPS3 ahead of three major upgrades to the plant which have now been completed. Those include the WA21 Environmental Enhancement project; and two subsequent upgrades, the most recent reducing odours by more than 50% to meet license conditions.*

- (2) *immediately write to the EPA and DEC to give notice that, if there is no scientific justification to maintain the 750m buffer, it is the city's intention to amend the local planning strategy as soon as possible to reflect the new buffer definition at the eastern edge of Lake Coogee and remove the provision which restricts development on DA5 in Schedule 11 of TPS3."*

This motion reflects Council's position held in relation to the odour buffer associated with the Woodman Point Waste Water Treatment Plant ("WPWWTP"). This position is that Council, in representing the community of the City of Cockburn, aspire to see the WPWWTP managed in such a way that it does not generate odour impacts beyond the eastern foreshore of Lake Coogee. In other words, to constrain the extent of the odour buffer to (at most) the eastern foreshore of Lake Coogee.

Currently the odour buffer extends beyond the eastern foreshore of Lake Coogee, up to a distance of approximately 750m from the shaped boundaries of the WPWWTP land. This odour buffer covers the land zoned 'Urban Deferred' adjoining Lake Coogee within the locality of Munster, and coincides with the interface between the 'Urban Deferred' and 'Urban' zoned land under the Metropolitan Region Scheme ("MRS").

Attachment 1 provides an extract of the MRS map, showing the WPWWTP location and the extent of the odour buffer coinciding with the interface between the 'Urban Deferred' and 'Urban' zone.

### **Submission**

N/A

### **Report**

From the outset it needs to be stated what role Council has in respect of the odour buffer associated with the WPWWTP. This role needs to



be considered against the broader context of planning within Western Australia ("WA"). This broader context is one whereby the State Government (in the form of the Hon Minister for Planning and Western Australian Planning Commission - "WAPC") maintain a very powerful and intervening control in the planning process. This creates a role for both the WAPC and Hon Minister, in regulating and moderating the planning system and maintaining dominance over local government planning especially.

This point is important, considering that the WAPC and Hon Minister exist as dominant approval authorities in respect of the following processes:

- the making and amendment of all Region Planning Schemes;
- the making and amendment of all Local Planning Strategies;
- the making and amendment of all Town Planning Schemes;
- the approval of Structure Plans; and
- the approval of subdivision applications.

Amendments to a Local Planning Strategy and Town Planning Scheme for example are subject to final approvals of the WAPC and/or Hon Minister, as opposed to the final approval of just a Local Government. It is against this that the following discussion takes place.

#### Background to the WPWWTP

The WPWWTP was established to the west of Lake Coogee in the period 1965 to 1966 and expanded in the period 1982 to 1984. Since that time there has been a history of the area surrounding the WPWWTP being affected by odours from the plant.

The issue of odour has been an underlying concern for planning of the Munster locality. By way of the MRS, the western portion of the Munster locality was rezoned from "Rural" to "Urban Deferred" in MRS Amendment No. 939-33A. The deliberate decision was made not to zone the land 'Urban', due to concerns held about the fact that the subject area was affected, and continued to be affected, by odours associated with the WPWWTP.

The MRS amendment took effect on 17 January 1997. A WAPC letter dated 17 January 1997 to all landowners and the Council within the "Urban Deferred" zone made the point that the land within the "Urban Deferred" zone should not be considered as suitable for future residential development, but rather, any future use was "...to be compatible with the location of land within the Waste Water Treatment Plant Buffer Zone or the Minister for the Environment's conditions of development as appropriate." A copy of the WAPC's letter is provided as Attachment 2.



Accordingly there has been a primary disclosure made to landowners about the impacts of odours associated with the WPWWTP. This has disclosed the plant as an important planning issue that needs to be carefully responded to, so that development is not permitted to take place (particularly residential development) which may inadvertently expose the public to unacceptable odour impacts. This reflects the precautionary planning approach in not attempting to allow areas subject to unacceptable impacts (in this case odour) to be permitted for residential development. Such precautionary planning approach would only be removed where it could be clearly demonstrated that the odour issue had been clearly and permanently removed, such as by removing the odour source completely or undertaking studies which now demonstrate a removed odour impact.

Accordingly Council's position for advocating for a reduction in the odour buffer to the eastern foreshore of Lake Coogee has always been based upon the premise of ensuring there is clear and verifiable evidence that the odour impact has been reduced. If such evidence is clear and decision making processes of the WAPC conclude this, then there would present the opportunity for the subject area being considered for residential development.

#### The odour buffer issue

A buffer to the WPWWTP is shown in Council's Local Planning Strategy at Figure 18. This is provided as Attachment 3 to this report. As per the planning procedures unique to WA which place the dominant role of the State Government in the planning system, the Council's planning has had to respond to the odour buffer issue associated with the WPWWTP. In responding to this, the Council's Local Planning Strategy and Town Planning Scheme have replicated the planning arrangements set through the MRS which zone a portion of the Munster locality adjoining Lake Coogee as 'Urban Deferred' (in order to not allow residential development).

On two occasions the State Administrative Tribunal ("SAT") have reviewed the issue as to whether an odour buffer has existed in association with the WPWWTP, and what legal standing such buffer has had to perform in terms of shaping planning decisions under the Council's Town Planning Scheme.

In both cases the SAT have held that the buffer area shown in Figure 18 of the Local Planning Strategy is the odour buffer which the Town Planning Scheme refers to. The Town Planning Scheme refers to this in such a way that it does not provide for any new residential development to take place within the odour buffer. Effectively the Town Planning Scheme and associated Local Planning Strategy lock the



buffer issue in as a statutory planning issue that planning decision making must be consistent with.

It is understood that landowners acknowledge and understand this statutory reality, in that the Town Planning Scheme does not currently permit for residential development to take place within the odour buffer, which is derived from Figure 18 of the Local Planning Strategy. However to modify this is a decision not solely that of Council's - instead it is a decision which finally will rest with the WAPC and Hon Minister.

The position of the MRS remains unchanged in terms of the 'Urban Deferred' demarcation adjoining the eastern foreshore of Lake Coogee. The process of how this may change in the future is discussed following.

Future decision making responsibilities of the WPWWTP odour buffer

Of importance to Council and landowners is the process by which a future decision regarding the odour buffer will be made, and which agency is specifically responsible for such decision. This is explained following:

The WAPC's "Review of the Kwinana Air Quality Buffer - Position Paper 2008" shows a buffer to the WPWWTP as 'Area 7'. This is the same buffer shown by Figure 18 of the Local Planning Strategy. A copy of the Kwinana Air Quality Buffer - Position Paper 2008 Map is provided as Attachment 3.

The process of reconsidering any buffer is set out within the 2008 Position Paper. This is an overarching State Government Policy document, and will be used to inform primarily any changes to the Council's Local Planning Strategy and Town Planning Scheme. This is as per State Planning Policy No. 4.1, which is the State Industrial Buffer Policy ("SPP4.1"). This sets out the statutory process for the WAPC to determine the extent of any industrial buffer, as provided for under Clause 4 of SPP4.1.

In terms of the process to now determine an updated odour buffer, noting the improvements to the WPWWTP which have taken place as well as the planned expansion of the plant, the 2008 Position Paper states the following:

*"The Woodman Point wastewater treatment plant services a large portion of the metropolitan region and supplies recycled water to the Kwinana area for industry via the Kwinana water recycling plant. The plant is of significance and its capacity is likely to increase as development extends to the south.*



*This area was “subject to further investigation” in the 2002 review. The Water Corporation has undertaken some improvements to reduce impacts affecting privately owned land to the north-east of the plant. Odour modelling studies commenced in 2003 to define the extent of the impact with the aim of establishing an appropriate buffer.*

*A 750 m buffer currently exists which is supported by the Water Corporation. However, small changes have been requested so that the 750 m buffer (mostly) reflects cadastre and existing approvals. This provides the most effective guidance for land use planning decision-making.*

*The urban deferred area within the 750 m buffer is an area of community interest.*

*The 750 m Woodman Point wastewater treatment plant buffer encompasses urban deferred land east of Lake Coogee (private land), as well as the public purposes reserve north of the plant. This land was rezoned urban deferred by Metropolitan Region Scheme amendment 939/33A in 1997.*

*In determining the amendment, the Minister for Planning noted that “the land within the urban deferred zone should not be considered as being suitable for future residential development. Rather, future use is to be compatible with the location of land within the wastewater treatment plant buffer zone or the Minister for the Environment’s conditions of development.”*

*The EPA released a section 16 report (bulletin 1240, Nov 2006) on the Woodman Point wastewater treatment plant which recommended maintaining the existing buffer (750 m) until after the implementation of stage 1 measures, which are to achieve a 50% odour reduction, to be completed by the end of 2008. The EPA noted that the 750 m buffer was not a technically established buffer. It is recommended that the 750 m buffer be included in the Kwinana air quality buffer to reflect acknowledged and current off-site impacts from the wastewater treatment plant.*

*Additional information will be available after the implementation of stage 1 and stage 2 measures by the Water Corporation, scheduled for completion by the end of 2008 and 2009, respectively. The Water Corporation will undertake monitoring of climate conditions and the results of the upgrade works, and review the impact of these works on the buffer during 2010/2011.*

*The 750 m buffer is to be included in the Kwinana air quality buffer at this time as shown in figure 1.”*



From this it is apparent that the WAPC will need to consider future implications of the 'additional information' referenced in the 2008 Position Paper. This will be a matter for the WAPC to decide on once the additional information is made available by the Water Corporation.

The Water Corporation recently presented an overview of this additional information to Elected Members. By way of summarising the Water Corporation's position, they form the view that the current odour buffer needs to be maintained at the 750m line (i.e. coinciding with the interface between the 'Urban Deferred' and 'Urban' zoned land). This is based upon the Odour Monitoring and Modelling report which has been prepared on behalf of the Water Corporation.

This reveals the key difference between the Council's aspirations versus what the Water Corporation have recommended following the preparation of the Odour Monitoring and Modelling report. This is primarily the key task which the WAPC will be required to make a final determination on. While Council aspires for the buffer to be reduced to the eastern foreshore of Lake Coogee, the Odour Monitoring and Modelling Report provides (in the Water Corporation's opinion) that the future odour impacts are such that the current odour buffer should not be reduced at this point in time.

It should be noted that Council are yet to formally consider the Odour Monitoring and Modelling Report.

Council's ability to vary its Local Planning Strategy and Town Planning Scheme to remove the odour buffer

The Council should seek to have a very active input into the WAPC's decision regarding an odour buffer definition. This is particularly important to ensure that Council's aspirations for the reduction in the odour buffer are known, and also that Council expects such a reduction to occur if the scientific evidence is clear that the odour problems have been addressed both now and for the future. The position of the Water Corporation in response to the Odour Monitoring and Modelling report is that they do not recommend that the current buffer should be reduced.

As mentioned above, Council's Local Planning Strategy and Town Planning Scheme create the statutory framework in respect of the odour buffer. Both the Town Planning Scheme and Local Planning Strategy provide the position that it is not appropriate to consider further residential development in areas which are affected by odour and which are currently not zoned or indicated for residential development to occur.



In terms of planning responsibilities, the point of the dominant role of both the WAPC and Hon Minister again needs to be mentioned. In terms of the Local Planning Strategy, the following explains the process by which a modification would need to take place.

Regulations 12A, 12B and 12C of the *Town Planning Regulations 1967* set out the process by which a Local Planning Strategy may be made or amended. In respect of amending a Local Planning Strategy, this is subject to determination by the Western Australian Planning Commission [Regulation 12C(1)].

Regulation 12C(3) requires an amendment to a Local Planning Strategy to be dealt with under the advertising and approval regime set out in Regulation 12B(2). Any Local Planning Strategy amendment must apply State and regional planning policy as per Regulation 12A(3).

Accordingly, until such time that the Kwinana Air Quality Buffer issue is fully resolved by the WAPC in respect of the WPWWTP, there appears no lawful ability to advance amendments to the Local Planning Strategy or Town Planning Scheme in specific respect to reducing the extent of the odour buffer.

#### Council's abilities moving forward

It is important for Council to reiterate its aspirations to both the WAPC and Water Corporation in respect of reducing the odour buffer of the WPWWTP to the eastern foreshore of Lake Coogee. However, it is not recommended that Council attempt to resolve either modifications to its Local Planning Strategy or Town Planning Scheme to affect this in a statutory affect. This is for the following reasons:

1. It would be inconsistent with the MRS, in that it would seek to enable land to be urbanised within an 'Urban Deferred' zoning under the MRS. Section 123(1) of the *Planning and Development Act 2005* restricts this from taking place.
2. It would fail in demonstrating due regard for SPP4.1, which is required by Section 77(1) of the *Planning and Development Act 2005*.
3. It would likely be environmentally unacceptable given that the issue of the odour buffer is yet to be finally determined, and that permitting residential development of land potentially impacted by odours would be broadly against protection of public health and amenities and precautionary planning principles.



### Concluding comments

Only once the WAPC has reviewed and decided on its position in respect of an odour buffer for the WPWWTP as per SPP4.1, will planning under the Council's Town Planning Scheme and Local Planning Strategy be able to be considered. If the WAPC decides of no change to the odour buffer, then legally the current format of the Town Planning Scheme and Local Planning Strategy could not change. If the WAPC's decision does however change the odour buffer, then planning under the Town Planning Scheme and Local Planning Strategy would be able to quickly respond.

Council should therefore continue in advocating for the odour buffer issue to be determined in an expedient manner by the WAPC, which takes appropriate consideration of Council's aspirations for the odour buffer to be reduced to the eastern foreshore of Lake Coogee if it is clearly demonstrated that such odour impacts have been reduced now and into the future through the operation of the WPWWTP.

### **Strategic Plan/Policy Implications**

#### **Demographic Planning**

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

#### **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**

N/A

### **Legal Implications**

Metropolitan Region Scheme  
Town Planning Scheme No. 3  
*Planning and Development Act 2005*  
*Town Planning Regulations 1967*

The relevant clauses within the above legislation and their implications on the officer recommendation are discussed in detail within the report.





**Community Consultation**

As this item is the subject of a notice of motion, it has not been subject to public consultation,

**Attachment(s)**

1. MRS Map
2. Copy of WAPC letter
3. Figure 18 of Local Planning Strategy

**Advice to Proponent(s)/Submissioners**

N/A

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

Nil.

CLR HOUWEN RETURNED TO THE MEETING AT THIS POINT, THE TIME BEING 8.01 PM.

THE PRESIDING MEMBER ADVISED CLR HOUWEN OF THE DECISION OF COUNCIL IN HIS ABSENCE.

**20. NOTICES OF MOTION GIVEN AT THE MEETING FOR CONSIDERATION AT NEXT MEETING**

Nil

**21. NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY COUNCILLORS OR OFFICERS**

Nil

**22. MATTERS TO BE NOTED FOR INVESTIGATION, WITHOUT DEBATE**

Nil

**(MINUTE NO 4750) (OCM 12/04/2012) – MEETING BEHIND CLOSED DOORS**

**COUNCIL DECISION**

MOVED Deputy Mayor K Allen SECONDED Clr T Romano that pursuant to s5.23(2)(a) of the Local Government Act 1995, the meeting



be closed to members of the public, the time being 8.03 p.m. to allow Council to discuss Item 23.1.

**CARRIED 10/0**

**23. CONFIDENTIAL BUSINESS**

**23.1 (MINUTE NO 4751) (OCM 12/04/2012) - MINUTES OF CHIEF EXECUTIVE OFFICER PERFORMANCE AND SENIOR STAFF KEY PROJECTS APPRAISAL COMMITTEE MEETING - 15 MARCH 2012 (1192) (S CAIN) (ATTACH)**

**RECOMMENDATION**

That Council receive the Minutes of the Chief Executive Officer Performance and Senior Staff Key Projects Appraisal Committee dated 15 March 2012, as attached to the Agenda, and adopt the recommendations contained therein.

**TO BE CARRIED BY AN ABSOLUTE MAJORITY OF COUNCIL**

**COUNCIL DECISION**

MOVED Deputy Mayor K Allen SECONDED Cllr S Pratt that the recommendation be adopted.

**CARRIED BY ABSOLUTE MAJORITY OF COUNCIL 10/0**

**Background**

The Chief Executive Officer Performance and Senior Staff Key Projects Appraisal Committee met on 15 March 2012. The minutes of that meeting are required to be presented to Council and its recommendations considered by Council.

**Submission**

The minutes of the Committee meeting are attached to the Agenda. Items dealt with at the Committee meeting form the basis of the Minutes.



## Report

The Committee recommendations are now presented for consideration by Council and, if accepted, are endorsed as the decisions of Council. Any Elected Member may withdraw any item from the Committee meeting for discussion and propose an alternative recommendation for Council's consideration. Any such items will be dealt with separately, as provided for in Council's Standing Orders.

## Strategic Plan/Policy Implications

### ***Governance Excellence***

- To maintain a professional, well-trained and healthy workforce that is responsive to the community's needs.

## Budget/Financial Implications

Committee Minutes refer.

## Legal Implications

Committee Minutes refer.

## Community Consultation

N/A

## Attachment(s)

Minutes of the Chief Executive Officer Performance and Senior Staff Key Projects Appraisal Committee 15 March 2012 are provided to the Elected Members as confidential attachments.

## Advice to Proponent(s)/Submissioners

The CEO and Senior Staff have been advised that this item will be considered at the April 2012 OCM.

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

Committee Minutes refer.

**(MINUTE NO 4752) (OCM 12/04/2012) - OPEN MEETING TO THE PUBLIC**



**COUNCIL DECISION**  
 MOVED Clr C Reeve-Fowkes SECONDED Clr T Romano that Council open the meeting to the public, the time being 8.14 p.m.

**CARRIED 10/0**

THE PRESIDING MEMBER ADVISED THE PUBLIC THE DECISION OF COUNCIL MADE BEHIND CLOSED DOORS AND PROCEEDED WITH THE REMAINDER OF THE COUNCIL MEETING.

**24 (MINUTE NO 4753) (OCM 12/04/2012) - 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 Deputy Mayor K Allen SECONDED Clr C Reeve-Fowkes that the recommendation be adopted.

**CARRIED 10/0**

**25 (OCM 12/04/2012) - CLOSURE OF MEETING**

Meeting closed at 8.15 p.m.

**CONFIRMATION OF MINUTES**

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

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

