



5 JUNE 2007

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### **Council Committee Meeting Minutes**

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## GLOSSARY OF ABBREVIATED TERMS

Term	Explanation
1:100	Ratio of 'one in one hundred'
AD	Acceptable Development
ARI	100 Annual Recurrence Interval (one in 100 year flood level)
AHD	Australian Height Datum
ANEF	Australian Noise Exposure Forecast
ARRB	ARRB Transport Research Ltd
ASCA	Australian Sister City Association
AWARE	All West Australians Reducing Emergencies (grant funding)
BBPCG	Back Beach Project Control Group
BCA	Building Code of Australia
BCEP	Bunbury Coastal Enhancement Project
BCCI	Bunbury Chamber of Commerce & Industries
BCRAB	Bunbury Community Recreation Association Board
BEAC	Built Environment Advisory Committee
BESAC	Bunbury Environment and Sustainability Advisory Committee
BHRC	Bunbury Harvey Regional Council
BMWSCC	Bunbury Meals on Wheels and Senior Citizens Centre (Inc.)
BPA	Bunbury Port Authority
BRAG	Bunbury Regional Art Galleries
BRAMB	Bunbury Regional Arts Management Board
BREC	Bunbury Regional Entertainment Centre
BSSC	Big Swamp Steering Committee
BWEA	Bunbury Wellington Economic Alliance
CALM	Department of Conservation and Land Management
CBD	Central Business District
CBDAC	CBD Advisory Committee
CCAFF	Community Cultural and Arts Facilities Fund
CERM	Centre of Environmental and Recreation Management
CPI	Consumer Price Index
CSRFF	Community Sport and Recreation Facilities Fund
CSRU	Community Supported Residential Units
DADAAWA	Disability in the Arts Disadvantage in the Arts Australia, Western Australia
DAP	Detailed Area Plan (required by WA Planning Commission)
DCU	Development Coordinating Unit
DEC	Department of Environment and Conservation
DEWCP	Department for Environment, Water and Catchment Protection
DLGRD	Department of Local Government and Regional Development
DLI	Department of Land Information
DoCEP	Department for Consumer and Employment Protection
DoE	Department of Environment
DOLA	Department of Land Administration
DoPI	Department of Primary Industry
DoW	Department of Water
DPI	Department for Planning and Infrastructure
DSR	Department of Sport and Recreation
DUP	Dual-use Path
ECT	Enforcement Computer Technology

<b>Term</b>	<b>Explanation</b>
EDAC	Economic Development Advisory Committee
EDWA	Education Department of Western Australia
EIA	Environmental Impact Assessment
EPA	Environmental Protection Authority
ERMP	Environmental Review and Management Program
ESL	Emergency Services Levy
ETP	Extended Trading Permit
FESA	Fire and Emergency Services Authority
FFL	Finished Floor Level
GBPG	Greater Bunbury Progress Group
GBRP	Greater Bunbury Resource Plan report
GBRS	Greater Bunbury Region Scheme
GL	Gigalitres
GRV	Gross Rental Value
GST	Goods and Services Tax
HCWA	Heritage Council of Western Australia
ICLEI	International Council for Local Environmental Initiatives
ICT	Information and Communications Technology
ILUTS	Integrated Land Use and Transport Strategy
IP	Internet Protocol
IT	Information Technology
ITC	In Town Centre
ITLC	Former In-Town Lunch Centre (now the "In Town Centre")
LAP	Local Action Plan
LCC	Leschenault Catchment Council
LEMC	Bunbury Local Emergency Management Committee
LIA	Light Industrial Area
LN (2000)	Liveable Neighbourhoods Policy (2000)
LSNA	Local Significant Natural Area
MHDG	Marlston Hill Design Guidelines
MHS1	Marlston Hill Stage 1 Design Guidelines
MRWA	Main Roads Western Australia
NDMP	National Disaster Mitigation Program
NEEDAC	Noongar Employment & Enterprise Development Aboriginal Corp.
NEPM	National Environmental Protection Measure
NRM	Natural Resource Management
NRMO	Natural Resource Management Officer
ODP	Outline Development Plan
PAW	Public Access Way
PHCC	Peel-Harvey Catchment Council
PR	Plot Ratio
R-IC	Residential Inner City (Housing) - special density provisions
RDC	Residential Design Codes
RDG	Residential Design Guidelines
Residential R15	Town Planning Zone – up to 15 residential dwellings per hectare
Residential R20	Town Planning Zone – up to 20 residential dwellings per hectare
Residential R40	Town Planning Zone – up to 40 residential dwellings per hectare
Residential R60	Town Planning Zone – up to 60 residential dwellings per hectare
RFDS	Royal Flying Doctor Service
RMFFL	Recommended Minimum Finished Floor Levels

<b>Term</b>	<b>Explanation</b>
ROS	Regional Open Space
ROW	Right-of-Way
RSL	Returned Services League
SAT	State Administrative Tribunal
SBCC	South Bunbury Cricket Club Inc.
SCADA	Supervisory Control and Data Acquisition
SGDC	Sportsgrounds Development Committee
SU7	Special Use Zone No. 7 Caravan Park
SW	South West
SWACC	South Western Area Consultative Committee
SWAMS	South West Aboriginal Medical Service
SWBP	South West Biodiversity Project
SWCC	South West Catchments Council
SWDC	South West Development Commission
SWDRP	South West Dolphin Research Program
SWEL	South West Electronic Library
SWSC	South West Sports Centre
TME	Thompson McRobert Edgeloe
TPS	Town Planning Scheme
TSP	Total Suspended Particle Dust
USBA	Union Bank of Switzerland Australia
VGO	Valuer General's Office
VOIP	Voice-Over Internet Protocol
WALGA	Western Australian Local Government Association
WAPC	Western Australian Planning Commission
WAPRES	Western Australian Plantation Resources
WAWA	Water Authority of Western Australia
WC	Water Corporation
WML	WML Consultants
WRC	Waters and Rivers Commission

## COUNCIL (STANDING) COMMITTEE MINUTES

Minutes of an Ordinary Meeting of the Council (Standing) Committee held in the Council Chambers, City of Bunbury Administration Building, 4 Stephen Street, Bunbury on Tuesday, 5 June, 2007.

### MINUTES

5 June 2007

**NOTE:** The “Recommendations” contained in this document are not final and are subject to adoption, amendment (or otherwise) at the subsequent Council Meeting.

#### 1. DECLARATION OF OPENING BY THE PRESIDING MEMBER

The Presiding Member declared the meeting open at 6:00 pm.

#### 2. RECORD OF ATTENDANCE, APOLOGIES AND LEAVE OF ABSENCE

<b>Committee Members</b>	
Presiding Member:	His Worship the Mayor, Mr D Smith
Deputy Presiding Member:	Deputy Mayor, Councillor J Jones
Members:	Councillor A Leigh
	Councillor T Smith
	Councillor McCleary
	Councillor T Dillon
	Councillor S Rooney
	Councillor L Rose
	Councillor W Lambert
<b>Executive Management Team (Non-Voting)</b>	
Chief Executive Officer:	Mr G Trevaskis
Executive Manager Corporate Services:	Mr K Weary
Executive Manager City Development:	Mr G Klem
Executive Manager City Services:	Mr M Scott
Executive Manager City Life:	Mr D Marzano
<b>Council Officers (Non-Voting):</b>	
Manager Health	Mr T Hunter
Manager Development Services	Mr G Fitzgerald
Senior Town Planner (Strategic & Environment)	Mr T Farnworth
Manager Community Law and Safety	Mr J Kowal
Administration Officer Corporate Services:	Mrs E Allan
<b>Others (Non-Voting):</b>	
Members of the Public:	4
Members of the Press:	1

*APOLOGIES AND LEAVES OF ABSENCE*

Cr S Craddock – Leave of Absence – 28 May to 4 July 2007 inclusive  
Cr D Wenn – Leave of Absence – 28 May to 11 June 2007 inclusive  
Cr R Frisina – Leave of Absence – 28 May to 4 July 2007 inclusive  
Cr W Major – Apology – 5 June 2007

**3. RESPONSES TO 'PUBLIC QUESTIONS' FROM THE PREVIOUS COUNCIL COMMITTEE MEETING (WHERE THEY COULD NOT BE ANSWERED AT THAT MEETING)**

Nil.

**4. PUBLIC QUESTION TIME - AS SPECIFIED UNDER SECTION 5.24 OF THE LOCAL GOVERNMENT ACT 1995**

**Mr Kent Lyon, 5 Reading Street, Bunbury**

*Question 1: Is there a council policy on responding to correspondence (emails and written) and phone calls instigated initially by the Chief Executive Officer (reference to email dated 24/11/2006)?*

Response 1: The Chief Executive Officer advised that there were guidelines for responding to correspondence, however some issues required more detailed investigation prior to a response being prepared and the time taken to respond to a piece of correspondence depended on the complexity of the matter(s).

*Question 2: Is six (6) months acceptable?*

Response 2: The Chief Executive Officer advised that Mr Lyon had been responded to and that he would provide copies of the correspondence which had been sent out to Mr Lyon if he so wished.

*Question 3: I am seeking some clarification on the statement by Mayor Smith at the Special Electors Meeting held 23 November 2006, that the property at the corner of Blair/Hayes/Charles Streets does not fall under the Stirling Street Heritage Precinct Boundaries? If this is not correct then may I request the Council clarifies publicly – either by letter showing the precinct boundaries sent to each elector that attended and/or public notice in the City Beat section of the paper showing the precinct boundaries. If the Mayor is correct then could I please request the details on when this precinct boundary was amended, who proposed the amendment, when it was advertised and when a motion was passed in Council to change this?*

Response 3: His Worship the Mayor advised that he would take this question on notice.

*Question 4: Does council have a policy on consultation with neighbours?*

Response 4: The Executive Manager City Development advised that where there was a requirement for consultation to be undertaken with neighbours, consultation was undertaken. If the application is a permitted use under TPS No.7 there is no requirement for consultation, it is only required in special circumstances.

*Question 5: In relation to the new library development, will council be preserving the heritage value of the olive trees on Lot 1 (3) Turner Street close to the adjoining boundary, based on the conditions by the Heritage Council of Western Australia for its development approval of the plans for the new library?*

Response 5: The Chief Executive Officer advised that all these questions had been answered in correspondence already sent to Mr Lyon.

Mr Lyon then read the following questions:

*Question 6: Will council comply with the advice of the arboriculturalists in regards to the canopy pruning, excavation, root preservation and the foundations near the new library wall near the boundary, including the presence of a supervising arboriculturalist at the expense of the City of Bunbury?*

*Question 7: Will council undertake an accurate survey in order to ascertain ownership of the Brazilian Pepper tree along the adjoining boundary, as recommended by the arboriculturalists to identify any developmental constraints for the new library?*

*Question 8: Will council undertake a modelling of how Lot 1 (3) Turner Street will be overshadowed at various times of the year?*

*Question 9: Will council consider the relocation of the existing Water Corporation sewer that runs diagonally across part of Lot 1 (3) Turner Street as a consequence of the plans for the new library development, that has imposed unnecessary constraints on the plans for landscaping and coach house, both of which now must be revised? The most sensible option would be to run it along the whole length of the disused carriageway and then northwards under the planned driveway to the new library's undercroft?*

*Question 10: Will Council be undertaking landscaping of the wasteland at the southern end of the disused carriageway to compensate for the loss of the large Norfolk Pine tree, included on council's Register of Significant Trees and green space consumed by the new library? We suggest that the landscaping plans include at least three pine trees to replace the one on the library carpark and two to replace trees knocked over by the tornado.*



*Question 11: Does council believe it is missing a once in a lifetime opportunity to restore Anzac Park back to its original dimensions and depriving the public of much needed green space in a growing city of vision by encroaching on the Heritage Council of WA's State Register of Heritage Places listed Anzac Park?*

Response: His Worship the Mayor advised Mr Lyon that matters which were not on the committee agenda could not be discussed, the correct forum to ask questions of a general nature was at council meetings. He asked Mr Lyon to provide a written copy of his questions and advised he would discuss these with the Executive.

**5. QUESTIONS ON NOTICE FROM MEMBERS OF THE COMMITTEE (WITHOUT DISCUSSION)**

Nil.

**6. CONFIRMATION OF PREVIOUS MINUTES**

**COMMITTEE DECISION**

Moved Cr Leigh

Seconded Cr McCleary

*The minutes of the Council (Standing) Committee Meeting held 15 May 2007, be confirmed as a true and accurate record.*

**CARRIED**

**9 Votes "For"/Nil Votes "Against"**

**7. DISCLOSURES OF INTEREST UNDER THE LOCAL GOVERNMENT ACT 1995**

Cr Rose disclosed a Proximity Interest in the item titled "*11.1: Reconsideration (Second) – Proposed Scheme Amendment No. 11 to City of Bunbury Town Planning Scheme No. 7 for Lot 71 Bunning Boulevard and Part of Road Reserve (Cnr Sandridge Road and Picton Road)*" as she lives in the area. She advised that this was not likely to affect her decision and advised that she would not be leaving the meeting during discussion and vote on the item.

Cr Leigh disclosed a Proximity Interest in the item titled "*11.1: Reconsideration (Second) – Proposed Scheme Amendment No. 11 to City of Bunbury Town Planning Scheme No. 7 for Lot 71 Bunning Boulevard and Part of Road Reserve (Cnr Sandridge Road and Picton Road)*" as he lives in the area. He advised that this was not likely to affect his decision and advised that he would not be leaving the meeting during discussion and vote on the item.

Cr T Smith disclosed a Proximity Interest in the item titled “11.4 (Item 11.3 on the Agenda): Proposed New Reef Hotel, Car Parking Requirements Lot 123, #21 Victoria Street” as his family company owns No. 10 Victoria Street.

Cr Lambert disclosed a Proximity Interest in the item titled “11.5 (Item 11.4 on the Agenda): Proposed Home Business – Multimedia Design – Lot: 11 #28 Parkfield Street, Bunbury” as he lives two doors from the property in question.

Cr Leigh disclosed a Financial Interest in the item titled “11.6 (Item 11.5 on the Agenda): Liquor Licensing Extended Trading Permit” as he knows the proponent through work. He advised that this was not likely to affect his decision and advised that he would not be leaving the meeting during discussion and vote on the item.

**8. ANNOUNCEMENTS BY THE PRESIDING MEMBER (WITHOUT DISCUSSION)**

His Worship the Mayor announced there had been an unlawful entry into the chambers on the weekend. Inventory had been taken that day. Some of the photos of past mayors and councillors were missing from the walls and would be re-hung once they had been re-framed. Further investigation was being undertaken on how this had occurred.

**9. CHIEF EXECUTIVE OFFICER REPORTS/DISCUSSION TOPICS**

Nil.

**10. RECEPTION OF FORMAL PETITIONS AND MEMORIALS**

Nil.

**11. RECEPTION OF REPORTS AND RECOMMENDATIONS FROM OFFICERS & ADVISORY COMMITTEES**

**11.1. RECONSIDERATION (SECOND) – PROPOSED SCHEME AMENDMENT NO. 11 TO CITY OF BUNBURY TOWN PLANNING SCHEME NO. 7 FOR LOT 71 BUNNING BOULEVARD AND PART OF ROAD RESERVE (CNR SANDRIDGE ROAD & PICTON ROAD)**

<b>File Ref:</b>	A02416
<b>Applicant/Proponent:</b>	Graham Houghton (Town Planning Consultant) on behalf of Citygate Properties Pty Ltd and Hornell Nominees Pty Ltd ( <i>refer to confidential report for directors' names</i> )
<b>Author:</b>	Thor Farnworth, Senior Town Planner (Strategic & Environment)
<b>Executive:</b>	Geoff Klem, Executive Manager City Development

**Summary**

The City received a letter from the Department for Planning and Infrastructure (DPI) on behalf of the Western Australian Planning Commission (WAPC) dated 9 February 2007, in relation to Council's decision on proposed Scheme Amendment No. 11 ("Amendment 11") to the City of Bunbury Town Planning Scheme No. 7.

The DPI outlined in its letter that Council's decision to request the Minister for Planning and Infrastructure to defer consideration of proposed Amendment 11 as being inconsistent with the Town Planning Regulations 1967. The DPI's advice goes on to say that in accordance with regulation 21 (1) (a)(b)(c), the Minister may either:

- \* grant approval;
- \* refuse to grant approval; or
- \* require the local government authority to make modifications as specified by the Minister prior to granting approval.

The Minister is not empowered under the Regulations to defer a decision as requested by Council.

Council formerly advertised the proposal from the week beginning 21 March to 6 May 2005, in order to test its feasibility and acceptability with the community, of which the majority of submissions received during the formal advertising period rejected the proposal on the relevant grounds of it having little strategic justification and unacceptable impact on the established residential amenity of the location.

Upon request of the proponent, the agenda item to reconsider this matter was withdrawn from the Agenda at the Council Meeting held on 24 April 2007. This request was granted in order to allow additional time for the proponent to prepare a response to the arguments presented in the agenda item report.

The proponent submitted a response dated 4 May 2007, which is discussed in the proposal section of this agenda item report. The new information presented by the proponent in response to the withdrawn Agenda Item 11.2 has provided no further substantial or material reason that would otherwise justify the proposed Amendment 11.

Therefore, as it is not possible to defer the matter indefinitely, it is advised that the unanimous decision of the Council Committee Meeting held on 4 May 2004 to refuse the proposal was sound and in accordance with orderly and proper planning under both the Scheme and Town Planning and Development Act 1928.

In the consideration of the submissions received and the advice provided by the DPI on proposed Amendment 11, it is recommended that Council resolve to not proceed with the adoption for final approval of Amendment 11 to Town Planning Scheme No. 7 (TPS No.7) under the Planning and Development Act 2005.

### **Background**

On 6 September 2005, Council considered the matter of Amendment 11 for Lot 71 Bunning Boulevard and a portion of road reserve at the intersection of Sandridge Road and Picton Road. The proposal to amend the Scheme Map involved:

- (a) deleting the “Development Investigation Policy Area” designation, “Residential Zone” and overlying residential density code of “R15” from Lot 71, and inserting a dual “Mixed Business Zone” and “Residential Zone” with an overlay of “R40”; and
- (b) deleting “District Distributor Road Reserve” from a portion of Sandridge Road and Picton Road reserves, and inserting “Mixed Business Zone”.

The proposal also involved the concurrent advertising of:

- (a) a Local Planning Policy that was intended to guide the subsequent land use and development of the subject site once rezoned; and
- (b) the closure of a portion of Sandridge Road and Picton Road and the amalgamation of both portions into Lot 71 Bunning Boulevard.

At its meeting held 6 September 2005 Council Decided (208/05):

**Council Decision 208/05**

*“Council, under and by virtue of the powers conferred on it in that behalf of the Town Planning and Development Act 1928 (as amended), here by resolves to:*

- 1. Note the submissions received.*
- 2. Request that the Minister defers consideration of proposed Amendment 11 and the associated Local Planning Policy for the principal reason that Council is currently engaged in the City Vision process and that any consideration to support the proposed rezoning at this point in time would be premature.*
- 3. Advise the proponent and submitters of Council’s decision, and to request that the proponent consider resubmitting this application after the current City Vision process is completed and after Draft Commercial Strategy is finalised should the Minister acquiesce in this regard.”*

On 9 February 2007 DPI formally responded in writing (**attached** at Appendix 1), directing Council to:

- \* refer the matter of proposed Amendment 11 back to Council for reconsideration;
- \* reconsider the proposed Amendment 11 based upon strategic planning work undertaken in the interim period; and
- \* provide a revised decision in line with *Town Planning Regulations 1967* (approval, approval with modifications or refusal).

The DPI outlined the need for Council to reconsider its decision on proposed Amendment 11 as follows:

- (a) the Minister does not have the legislative power to defer a decision as recommended by Council; and
- (b) proposed Amendment 11 has been held in connection with the progression of the City Vision Strategy, which in the DPI’s view, is now at the stage where Council may consider proposed Amendment 11. However, the DPI acknowledges that there is a fundamental difference between the original scope of the City Vision project and that of the adopted revised City Vision Strategy. This difference lies in the fact that the adopted City Vision Strategy is a triple-bottom-line based strategic plan for the community, and is not a land use and development strategy, as this is the function of a Local Planning Strategy.

On the basis of the DPI’s advice outlined above, reconsideration of Council’s last decision on proposed Amendment 11 has been presented for further discussions and determination as required.

**Proposal**

Scheme Amendment for Lot 71 Bunning Boulevard

Amendment 11 as it relates to Lot 71 Bunning Boulevard involves the following proposed amendments to the Scheme Map:

<b>Delete</b>	<b>Insert</b>
“Development Investigation Policy Area”	Nil.
“R15”	“R40”
“Residential Zone”	Split zoning of “Mixed Business Zone”, and “Residential Zone”, as shown on the proposed Scheme Amendment map.

It is proposed by the proponent to rezone Lot 71 Bunning Boulevard from ‘Residential R15’ and “Development Investigation Policy Area” to ‘Mixed Business’ and ‘Residential R40’. The “Mixed Business” zone would occupy that land fronting Sandridge and Picton Roads in the northwest portion of the subject lot, while the “Residential” zone with an “R40” residential density code would front the local access road Duncan Way. The justification given by the proponent is that the proposal would create additional “Mixed Business” zoned land with good exposure to main roads for the commercial component and a residential interface to existing residential development towards the east.

A full analysis of the justifications by the proponent was provided in the report to the Council Meeting held on 11 May 2004. It is important to note that whilst a substantial amount of information has been collected and dialogue has occurred with the proponent since Council Decision 109/04, no new additional information or justification has been given to substantially or materially justify the proposed Amendment 11.

Scheme Amendment for Portion of Sandridge Road and Picton Road Reserves

Amendment 11 as it relates to a portion of Sandridge Road and Picton Road reserves involves the following proposed amendments to the Scheme Map:

<b>Delete</b>	<b>Insert</b>
“District Distributor Road Reserve”	“Mixed Business Zone”

It is proposed by the proponent to close and amalgamate a portion of Sandridge Road and Picton Road reserves with Lot 71 Bunning Boulevard. It is considered by the proponent that this will increase the area of the subject lot for commercial purposes.

This report provides no further comment or justification for the road closure and amalgamation beyond that, any course of action to reduce the current road reserve will reduce

the potential for a landscaped buffer to fringe residential properties within the neighbourhood of Sandridge Park.

**Attached** at Appendix 2 is the proposed Scheme Amendment No. 11 Map.

Local Planning Policy – Lot 71 and Closed Road Reserve, Corner Sandridge and Picton Roads, Land Use and Development Guidelines

At its meeting held 28 September 2004 Council Decided (266/04) to require that a Local Planning Policy be prepared subject to the proposed rezoning from “Residential R15” to “Mixed Business” and “Residential R40”. The rationale for this requirement was based upon the desire for the creation of a “Special Development Area” over the subject site under the Scheme (clause 5.9.4.6) in order to guide the development of the land.

This approach was potentially flawed, as the use of “Special Development Areas” is limited to only that land included in the “Mixed Use Zone”, and therefore any Local Planning Policy could not apply to land include in either the “Residential” Zone or a road reserve; and therefore, could not apply to the entirety of Lot 71 or adjoining access road reserves.

It is important to note that the proponent then subsequently sought to introduce a significant variation, which was not properly considered as part of Council’s original decision, and thus would have been potentially beyond the scope of the original decision. The nature of this variation (not properly advertised), presumed the rezoning of the entire Lot 71 as “Mixed Business” zone. Whilst this improper procedural matter has not been the focus of discussion, it should be advised that Council would need to reinitiate the Scheme Amendment process by readvertising the proposed Amendment 11 accordingly.

However, it must be advised that to proceed with a modified Scheme Amendment for the entire site’s inclusion in the “Mixed Business” zone would reduce the City’s statutory ability to regulate development, and may potentially expose the City to appeals on any:

- \* refusal for an application for planning approval; or
- \* conditions placed on planning approval granted.

It is important to note that the land is presently designated as a “Development Investigation Policy Area” under TPS No.7 (clause 6.2.1), and therefore requires a “Structure Plan” or a “Development Guide Plan” to be prepared in order to permit subdivision and development. The purpose of a Development Investigation Policy Area is not to permit the consideration of just any land use proposal as if the land was not already properly zoned. Rather, the use of Development Investigation Policy Areas is to require that a Structure Plan or a Development Guide Plan be prepared to guide the subdivision, infrastructure servicing and development of the land for uses permitted in the underlying zone. In the case of Lot 71, this is for the development of residential dwellings as part of the neighbourhood of Sandridge Park.

Strategic & Environmental Planning Comment

*State & Local Planning Policy Contexts*

The proposal and submissions received have been analysed in light of the relevant strategic and statutory planning documents, with a view to providing information and guidance for informed and lawful decision-making by Council.

*Bunbury Wellington Region Plan 1995*

The Bunbury Wellington Region Plan (1995) identifies the subject land within “Planning Unit BU3: Bunbury East” (page 185). Whilst there are three (3) given statements of planning policies and guidelines, it is considered that the first statement “*Encourage a further extension of the range and density of housing especially in the area adjacent to the CBD*” is less relevant to the subject site, due to its inclusion in the extreme southern end of the Planning Unit’s boundary. Instead it is interpreted that this statement is more relevant to land in the neighbourhood of East Bunbury, which is adjacent to the Central Business District (CBD). Whilst it is acknowledged that the Bunbury Wellington Region Plan is twelve (12) years old, in the absence of an alternative regional planning framework it remains a sound and relevant guide for strategic land use and infrastructure decision-making.

The subject land lies outside of “Planning Unit BU1: Bunbury Regional Centre”, which is appropriately zoned for Mixed Business uses, and is the recognised Planning Unit for the City’s primary area of commercial activities. Consequently, the Bunbury Wellington Region Plan does not refer to commercial interest within Planning Unit BU3: Bunbury East specifically, as it reflects the fact that land included within this Planning Unit is principally for residential purposes. Indeed, the Planning Unit’s primary focus is the development and maintenance of its role and amenity as a residential living environment. The Bunbury Wellington Region Plan does however, allow for commercial uses within the Planning Unit according to the established hierarchy of commercial centres (page 204).

Flexibility in the interpretation of the Bunbury Wellington Region Plan may be justified in the consideration of the time since its release and current circumstances. However, any interpretation that deviates from the Bunbury Wellington Region Plan must be based upon orderly and proper planning considerations and in accordance with the aims of the Scheme.

*Draft Greater Bunbury Region Scheme*

The Draft Greater Bunbury Region Scheme (GBRS) identifies the subject site as “Urban Zone”, and does not distinguish between lands for residential or commercial purposes.

*Town Planning Scheme No. 7*

Under the current Scheme the subject land is included in the “Residential” zone and has a Residential Density Code of “R15”. The subject land is located within the neighbourhood of Sandridge Park, which is separated from the “Mixed Business Zone” by the intersection of the Sandridge Road and Picton Road district distributor road reserves. As stated above, the



Scheme also identifies the subject land as a “Development Investigation Policy Area”, which requires the preparation of a “Structure Plan” or a “Development Guide Plan” as set out under clause 6.2.1 of the Scheme. No development or subdivision is permitted within the Development Investigation Policy Area until the respective Structure Plan or Development Guide Plan has been adopted by Council and endorsed by the WAPC.

Development Investigation Policy Areas are designated over land requiring further strategic planning and investigations in relation to land use options, environmental issues, servicing requirements, transportation infrastructure needs, landscaping and design guidelines. Structure plans or development guide plans are however to be prepared consistent with the objectives of the underlying zone (in this case clause 5.9, and specifically 5.9.1 Residential Zone), and are not a blanket mechanism for the introduction of non-permitted or incompatible uses. Instead, structure plans or development guide plans are to be adopted and endorsed in order to provide a framework to guide the assessment of applications for planning and subdivision proposals or scheme amendment proposals for the rezoning of land. As such, structure plans or development guide plans are to be prepared consistent with the State Planning Strategy, State Planning Framework Policy, provisions of Statement of Planning Policy No. 1 and other strategic plans of the WAPC.

Local Planning Policy - Commercial Strategy

In the absence of a regional policy for commercial centres endorsed by the WAPC, the City’s own Local Planning Policy – Commercial Strategy provides guidance on the planning of the local commercial centres hierarchy and mixed business area. This strategy identifies the “Bunbury Regional Centre” and “possible future rounding off Mixed Business Area”. Despite a claim by the proponent to the contrary, the subject site falls outside of the area recommended for consideration in any future ‘rounding off’ of the Bunbury Regional Centre and hence the “Mixed Business Zone”. The process for any future consideration of a ‘rounding off’ of the Bunbury Regional Centre will occur through a review of the Commercial Strategy, which will then inform the preparation of a Local Planning Strategy and the ultimate review of the Scheme as prescribed within the *Planning and Development Act 2005* and the *Town Planning Regulations 1967*.

Notwithstanding, the need for more commercial land must be balanced with the equally pressing need for additional residential dwellings. Therefore, considering the ample amount of sound strategic planning and policy documents available, there is clear and consistent direction given that the subject site should be developed for residential purposes as intended and designed.

Whilst the City is progressing with the next phase in its strategic planning program, through the implementation of the City Vision Strategy, it is not considered that this site warrants any special consideration over and above other opportunities in older locations more suitable for redevelopment to commercial and mixed uses. Where such opportunities are expected to be created, appropriate land use and development controls will be introduced to ensure new developments are designed and constructed in a manner that is sensitive to established character and amenity, are of human scale and encourage walkable neighbourhoods by incorporating good urban and streetscape design principles.

*Site Analysis & Context*

The established view of King Road forming the demarcation between the commercial/light industry oriented mixed business area in the west and the residential oriented neighbourhood in the east was the basis for a refusal to progress the proposed Scheme Amendment No. 100 to Town Planning Scheme No. 6 (TPS6). The proposed rezoning to “Special Use – Car Sales with Ancillary Offices and Repair Facilities” was refused at the time; as it was judged that the development would not be in keeping with the predominate residential use or character of the area.

The proposal to develop Lot 71 with a row of medium density grouped housing along the frontage of Lot 71 with existing low density houses is not in itself a solution to land use conflict, but indeed may create problematic outcomes with respect to differential streetscape amenity and traffic generation between the two sides of the same streets. Further, the proposed land use arrangement does not address the potential for the creation of an undesirable interface and/or land use conflict between any new commercial and residential development on Lot 71 Bunning Boulevard itself. Simply put, the proposal may only attempt to avoid objections with existing residents by serving to generate the same land use conflict within a future development.

The proposal would entail the need for traffic to gain access by means of the local road reserves of Bunning Boulevard, which was designed for and used by the existing residential premises. The existing residential subdivision was design in a manner to reinforce its function as a neighbourhood cell, as described under the Residential Road Planning Policy DC 2.6, which states:

*“1.3.2 Access Roads*

*Access roads serve only to provide access to individual dwellings and are the link between these dwellings and the local distributor. It is on roads in this category that the domestic environment should predominate over the needs of the motor vehicle.”*

As discussed under the Proposal heading, the proposed draft “Local Planning Policy – Lot 71 and Closed Road Reserve, Corner Sandridge and Picton Roads, Land Use and Development Guidelines” was prepared as means for attempting to manage the potential land use conflicts expected to arise as a result of the proposed development. Notwithstanding the fundamental limitations of this approach, the draft Local Planning Policy itself does not articulate any significant controls over and above what is already stated under the Scheme for building setbacks, heights, parking and landscaping requirements.

Past Council Decisions on Proposed Amendment 11

A summary of Council’s Decisions in chronological order in relation to proposed Amendment 11, is **attached** at Appendix 3.

### **Strategic and/or Regional Outcomes**

Council's 2002 – 2007 Strategic Plan states as a goal to *“Have a built environment which is safe, accessible, functional, attractive and sympathetic with the natural environment.”* To achieve this goal, the implementation of the Town Planning Scheme must ensure that land use and development balances the needs of maintaining residential amenity with enabling commerce and industry. Specifically, that the assessment and approval of Scheme Amendments and applications for planning and subdivision approval do not create unnecessary land use conflicts by introducing commercial development that may impact on established residential living environments.

The Recommendation has had regard to Council's 2002-2007 Strategic Plan.

### **Community Consultation**

During the public advertisement period following the Ordinary meeting of Council held 28 September 2004 (266/04) that initiated the proposed Scheme Amendment, twelve submissions were received, of which the majority rejected proposed Amendment 11 based upon the following (in summary):

- \* The proposed Scheme Amendment is inconsistent with the existing “Residential R15”. One of the submitters states that the proposed Scheme Amendment *“‘leapfrogs’ the spread of Mixed Business to the eastern side of Picton Road...”*.
- \* That the proposed Scheme Amendment is neither in the Bunbury Regional Centre nor in a “possible future rounding off Mixed Business Area”.
- \* The proposal may undermine the precinct plans currently being prepared for CBD and Regional Centre under the City Vision process (at the time of the original City Vision Strategy in progress).
- \* That three (3) out of four (4) road frontages to the site adjoin residential sites and that the proposed showroom will face and potentially impact on the surrounding residential development.
- \* That the criteria listed in Section 11 of the Commercial Strategy does not include the site considered under proposed Amendment 11.
- \* One objector specifically questioned whether or not the City referred the proposal to the WAPC. The proposal was referred to the WAPC and the advice received, in summary, reads that it is premature to consider proposed Amendment 11 for the principal reason that there is a limited strategic justification.
- \* Potential traffic impact as a result of commercial development near the residential site.

In the presentation of this second reconsideration of proposed Amendment 11, no further community consultation is required over and above that already undertaken in relation to the proposed Scheme Amendment. As prior to the presentation to Council for final determination of the proposal in July 2005, the proposal was advertised in accordance with the then *Town Planning and Development Act 1928*.

**Attached** at Appendix 4 is the Schedule of Submissions received on proposed Scheme Amendment No. 11.

### **Councillor/Officer Consultation**

Advice and comment has been obtained from all relevant officers within Development Services in relation to the proposed Amendment 11.

### **Analysis of Financial and Budget Implications**

The Recommendation will not impact on the existing Annual Budget, nor are there any expenses associated with the second reconsideration of proposed Amendment 11.

### **Economic, Social, Environmental and Heritage Issues**

#### Economic Issues

There are no economic issues associated with this proposal.

#### Social Issues

There are no social issues associated with this proposal.

However, it is reasonable to expect potentially negative impacts to the established residential amenity of the locality through potential incongruity of built form, land use conflict and increased traffic and associated noise.

#### Environmental Issues

There are no known environmental issues associated with this proposal.

#### Heritage Issues

There are no known heritage issues associated with this proposal.

### **Council Policy Compliance**

The proposal does not comply with either the Scheme or the adopted Local Planning Policy – Commercial Strategy. The subject site is outside that which has been designated as the Bunbury Regional Centre, and is not within the envisaged area for inclusion in any future ‘rounding’ off the Mixed Business Zone.

### **Legislative Compliance**

The DPI, on behalf of the WAPC, has requested that Council reconsider its decision on proposed Amendment 11 due to the fact that Council's Decision 208/05, which requests the Minister to defer consideration of proposed Amendment 11, is inconsistent with the *Town Planning Regulations 1967*.

Subject to the proposed Scheme Amendment being given consent to advertise (Note: the proposed Scheme Amendment was not referred to the WAPC at the time, but was belatedly referred to the DPI for comment on 16 May 2005, which was after the public advertising period was completed on 6 May 2005. Nevertheless, the DPI provided comment on 6 July 2005, noting the Departments' concerns with regards to proposed Amendment 11) and it not requiring an Environmental Review (Note: the proposed Scheme Amendment was referred to the Environmental Protection Authority (EPA) within the statutory time period, which deemed the proposal as being properly assessed and did not require an Environmental Review to be conducted, nor did the EPA seek to give any environmental advice on the proposal.), in accordance with the provisions of the *Planning and Development Act 2005* and the *Town Planning Regulations 1967*, the proposed Scheme Amendment is to be referred back to Council for its consideration upon completion of the public advertising period. Council may then either resolve to:

- \* adopt the proposed Scheme Amendment for Final Approval with or without modifications; or
- \* not to proceed with the proposed Scheme Amendment.

In either case, a copy of the Scheme Amendment documentation (text and maps), together with the following, must be forwarded to the WAPC for its final determination:

- (a) a schedule of submissions made on the proposed Scheme Amendment;
- (b) its recommendations made in respect of those submissions;
- (c) particulars of the modifications (if any) to the proposed Scheme Amendment recommended by the local government authority;
- (d) a copy of the resolution passed; and
- (e) if that resolution was not to proceed with the proposed Scheme Amendment, a summary of the reasons why the Local Government Authority does not wish to proceed with the proposed Scheme Amendment.

### **Delegation of Authority**

In accordance with the *Planning and Development Act 2005*, Council is the responsible local government authority for the initiation and adoption for final approval of proposed Scheme Amendments to its Local Planning Scheme.

### **Relevant Precedents**

To date, no known proposal for a Scheme Amendment has been returned to Council for a second reconsideration under similar circumstances.

### **Possible Options**

Option 1: As per the Recommendation.

Option 2: Proceed with the final approval of the proposed Amendment 11 without modifications.

(Should Council resolve to proceed with this option, the following strategic policy and statutory planning implications must be also be addressed:

- (a) the endorsement by the WAPC of a consequential amendment to the Local Planning Policy – Commercial Strategy; and
- (b) the endorsement by the WAPC of a consequential amendment to the Local Planning Policy – Housing Strategy.
- (c) the endorsement by the WAPC of a consequential proposed draft Local Planning Policy – Lot 71 and Closed Road Reserve, Corner Sandridge and Picton Roads, Land Use and Development Guidelines.

It is advised that the obtaining of the WAPC's endorsement for such amendments may be problematic, as they are counter to the provisions of the adopted and endorsed state and local planning policy frameworks.)

### **Conclusion**

Council's decision in requesting the Minister to defer proposed Amendment 11 is inconsistent with the *Planning and Development Act 2005* and *Town Planning Regulations 1967*. Therefore, it is recommended that Council resolve to not proceed with the adoption for final approval of Amendment 11 to TPS No.7 for the following reasons:

- (a) the proposed Amendment 11 is inconsistent with the long-term planning objectives of the local area, as described under the Bunbury – Wellington Region Plan 1995, which nominates the site for residential development; and
- (b) the subject land is not located in the designated “Bunbury Regional Centre”, nor is it located within a “possible future rounding off Mixed Business Area” as defined in the City of Bunbury Local Planning Policy - Commercial Strategy.
- (c) the proposed Amendment 11 is inconsistent with passed landuse planning decisions regarding the subject site (lot 71).

**OUTCOME OF THE COUNCIL COMMITTEE MEETING ON 5 JUNE 2007**

Cr Rose disclosed a Proximity Interest as she lives in the area. As the interest declared was not likely to affect her decision she chose to remain in the meeting during discussion and vote on the item.

Cr Leigh disclosed a Proximity Interest as he lives in the area. As the interest declared was not likely to affect his decision he chose to remain in the meeting during discussion and vote on the item.

Mr Steve Prosser addressed the Committee. Mr Prosser spoke against the Recommendation.

Option 2 was moved Cr T Smith, seconded Cr Dillon.

In response to questions from members the Executive Manager City Development advised:

- \* The City Vision process had been an open process which had been coordinated by the Taskforce and had involved public workshops. The final document is a framework by which to review TPS No.7. It contains a number of statements which will be developed in a balanced way.
- \* A significant amount of intense planning work had been undertaken in Glen Iris. It was foreseen that significant public opportunities would emerge in that area.
- \* Lot 71 Bunning Boulevard is zoned residential and with the current high demand for housing the community is better served if the land is used for housing.
- \* The term "Development Investigation Policy Area" means that rather than allow ad hoc development in line with the residential zoning, a structure plan must be prepared for the lot. The only development investigation allowed to take place is that of the current zoning, which in this case is residential.

In response to questions from members the Manager Development Services advised:

- \* The City Vision was at the early stages when the proposal last came to council, at that time there were a number of significant proposals open to comment in the public forum. However, the final outcome of City Vision differed from early discussions.
- \* Council deferred the proposal at the meeting in September 2005 as they wished to see the direction of City Vision. City Vision as it now stands does not support the proposal.
- \* The Local Planning Policy – Commercial Strategy and the Local Planning Policy – Housing Strategy were both endorsed by Council in 2002, however to date these have not been endorsed by the WAPC. This proposal is not in keeping with those policies and if it is supported the policies will need to be amended.

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The Presiding Member put the Motion to the vote and it was lost.

**MOTION**

Moved Cr T Smith  
Seconded Cr Dillon

*Council proceed with the final approval of the proposed Amendment 11 without modifications.*

**LOST**

**4 Votes “For”/5 Votes “Against”**

Note: Councillors Dillon, T Smith, Lambert and Rose requested that their votes “for” the above Motion be recorded.

Note: Councillors McCleary, Rooney, Jones, Leigh and His Worship the Mayor requested that their votes “against” the above Motion be recorded.

The Recommendation was moved Cr McCleary, seconded Cr Leigh.

The Presiding Member put the Recommendation to the vote and it became the Committee Recommendation.



**COMMITTEE RECOMMENDATION**

Moved Cr McCleary  
Seconded Cr Leigh

*Council, under and by virtue of the powers conferred upon it in that behalf of the Planning and Development Act 2005 hereby resolves to:*

1. *Not adopt for final approval the proposed Scheme Amendment No. 11 to the City of Bunbury Town Planning Scheme No. 7 for the following reasons:*
  - (a) *The proposed Scheme Amendment No. 11 is inconsistent with the long-term planning objectives of the local area, as described under the Bunbury – Wellington Region Plan 1995 which nominates the site for residential development; and*
  - (b) *The subject land is not located in the designated “Bunbury Regional Centre”, nor is it located within a “possible future rounding off Mixed Business Area” as defined in the City of Bunbury Local Planning Policy - Commercial Strategy.*
2. *Advise the Western Australian Planning Commission, the proponent and all submitters of Council’s decision on proposed Scheme Amendment No. 11.*

**CARRIED**

**5 Votes “For”/4 Votes “Against”**

Note: Councillors McCleary, Rooney, Jones, Leigh and His Worship the Mayor requested that their votes “for” the above Recommendation be recorded.

Note: Councillors Dillon, T Smith, Lambert and Rose requested that their votes “against” the above Recommendation be recorded.

**11.2 AMENDMENT OF PRIVATE PROPERTY LOCAL LAW TO ALLOW FOR ELECTRIC FENCING**

<b>File Ref:</b>	A00999
<b>Applicant/Proponent:</b>	Internal Report
<b>Author:</b>	John Kowal, Manager Community Law & Safety
<b>Executive:</b>	Geoff Klem, Executive Manager City Development

**Summary**

At its meeting held 27 March 2007 Council Decided (53/07):

Council Decision 58/07

- “1. Council resolves to give public notice that it intends to adopt amendments to its Private Property Local Law so as to allow electrification of a fence.
2. The proposed Local Law to amend the text of the Private Property Local Law is to be advertised for public information state-wide and locally with a submission period of no less than six (6) weeks as required under Section 3.12(3) and (3a) of the Local Government Act 1995.
3. A copy of the proposed amended Local Law be provided to the Minister.
4. Following the public submission period the proposed amended Local Law to be returned to Council for further consideration and adoption.”

In accordance with council’s decision and Section 3.12 of the Local Government Act 1995 (“the Act”), the proposed Private Property Amendment Local Law has been advertised and a copy of the proposed local law has been provided to the Minister. The item is now returned to Council for further consideration.

**Background**

The matter to amend the Private Property Local Law originally was presented to council on 26 September 2006 at which time Council decided (174/06)

Council Decision 174/06

*“The City of Bunbury review its Private Property Local Law (which deals with different fencing types) with a view to allowing use of electric fencing within its boundaries.”*

This Motion had been moved by Cr Lambert who advised:

*"I have been approached by a local security firm asking for the review of this particular Local Law along with its letter of request is supporting documentation of: five (5) letters of*

*support from local businesses; brochure on how electric fences work; list of existing certified electric security fences installed throughout other shires in Western Australia (and Australia), and; copies of Local Laws in relation to this type of fencing from the Shire of Harvey and City of Perth where electric fencing is allowed.*

*I believe it would be short-sighted of this Council if it did not at least look at the possibilities of updating this particular Local Law."*

Subsequently at the meeting held 12 December 2006 Council Decided (234/06):

Council Decision 234/06

*"Amendment of the Private Property Local Law to allow for electrified fencing be referred back to the first briefing session of 2007 for further consideration."*

Previously provided to Council was advice from Council's legal practitioners, McLeod's and also from Council Insurers.

Advice previously received indicated that the amendment to the Private Property Local Law to allow the installation of electrified fencing should be worded so as to remove any requirements or obligations on Council to monitor and/or inspect any installation of electric fencing. However, the advice also indicated that Council may still need to ensure that any electric fencing complies with and is maintained in accordance with the Australian Standards and any conditions which maybe imposed by Council.

At the Council meeting held 27 March 2007, several Councillors raised concerns including:

- \* allowing the installation of electric fencing within certain areas;
- \* allowing electric fencing within residential areas;
- \* type of fencing allowed; and
- \* height of fencing.

The abovementioned concerns and various other issues may be dealt with by way of the development of a local planning policy ensuring that an applicant formerly applies to Council prior to any installation of electric fencing and then Council inturn applying conditions it considers necessary through the approval process.

A local planning policy may include the following conditions:

- \* Fencing shall comply with AS/NZS 3016 – Electrified Fencing Standards as amended from time to time.
- \* Fencing to be rendered inoperable during normal business operating hours (hour's maybe stipulated).

- \* Fencing must be maintained in a safe and serviceable manner by a qualified person.
- \* Warning signs are to be installed and maintained so as to be readable along all boundaries warning of the electrified fencing.
- \* Suitability of the electric fencing to the surrounding area.
- \* Consent of property owner.
- \* Consent of surrounding property owner/occupiers.
- \* Transfer of approval conditions from one property owner/occupier to another (Section 70 notice).

Should Council decide to make the Private Property Amendment Local Law it is proposed to draft the Local Planning Policy. The drafting and adoption process of the Local Planning Policy will coincide with the further advertising and implementation process of the Local Law.

### **Proposal**

The proposal is for council to make the Private Property Amendment Local Law 2007 so as to allow for the installation of electric fencing. The proposed Private Property Amendment Local Law 2007 is **attached** at Appendix 5.

### **Strategic and/or Regional Outcomes**

There are no Regional Outcomes relevant to this report.

Council's Strategic Plan 2002 – 2007 states under Strategic Direction 1.3 "*Have a safe and attractive city for the community and visitors*". Part (a) provides "*a) Ensure that Bunbury City Council's policies, local laws and legislation are complied with throughout the district to ensure safety, equity and order are maintained.*"

### **Community Consultation**

In accordance with Section 3.12 of the Local Government Act 1995 the proposal to amend the Private Property Local Law and to request public submissions was advertised in the West Australian on Saturday 7 April 2007 and in locally in the Bunbury Mail on Wednesday 4 April 2007.

There has also been ongoing consultation with a fencing business owner and the Bunbury Chamber of Commerce and Industry.

At the close of the six (6) week submission period a total of three (3) submissions were received and copies of all submissions are **attached** at Appendix 6.

All submissions supported the amendment to the Private Property Local Law to allow the installation of electric fencing. No submissions were received that were against the proposal.

There was also a submission from the Department of Local Government and Regional Development (DLGRD). This submission is **attached** at Appendix 7. The DLGRD submission gave advice in regard to drafting of the proposed Private Property Amendment Local Law 2007 and this advice has been accepted and the proposed Private Property Amendment Local Law 2007 has been amended accordingly.

### **Councillor/Officer Consultation**

There has been ongoing consultation between relevant Council Officers including the Chief Executive Officer, Executive City Development and Manager Development Services.

### **Analysis of Financial and Budget Implications**

The item has financial and budgetary implications with costs associated with the following:

- \* legal opinion and review of local law;
- \* Drafting of local law;
- \* Local and statewide advertising and advertising of the local law in the *Government Gazette* in accordance with the Act.

Although there may not be a significant number of applications for the installation of electrified fencing, the aforementioned obligation on Council may nevertheless require Council staff to scrutinise and process applications. This may create additional workload for staff and therefore a fee may have to be applied for the approval service similar to other approval services currently supplied by Council.

### **Economic, Social, Environmental and Heritage Issues**

#### Economic Issues

There may be some economic issues with this item as currently fencing contractors who want to install electrified fencing are unable too because of the current Private Property local law.

#### Social Issues

There are no social issues relevant to this report.

#### Environmental Issues

There are no environmental issues relevant to this report.

Heritage Issues

There are no heritage issues relevant to this report.

**Council Policy Compliance**

There is no Council Policy relevant to this item.

**Legislative Compliance**

Section 3.12 of the Act provides the process for Local Law adoption (this includes amendments to local laws). The ten-step process is as follows:

1. A summary of the ‘Purpose and Effect’ of the Local Law is to be read aloud at a Council Meeting and a Council decision made to advertise the proposed law for public information.
2. The draft Local Law is to then be given statewide public notice and local public notice.
3. A public submission period of at least six (6) weeks from the date of the first statewide notice is to be allowed.
4. A copy of the proposed law is to be sent to the Minister for Local Government and any other Minister administering an Act under which the law is made.
5. A copy of the proposed Local Law is to be made available to any person requiring it. (Adoption of a Local Law or any amendments thereto, can only be made once the public submission process is complete).
6. A written summary of any public submissions received is to be included as an item for Council consideration.
7. Council is to consider submissions and may decide by a special majority vote to make the law (if not substantially different from the original proposal).
8. The new Local Law is to be published in the Government Gazette and a copy provided to the relevant Minister.
9. Local public notice is to be given stating the title of the new Local Law, a summary of its “Purpose and Effect” and the date on which it comes into operation. The public must be advised that copies are available for information.
10. Explanatory material and copies of the new Local Law are to be provided to the Parliament at the direction of the Minister.

### **Delegation of Authority**

There is no current Delegation of Authority that would allow Council Officers to amend a local law.

### **Relevant Precedents**

Council has made, reviewed and amended local laws previously.

### **Options**

Option 1: Per the Recommendation

Option 2: Council resolve not to make the Private Property Amendment Local Law 2007.

### **Conclusion**

As stated in the report, there seems to be a need for certain type of alternate fencing within the Community. This needs to be balanced to ensure that any type of structure including fencing is properly installed and continually maintained to ensure the safety and reduction of risk to the community, the aesthetics and amenity of an area. It is considered that this can be achieved by Council's formal approval process.

The Executive do not support Option 2, the amendment to the Private Property Local Law will allow for the installation of electric fencing. Internal processes will evaluate applications on a case by case basis and determine appropriate and most suitable conditions for each application.

Council is obligated to ensure that electric fencing is installed and maintained in accordance with Australian Standards, Council and community requirements. This can be achieved through an internal application process and application evaluation. The risk to the community may be reduced by placing the onus on the property owner/occupier and the installer of electric fencing to comply with suitable conditions in relation to approvals as stated in this report.

### **OUTCOME OF THE COUNCIL COMMITTEE MEETING ON 5 JUNE 2007**

Cr Jones left the meeting at 7:26 pm and returned to the chamber at 7:27 pm.

Cr Dillon left the meeting at 7:26 pm and returned to the chamber at 7:30 pm.

The Recommendation was moved Cr Lambert, seconded Cr McCleary.

With the consent of the mover and seconder, the Recommendation was amended to include a timeframe for the return of the local planning policy to council.

The Presiding Member put the amended Recommendation to the vote and it became the Committee Recommendation.

**COMMITTEE RECOMMENDATION**

Moved Cr Lambert  
Seconded Cr McCleary

*Council resolves to make the Private Property Amendment Local Law 2007.*

1. *The new Local Law is to be published in the Government Gazette and a copy provided to the relevant Minister.*
2. *Local public notice is to be given stating the title of the new Local Law, a summary of its "Purpose and Effect" and the date on which it comes into operation. The public must be advised that copies are available for information.*
3. *Explanatory material and copies of the new Local Law are to be provided to the Parliament at the direction of the Minister.*
4. *Council officers to present to Council a local planning policy to support the processing of applications for electric fencing on or before 31 July 2007.*

**CARRIED**

**9 Votes "For"/Nil Votes "Against"**

**ABSOLUTE MAJORITY VOTE REQUIRED AT THE COUNCIL MEETING**

Note: The Committee chose to amend the Recommendation to provide a timeframe for the local planning policy to be presented to council.

**IMPORTANT:** At the Council Meeting, the Person presiding must give notice (read aloud) to the meeting of the following "Purpose and Effect" of the proposed amended Local Law, before a decision is made.

PURPOSE

The purpose of the Private Property Amendment Local Law is to allow for the installation of electric fencing.

EFFECT

The effect will be that the installation of electric fencing will be permitted only subject to Local Government approval.



**11.3 DEED OF LICENCE OVER SOUTH WEST SPORTS CENTRE - PROPOSED SOUTH WEST ACADEMY OF SPORTS INC.** *(THIS ITEM WAS LISTED AS ITEM 11.8 ON THE MEETING AGENDA)*

<b>File Ref:</b>	A00963
<b>Applicant/Proponent:</b>	Tom Busher, Regional Project Officer (SWDC)
<b>Author:</b>	John Beaton, Manager Administration & Property Services
<b>Executive:</b>	Greg Trevaskis, Chief Executive Officer

**Summary**

The South West Development Commission plans to establish an Academy of Sports within the South West to provide an incentive for talented young athletes in the region to develop their skills and continue their training to an advanced or elite level. Accordingly, the South West Development Commission seeks Council's endorsement for the City to enter into a Licence Agreement with the (future) South West Academy of Sports Inc. over use of a portion of the South West Sports Centre for an initial three year period commencing 1 August 2007.

A plan outlining the proposed licence area is **attached** at Appendix 14.

**Background**

Land Details

The South West Sports Centre is located on portion of Hay Park or more specifically, part of Crown Reserve 30601 (Lot 3001) Rotary Drive, Bunbury, being part of the land comprised within Crown Land Record Volume 3136 Folio 213. The City of Bunbury holds a Management Order over the land with the power to lease for twenty-one years for the purpose of "Recreation".

South West Academy of Sports Inc.

Once fully incorporated as a not-for-profit organisation, it is proposed that the South West Academy of Sports (or "SWAS") be based at the South West Sports Centre. The organisation will operate using the same principles as similar organisations in the Eastern States by giving young talented athletes in country areas the same opportunities as their City-based counterparts i.e., provide them with localised coaching programmes, education and professional sporting support services. It is anticipated this will encourage country athletes to continue their training as they will not incur unreasonable travelling expenses or disruption to family or school life caused through travelling/relocating to Perth.

The Academy will be staffed by at least two (2) administrative personnel together with a number of specialized coaches. Academy staff will travel to country towns and schools within the South West on a regular basis to meet with aspiring young athletes and their families. One-on-one training sessions would be provided where required.

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It is proposed that the SWAS will seek funding largely through grants from Federal and State government (possibly as an adjunct to the Australian Institute of Sport) and corporate sponsorship. Members of the Academy will typically be aged between 12 and 18 years, reside (or compete for a sporting club) within the South West and their sporting achievements will have to meet specified selection criteria as established by administrative bodies within their chosen sport.

Memorandum of Understanding

During the past 12 months, the South West Development Commission invited the Chief Executive Officer to attend meetings of its South West Academy of Sports Working Group. The Working Group was charged with the task of compiling a Memorandum of Understanding between the proposed South West Academy of Sports Inc. and the City of Bunbury for use of the South West Sports Centre. The document contains terms negotiated for the following:

- \* Office space
- \* Annual rental
- \* Dedicated training room
- \* Ancillary office support
- \* Access to Sports Centre facilities
- \* Coaches' responsibilities
- \* Insurance
- \* Corporate Sponsorship
- \* Grant funding
- \* Other uses of the facility
- \* Duration of agreement
- \* General obligations

A copy has been provided to committee members under separate cover.

Proposed Licence Agreement Details

Term:	Three (3) years
Commencement:	1 August 2007
Expiry:	31 July 2010
Option to Renew:	Three (3) year option
Licence Area:	35 square metres
Permitted Use:	Coaches Hot Desk
Annual Licence Fee:	\$9,100 plus GST (35m <sup>2</sup> x \$260) subject to annual review in line with the <i>Schedule of Fees and Charges</i> endorsed by the City as part of its Municipal Budget.
Outgoings:	Responsibility of Licensee
Insurance:	Licensee responsible for general insurance cover (for licence area only) and workers' compensation cover for its employees, contractors and patrons. The Licensee to hold a Public Liability and Indemnity Policy to cover all forms of sports development for

	which activities or training will occur at the Sports Centre (to the value of \$10,000,000 for any one claim)
Special Conditions:	<ol style="list-style-type: none"> <li>1) Licensee to utilise telephone, facsimile, email, internet, computer service and photocopying services at the Sports Centre on a proportionate "fee for service" basis as determined by the City of Bunbury.</li> <li>2) Unless otherwise arranged by Sports Centre management, Sports Academy athletes and staff can only gain access to the Sports Centre within its normal hours of operation.</li> <li>3) Members of the Academy to hold a Corporate Membership Card for use of facilities at the Sports Centre (except for use of the sports hall and squash courts).</li> <li>4) Licensee to use meeting and function rooms at the Sports Centre on a "fee for service" basis at the same rates as charged to local sporting associations.</li> <li>5) Exclusive use of facilities at the Sports Centre to be arranged via an annual or seasonal agreement negotiated between Sports Centre management and the coach.</li> <li>6) The Licensee cannot sub-let the licence area nor can it allow the licence area to be utilised for any purpose other than the "permitted use" without the prior written agreement of Sports Centre management.</li> </ol>
Document Preparation:	Responsibility of the Licensee

Note: The Memorandum of Understanding indicates that the Academy is to have the option of setting up a dedicated training room within the Sports Centre if required. Should this option be taken up, a separate agreement will need to be entered into between the parties based on terms consistent with those for lease of office space. The terms and conditions of any resulting agreement will be submitted to Council for endorsement and will be subject to public advertising as required under the Local Government Act 1995.

### **Strategic and/or Regional Outcomes**

The proposal complies with the *City of Bunbury Strategic Plan 2007-2012* through Strategic Objective 6 titled "Develop Social Capital", as it provides a means of assisting young athletes from Bunbury to develop their full potential and possibly, reach elite levels in their chosen sport.

The proposal will specifically benefit the Bunbury region as staff from the Sports Academy plan to frequent towns and schools throughout the South West on a regular basis to meet with aspiring young athletes and their families.

### **Community Consultation**

The project is an initiative of the South West Development Commission. No public consultation has been undertaken to date but the Commission plans to release a media statement once the Academy is established.

### **Councillor/Officer Consultation**

The Chief Executive Officer represented the City on the South West Academy of Sports Working Group which developed the Memorandum of Understanding.

### **Analysis of Financial and Budget Implications**

The City of Bunbury will not be required to contribute to the cost of establishing or operating the South West Academy of Sports. The Academy will be an incorporated not-for-profit organisation and derive its income from government funding and corporate sponsorship.

### **Economic, Social, Environmental and Heritage Issues**

There are no economic, environmental or heritage issues to consider.

The social impact of encouraging the region's young athletes to continue their training, has already been outlined above.

### **Council Policy Compliance**

There is no Council policy in relation to leasing or licensing of Council-owned or operated property.

### **Legislative Compliance**

The intention to licence portion of the South West Sports Centre to the South West Sports Academy Inc., will be advertised for public information with a submission period of fourteen (14) days as required under sections 3.58(3) and (4) of the Local Government Act 1995.

### **Delegation of Authority**

The Chief executive Officer has the delegated authority of the Council to negotiate the terms and conditions of leases and licences, provided the settled terms and conditions are presented to Council for approval before documentation is finalised.

In this instance it is proposed that subject to no objecting submissions being received as a result of public advertising, the Chief Executive Officer be authorised to proceed with preparation and signing of the licence document.

### **Relevant Precedents**

The City has entered into licence agreements with other sporting bodies at the South West Sports Centre e.g., Alexander Squash Club Inc., Bunbury Volleyball Association Inc. and Bunbury Basketball Association Inc.

### **Options**

Option 1: Per the officer's recommendation listed in this report.

Option 2: The City of Bunbury declines to grant a licence to the South West Academy of Sports Inc. for use of a 35 square metre portion of the South West Sports Centre.

### **Conclusion**

As has been the experience of similar operations in the Eastern States, regional sporting academies act as a “stepping stones” for athletes from country areas allowing them entry into state or national elite level development programs. The proposed South West Academy of Sports Inc. aims to provide a level of support and training for aspiring young athletes greater than that available at local club level.

The Memorandum of Understanding entered into between the City of Bunbury and the South West Academy of Sports Inc. stipulates the responsibilities of coaching staff (when at the Sports Centre) and outlines the funding sources for the programme. As the Academy proposes to raise funds through government grants and corporate sponsorship, the City of Bunbury will not be required to provide funding for the programme or provide exemptions in payment of licence fees or any other fees or charges for the Academy's use of facilities at the South West Sports Centre.

It is proposed to enter into an initial three (3) year licence agreement with the Academy and, should the programme prove successful, extend this for a further three (3) years with terms and conditions to be the same as those offered to other sporting groups that use the South West Sports Centre. Members of the general public will not be inconvenienced by the licence agreement as the presence of a Coaches Hot Desk will not prevent them from utilising the facilities that the Centre has to offer.

The proposal complies with the City's current Strategic Plan and will benefit the region as staff from the Sports Academy plan to frequent towns and schools throughout the South West on a regular basis to meet with aspiring young athletes and their families.

### **OUTCOME OF THE COUNCIL COMMITTEE MEETING ON 5 JUNE 2007**

Mr Tom Busher of the South West Development Commission made himself available to answer questions from members.

The Recommendation was moved Cr Dillon, seconded Cr Jones.

Cr Rooney left the meeting at 7:41 pm and returned to the chamber at 7:43 pm.

Cr McCleary left the meeting at 7:43 pm and returned to the chamber at 7:45 pm.

In response to questions from members the Chief Executive Officer advised:

- \* The three year term was suggested in order to give stability to the Academy and give grant providers the knowledge that security of tenure was in place for that period.
- \* The area in question was located near the kiosk and had previously been unallocated. This area had been suggested by the current manager of the facility.
- \* Not all sports would be included in the proposal, probably four (4) sports.

The Presiding Member put the Recommendation to the vote and it became the Committee Recommendation.

**COMMITTEE RECOMMENDATION**

Moved Cr Dillon  
Seconded Cr Jones

*Upon incorporation of the South West Academy of Sports, the Bunbury City Council to grant the Academy a Licence Agreement over a 35 square metre portion of the South West Sports Centre located on portion of Reserve 30601 "Hay Park" (Lot 3001 Rotary Drive), subject to:*

1. *The Licence to commence on 1 August 2007 with a three (3) year term and a further three (3) year option, the terms and conditions of the licence agreement to be consistent with the conditions listed in this report and in the Memorandum of Understanding.*
2. *The Minister for Lands to consent to the Licence Agreement.*
3. *The City's intention to enter into a Licence Agreement to be advertised for public information pursuant to Sections 3.58(3) and (4) of the Local Government Act 1995, giving a two (2) week submission period. The notice to appear in the City Update column of the Bunbury Mail Newspaper and on Public Notice Boards at the City's Administration Centre, both libraries and the City's internet website.*
4. *If no objecting submissions are received as a result of Part 3. above, then the Chief Executive Officer may proceed with preparation and signing of the Licence Agreement.*

**CARRIED**

**9 Votes "For"/Nil Votes "Against"**

**11.4 PROPOSED NEW REEF HOTEL, CAR PARKING REQUIREMENTS - LOT 123, #21 VICTORIA STREET** *(THIS ITEM WAS LISTED AS ITEM 11.3 ON THE MEETING AGENDA)*

<b>File Ref:</b>	P10178
<b>Applicant/Proponent:</b>	Prodale Pty Ltd (refer to confidential report for directors' names)
<b>Author:</b>	Paul Davies, Planning Consultant
<b>Executive:</b>	Geoff Klem, Executive Manager City Development

**Summary**

The City has recently received a Planning Application from Prodale Pty Ltd for development of a new hotel. The proposed development comprises two stories with ground floor, public drinking areas, beer garden, bottle shop and upstairs restaurant, dining area, function rooms, three (3) accommodation rooms and a directors suite.

The proponent has requested that the proposal be referred to Council for consideration of car parking requirements in accordance with Clause 5.7.1.9 of Town Planning Scheme No.7.

In accordance with Clause 5.7.1.9 developments within the City Centre less than 2000m<sup>2</sup> gross floor area may not be required to provide onsite car parking. The proposed development has a total floor area of approximately 1890m<sup>2</sup> which is less than the requirements under Clause 5.7.1.9.

With recent concerns with availability of car parking in the CBD the parking provisions under the Town Planning Scheme are currently under review and may be modified in the future.

In accordance with Town Planning Scheme No.7 car parking general land use requirements a total of 330 bays would be required for the development based on 1 bay per 2m<sup>2</sup> public area and 1 bay per 4m<sup>2</sup> for eating areas.

In Accordance with the current City of Bunbury, Local Planning Policy, Parking Strategy, in regard to consideration of reciprocal rights and existing car parking requirements for the existing use of the site the on site car parking could be reduced to 121 car parking bays.

Further, in accordance with the current Local Planning Policy the proponent could provide the total requirement on site or may provide cash in lieu for up to 80% of the car parking requirement with provision of the balance (24 Bays) on site.

Development Services considers that in light of the issues raised in regard to car parking within the CBD generally that it would be prudent to review the current philosophy of allowing significant relaxation of car parking under clause 5.7.1.9 of the scheme.

Therefore, the proposal is referred to Council for consideration of car parking requirements.

## **Background**

The site is currently developed with a red brick warehouse/showroom style building which is occupied by Vibrations Music Store. The site is proposed to be developed with a new hotel to replace the existing Reef Hotel located on the opposite side of Victoria Street.

The proponents advise that they have acquired the hotel licence from the existing Reef Hotel (Former Captain Bunbury Hotel) and intend to transfer the licence to the new premises. The proponents indicate that the new development will utilise much of the existing fittings and plant from the existing hotel.

The location plan is **attached** at Appendix 8.

## **Proposal**

The proposed development utilises portions of the existing building with rebuilding existing walls and new walls as necessary with two storey tilt panel walls around the beer garden. The proponents advise that the beer garden will include a large water feature and significant palms relocated from the existing hotel beer garden.

Design plans submitted with the application are not comprehensive. In view, however, of potential on site car parking requirements which would necessitate a significant modification to the proposed design the proponent has requested a determination by Council in regard to car parking requirements prior to preparing revised plans.

Concept design and floor plans are **attached** at Appendix 9.

Council's Environmental Health Department also has concerns in regard to potential noise from the outside (beer garden) area. The proponents have been requested to provide an acoustic assessment report for the outside beer garden area.

The proponents advise that the restaurant will have inside and outside dining and a completely soundproofed area on the first floor that will be available for groups/association meetings, and at night will play music directed at a more mature audience through music style and ambience.

Further, the proponents advise that there will be no noise escape or amplified music in any outdoor area and that noise attenuation will be addressed so they can coexist with existing neighbours.

## **Car parking requirements**

In accordance with Clause 5.7.1.9 developments within the City Centre less than 2000m<sup>2</sup> gross floor area may not be required to provide onsite car parking. Any development in excess of 2000m<sup>2</sup> is required to provide adequate onsite car parking as determined by Council.



The proposed development has a total gross floor area of approximately 1890m<sup>2</sup> which is less than the requirements under Clause 5.7.1.9, hence on site car parking may not be required for the proposed development.

In accordance with Town Planning Scheme No.7, general car parking requirement, Table 2, for "Hotel" development, one space is required for ever 2m<sup>2</sup> of public drinking area, plus one space for every 4m<sup>2</sup> of eating area and one space per bedroom.

Based on the current car parking requirements under Town Planning Scheme No.7 a total of 330 car parking bays would generally be required for the proposed development.

Councils current Local Planning Policy, Parking Strategy outlines potential for a 60% reduction in car parking based on reciprocal rights of access to other available parking within a 200 metre distance of the development site. The provision for reciprocal rights is based on uses which operate after 6:00pm.

Also, it is considered that the existing shop use on the site would generate demand for 28 car parking bays (based on 550m<sup>2</sup> existing floor area with 1 bay per 20m<sup>2</sup> shop area). By including a 60% reduction for reciprocal rights and deducting the existing shop use car parking requirement a total of 121 on site bays would be required for the proposed development.

The current Local Planning Policy, Parking Strategy also includes provision for the proponent to provide cash in lieu for up to 80% of the car parking requirement. On this basis cash in lieu could be provided for 97 car parking bays with an approximate value of \$1.746 million (based on current cost estimate of \$18,000 per parking bay).

With provision of cash in lieu for 97 bays the proponent would need to provide 24 car parking bays on site. The provision of the required car parking and cash in lieu as outlined above would require significant redesign of the proposed development, hence the proponent has requested that Council consider the issue of car parking prior to preparation of revised plans.

### **Applicants Justification**

The proponent requests that Council support provision of no on-site car parking for the proposed development. The proponent suggests that the existing Reef Hotel on the opposite side of Victoria Street does not have on site parking hence the new Reef Hotel proposal should also not require on site car parking.

The proponent advises that the development site has an area of 1113m<sup>2</sup> and in view of the small size of the lot it is impractical to have onsite car parking. They advise that they promote a no drinking and driving at the hotel and skipper program that minimises the number of vehicles that attend the venue.

Also, they advise that the driving behaviour of hotel patrons is changing significantly in recent years such that very few drive to hotels.

### **Comment on Current Review**

A report in regard to the Central District Parking Strategy was considered at the Council Committee meeting on 24 April 2007. Consideration was subsequently deferred pending comments being obtained from the Bunbury Chamber of Commerce.

The Parking Strategy review report provides the basis for a parking strategy that addresses planning, management and the development of parking areas within the CBD. It was informed by the review of the GHD Integrated Land Use and Transport Strategy 2030 and the more recently advertised AARB Parking Works Program.

On evidence provided by the consultants, it has been concluded that the Bunbury CBD has adequate provision for car parking over the planning horizon of 10 years used in the AARB Report. There are however areas of high demand where inconvenience is being experienced and the potential to reach capacity in inner CBD parking areas if future developments do not provide adequate on site or cash in lieu of parking.

Development Services consider that the City has evolved to a point where parking is no longer an activity of Council that is insignificant and low profile. It is considered that the City is well placed to respond to any perceived or actual parking issues as it owns the main parking stations in key strategic locations of the CBD.

### **Strategic Outcomes**

Council's 2002 – 2007 Strategic Plan states that Bunbury City Council has a goal to "*Have a built environment which is safe, accessible, functional, attractive and sympathetic with the natural environment*". To achieve this goal, the Strategic Plan specifies assessment and approvals of all development proposals within the context of the Town Planning Scheme. The proposed policy is consistent with this goal.

The Recommendation has had regard to Council's 2002-2007 Strategic Plan.

### **Community Consultation**

No community consultation has been undertaken.

### **Councillor/Officer Consultation**

This matter has been reviewed by Council staff within the Development Coordination Unit meetings consisting of officers from Engineering, Planning, Building and Health. Further discussions have taken place with Manager Development Services, Senior Planner (Statutory) and Executive Manager City Development.

### **Analysis of Financial and Budget Implications**

The Recommendation will not impact on the existing Annual Budget nor are there any expenses associated with the requests from a Council perspective.

The issue of car parking provision in the long term has the potential to significantly impact on Councils future budget management. In that there may be a requirement for additional public car parking if adequate onsite parking or contributions are not provided by developers.

### **Economic, Social, Environmental and Heritage Issues**

#### Economic Issues

In economic terms, the proposal will provide economic benefit during the construction phase of the development and also future employment opportunities in the proposed hotel.

#### Social Issues

The proposal will provide for social opportunities for residents and the general public.

#### Environmental Issues

There are no environmental issues associated with the proposal.

#### Heritage Issues

There are no heritage issues associated with the proposal.

### **Council Policy Compliance**

It is considered that the Recommendation does not contravene any known Council policy.

### **Legislative Compliance**

Legislative requirements relating to the Local Government Act 1995 or any other Act, Local Law or Regulations have been complied with in the processes leading up to the finalisation of this report.

### **Delegation of Authority**

There is no delegation of authority in this instance.

### **Relevant Precedents**

There are no known relevant precedents in respect of the specific matter being considered by Council.

### **Possible Options**

Option 1: Per Recommendation.

Option 2: Council resolve to advise Prodale Pty Ltd that it supports in principle the proposed hotel development on Lot 123 Victoria Street, Bunbury with no on-site car parking provision in accordance with Clause 5.7.1.9 of Town Planning Scheme No.7 subject to submission of appropriate design drawing for the proposed building and a noise assessment report for the development to the satisfaction of the Manager Development Services.

Option 3: Council resolves to advise Prodale Pty Ltd that it defers consideration of the car parking requirements for the proposed development the proposed hotel development on Lot 123 Victoria Street, Bunbury pending completion of the review of the car parking requirements for the CBD under Town Planning Scheme No.7 and the City of Bunbury Local Planning Policy Parking Strategy.

### **Conclusion**

The proposed development has a total floor area of approximately 1890m<sup>2</sup>. Council has previously supported reduced car parking requirements for commercial floor space less than 2000m<sup>2</sup> in the CBD in accordance with the provisions of Clause 5.7.1.9 of Town Planning Scheme No.7.

With recent concerns with availability of car parking in the CBD the parking provisions under the Town Planning Scheme are currently under review and may be modified in the future.

In accordance with Town Planning Scheme No.7 car parking general land use requirements a total of 330 bays would be required for the development based on 1 bay per 2m<sup>2</sup> public area and 1 bay per 4m<sup>2</sup> for eating areas.

With consideration of reciprocal rights and existing car parking requirements for the existing use of the site the on-site car parking could be reduced to 121 car parking bays. The proponent could provide the total requirement on site or may provide cash in lieu for up to 80% of the car parking requirement with provision of the balance (24 Bays) on site.

The proponent has requested that Council support provision of no car parking for the proposed development in accordance with Clause 5.7.1.9. Development Services considers that parking requirements should be reviewed with a view to facilitate provision of adequate on site car parking for the proposed development.

### **OUTCOME OF THE COUNCIL COMMITTEE MEETING ON 5 JUNE 2007**

Cr T Smith disclosed a Proximity Interest as his family company owns No. 10 Victoria Street. He left the meeting chamber at 7:50 pm for the duration of discussion and vote on the matter.

The Recommendation was moved Cr McCleary, seconded Cr Jones (pro forma).

In response to questions from members the Executive Manager City Development advised:

- \* 2000m<sup>2</sup> clause is a provision of TPS No.7.
- \* The ARRB Report had been presented to Committee on 24 April 2007, however it had been withdrawn in order to give the Chamber of Commerce time to comment on the perceived changes to the document. The Chamber would be advised that the report would be presented to the next round of meetings and that their comments are required at this time.
- \* Once the proponent has a response from Council on the parking issue they can decide what they wish to do.

The Presiding Member put the Recommendation to the vote and it became the Committee Recommendation.

**COMMITTEE DECISION**

Moved Cr McCleary  
Seconded Cr Jones (pro forma)

*Council resolves to:*

1. *Advise Prodale Pty Ltd that it supports in principle the proposed new hotel development on Lot 123 Victoria Street, Bunbury subject to;*
  - (a) *provision of adequate on site car parking, comprising 121 car parking bays of which cash in lieu may be provided for up to 80% of the parking bay requirement with the balance 24 bays being provided on site.*
  - (b) *submission of appropriate design drawings for the proposed building, and,*
  - (c) *submission of a noise assessment report for the development to the satisfaction of the Manger Development Services.*
2. *Through Development Services address the issue of car parking requirements in the CBD through the review of current provisions/requirements of the City of Bunbury, Town Planning Scheme No.7 and the City of Bunbury, Local Planning Policy, Parking Strategy.*

**CARRIED**

**8 Votes "For"/2 Votes "Against"**

Cr T Smith returned to the meeting chamber at 8:13 pm

**11.5 PROPOSED HOME BUSINESS - MULTIMEDIA DESIGN – LOT: 11 #28 PARKFIELD STREET, BUNBURY** *(THIS ITEM WAS LISTED AS ITEM 11.4 ON THE MEETING AGENDA)*

<b>File Ref:</b>	P07397
<b>Applicant/Proponent:</b>	Bruce Crain
<b>Author:</b>	Lindsay Bergsma, Planning Officer
<b>Executive:</b>	Geoff Klem, Executive Manager, City Development

**Summary**

Council has received a development application from Bruce Crain (who was in the process of purchasing the subject lot when he lodged the application with the City) for a home business on Lot 11, No. 28 Parkfield Street, Bunbury.

The subject site is zoned “Residential R15” within which a home business is an “A” use. The proposal was advertised and two (2) submissions were received objecting to the proposal. It is for this reason that the proposal is being referred to Council for determination.

**Background**

The subject land is zoned “Residential R15” and currently there is an existing single house on-site. The zoning of the subject land will remain the same. A home business in a residential zone is an “A” use under the City’s current Town Planning Scheme (TPS No.7) meaning this is a use that is not permitted unless the local government exercises its discretion and grants planning approval after advertising the proposal for public comment.

A location plan of the subject lot is **attached** at Appendix 10.

In accordance with the Scheme requirements, the proposal was advertised for 21 days and two (2) submissions were received. The two (2) submitters have objected to the proposal on the basis that the residential zoning of the area is being eroded and commercial interests and small businesses are locating in the area and this may set a precedent for the future.

Pursuant to the City’s Local Planning Policy –Development Applications Assessment Processes: Rights of the Applicant and the Community, *“Upon closure of the advertising period, all submissions are [to be] compiled and incorporated into agenda item to Council for their consideration.”* This then, is the purpose of this report.

The applicant noted in a letter to the City as part of the planning application that he had conducted the same business (GEO Media Interactive, formally BTG Media) at Lot 4, No. 2 Carey Street, Bunbury. He noted that he had conducted the business from this location for the last seven (7) years, having successfully applied for approval at that time. The applicant stated that he received no complaints from the neighbours in the seven years in which the business was located there.

## **Proposal**

The proposal is a home business (for a multimedia design business) for Lot 11, No. 28 Parkfield Street, Bunbury. Two (2) offices are proposed in the existing dwelling. The total area of the home business is proposed to be approximately 35m<sup>2</sup> of the existing dwelling. The proposed area of the home business is shown on the floor plan, being 'office 1' and 'office 2' and the area between the stairs and the 'lounge', in front of 'office 2'. The floor plan is **attached** at Appendix 11.

### Applicant's justification

Subsequent to a letter submitted by the applicant as part of the planning application, and on request from Development Services to clarify the use, further details were provided on the proposal. The applicant advised that a total of two (2) people are employed by the business. The applicant also stated that it is his intent to live in the existing dwelling during the week, while his business partner (who is not a family member) will not be living on site but will be coming to the site daily to work. The business is proposed to receive approximately one (1) client visit per month since the applicant and business partner mostly visit the clients where necessary. The nature of the business generally involves the use of computers creating multimedia. There is no machinery and no noise etc. In regard to parking on site, there is sufficient room to park four vehicles in total in the existing garage and on the driveway area.

### Local Planning Policy – Home Based Businesses

The City's Local Planning Policy – Home Based Businesses identifies three (3) forms of home based businesses (which are also uses listed individually under the City's TPS No.7). They are: home occupation, home office and home business. These categories are outlined in the Policy as follows:

1. Home Office: an occupation limited to a business carried out solely within a dwelling by a resident of the dwelling but which does not-
  - (a) entail clients or customers travelling to and from the dwelling;
  - (b) involve any advertising signs on the premises; and
  - (c) require any external change to the appearance of the dwelling.
  
2. Home Occupation: an occupation carried out in a dwelling or on land around a dwelling by an occupier of the dwelling which-
  - (a) does not employ any person not a member of the occupier's household;
  - (b) will not cause injury to or adversely affect the amenity of the neighbourhood;
  - (c) does not occupy an area greater than 20m<sup>2</sup>;
  - (d) does not display a sign exceeding 0.2m<sup>2</sup>;
  - (e) does not involve the retail sale, display or hire of goods of any nature;
  - (f) in relation to vehicles and parking, does not result in the requirement for a greater number of parking facilities than normally required for a single

- dwelling or an increase in traffic volume in the neighbourhood, does not involve the presence, use or calling of a vehicle more than 2 tonnes tare weight and does not include provision for the fuelling, repair or maintenance of motor vehicle; and
- (g) does not involve the use of an essential service or greater capacity normally required in the zone.
3. Home Business: means a business, service or profession carried out in a dwelling or on land around a dwelling by an occupier of the dwelling which-
- (a) does not employ more than 2 people not members of the occupier's household;
  - (b) will not cause injury to or adversely affect the amenity of the neighbourhood;
  - (c) does not occupy an area greater than 50m<sup>2</sup>;
  - (d) does not involve the retail sale, display or hire of goods of any nature;
  - (e) in relation to vehicles and parking, does not result in traffic difficulties as a result of the inadequacy of parking or an increase in traffic volumes in the neighbourhood, and does not involve the presence, use or calling of a vehicle more than 3.5 tonnes tare weight; and
  - (f) does not involve the use of an essential service of greater capacity than normally required in the zone.

In consideration of the different home based business categories given above, the proposed multimedia design business best fits the 'home business' definition. The proposal cannot be classed as a home office due to the fact that there will be some clients coming to the site (even though this will be very seldom). The proposal cannot be classed as a home occupation due to the fact that the business employs a person who is not a member of the occupier's household and also is proposed to occupy an area greater than 20m<sup>2</sup>.

The proposal was therefore assessed as a home business. The assessment considered the 'home business' definition points outlined above (stated in the City's Local Planning Policy – Home Based Businesses) and found the proposal to comply with these points. From the previous information stated in this report, the proposed home business can be seen to comply with the points a, c, d, e. Points b and f are related to the objections raised in the two (2) submissions received by the City following advertising of the proposal. The submissions will now be discussed.

#### Submissions (objections) to the proposal

During the advertising of the proposal for a three-week period, two (2) submissions were received from adjoining landowners objecting to the proposal. Since both submissions are fairly short they can be included in full in this report.

#### *Submission 1*

*"Concerns that the residential zonings are being slowly eroded and commercial interests, slowly, are sneaking into our area. No properties directly are affected but whole area is*



*under threat by the encroaching commercial interests pretending to be a home business! As the submission is "home business" should the property have permanent residence? Since the property was handed over (early January 07) there seems to never be anyone present except during office hours!"*

*Submission 2*

*"I am the owner and occupier of an adjoining property. I am very concerned that this could cause a precedent and that the area could be dominated by small business. This is a beautiful heritage-type precinct and it would be a disaster for Bunbury if this lovely area was lost as residential zone. I would like a guarantee from Council that this will not happen in the short/ long term. I don't agree with a business in this area."*

In response to both submissions, it should be noted firstly, that the residential zoning of the subject lot is not proposed to change. Also, only a very limited number of commercial uses can be considered under the City's TPS No.7 for the residential zone. These uses would require a planning application to be lodged with the City and the uses would be assessed on their merits. Mechanisms are therefore in place to restrict any land uses from locating in the residential zone which would detrimentally affect the zone.

Submission 1 questions the definition of 'home business' in regards to permanent residency. The definition of 'home business' (as stated in the City's Local Planning Policy- Home Based Businesses) has been included in an earlier section of this report. The submission also refers to the observation that "there seems to never be anyone present except during office hours". What the landowner (applicant) has chosen to do with the subject land at this stage (before planning approval is issued for the home business) is unclear. If he has chosen to keep the site vacant at this time, he has the right to do so. It should be noted however, that the applicant has confirmed that he will live in the existing dwelling during the week once the home business has been approved. If approval is issued, the City can then monitor the situation and ensure that the applicant is operating the business in accordance with the approval.

It should also be noted at this point that the City's Local Planning Policy- Home Based Businesses refers to the City's Housing Strategy and states that as per the Strategy, home businesses will ideally be supported to operate from 'frame areas'- being those locations adjacent to identified commercial areas. The subject lot is not within a frame area. The Policy goes on to state that if an application is received for a home business external to a frame area, the application would be considered on its merits (i.e. nature of business, number of employees, location etc).

From all that has been stated earlier, it can be seen that the nature of the business is not likely to be detrimental to the surrounding area. The business will not be noisy since most of the work undertaken by the business is carried out via computer. With one (1) employee coming to the subject site daily from elsewhere, and the possibility of approximately one (1) client coming per month, the traffic coming to the site would not be more than what is normally expected for a dwelling in any residential zone.

Finally it should also be acknowledged that if approval was issued for the proposed home business, the approval will only be valid until the end of the year. After that time, the home business will need to be renewed annually. This allows for the home business to be reviewed on an annual basis and, if major issues arise, the City could decide (in the worst case scenario) not to renew the home business.

### **Strategic and/or Regional Outcomes**

Council's 2002 – 2007 Strategic Plan states that Bunbury City Council has a goal to "*Have a built environment which is safe, accessible functional attractive and sympathetic with the natural environment*". To achieve this goal, Council is guided by its strategy to "*Undertake assessment and approvals of all development proposals within the context of the Town Planning Scheme*". In this case, the proposal has been considered in the context of its compliance with current Scheme and has been assessed against the associated planning policies.

It is considered that the broad direction of the City's 2002 – 2007 Strategic Plan would not be compromised to any significant extent by supporting the proposed development.

### **Community Consultation**

The proposal was advertised for a three week period between 21 March 2007 and 10 April 2007. Two (2) submissions were received objecting to the proposal.

### **Councillor/Officer Consultation**

The proposal was received on 13 December 2006, and it was tabled for the Development Coordinating Unit (DCU) meeting of 14 December 2006 during which time some issues were discussed among the concerned Departments.

Following the DCU meeting, the proposal was prepared for advertisement in accordance with scheme requirements.

### **Analysis of Financial and Budget Implications**

The effect of the Recommendation will not impact on the existing Annual Budget nor are there any expenses associated with the proposal from a Council perspective.

### **Economic, Social, Environmental and Heritage Issues**

There are no known environmental implications regarding the proposal. The economic implication is that the proposal will create employment opportunity. The premises is not listed under the City's Municipal Inventory. With regard to social implications, there are no foreseeable concerns as a result of this proposal, as discussed earlier in this report.

### **Council Policy Compliance**

It is considered that the Recommendation does not contravene any known operable Council policy. The relevant Council policies have been discussed above in the 'Proposal' section of this report.

### **Legislative Compliance**

Legislative requirements relating to the Local Government Act or any other Act, Local Law, or regulations have been complied with in the processes leading up to the finalisation of this report.

### **Delegation of Authority**

There is a requirement for an application to automatically be referred to Council for a decision when submissions are received as the result of public advertising.

### **Relevant Precedents**

There are no known relevant precedents.

### **Options**

Option 1: As per the Recommendation.

Option 2: Refuse the proposal. Should Council resolve to proceed with this option, a suggested format for such action is as follows:

*Council, under and by virtue of the powers conferred upon it in that behalf by the Planning and Development Act 2005 hereby resolves:*

1. *Not to grant planning approval in respect of the proposed home business for Lot 11, No. 28 Parkfield Street, Bunbury on the following grounds:*
  - 1.1 *The proposed home business is likely to detrimentally affect the amenity of the residential area in which it is proposed to be located.*
2. *Advise the applicant and submitters of Council's decision.*

### **Conclusion**

The proposed home business meets the requirements stated in the City's Local Planning Policy – Home Based Businesses. The submissions received by the City objecting to the proposal are on the basis that the residential zoning of the area is being eroded and commercial interests and small businesses are locating in the area and this may set a precedent for the future. However, it has been noted that that the residential zoning of the

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subject lot is not proposed to change and there are procedures in place to restrict any land uses from locating in the residential zone which would detrimentally affect the zone. It has been shown that this proposal will not detrimentally affect the surrounding area and the use, in any case (if approved), can be reviewed on an annual basis.

It is therefore recommended that the proposal be approved.

**RECOMMENDATION**

Council, under and by virtue of the powers conferred upon it in that behalf by the Planning and Development Act 2005 hereby resolves to:

1. Grant Planning Approval for the proposed home business for Lot 11, No. 28 Parkfield Street, Bunbury subject to the applicable development conditions to the satisfaction of the Manager Development Services.
2. Advise the applicant and submitters of Council's decision.

**OUTCOME OF THE COUNCIL COMMITTEE MEETING ON 5 JUNE 2007**

Cr Lambert disclosed a Proximity Interest as he lives two doors from the property in question. He left the meeting chamber at 8:13 pm for the duration of discussion and vote on the matter.

A Motion to refer the matter back to committee was moved Cr Dillon (as this is a Procedural Motion, no seconder is required).

The Presiding Member put the Motion to the vote and it became the Committee Decision.

**COMMITTEE DECISION**

Moved Cr Dillon  
Seconded (not required)

*That the matter of the Proposed Home Business – Multimedia Design – Lot 11 No. 28 Parkfield Street, Bunbury be referred back to Committee.*

**CARRIED**

**6 Votes "For"/2 Votes "Against"**

Note: The Committee decided to refer the matter back to Committee to allow time for members to meet with submitters.

Cr Lambert returned to the meeting chamber at 8:16 pm

**11.6 LIQUOR LICENSING EXTENDED TRADING PERMIT** *(THIS ITEM WAS LISTED AS ITEM 11.5 ON THE MEETING AGENDA)*

<b>File Ref:</b>	P10202
<b>Applicant/Proponent:</b>	Crowley Investments (Bunbury) Pty Ltd, Applicant
<b>Author:</b>	Tim Hunter, Manager Health
<b>Executive:</b>	Geoff Klem, Executive Manager City Development

**Summary**

In response to recent changes in the Liquor Control Act 1988, Henrys Café/Brasserie of 33-35 Victoria St, Bunbury have lodged an application for an Extended Trading Permit to its existing liquor licence (Licensed Restaurant) to permit them to sell and supply liquor without a meal. The business does not have an existing Extended Trading Permit to its licence.

In order to apply for an Extended Trading Permit the business is required to supply a current Section 39 Certificate (compliance with health, building and sewerage or drainage legislation) and a Section 40 Certificate (compliance with relevant planning laws) and this process gives the Council an opportunity to lodge any objections to the proposal with the Department of Racing, Gaming and Liquor for consideration with the application.

**Background**

Parliament has recently reviewed the Liquor Licensing Act 1988 and proclaimed amendments to take effect from 7 May 2007. The Act has been renamed as the Liquor Control Act 1988 and contains several amendments that impact on the activities of the City. An explanation of the changes published by the Department of Racing, Gaming and Liquor is **attached** at Appendix 12.

An Extended Trading Permit (ETP) is a legal instrument that may be granted to licensees who hold an existing Liquor Licence to enable them to trade outside the normal constraints of their licence conditions.

The legislation now allows for the grant of an ETP for the holder of a restaurant licence to serve alcohol without a meal to 100% of its patrons (previously the legislation limited the sale to 20% of the seating capacity) subject to conditions relating to the continued use as a restaurant, a full regular menu being available, consumption of alcohol only while seated and the premises being set up and presented for dining.

To date the City has received three (3) requests to comment on application for the variation to 100% and one (1) request to comment on an application for a new ETP.

The change in the legislation also introduces a new type of Hotel licence – a “Small Bar Licence” that falls between a restaurant and tavern, operating like a tavern but not allowing the sale of packaged liquor and limiting the occupancy to 120 patrons.

A copy of the relevant policies published by the Department of Racing, Gaming and Liquor is **attached** at Appendix 13.

### **Strategic and/or Regional Outcomes**

The Corporate Strategic Plan outlines the goals of the Vision of the City of Bunbury, which include: facilitating desired tourism growth, and maintaining and improving on quality of life. The proposal to allow and Extended Trading Permit provides for businesses within the City to work towards encouraging tourism and improving on residents' quality of life.

### **Community Consultation**

Community consultation is not required.

### **Councillor/Officer Consultation**

The issue has been discussed at officer level with Planning, Building and Health officers and the application referred through the DCU process. There have been no objections.

### **Analysis of Financial and Budget Implications**

A charge to cover the cost of processing Section 39 and 40 certificates is set by Council each year during the Budget.

### **Economic, Social, Environmental and Heritage Issues**

#### Economic Issues

An extended trading permit may persuade people who would not otherwise be in the restaurant at the time to make use of the facilities. This may in turn encourage people out into the City when they otherwise would not be.

#### Social Issues

Socially, this would provide people with another avenue to enjoying time out with friends.

#### Environmental Issues

There are no environmental issues associated with this proposal.

#### Heritage Issues

There are no heritage issues associated with this proposal.

### **Council Policy Compliance**

Council Work Procedure WP-16.8 requires an application for a new Extended Trading Permit to be referred to Council for determination.

### **Legislative Compliance**

The proposal is in accordance with government policy having followed the legislative process. The relevant act is the Liquor Control Act 1988.

### **Delegation of Authority**

The Chief Executive Officer has delegated authority to approve or provide comment on applications for Extended Trading Permits but the authority does not extend to using the power to approve or refuse an application which is a first-time request for an Extended Trading Permit.

The Council is not an approving authority for liquor licences however the Act requires that it be consulted when there is a change in the area of a licensed premises and would require Council approval for an Outdoor Eating Area to be licensed. The current Outdoor Eating Area licenses are conditioned in accordance with Council Policy CD4 "*Where alcohol is served it shall be served to the table and the patrons must remain seated at all times while it is being consumed*".

In view of the change in the Liquor Control Act, Council may wish to consider amending the delegation to include the comment or approval of a first-time Extended Trading Permit.

### **Relevant Precedents**

There have been three (3) applications to vary an existing Extended Trading Permit and these have had a "No objection" response sent under delegated authority following consideration at officer level through the DCU process.

### **Options**

Option 1: Per the Recommendation.

Option 2: Council advise the Department of Racing Gaming and Liquor that it objects to the grant of an Extended Trading Permit to sell liquor without a meal at Henrys Café/Brasserie.

### **Conclusion**

The proposal is in accordance with government policy and has no town planning implications as the premises is already approved as a licensed restaurant.

### **OUTCOME OF THE COUNCIL COMMITTEE MEETING ON 5 JUNE 2007**

Cr Leigh disclosed a Financial Interest as he knows the proponent through work. As the interest declared was not likely to affect his decision he chose to remain in the meeting during discussion and vote on the item.

The Recommendation was moved Cr Lambert, seconded Cr Dillon.

**COMMITTEE DECISION**

Moved Cr Lambert  
Seconded Cr Dillon

1. *Council advise the Department of Racing Gaming and Liquor that it has no objections to the grant of an Extended Trading Permit to sell liquor without a meal at Henrys Café/Brasserie, Bunbury*
2. *Council amend its delegation register to read:*

**1.5      *Liquor Licensing Extended Trading Permits***

*Pursuant to the provisions of the Liquor Control Act 1988 the Chief Executive Officer is delegated the authority to approve or provide comment on applications for Extended Trading Permits.*

**CARRIED**

**8 Votes "For"/1 Vote "Against"**



**11.7 NASH STREET KERBING & MAINTENANCE OF KEN CANTWELL PARK – PETITION** *(THIS ITEM WAS LISTED AS ITEM 11.6 ON THE MEETING AGENDA)*

File Ref:	F00101-30
Applicant/Proponent:	Internal Report
Author:	Beatrice Plant, Senior Engineer Program & Asset Management
Executive:	Michael Scott, Executive Manager City Services

**Summary**

This report is in response to Council decision 30/07 dated 6 March 2007 that requested the matter of Nash Street kerbing and maintenance of Ken Cantwell Park be referred to a Committee for consideration and report.

**Background**

The City received a petition containing nine (9) signatures with a covering letter from Mr A J Tonkes of 6 Nash Street, Bunbury on 26 February 2007.

In their petition, the residents requested: *"We the residents of Nash Street and Wallrodt Estate request that the substandard and outdated kerbing in Nash Street be prioritised for replacement, and; for Ken Cantwell Park to be given far more regular maintenance with emphasis on the safety standards of the playground in the park."*

This item was presented to the Council Meeting dated 6 March 2007 and resulted in the decision that the petition be accepted and referred to a committee for consideration and report.

As a result of this petition and associated council decision an inspection of Nash Street was carried out by the City's Works Coordinator. The inspection determined that the existing kerbing to Nash Street is in a poor condition, although it is not considered to be a safety or drainage concern. The kerb is the old precast type kerbing and is only 50mm high in some places. The road surface is also in need of reseal maintenance as the surface has deteriorated over the years.

As a result of this inspection it is considered appropriate that Nash Street be considered for inclusion on a future reseal and kerb replacement program. This proposal to include Nash Street in the 2007/2008 reseal program was also conveyed to Council via a memorandum on 24 April 2007.

**Strategic and/or Regional Outcomes**

The Corporate Strategic Plan outlines the goals of the Vision of the City of Bunbury, which include: accommodating sustainable population growth, improving reputation with community, and maintaining and improving on quality of life. The proposal to place these works into the 2007/2008 budget is in keeping with this.

### **Community Consultation**

This matter does not require community consultation.

### **Councillor/Officer Consultation**

Consultation has occurred within City Services regarding this matter.

### **Analysis of Financial and Budget Implications**

The resealing and rekerbing of Nash Street could be accommodated in the City's Annual Reseal Program which is funded by the Roads to Recovery Grant Scheme. The City's 2007/2008 draft budget indicates that the Annual Reseal Program has a proposed budget of \$364,700.00.

A program of works for this reseal program has not yet been finalised and hence there is the opportunity to include Nash Street in this program. An initial estimate for the Nash Street resealing and rekerbing works is \$ 50,000.00.

### **Economic, Social, Environmental and Heritage Issues**

#### Economic Issues

There are no economic issues associated with this proposal.

#### Social Issues

There are no social issues associated with this proposal.

#### Environmental Issues

There are no environmental issues associated with this proposal.

#### Heritage Issues

There are no heritage issues associated with this proposal.

### **Council Policy Compliance**

There are no known Council policies applicable.

### **Legislative Compliance**

There are no known Legislative requirements applicable.

### **Delegation of Authority**

The Executive have delegated authority for Nash Street to be included in the 2007/2008 resealing program.

### **Relevant Precedents**

City Services frequently receive requests for similar types of work. These are individually assessed and completed as required as part of the annual works program.

### **Options**

Option 1: Per the Recommendation

Option 2: Council elect that Nash Street resealing and rekerbing works should not be considered for inclusion in the 2007/2008 works program.

### **Conclusion**

The Nash Street road surface and kerb have deteriorated over time and are currently considered to be in a poor condition. It is proposed that Nash Street be considered for inclusion in the City's 2007/2008 reseal program.

### **OUTCOME OF THE COUNCIL COMMITTEE MEETING ON 5 JUNE 2007**

The Recommendation was moved Cr Dillon, seconded Cr Leigh.

In response to questions from members the Executive Manager City Services advised that in order to rekerb the road, some of the road surface must be removed and would require resealing.

With the consent of the mover and seconder, the Recommendation was amended to include reference to the rekerbing program.

The Presiding Member put the amended Recommendation to the vote and it became the Committee Recommendation.

**COMMITTEE RECOMMENDATION**

Moved Cr Dillon  
Seconded Cr Leigh

*Nash Street be considered for inclusion in the City's 2007/2008 annual reseal and rekerbing program.*

**CARRIED**

**9 Votes "For"/Nil Votes "Against"**

Note: The Committee chose to amend the Recommendation to make reference to the rekerbing program.

**11.8 BUNBURY-HARVEY REGIONAL COUNCIL - RENEWAL OF LEASE OVER LANDFILL SITE, LOT 45 STANLEY ROAD, LESCHENAULT** *(THIS ITEM WAS LISTED AS ITEM 11.7 ON THE MEETING AGENDA)*

<b>File Ref:</b>	F00075
<b>Applicant/Proponent:</b>	Bruce Lorimer (CEO) - Bunbury-Harvey Regional Council
<b>Author:</b>	John Beaton, Manager Administration & Property Services
<b>Executive:</b>	Ken Weary, Executive Manager Corporate Services

**Summary**

The Bunbury-Harvey Regional Council ("BHRC") seeks approval from the City of Bunbury and Shire of Harvey, for a five-year extension of its current lease over the Stanley Road Landfill Facility located at Lot 45 Stanley Road in Leschenault. The lease over the land expires on 30 November 2007.

**Background**

The lease site at Lot 45 Stanley Road is jointly owned by the City of Bunbury (90%) and the Shire of Harvey (10%). The land is Lot 45 on Plan 17161 as contained in Certificate of Title Volume 1850 Folio 63. All domestic and commercial waste collected within the City of Bunbury and Shire of Harvey is delivered to the landfill facility on the site for processing and disposal. The land is leased by the Bunbury-Harvey Regional Council ("BHRC") which was formed in 1990 and receives funding from the City of Bunbury and Shire of Harvey.

The objectives of the BHRC are:

- \* The orderly and efficient treatment, storage and disposal of waste.
- \* The provision and maintenance of machinery & equipment for the above purpose.
- \* Charge fees in regard to the above.
- \* Provide representation to the WA Waste Disposal Advisory Council.

The BHRC comprises representatives from both member municipalities together with a Chief Executive Officer. As at the beginning of April 2007, the City's representatives on the BHRC were: the Deputy Mayor, Councillor Judy Jones, Councillor Tom Dillon and Councillor Norm McCleary (with Councillor Major as proxy). The BHRC conducts a ballot to determine the position of Chairman and this position is currently held by a representative of the City of Bunbury.

At its meeting on 9 August 2005, the City granted the BHRC a two-year extension of its lease over the Stanley Road Landfill Facility (from 30 June 2006 to 30 November 2007) so that the expiration of the lease for the site would coincide with expiration of the contract for the newly appointed Waste Disposal Contractor i.e., 30 November 2007.

The BHRC will call tenders for a Waste Disposal Contractor again toward the end of 2007.

The Executive of the BHRC is currently formulating a new Site Management Contract for the Stanley Road Landfill Facility to ensure that future operators of the site run the facility in a professional manner in accordance with DEC Licence conditions and any associated statutory requirements. The BHRC considers that a vital component of attracting (and appointing) a quality Waste Disposal Contractor will be ensuring the BHRC has a long-term lease in place for the Landfill facility.

The viability of the site for waste disposal is not inexhaustible however. In 2003, BSD Consultants prepared a "Future Directions Strategy" for the site and recommended that it could continue to accept waste until the current cells have been filled, shaped and capped appropriately - it is now expected that the site should be viable until at least 2012.

Accordingly, it is proposed that the BHRC lease over the Stanley Road Landfill Facility be restricted to five (5) years from 1 December 2007 to 30 November 2012.

### **Strategic and/or Regional Outcomes**

The proposal complies with the City's Strategic Plan 2007-2012: Strategic Objective 1 states that the City will *"improve its relationships with State, Federal and other Local Governments"*; while Strategic Objective 5.3 states that the City will *"explore regional waste management opportunities with adjoining local authorities"*.

### **Community Consultation**

Regulation 30(1)(c)(iii) of the Local Government (Functions and General) Regulations 1996 exempts the City of Bunbury from the requirements of Section 3.58 of the Local Government Act 1995, as the land is disposed to the BHRC.

### **Councillor/Officer Consultation**

The BHRC supports the extension of the lease to 30 November 2012 and has mutually agreed to the market rental value proposed.

### **Analysis of Financial and Budget Implications**

On 5 November 2003, the (then) Office of the Valuer General advised that a fair market rental for the site would be \$45,000 per annum excluding GST.

New information received from the Valuation Services Section of the Department for Planning and Infrastructure, now advises that a fair market rental value for the site would be \$56,000 per annum (excluding GST).

Council has not previously levied a lease fee for the lease of the land to the BHRC.

### **Economic, Social, Environmental and Heritage Issues**

*Economic, Social and Heritage Issues*

There are no economic, social or heritage issues to consider.

### Environmental Issues

The waste disposal site is managed in accordance with a DEC Licence and associated statutory requirements that protect the local environment.

BSD Consultants prepared a "Future Directions" strategy for the Stanley Road site in June 2003. This report outlines a strategy to fill and cap the existing landfill pits (or cells) which will take some years to complete. In the meantime, Council Officers have requested that no new cells be commenced without the City Council's consent first being received. Discussions are also about to commence with local governments abutting the City of Bunbury, to explore the possibility of establishing a new regional council that will provide waste management services for the entire region.

### **Council Policy Compliance**

There are no Council Policies applicable to the proposal.

### **Legislative Compliance**

In accordance with Regulation 30(1)(c)(iii) of the Local Government (Functions and General) Regulations 1996, the Council is exempt from the requirements of Section 3.58 of the Local Government Act 1995 as the land is disposed to the BHRC.

### **Delegation of Authority**

The Chief Executive Officer has the delegated authority of the Council to negotiate the terms and conditions of leases and licences over Council property subject to the terms and conditions being presented to Council for endorsement before documentation is finalised.

It is proposed that the Chief Executive Officer proceed with preparation of the Deed document.

### **Relevant Precedents**

Council has previously agreed to extend the lease to 30 November 2007.

### **Options**

Option 1: Per the Recommendation.

Option 2: Per the Recommendation but including an option to include annual lease rental of \$56,000 per annum indexed by CPI throughout the term.

Option 3: Council may elect not to support the application by the Bunbury Harvey Regional Council to extend its lease term to 30 November 2012 and may vary the term.

### **Conclusion**

The intention to extend the BHRC Lease to 30 November 2012 is supported as:

1. The site should still be viable for use as a landfill facility up to that date, and;
2. the BHRC requires security of tenure over the site in order to attract a quality Waste Disposal Contractor when it advertises the tender in June 2007.

### **RECOMMENDATION**

1. The Bunbury City Council agrees to support the application by the Bunbury-Harvey Regional Council to extend its lease over Lot 45 Stanley Road (for the purpose of a landfill facility) from 1 December 2007 to 30 November 2012 under the terms and conditions as mutually agreed.
2. Council meet with the Bunbury-Harvey Regional Council to discuss the introduction of the Valuer General's valuation lease fee for the five-year lease of the site.
3. All costs associated with extension of the lease are to be borne by the Bunbury-Harvey Regional Council.

### **OUTCOME OF THE COUNCIL COMMITTEE MEETING ON 5 JUNE 2007**

The Recommendation was moved Cr Dillon, seconded Cr McCleary.

In response to questions from members the Executive Manager Corporate Services advised that currently the Bunbury-Harvey Regional Council do not pay a lease rental on the site.

With the consent of the mover and seconder, the Recommendation was amended to ensure that agreement had to be reached on the Annual Lease Rental prior to the Lease being extended.

The Presiding Member put the amended Recommendation to the vote and it became the Committee Recommendation.



**COMMITTEE RECOMMENDATION**

Moved Cr Dillon

Seconded Cr McCleary

1. *That subject to agreement being reached on items 2 and 3 the Bunbury City Council agrees to support the application by the Bunbury-Harvey Regional Council to extend its lease over Lot 45 Stanley Road (for the purpose of a landfill facility) from 1 December 2007 to 30 November 2012 under the terms and conditions as mutually agreed.*
2. *Council meet with the Bunbury-Harvey Regional Council to discuss the introduction of the Valuer General's valuation lease fee for the five-year lease of the site.*
3. *All costs associated with extension of the lease are to be borne by the Bunbury-Harvey Regional Council.*

**CARRIED**

**9 Votes "For"/Nil Votes "Against"**

Note: The Committee chose to amend the Recommendation to ensure agreement was reached on the Annual Lease Rental prior to the Lease being extended.

**11.9 FINANCIAL STATEMENTS FOR THE PERIOD ENDING 30 APRIL 2007**

<b>File Ref:</b>	A02838
<b>Applicant/Proponent:</b>	Internal Report
<b>Author:</b>	David Ransom, City Accountant
<b>Executive:</b>	Ken Weary, Executive Manager Corporate Services

Financial Statements for the period ending 30 April 2007 have been circulated to members **under separate cover**. The statements included the following details:

- \* Income Statement
- \* Balance Sheet
- \* Statement of Changes in Equity
- \* Statement of Financial Activity
- \* Statement of General Purpose Income
- \* Statement of Rating Information

- Note 1 Significant Accounting Policies
- Note 2 Description of Programmes
- Note 3 Net Current Assets
- Note 4 Receivables
- Note 5 Other Financial Assets
- Note 6 Payables
- Note 7 Provisions
- Note 8 Trust Funds
- Note 9 Explanation of Significant Variations to Operating Statement
- Note 10 Capital Expenditure
- Note 11 Key Operating Expenditure and Income (budget exceeding \$20,000)
- Note 12 Loan Funds
- Note 13 Reserve Funds
- Note 14 Bunbury Timber Jetty
- Note 15 Investment Funds (rate of return benchmarked against International Index)

**OUTCOME OF THE COUNCIL COMMITTEE MEETING ON 5 JUNE 2007**

Cr Leigh left the meeting at 8:34 pm and returned to the chamber at 8:36 pm.

The Recommendation was moved Cr Dillon, seconded Cr Leigh.

The Presiding Member put the Recommendation to the vote and it became the Committee Recommendation.

**COMMITTEE RECOMMENDATION**

Moved Cr Dillon  
Seconded Cr Leigh

*The Financial Statements for the period ending 30 April 2007, be received.*

**CARRIED**

**9 Votes "For"/Nil Votes "Against"**

## **11.10 DRAFT CORPORATE FINANCIAL PLAN 2007/2008 TO 2011/2012**

<b>File Ref:</b>	A00362-06
<b>Applicant/Proponent:</b>	Internal Report
<b>Author:</b>	David Ransom, City Accountant
<b>Executive:</b>	Ken Weary, Executive Manager Corporate Services

### **Summary**

The Draft Corporate Financial Plan for the five financial years 2007/2008 to 2011/2012 is now referred to Council for consideration and endorsement.

### **Background**

Councillor Workshops were held on 16 May and 22 May 2007 to consider the Draft Corporate Financial Plan. From these workshops the following items were noted for further review during 2007/2008:

1. The financial requirements to implement the priorities listed in the ARRB Carparking Strategy be investigated.
2. A council committee be appointed to review the Bunbury Recreation Plan development options.
3. A review of the Carey Park Traffic Management Plan be undertaken.
4. A review of the Staffing Strategy, New Bunbury City/Regional Library 2007-2009 be considered.

A copy of the Draft Corporate Financial Plan for the financial years 2007/2008 to 2011/2012 has been circulated to Council **under separate cover**.

### **Strategic and/or Regional Outcomes**

The Draft Corporate Financial Plan summarises Council's proposed major activities, is linked to Council's Corporate Strategic Plan and will guide Council's future direction, budgets and financial planning.

### **Community Consultation**

A summary of the Corporate Financial Plan once adopted by Council will form part of Council's Corporate Strategic Plan (adopted by Council on 6 March 2007) and will be advertised in the South Western Times. The advertisement will also advise that a copy of the plan will be available from Council's Customer Service Centre and public libraries.

### **Councillor/Officer Consultation**

Councillor Workshops were held on the 16 May and 22 May 2007 to consider the Draft Corporate Financial Plan for the financial years 2007/2008 to 2011/2012.

### **Analysis of Financial and Budget Implications**

The purpose of the Corporate Financial Plan is to ensure that council's annual budget achieves the objectives outlined in City of Bunbury Corporate Strategic Plan.

The Corporate Financial Plan maintains a balanced financial position each year.

### **Economic, Social, Environmental and Heritage Issues**

The Draft Corporate Financial Plan supports the City of Bunbury Corporate Strategic Plan, which includes the Strategic Objective: "*Strengthen the City of Bunbury's Governance and Leadership*". This Strategic Objective includes the implementation of 5 year financial planning and the commitment to strengthening Council's financial position and providing sound financial management.

### **Council Policy Compliance**

The Corporate Financial Plan is reviewed each year.

### **Legislative Compliance**

The preparation of a "Plan for the Future" is a requirement under the provisions of section 5.56 of the Local Government Act 1995. The adoption of the Corporate Financial Plan combined with the City of Bunbury Corporate Strategic Plan, adopted by Council on the 6 March 2007, will form Council's "Plan for the Future" and be titled the City of Bunbury Corporate Strategic Plan.

### **Delegation of Authority**

There is no delegation of authority applicable to the Draft Corporate Financial Plan.

### **Relevant Precedents**

Council has for many years maintained and reviewed annually its Forward Financial Plan. The Plans were previously referred to as the 5 Year Finance Plan and Principal Plan of Activities.

### **Options**

Option 1: Per the Recommendation.

Option 2: Council adopt the Draft Corporate Financial Plan 2007/2008 to 2011/2012 with any amendments.

Option 3: Council not adopt the Corporate Financial Plan and the plan be referred back to Committee for further review and consideration.

### **Conclusion**

Adoption of the Draft Corporate Financial Plan 2007/2008 to 2011/2012 is supported as the Draft Corporate Financial Plan 2007/2008 to 2011/2012 is an important strategic management tool for Council and will be included in Council's Corporate Strategic Plan.

### **OUTCOME OF THE COUNCIL COMMITTEE MEETING ON 5 JUNE 2007**

The Recommendation was moved Cr T Smith, seconded Cr McCleary.

In response to questions from members the Chief Executive Officer advised that the Corporate Financial Plan 2007/2008 to 2011/2012 was macro document and amendments could be made to individual figures at budget time. The purpose of this plan was to show the direction in which the City was headed and to provide endorsement for major projects, rate strategies, employment numbers, land rationalisation and debt levels.

The Presiding Member put the Recommendation to the vote and it became the Committee Recommendation.

**COMMITTEE DECISION**

Moved Cr T Smith

Seconded Cr McCleary

1. *Council adopt the City of Bunbury Draft Corporate Financial Plan 2007/2008 to 2011/2012.*
2. *Council advertise the adoption of the Corporate Strategic Plan incorporating the Corporate Finance Plan for public information and invite public comment on the Plan for Council consideration in the ongoing annual review of the Plan.*
3. *Council undertake the following during 2007/2008:*
  - 3.1 *Investigate the financial requirements to implement the priorities listed in the ARRB Carparking Strategy.*
  - 3.2 *Appoint a Council Committee to review the Bunbury Recreation Plan development options.*
  - 3.3 *Undertake a review of the Carey Park Traffic Management Plan.*
  - 3.4 *Consider a review of the Staffing Strategy, New Bunbury City/Regional Library 2007-2009.*

**CARRIED**

**8 Votes "For"/1 Votes "Against"**

**12. MOTIONS (OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN) TO BE DISCUSSED & RECOMMENDATIONS TO BE REFERRED TO THE NEXT COUNCIL MEETING**

Nil.

**13. "URGENT" BUSINESS WITH THE APPROVAL OF THE MAJORITY OF MEMBERS PRESENT**

**NOTE:** In accordance with Standing Order 5.1.13, the parameter to be used for determining whether an item can be considered as 'Urgent Business' is: "*Can it wait until the next meeting?*".

Nil.

**14. ITEMS TO BE NOTED**

**14.1 ITEMS TO BE NOTED (NO DISCUSSION) AT THE COUNCIL COMMITTEE MEETING**

A report has been circulated under separate cover.

**OUTCOME OF THE COUNCIL COMMITTEE MEETING ON 5 JUNE 2007**

The Recommendation was moved Cr Jones, seconded Cr Leigh.

The Presiding Member put the Recommendation to the vote and it became the Committee Recommendation.

**COMMITTEE RECOMMENDATION**

Moved Cr Jones  
Seconded Cr Leigh

*The following items subject of a report circulated to Council Members under separate cover, are noted for information only:*

- Title: Minutes (Bunbury Environment and Sustainability Advisory Committee Meeting held 3 May 2007)*  
*Author: Ben Deeley, Environmental Planning Officer*  
*File: A01981*

**CARRIED**

**9 Votes "For"/Nil Votes "Against"**



**14.2 ITEMS TO BE NOTED AND ENDORSED (NO DISCUSSION) AT THE COUNCIL COMMITTEE MEETING**

There are no items recommended for endorsement (no discussion).

**15. CONFIDENTIAL BUSINESS AS STIPULATED UNDER SECTION 5.23(2) OF THE LOCAL GOVERNMENT ACT 1995**

NOTE: Pursuant to Standing Order 15.10, the following Procedural Motion needs to be moved if there are items to be discussed under this heading: *"The meeting exclude members of the public to permit Confidential Business (as defined by the Local Government Act 1995) to be discussed."*

Nil.

**16. CLOSE OF MEETING**

There being no further business, the Presiding Member declared the meeting closed at 9:07 pm.

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CONFIRMED this day 26 June 2007, to be a true and correct record of proceedings of the Bunbury City Council (Standing) Committee Meeting held 5 June 2007.

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**DAVID LAWRENCE SMITH**  
**MAYOR**