



30 September 2008

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## GLOSSARY OF ABBREVIATED TERMS

Term	Explanation
1:100	Ratio of 'one in one hundred'
AD	Acceptable Development
ARI	Annual Recurrence Interval
AHD	Australian Height Datum
ANEF	Australian Noise Exposure Forecast
AWARE	All West Australians Reducing Emergencies (grant funding)
BCA	Building Code of Australia
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
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
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
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 (formerly CALM)
DEWCP	Department for Environment, Water and Catchment Protection
DLI	Department of Land Information
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
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
FESA	Fire and Emergency Services Authority
FFL	Finished Floor Level
GBPG	Greater Bunbury Progress Group

<b>Term</b>	<b>Explanation</b>
GBRP	Greater Bunbury Resource Plan report
GBRS	Greater Bunbury Region Scheme
GFA	Gross Floor Area
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
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
MRWA	Main Roads Western Australia
NDMP	National Disaster Mitigation Program
NEEDAC	Noongar Employment & Enterprise Development Aboriginal Corp.
NLA	Nett Lettable Area
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
ROS	Regional Open Space
ROW	Right-of-Way
RSL	Returned Services League
SBCC	South Bunbury Cricket Club Inc.
SCADA	Supervisory Control and Data Acquisition
SGDC	Sportsgrounds Development Committee
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

<b>Term</b>	<b>Explanation</b>
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
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 MEETING MINUTES

Minutes of an Ordinary Meeting of the Bunbury City Council held in the Council Chambers, City of Bunbury Administration Building, 4 Stephen Street, Bunbury on Tuesday, 30 September 2008.

### MINUTES

30 September 2008

NOTE: Decisions in this document are subject to confirmation at the subsequent meeting of the Council.

#### 1. DECLARATION OF OPENING BY THE MAYOR

His Worship the Mayor, Mr David Smith, declared the meeting open at 6.02pm.

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

##### *PRESENT*

<b>Council Committee Members</b>	
Presiding Member:	His Worship the Mayor, Mr D Smith
Deputy Presiding Member:	Deputy Mayor, Councillor S Craddock
Members:	Councillor J Jones
	Councillor J Harrop
	Councillor S Rooney
	Councillor W Major
	Councillor R Slater
	Councillor N Whittle
	Councillor M Steck ( <i>arrived 6.16pm</i> )
	Councillor A Leigh
	Councillor D Spencer
<b>Executive Management Team (Non-Voting)</b>	
Acting Chief Executive Officer:	Mr K Weary
Executive Manager City Services:	Mr M Scott
Executive Manager City Development:	Mr G Klem
Executive Manager City Life:	Mr D Marzano
<b>Council Officers (Non-Voting):</b>	
Senior Planner:	Mr S McNeilly
Administration Officer Corporate Services:	Ms F Wood
<b>Others (Non-Voting):</b>	
Members of the Public:	12 (approx.)
Members of the Press:	1

##### *APOLOGY:*

Councillor B Kelly – Leave of Absence (28 September to 4 October 2008)

Councillor H Punch – Leave of Absence (25 September to 4 October 2008)

**3. RESPONSES TO 'PUBLIC QUESTIONS' FROM THE PREVIOUS COUNCIL 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**

Ms K Steel, McQueen Crescent Resident asked the following questions relating to the article in the newspaper about a trip over to Queensland.

*Question 1: Does Council see it appropriate to spend monies on trips for Councillors to look at coastal and waterside developments over East when a decision is yet to be made on the fate of the zoning decision on the Eastside Development?*

*Question 2: How were the representatives from Council chosen?*

*Question 3: Has it already been booked?*

*Question 4: Will a report from the trip be compiled and made available for the public to view?*

*Question 5: Is Council aware that the International Professor of Architecture, Joon Ahn Gail is coming to Perth and having a public open day and I was wondering if anybody from Council wished to attend?*

The Mayor provided the following responses:

Response 1: The trip is not only in relation to the Eastside Development it is in relation to a range of Local Government issues. It gives participants the opportunity to see good examples as well as bad examples of different forms of development and non development that have been developed on foreshore areas for public use.

If the Eastside Development is not approved, we would like to see some alternative examples of other forms of development for foreshores to encourage public use of the areas and to ensure the public has more enjoyable spaces.

Participants will also be meeting with other Local Government Councils and it will be of assistance with decision making not only on the Eastside Development but other projects in the future.

I hope it does not give any prejudgement of the Eastside Precinct Project.

Response 2: Each Councillor was chosen as the items have special interest or relevance to them. For example Cr Craddock is interested in viewing how other Local Council's undertake Landscaping of public areas and CBD areas and Cr Whittle is interested in seeing the way in which other Local Council's develop



Dual Use Paths and Cycleways and Coastal Areas. It provides the Councillors with opportunities to meet with other Councils to see the way in which they function and how they come about decisions.

Response 3: Yes. It is not until the 30 October 2008 which is following the primary consideration of the Eastside Precinct Development. Council's first briefing in relation to this matter is on the 14 October 2008.

Response 4: Yes, it will most likely be a joint report but will cover the things that are undertaken.

Response 5: If you would please provide the dates and associated information for whilst he is in Perth and Councillors would then be able to determine if they wish to attend.

Mr J Warne, Carey Street resident asked the following questions in relation to Climate Change and in particular, flooding.

*Question 1: Is Council aware of the recent decision of the Victorian Tribunal to prevent building on 6 blocks of land on the States Coast in part due the threat of flooding from climate change?*

*Question 2: Being aware of this, every local Council in a coastal area of Australia is now on notice that if they seek to give approval to a development on low lying or flood effected area, it is quite likely to be an issue if they don't take into account climate change impacts. Has the Bunbury City Council initiated the Risk Assessment of Rising Sea Levels?*

*Question 3: Has an Environmental Impact Study been undertaken for the Eastside Precinct Project and has Climate change been taken into consideration?*

*Question 4: Will the risk assessment for Rising Sea Levels be made available to the public?*

In response, the Mayor provided the following:

Response 1: Yes, Council is aware.

Response 2: A number of processes have commenced. Firstly we have been accumulating a number of research papers that have been undertaken.

Secondly we are a member of the Sea Change Councils Group. One of the issues of interest to this group is the issue of climate change. Through this group a report has been commissioned and I have attended a conference in Brisbane on the issue. During this conference several of the papers were on the issue of climate change, planning and adaptation and protection of infrastructure. I noted that Senator George and all of her committee that are looking at the issue were in attendance for the full three days of the conference.

We are currently investigating the possibility of the Executive Manager City Development attending a similar conference in Brisbane which is scheduled for 31 October 2008.

The papers collected from the Sea Change Councils Conference and the research papers that have been sent by the Commonwealth Government on these issues and a range of related issues, have been referred to the City's Environmental Planner. A Memorandum has also been issued to members encouraging more public awareness and recognising that this is an issue that must be dealt with.

Response 3: The Environmental Impact Study will only occur following approval for rezoning and it is not certain that this approval will be forthcoming. Any recommendation through Council would need to be reviewed by the Environmental Protection Authority and Department of Environment and Conservation with climate change issues that they would take into account.

There is a two year process that includes substantial environmental reviews but this will only commence when Council resolves to go ahead with the Eastside Precinct Project, or if the Department of Planning and Infrastructure or the new State Government acts.

Response 4: Everything this Council does is accountable and transparent. Any Reports obtained by Council do become public documents.

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

Nil.

**6. CONFIRMATION OF PREVIOUS MINUTES**

The recommendation was moved Cr Major, seconded Cr Leigh. The Mayor put the motion to the vote and it was adopted to become a Council Decision.

**Council Decision 169/08**

*The minutes of the Council Meeting held 9 September 2008, be confirmed as a true and accurate record.*

**CARRIED**

**10 Votes "For" / Nil Votes "Against"**

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

IMPORTANT: Council Members are to complete a "Disclosure of Interest" form for each item on the agenda in which they wish to disclose an interest and give the form to the Mayor <u>before</u> the meeting commences.
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Cr Leigh disclosed an impartiality interest for item 11.5 titled "*Proposed Amendment – Retaining Wall – Lot 57 DP P17746 #5 Ocean View Court South Bunbury*" as he knows the applicant and the applicants family on a personal basis. Cr Leigh indicated he would leave the chambers for duration of discussion and vote.

Mayor D Smith disclosed an impartiality interest for item 11.5 titled "*Proposed Amendment – Retaining Wall – Lot 57 DP P17746 #5 Ocean View Court South Bunbury*" as he to knows the applicant and the applicants family on a personal basis and has in the past given his professional advice as a client through his solicitors business. The Mayor indicated he would leave the chambers for duration of discussion and vote.

Cr Craddock disclosed a proximity interest for item 11.13 titled "*Caf-fez Alfresco Area*" as he is a shop owner within the CBD district. Cr Craddock indicated he would take part in both the discussion and the vote on the matter.

**8. ANNOUNCEMENTS BY THE MAYOR (WITHOUT DISCUSSION)**

The Mayor advised that invitations have been sent to all Mayors and Presidents accross Australia inviting them to participate in the Australian Council of Local Government convened by the Priminister to be held on 18 November 2008 in Canberra. The invitation is required to be responded to by the 8 October 2008 and the Mayor advised he intends to accept the invite. The Mayor advised that the proposal will be presented to Council for consideration prior to the conference.

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

**9.1 CEO'S REPORT - LOCAL STRUCTURE PLAN – LOT 74 BEDDINFIELD STREET BUNBURY – OUTDOOR STORAGE, STORAGE SHEDS AND AN INCIDENTAL OFFICE – (LATE ITEM)**

<b>File Ref:</b>	P13341
<b>Applicant/Proponent:</b>	kiltasz Smith on behalf of Correctline Contracting
<b>Author:</b>	Gary Fitzgerald, Manager Development Services Sam McNeilly, Senior Planner (Statutory)
<b>Executive:</b>	Geoff Klem, Executive Manager City Development

**Summary**

In terms of process the following CEO's report is submitted for consideration.

Koltasz Smith (KS), Planning Consultant, on behalf of Correctline Drainage, has lodged a formal application to the City for a Local Structure Plan (LPS) in respect of part of lot 74 Beddingfield Street Bunbury (refer site location plan **attached** at Appendix 23).

The land is currently zoned "industry" in Town Planning Scheme 7 (TPS 7), and falls within a "Development Investigation Policy Area". Essentially, such designation establishes a requirement to have in place a Structure Plan (SP) and/or a Development Guide Plan prior to any development (construction of a building(s) and/or subdivision) on the land.

A Structure Plan is required therefore in that the proposed development ("*outdoor storage, storage sheds and an incidental office*") is not permitted unless a bonafide Structure Plan is in place.

As part of the standard consultation process associated with considering a structure plan and the following DA comments were sought from relevant State Authorities including DEC. The advice provided by DEC on the proposed development clearly indicates the possibility of concerns in regards to EPA policy/guidelines separation distances not being complied with.

In summary DEC advise that given that the development is less than the recommended separation distances as detailed in the EPA Guidance for Environmental Factors, Separation Distances between Industrial and Sensitive Land Use it is highly likely that the proposed development on lot 74 will be impacted by odour emissions from the existing surrounding industries.

It has been suggested by the applicant that the matter of the processing of the application may have been unnecessarily delayed by the City. **Attached** at Appendix 24 is a chronology of events, in summary, detailing time frames from initial discussions with the applicant to current position.

## **Background**

A brief outline of the matter so far is as follows. The applicant first applied (4th May 2007) for approval of a Structure Plan (**attached** at Appendix 25) over the entire area (30.769 ha.) of lot 74 Beddingfield Street. After various discussions and liaison with City officers, such plan was modified to meet the requirements of the City in respect of matters such as stormwater drainage. For example, the original plan submitted by Koltasz Smith showed that detention basins (to capture stormwater overflow) were proposed on the adjoining Regional Open Space. This proposal (provision of detention basins on the developer's land) was, inter alia, amended in the amended version (9 November 2007) of the overall Structure Plan (SP).

The City, as part of discussions at this time, formally advised the applicant of the importance of his liaising with the relevant State authorities in terms of matters such as drainage, Regional Open Space, Environmental considerations and the requirement to pay the appropriate application fee, etc.

After advertising, on the 4th May 2007 the original structure plan (SP) over the entire area could not proceed due to the fact that the EPA determined (18 March 2008) that the subject land is identified in Area 19 and that this is a significant natural area.

The applicant then, after further discussions with the City, proposed to use Clause 5.5.1 of the current TPS as a means of considering the possibility of circumventing the "need" to prepare (and have approved) a SP, and proceeded to submit a Development Application (DA) on such basis.

Clause 5.5.1 of the TPS states that *"if a development is the subject of an application for planning approval and does not comply with a standard or requirement ..... the local government may, despite the non-compliance, approve the application unconditionally or subject to such conditions as the local government thinks fit"*.

In respect of Clause 5.5.1 of TPS 7, the applicant submitted a legal opinion from a planning lawyer that such action was in order, and the City agreed to consider the second Development Application (submitted on 4 June 2008) on such basis (i.e. to forego the need for a SP) but on the proviso that the matter would be publicly advertised and that the matter would, in the end be submitted to Council for its formal consideration.

As part of due process the City wrote to the DPI to seek its input in respect of the matter and to request (in respect of the provisions of the Greater Bunbury Region Scheme) that the DPI consider the matter in light of the fact that the legal lot (lot 74) adjoined Regional Open Space (the Preston River). The DPI formally advised the City (6 Aug 08) that it did not agree with the City in terms of its interpretation of Clause 5.5.1 (in respect of waiving the requirement for a SP prior to issuing a grant of planning approval for a development on the land concerned). The City then wrote to the DPI querying their interpretation; DPI reiterated its prior position (letter **attached** 13 Aug 08 at Appendix 31) to the effect that a SP would be required prior to the issue of a DA.

After the DPI rejected the applicant's proposal to use Clause 5.5.1 to circumvent the need to prepare a SP prior to the making of a DA, further discussions ensued between the applicant and City officers, and the applicant and the DPI. In the end the DPI informed the applicant that it would accept a Local Structure Plan (LSP) over the precise area of the land required (a site-specific SP) for the operations of Correctline Contracting subject to the applicant addressing all comments provided by other statutory authorities including the comments from DEC regarding the need to address the matter of the potential impact on the site from surrounding industries.

### **Proposal**

The applicant is seeking approval for a Local Structure Plan (LPS) in respect of part of lot 74 Beddingfield Street. The proposed LSP is **attached** for reference at Appendix 26 (NB. A copy of the full Report Document is available in the City's Administrative Offices for reference).

The applicant, according to the planning report accompanying the application, is seeking to establish a facility for "*outdoor storage, storage sheds and an incidental office*" on part of lot 74 Beddingfield Street. It is noted however that the original plans submitted with the Development Application indicated that the development is for "offices and workshops" – as indicated on the DA application form.

It is necessary to have in place an approved Structure Plan (SP) prior to consideration of development on the land concerned pursuant Clause 6.2.1.3.1 of the Scheme. This is consistent with advice from the DPI and legal advice from the City's Solicitor. Clause 6.2.1.3.1 of the Scheme states: "*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 Commission.*"

The following criteria are considered to be relevant in terms of properly considering the matter and in terms of Council determining as to whether it wishes to grant approval in respect of the matter.

#### Validity of the applicant's submission.

The DPI has given advice to the applicant to the effect that the applicant has a right to make a site-specific application. It is noted however that in accepting a site specific LSP, the process of analysis has of necessity to be no less rigorous in terms of ensuring that a correct land-use determination is made.

It is noted, in terms of completeness of information that the City had initially determined to require the further advertising of the LSP. The City had taken this position in that it was considered that an amendment to the original structure plan submitted in 2007 would not be considered contemporary (in that over 15 months had elapsed since the original application). The applicant submitted an opinion to the effect that further advertising should not be required.

Notwithstanding, the City and in consultation with the DPI, has most recently agreed that the matter may proceed on the basis of notification of State authorities and adjoining owners.

It is further noted however that the developer has written to the City to the effect that it is important the matter be referred to Council for its consideration at the 23/30 September 2008 round of meetings. Correctline Contracting has stated in communication that it should not be required to provide any buffers out of its land in respect of the adjoining operations, and that legal action may be contemplated. A copy of the communication (dated 18 September 2008) from Correctline Contracting is **attached** at Appendix 27

#### Efficacy of the proposed LSP

The principle issue relative to the matter of the final acceptability of the proposed LSP relates to the question as to whether the surrounding industries and the proposed operations of Correctline Contracting can co-exist from a land-use perspective. The main point of contention relates to the suggested requirements provided by the DEC in regards to the EPA buffer guidelines. In the opinion of DEC it is highly likely that that the proposed development on lot 74 will be impacted by odour emissions from the existing surrounding industries.

Guidance for the assessment of Environmental Factors – separation distances between Industrial and Sensitive land uses.

The EPA Guidance Statement is intended to provide advice on generic separation distances between specific industry and sensitive land uses to avoid or minimise the potential for land use conflict. The distances outlined in Appendix 1 are not intended to be absolute separation distances, rather they are a default distance for the purposes of:

- Identifying the need for specific separation distance or buffer definition studies; and
- Providing general guidance on separation distances in the absence of site-specific technical studies.

The separation distances are intended to be used as a tool, supplemented by other appropriate techniques, to assist in the assessment of:

- New individual industries, infrastructure and estates, in the vicinity of existing/proposed sensitive land uses: and
- New individual sensitive land uses or estate, in the vicinity of existing/proposed industry and infrastructure.

#### Environmental Protection Agency (EPA)

The EPA has advised (24 June 2008) KS (at the time of the making of the DA application) that:

*“The proposed development marginally impacts upon an area identified in Bulletin 1282 as a regionally significant natural area (Area 19). After careful consideration and a site*

*visit undertaken by the EPA Service Unit it has been determined that the proposal can be implemented without compromising the EPA's recommendations and the regional values of the vegetation on the remainder of the site. Clearing must be contained to the small area referred to in your development application".*

The EPA also notes other issues that are important such as the importance of the developer ensuring that he has the requisite "Clearing Permit" from DEC. The EPA also advises for example that "the decision of the EPA to not assess your proposal carries no presumption about the outcome of an application for a Clearing Permit". The letter (dated 24th June 2008) from the EPA to KS is **attached** at Appendix 28

Department of Environment and Conservation (DEC)

DEC has advised of its comments on the associated DA (which essentially is similar – except that the use-class "workshop" is additional in the DA which was submitted - to the final development anticipated in the LSP) per its letter to the City dated 29th July 2008 (copy **attached** at Appendix 29). DEC has stated, in part, that:

*"The site proposed for development is within close proximity to existing odorous industries these being a composting facility (Malatesta) and an abattoir that includes rendering works (V & V Walsh).*

*The EPA Guidelines Statement No. 3 Separation Distances between Industrial and Sensitive Land Uses (June 2005) identifies separation distances for different types of industry to protect sensitive land uses from emissions such as noise, gases, dust and odour. Land uses considered to be potentially sensitive from emissions include residential development or dwellings, shopping centres, some public buildings, retail outlets, offices and training centres and some types of storage and manufacturing facilities.*

*Appendix 1 of EPA Guidelines Statement No. 3 identifies for outdoor uncovered composting facilities of minimum generic separation of 1000 metres for manures, mixed food and vegetable food waste, 500 metres for biosolids and 150 metres green waste between sensitive land uses and the composting facility. Appendix 1 also identifies a minimum generic separation of 1000-1500 metres between sensitive land uses and rendering works.*

*The proposed workshop, storage and office is located significantly closer to these existing industries, with the composting facility being approximately 60 metres from the site and the rendering works being approximately 650 metres from the site.*

*Within the last 12 months DEC has received approximately 23 complaints from premises surrounding these odorous industries in relation to odour issues. This number does not include similar complaints that would have been received by the City of Bunbury.*

*Given that the buffer distances from these existing industries and the proposed development is less than the recommended separation and the levels of complaints from*



*other surrounding premises, it is highly likely that the proposed development on lot 74 will be impacted by odour emissions from the existing surrounding industries.*

The advice from DEC goes on to cover some points made by the EPA and to cover matters of a more detailed technical nature (refer Appendix 30 - Schedule of Submissions for full DEC submission).

Subsequently, Development Services met (12 September 2008) with staff of DEC to discuss the matter in some greater level of detail. Essentially, the key point made by DEC was to the effect that buffer distances are important as they stated previously, and that prior to considering the issue of an approval, the City may consider requiring the submission of an Odour Modelling Study (consistent with advice from DEC) so as to be able to gauge any impact of the surrounding operations (Malatesta operations – composting facility and asphalt works, and the abattoir) on the subject site.

The applicant has argued in his report to the effect that, in terms of the EPA Guidance Notes (Guidance for the Assessment of Environmental Factors – in accordance with the EP Act 2986) that the advice of DEC is premised on the proposal being considered as a “sensitive use”.

An “odour sensitive” land-use is described as follows:

*“land uses considered to be potentially sensitive to emissions from industry and infrastructure include residential developments, hospitals, hotels, motels, hostels, caravans parks, schools, nursing homes, child care facilities , shopping centres, playgrounds, and some public buildings. Some commercial, institutional and industrial land uses which require high levels of amenity or/ are sensitive to particular emissions may also be considered “sensitive land uses. Examples include some retail outlets, office, sand training centres, and some types of storage and manufacturing facilities.”*

DEC has advised that they receive regular complaints from landowners within the immediate area of the proposal. It should also be noted the City has also received a number of complaints from landowners within the same area regarding odour problems.

It is the opinion of Development Services that bearing in mind the number of complaints Council has received (11 since 1999 until the present time) and which DEC (23 complaints as set out on the **attached** Environmental Complaints Action Report) Appendix 32 has received in respect of similar-type developments, it would be reasonable, it is considered, to take the position that the development proposed is a “sensitive land-use, thereby requiring a buffer between the surrounding operations and the proposed development. Alternatively the applicant may propose any other suitable management strategy (in consultation with DEC and the City) with a view to meeting the requirements of the EPA.

In regards to TPS7 the following 2 clauses are important in terms of properly considering the matter.

Clause 5.9.5.6.3 states:

*“The local government is not to permit any use or development within the various industrial zones which, in the opinion of the local government, would require a buffer zone, other physical device or special restrictions to apply outside the boundary of the site containing the use or development in order to make it environmentally acceptable.”*

Clause 5.9.5.6.4 states:

*“the local government may require an applicant (at the applicant’s expense) to provide it with scientific and /or technical information or analysis in respect of any industrial use or development.”*

This specific clause gives Council the power to require the applicant to prepare an Odour Modelling Study, or any other such study that Council considers is necessary to prove-up the efficacy, or otherwise, of the proposed development.

#### Submissions

The submissions (on the original Structure Plan – application date 4th May 2007) are as indicated on the Schedule of Submissions (**attached** at Appendix 30). Submissions have been received from Western Power, Telstra, WA Police South-West District Office, the EPA, the Dept. of Water, and the Dept. of Indigenous Affairs (DIA), WestNet Energy, Aqwest, and the Water Corporation. All relevant submissions are addressed in the body of the report.

#### Department for Planning and Infrastructure (DPI)

Development Services staff have had detailed communication with DPI staff (formal meetings and written communication) with a view to reaching some level of understanding with the DPI officers in respect of the matter, and particularly in light of the fact that the WAPC will ultimately consider as to whether it will grant approval in respect of the proposed development in the form of the LSP.

Should Council determine to support the proposed modified Local Structure Plan, the City will, as required, refer the matter to the WAPC for its formal determination.

Clause 5.9.13.7 of the current TPS states:

*“Prior to the local government adopting any structure plan, the structure plan is to be forwarded to the Commission for its endorsement and the local government is not to adopt a structure plan unless it has first been endorsed by the Commission. The local government is to forward its recommendations together with public submissions to the Commission in seeking endorsement from the Commission.”*

Potential particulate transfer – legionnaires

The City has consulted (via the City's Environmental Health Dept.) as part of due process with the State Health Dept. with a view to determining the potential health impacts, if any, on the subject land in terms of Legionella organisms carried by dust and aerosols from the surrounding land. The City's Environmental Health Dept. advises that the initial indication is that the risk in this regard is low.

Specific provisions of the Scheme

The key issues relevant to matters listed in Clause 10.2.1 of TPS 7 are as follows:

- (i) Compatibility of the use in its setting – i.e. how it relates to existing land-uses in the vicinity.
- (l) The likely effect of the proposal on the natural environment and any means that are proposed to protect or to mitigate impacts on the natural environment.
- (m) Whether the land to which the application relates is unsuitable for the proposal by reason of it being, or being likely to be subject to flooding, tidal inundation, subsidence, landslip, bush fire or any other risk. Comment: "any other risk" may apply in terms of the fact that the development in the vicinity may adversely impact on the proposed development.
- (o) The relationship of the proposal to development on adjoining land or on other land (emphasis by writer) in the locality including but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the proposal.

The key point in respect of this paragraph is the relationship of the proposed development to any established development in the vicinity of the proposed development.

- (z) The comments or submissions received from any authority consulted under clause 10.1.1;

Such matters are discussed in greater level of detail in other sections of this report.

**Strategic Outcomes**

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

**Community Consultation**

It is a requirement of the current Town Planning Scheme (TPS 7) that a Structure plan is advertised for public comment. The applicant has made the point essentially that in his

opinion the currently proposed LSP has been adequately advertised in that it is in effect a modification of the original Structure Plan (submitted 4th May 2007). Notwithstanding, accepting the applicant's interpretation, Development Services is of the opinion that the matter should be re-referred to all relevant State authorities and adjoining owners.

### **Applicant Consultation**

Officers of the City have had numerous discussions with the applicant with a view to progressing the subject application. Such discussions and communication are detailed in the body of the report.

### **Councillor/Officer Consultation**

The various issues relating to this matter have been broadly canvassed at staff level with a view to achieving a corporate approach to the decision making process.

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

It is considered that there would be no adverse impact on the Municipal Budget.

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

#### Economic

It is considered that the proposed development would provide relatively significant economic benefits to the City as it proceeds to take up its second-city status in the State, and particularly in that Correctline Contracting is a very significant civil engineering contracting company in the Bunbury Region and in the South Western part of the State. Its relative size can essentially be measured by its workforce at this point in time (approximately 150 according to the Koltasz Smith planning report).

#### Social

It is considered that there would be no adverse social consequences should the proposed development proceed excepting that there may be conflict between the operators of the proposed facility and the established development of Malatesta at Lot 2 South Western Highway.

#### Environmental

The only known environmental issue which is considered to be of consequence in terms of considering the matter relates to the fact that the existing industrial uses in the area may impact adversely on the proposed development. This is detailed in other parts of the report.

#### Heritage

Nil impact.

### **Council Policy Compliance**

It is considered that the processing of the application to date generally complies with the City's Policy documentation.

### **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 item.

### **Delegation of Authority**

Delegation of authority is not applicable in this case.

### **Relevant Precedents**

There are no known absolutely relevant precedents in this case.

### **Options**

#### Option 1

Per the recommendation as listed in this report.

#### Option 2

Support development as proposed

Should Council determine to support the proposed LSP, as submitted, a suggested format for such action is as follows:

#### Part A

Council under and by virtue of the powers conferred upon it in that behalf pursuant to the Planning and Development Act 2005 hereby resolves, in respect of a proposed Local Structure Plan (LSP) over part of lot 74 Beddingfield Street (and as detailed in a submission by Koltasz Smith, Planning Consultants), to support the proposed Structure Plan subject to the following conditions:

The applicant amending the proposed LSP with the following notation added to the Structure Plan map

Specific Planning and Development Provisions

*This Local Structure Plan provides a framework for future development of the land. Subdivision and development applications shall be generally in accordance with this Local Structure Plan, although minor variations may be permitted at application stage.*

*Except as otherwise provided for in these Specific Planning and Development Provisions, development of land within the area the subject of the Local Structure Plan shall be in accordance with the City of Bunbury Town Planning Scheme No. 7 and any relevant Local Planning Policy.*

*A Drainage Management Study is to be submitted to the City for consideration prior to issuance of a grant of planning approval.*

*The applicant submitting any details of any vehicular access roads and all associated infrastructure to the City for consideration prior to the issuance of a grant of planning approval, and the applicant being responsible for any costs in terms of such submission, and in respect of the construction of such works.*

*A landscape plan is to be submitted to the City for consideration prior to the issuance of a grant of planning approval. Such plan is to identify all existing vegetation which is to be retained in accordance with advice of the EPA and to show any new landscaping proposed.*

*A full Aboriginal Heritage assessment of the land is to be submitted to the DIA and to be approved by the DIA prior to the issuance of a grant of planning approval.*

*Compliance with any requirements of the Dept. of Water.*

*The applicant is required to ensure that all uses are in accordance with the requirements of the “EPA Guidance for the Assessment of Environmental Factors – Separation Distances between Industrial and Sensitive Land-uses” and that any structures of the proposed structures are fitted with reverse cycle air-conditioning, or any other mechanism(s) to the satisfaction of the City, to ensure minimum impact from any nearby odour-emitting premises.*

**Part B**

That Development Services write formally to the DPI to advise such authority of Council’s determination.

Option 3

Support, with the requirement of an Odour Modelling Study.

Should Council determine to support the proposed LSP, subject to a condition to the effect that the applicant be required to prepare and have approved an Odour Modelling Study prior to any Development Application being considered, a suggested format for such action is as follows:

Part A

Council under and by virtue of the powers conferred upon it in that behalf pursuant to the Planning and Development Act 2005 hereby resolves, in respect of a proposed Local Structure Plan (LSP) over part of lot 74 Beddingfield Street (and as detailed in a submission by Koltasz Smith, Planning Consultants), to support the proposed Structure Plan subject to the following condition:

The applicant amending the proposed LSP with the following notation added to the Structure Plan map

Specific Planning and Development Provisions

*This Local Structure Plan provides a framework for future development of the land. Subdivision and development applications shall be generally in accordance with this Local Structure Plan, although minor variations may be permitted at application stage.*

*Except as otherwise provided for in these Specific Planning and Development Provisions, development of land within the area the subject of the Local Structure Plan shall be in accordance with the City of Bunbury Town Planning Scheme No. 7 and any relevant Local Planning Policy.*

*A Drainage Management Study is to be submitted to the City for consideration prior to issuance of a grant of planning approval.*

*The applicant submitting any details of any vehicular access roads and all associated infrastructure to the City for consideration prior to the issuance of a grant of planning approval, and the applicant being responsible for any costs in terms of such submission, and in respect of the construction of such works.*

*A landscape plan is to be submitted to the City for consideration prior to the issuance of a grant of planning approval. Such plan is to identify all existing vegetation which is to be retained in accordance with advice of the EPA and to show any new landscaping proposed.*

*A full Aboriginal Heritage assessment of the land is to be submitted to the DIA and to be approved by the DIA prior to the issuance of a grant of planning approval.*

*Prior to any grant of planning approval for any structures and/or operations on the land concerned the applicant is required to prepare an Odour Modelling Study to the satisfaction of the Dept. of Environment and Conservation, and the City to demonstrate that the proposed development can be located in the recommended buffer zones (relative to established industries in the vicinity of the proposed development) as set out in the document titled "Guidance for the Assessment of Environmental Factors/ Separation Distances between Industrial and Sensitive land-uses".*

*Compliance with any requirements of the Dept. of Water.*

## Part B

That Development Services write formally to the DPI to advise such authority of Council's determination.

## Conclusion

It is a requirement of TPS 7 for Council to consider any approved environmental protection policy under the Environmental Protection Act. It is also relevant for Council to consider the requirements of Clause Clauses 5.9.5.6.3 and 5.9.5.6.4. Clause 5.9.5.6.3 states: "The local government is not to permit any use or development within the various industrial zones which, in the opinion of the local government, would require a buffer zone, other physical device or special restrictions to apply outside the boundary of the site containing the use or development in order to make it environmentally acceptable." Clause 5.9.5.6.4 states: "the local government may require an applicant (at the applicant's expense) to provide it with scientific and /or technical information or analysis in respect of any industrial use or development."

Clause 5.9.5.6.4 gives Council the power to require the applicant to prepare an Odour Modelling Study, or any other such study that Council considers is necessary to prove-up the efficacy, or otherwise, of the proposed development.

DEC has advised that it is highly likely that the proposed development on lot 74 will be impacted by odour emissions from the existing surrounding industries, and given that the buffer distances provided are significantly less than that set-out in Appendix 1 of the EPA Guidance document, it would be appropriate, it is considered, to require the applicant to undertake odour modelling prior to any consideration to granting approval for the proposed development.

Council has, in the opinion of Development Services, and as set out above, a number of options (not necessarily set out in order of considered efficacy). Council could grant its support in respect of the LSP, as is, and simply forward the matter to the WAPC to endorse (if the WAPC were to agree) its determination. Or it could grant its support subject to the Structure Plan being approved with a proviso that the developer prepare an Odour Modelling



Study prior to the issuance of a Development Approval for any buildings on the land, or the start of any operations on the land. It could also consider refusing to support the proposed LSP unless the applicant prepares an Odour Modelling Study to Council's satisfaction.

On balance, and after detailed consideration, Development Services recommends that the application for approval of the proposed LSP be refused for the principle reason that the applicant hasn't proven that the proposed development could co-exist with the surrounding development.

### **Recommendation**

Council under and by virtue of the powers conferred upon it in that behalf pursuant to the Planning and Development Act 2005 hereby resolves, in respect of a proposed Local Structure Plan (LSP) over part of lot 74 Beddingfield Street (and as detailed in a submission by Koltasz Smith, Planning Consultants) to take the following action:

#### Part A

That Council does not support the proposed Local Structure Plan (LSP) over part of Lot 74 Beddingfield Street dated 5 September 2008 for the following reasons:

1. The applicant has not, in the opinion of the Council, proven to the satisfaction of the Council (as part of its site-specific Structure Plan) that the proposed development can co-exist with the established uses in the area.
2. The applicant has not addressed the matter of adequate buffers between the established industries in the vicinity of the proposed development and the subject development in terms of EPA requirements in respect of its standards such as "Guidance for the Assessment of Environmental Factors - Separation "Distances between Industrial and Sensitive Land Uses.
3. The proposed Local Structure Plan does not meet the requirements for orderly and proper planning in terms of the provisions of Clause 10.2.1 (a) of the current TPS.

#### Part B

That Development Services write formally to the DPI to advise such authority of Council's determination.

**AT THE COUNCIL MEETING – 30 September 2008**

The Mayor advised that the applicants have written to Council requesting that the matter be deferred.

Cr Craddock Moved, Cr Major seconded, the motion "*The item be referred back to Committee*". The Mayor put the motion to the vote and it was adopted to become a Council Decision.

**Council Decision 170/08**

*The item be referred back to Committee.*

**CARRIED**

**10 Votes "For" / Nil Votes "Against"**

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

Nil.

**11. RECEPTION OF REPORTS AND RECOMMENDATIONS FROM THE COUNCIL (STANDING) COMMITTEE MEETING HELD 23 SEPTEMBER 2008**

Councillor Steck arrived at the Chambers at 6.16pm

At this point in proceedings, the Council adopted *en bloc* committee recommendations listed under items 11.3, 11.8, 11.10, 11.14, 11.15 and 11.16 of the meeting agenda (as permitted under the City's Standing Orders).

Items 11.1, 11.2, 11.4, 11.5, 11.6, 11.7, 11.9, 11.11, 11.12 and 11.13 of the meeting agenda were then dealt with (and voted on) individually.

**Please note: Items listed in Section 11 of the minutes differ from the order that they appeared in the meeting agenda. The items have been re-numbered in order of discussion so that those items voted *en bloc* by members of the Council, are listed first.**

**11.1 APPOINTMENT OF AUTHORISED COUNCIL OFFICER/PERSON – GAVIN SMITH** *(WAS LISTED AS ITEM 11.3 ON THE MEETING AGENDA)*

<b>File Ref:</b>	A03544
<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**

Mr Gavin John Smith has recently commenced employment with the City of Bunbury as Ranger/Fire Control Officer.

This officer now requires Council authorisation to perform relevant duties in accordance with various legislation that is administered by the Department.

**Legislative Compliance**

Council is required to authorise and appoint a person or persons to act on behalf of the City of Bunbury in accordance with various legislation.

Once Council has appointed a person, the appointment must be advertised for public information (a statutory requirement).

**Options**

Option 1

Per the recommendation as listed in this report.

Option 2

Council may elect not to appoint Mr Gavin John Smith as an Authorised Council Officer/Person.

**Recommendation**

1. Council appoints Gavin John Smith as Authorised Council Officer/Person in accordance with the following legislation:
  - 1.1 *Dog Act 1976*, *Dog Act Regulations*, *Dog (Restricted Breeds) Regulations (No. 2)* and *Dog Local Laws (as amended)*;
  - 1.2 *Local Government Act 1995* and *Local Government (Miscellaneous Provisions) Act 1995 (as amended)*;
  - 1.3 *Litter Act 1979* and *Litter Act Regulations (as amended)*;

- 1.4 *Control of Vehicles (Off-road Areas) Act 1978 and Control of Vehicles (Offroad Areas) Act Regulations (as amended);*
  - 1.5 The purpose of control and supervision of any of the Local Laws of the City of Bunbury Council; and
  - 1.6 *Bush Fires Act 1954 and Bush Fires Act Regulations (as amended).*
2. Council appoints Gavin John Smith as:
    - 2.1 Registration Officer in accordance with the *Dog Act 1976*;
    - 2.2 Fire Control Officer in accordance with Section 38 and 59 of the *Bush Fires Act 1954* (as amended);
    - 2.3 Pound Keeper/Ranger pursuant to the provision of Part XX of the *Local Government (Miscellaneous Provisions) Act 1995*.
  3. The appointments to be advertised in accordance with the various Legislation.
  4. The appointment in points 1 and 2 herein are to apply as from the date of the officer's commencement of employment with the City of Bunbury.

### **Outcome of the Council Committee Meeting – 23 September 2008**

The recommendation was moved Cr Leigh, seconded Cr Jones and adopted *11 votes "for" to Nil votes "against"* to become the Committee's recommendation on this issue.

### **Committee Recommendation**

1. Council appoints Gavin John Smith as Authorised Council Officer/Person in accordance with the following legislation:
  - 1.1 Dog Act 1976, Dog Act Regulations, Dog (Restricted Breeds) Regulations (No. 2) and Dog Local Laws (as amended);
  - 1.2 Local Government Act 1995 and Local Government (Miscellaneous Provisions) Act 1995 (as amended);
  - 1.3 Litter Act 1979 and Litter Act Regulations (as amended);
  - 1.4 Control of Vehicles (Off-road Areas) Act 1978 and Control of Vehicles (Offroad Areas) Act Regulations (as amended);
  - 1.5 The purpose of control and supervision of any of the Local Laws of the City of Bunbury Council; and
  - 1.6 Bush Fires Act 1954 and Bush Fires Act Regulations (as amended).
2. Council appoints Gavin John Smith as:
  - 2.1 Registration Officer in accordance with the Dog Act 1976;

- 2.2 Fire Control Officer in accordance with Section 38 and 59 of the Bush Fires Act 1954 (as amended);
- 2.3 Pound Keeper/Ranger pursuant to the provision of Part XX of the Local Government (Miscellaneous Provisions) Act 1995.
3. The appointments to be advertised in accordance with the various Legislation.
4. The appointment in points 1 and 2 herein are to apply as from the date of the officer's commencement of employment with the City of Bunbury.

**AT THE COUNCIL MEETING – 30 September 2008**

The Committee's recommendation was moved Cr Major, seconded Cr Leigh. The Mayor put the motion to the vote and it was adopted to become a Council Decision.

**Council Decision 171/08**

1. *Council appoints Gavin John Smith as Authorised Council Officer/Person in accordance with the following legislation:*
  - 1.1 *Dog Act 1976, Dog Act Regulations, Dog (Restricted Breeds) Regulations (No. 2) and Dog Local Laws (as amended);*
  - 1.2 *Local Government Act 1995 and Local Government (Miscellaneous Provisions) Act 1995 (as amended);*
  - 1.3 *Litter Act 1979 and Litter Act Regulations (as amended);*
  - 1.4 *Control of Vehicles (Off-road Areas) Act 1978 and Control of Vehicles (Offroad Areas) Act Regulations (as amended);*
  - 1.5 *The purpose of control and supervision of any of the Local Laws of the City of Bunbury Council; and*
  - 1.6 *Bush Fires Act 1954 and Bush Fires Act Regulations (as amended).*
2. *Council appoints Gavin John Smith as:*
  - 2.1 *Registration Officer in accordance with the Dog Act 1976;*
  - 2.2 *Fire Control Officer in accordance with Section 38 and 59 of the Bush Fires Act 1954 (as amended);*
  - 2.3 *Pound Keeper/Ranger pursuant to the provision of Part XX of the Local Government (Miscellaneous Provisions) Act 1995.*
3. *The appointments to be advertised in accordance with the various Legislation.*
4. *The appointment in points 1 and 2 herein are to apply as from the date of the officer's commencement of employment with the City of Bunbury.*

**CARRIED**

**11 Votes "For" / Nil Votes "Against"**

**11.2 FINANCIAL STATEMENTS FOR MONTHS OF JULY & AUGUST 2008** (*WAS LISTED AS ITEM 11.8 ON THE MEETING AGENDA*)

<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 August 2008 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	<i>Significant Accounting Policies</i>
Note 2	<i>Description of Programmes</i>
Note 3	<i>Net Current Assets</i>
Note 4	<i>Trade and Other Receivables</i>
Note 5	<i>Other Current Assets</i>
Note 6	<i>Trade and Other Payables</i>
Note 7	<i>Provisions</i>
Note 8	<i>Trust Funds</i>
Note 9	<i>Capital Expenditure</i>
Note 10	<i>Key Operating Expenditure and Income</i> (budget exceeding \$20,000)
Note 11	<i>Loan Funds</i>
Note 12	<i>Reserve Funds</i>
Note 13	<i>Bunbury Timber Jetty</i>
Note 14	<i>Investment Funds</i>

Financial Statements for the month of July 2008 will be tabled at the meeting for the information of members.

**Recommendation**

Financial Statements for the months of July, and August 2008 be received.

**Outcome of the Council Committee Meeting – 23 September 2008**

The recommendation was moved Cr Leigh, seconded Cr Jones and adopted *11 votes "for" to Nil votes "against"* to become the Committee's recommendation on this issue.

**Committee Recommendation**

Financial Statements for the months of July, and August 2008 be received.

**AT THE COUNCIL MEETING – 30 September 2008**

The Committee's recommendation was moved Cr Major, seconded Cr Leigh. The Mayor put the motion to the vote and it was adopted to become a Council Decision.

**Council Decision 172/08**

*Financial Statements for the months of July, and August 2008 be received.*

**CARRIED**

**11 Votes "For" / Nil Votes "Against"**

**11.3 ADOPT/REVIEW – CODE OF CONDUCT** (WAS LISTED AS ITEM 11.10 ON THE MEETING AGENDA)

<b>File Ref:</b>	A00224
<b>Applicant/Proponent:</b>	Internal Report
<b>Author:</b>	Jack Dyson, Senior Administration Officer
<b>Executive:</b>	Ken Weary, Executive Manager Corporate Services

**Summary**

Under the provisions of Section 5.103 of the Local Government Act 1995, “Every Local Government is to prepare and adopt a code of conduct to be observed by council members, committee members and employees.

**Background**

In October 2007, the Local Government Act 1995 was amended which introduced new requirements and regulations regarding the “Rules of Conduct” contained within respective Codes of Conduct.

The Local Government (Rules of Conduct) Regulations 2007 introduce provisions and principles which guide the behaviour of elected members, committee members and employees and establish certain rules of conduct. The amendments to the Local Government Act 1995 introduce prescribed matter regarding breach, complaints and how they are dealt with, penalties and the powers of the State Administrative Tribunal in determining the outcome of potential breaches.

Elected Members were issued with a copy of the “Draft” Code of Conduct, prepared by the Western Australian Local Government Association, under memorandum dated 11 September 2008. The “Draft” document incorporates the principles of the recent amendments as well as the newly introduced regulations.

Council last undertook a review of it’s current Code of Conduct in March 2006, as required by previous legislation.

**Strategic and/or Regional Outcomes**

The adoption of the new Code of Conduct will ensure the City continues to meet its legislative compliance obligations, as well as conform with the Strategic Objective 2.1’ “ensure compliance with statutory obligations” and “provide accountability in open decision making”.

**Community Consultation**

There has been no community consultation in the development of this document as it is an internal operational matter.



### **Councillor/Officer Consultation**

His Worship the Mayor, Chief Executive Officer and Executive Management team have all been consulted in the development of this document. All Elected Members were originally provided with a draft copy under memorandum dated 28 August 2008. Councillor's comments have been incorporated into the document.

The Draft Model Code of Conduct was referred to the Council Briefing Session dated Tuesday 16 September 2008 for discussion and consideration.

A copy of the final Draft Code of Conduct is issued **under separate cover**.

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

There are no financial or budgetary implications arising from this report.

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

There are no social, economic, environmental or heritage issues associated with this report.

### **Council Policy Compliance**

The adoption of the Code of Conduct is a legislative requirement and therefore no existing policy applies.

### **Legislative Compliance**

Consideration of this matter is a requirement under the provisions of Section 103 of the Local Government Act 1995.

### **Delegation of Authority**

The Chief Executive Officer does not have delegated authority to adopt or amend the Code of Conduct.

### **Relevant Precedents**

Council last undertook a review of the Code of Conduct in March 2006.

### **Options**

#### *Option 1*

Per the recommendation as listed in this report.

Option 2

As per the recommendation as listed in this report, together with any suggested amendments thereto.

Option 3

Council not adopt the proposed Code of Conduct.

**Conclusion**

Council is required to adopt a Code of Conduct as prescribed by Section 5.103 of the Local Government Act 1995. By adopting this document Council will have fulfilled its obligation and meet statutory compliance.

**Recommendation**

Council adopt the "Draft" Code of Conduct as previously circulated to Councillors as its official "Code of Conduct".

**Outcome of the Council Committee Meeting – 23 September 2008**

The recommendation was moved Cr Slater, seconded Cr Harrop and adopted *11 votes "for" to Nil votes "against"* to become the Committee's recommendation on this issue.

**Committee Recommendation**

Council adopt the "Draft" Code of Conduct as previously circulated to Councillors as its official "Code of Conduct".

**AT THE COUNCIL MEETING – 30 September 2008**

The Committee's recommendation was moved Cr Major, seconded Cr Leigh. The Mayor put the motion to the vote and it was adopted to become a Council Decision.

**Council Decision 173/08**

*Council adopt the "Draft" Code of Conduct as previously circulated to Councillors as its official "Code of Conduct".*

**CARRIED**

**11 Votes "For" / Nil Votes "Against"**

**11.4 PROPOSED VARIATION TO LEASE TO AMEND "PERMITTED USE" TO INCLUDE BEACH VOLLEYBALL - BUNBURY BOWLING CLUB INCORPORATED LOT 73 CORNER FORREST AVENUE AND BLAIR STREET, BUNBURY (WAS LISTED AS ITEM 11.14 ON THE MEETING AGENDA)**

<b>File Ref:</b>	F00004
<b>Applicant/Proponent:</b>	Bunbury Bowling Club Inc.
<b>Author:</b>	John Beaton, Manager Administration & Property Services
<b>Executive:</b>	Ken Weary, Executive Manager Corporate Services

### **Summary**

The Bunbury Bowling Club Inc. leases a 1.4 hectare portion of Forrest Park. The permitted use for the leased land is "*Bowling Club Playing Ground and Clubroom*". The Club now seeks the City's permission (as Lessor) to amend the purpose of its lease to "*Bowling Club Playing Ground, Beach Volleyball and Clubroom*" so that it can convert a disused bowling rink at the premises into 3 beach volleyball courts.

A location and site map is **attached** at Appendix 21.

### **Background**

#### Current Land and Lease Details

Forrest Park (or Lot 73) is owned freehold by the City of Bunbury and is comprised within Diagram 2224 being part of the land comprised in Certificate of Title 438 Folio 53A. The Bunbury Bowling Club Inc. has leased a 1.4 hectare portion of Forrest Park since the early 1960's and its current lease with the City expires on 18 October 2019. It pays the City annual rental of \$4,749.58 including GST. The rental is subject to annual CPI increases and is reviewed by Landgate Valuation Services every three years throughout the term.

#### Proposal

The Bowling Club recently entered into negotiations with the Koombana Beach Volleyball Club to convert a disused bowling rink on the corner of Forrest Avenue and Blair Street (known as "A" green) into 3 beach volleyball courts. The work will be done by the Beach Volleyball Club. In addition, the Beach Volleyball Club members will become fully registered members of the Bunbury Bowling Club so that they can utilise the courts and other facilities (such as the clubrooms) at the Bowling Club.

The proposal will make use of an otherwise underutilised area while at the same time boosting membership and use of the venue. The Koombana Beach Volleyball Club is keen to enter into the arrangement for the following reasons:

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- The 11 courts at Koombana Beach are not adequate to cater for the Club's *Corporate Cup* competition. Making courts available at the Bunbury Bowling Club will solve this problem and give the Club the potential to hold State level events.
- There are no clubrooms at Koombana Beach to enhance the social aspect of the beach volleyball competitions or at which to hold committee meetings, annual social events and wind-up meetings.
- The exposure to be gained from passers-by seeing beach volleyball played near the intersection of Forrest Avenue and Blair Street will promote the sport and pave the way for an influx of new players or sponsorship opportunities.

The Clubs have come to an agreement on the following issues:

- Use of the new beach volleyball courts and clubroom facilities
- Parking
- Playing fees
- Insurance arrangements
- Playing equipment use and storage
- Safety, cleaning, maintenance and repair requirements
- Operational issues
- Dress Codes
- Calendar of Events (to ensure no double-bookings)

A copy of the draft *Memorandum of Understanding* is **attached** for councillor information at Appendix 22

*Proposed Fixtures at the Bunbury Bowling Club Volleyball Courts*

It should be noted that the Koombana Beach Volleyball Club will continue to conduct the majority of its competitions at the volleyball courts at Koombana Beach during the beach volleyball season which runs from the end of October to the end of March each year.

During the 2008/09 season, the Beach Volleyball Club intends to use the volleyball courts at the Bunbury Bowling Club premises, as follows:

Day	Times	Details
Tuesdays ( <i>tentative</i> )	6.00pm to 8.00pm	Two-a-side Mixed Doubles Competition
Wednesdays	6.00pm to 8.00pm	Corporate Cup Competition
Thursdays	6.00pm to 8.00pm	Individual Player Training Sessions

The fixtures will be reviewed following the end of the 2008/09 season.

*Works Required at the Bunbury Bowling Club*

The Koombana Beach Volleyball Club has agreed to organise and pay for the following works at the Bunbury Bowling Club premises in order to convert the existing bowling rink at "A" green into beach volleyball courts:

- The sunken green will be removed and filled with 40 cm of screened, free draining sand.
- Poles will be erected along Blair Street to support an open weave net that will prevent balls going onto the road when the courts are in use. These nets will be hinged at the bottom to allow them to be laid flat on the ground when not in use so as to maintain aesthetics.
- Erection of volleyball court nets. The poles will stay in place but the nets will be removed and stored after play.

#### Executive Comments

Beach volleyball is a popular, recreational non-contact sport that complements the other users of Forrest Park. The initiative by both parties to enter into an agreement to co-exist and maximise use of facilities at the Bowling Club venue is consistent with the key objectives of the City of Bunbury Recreation Plan adopted by Council on 15 August 2006.

It is noted from the details listed under the heading "*Proposed Fixtures ...*" earlier in this report, that use of the new volleyball courts would take place mainly in the evenings. Provided the daylight saving scheme continues, then the "A" green (which is not currently floodlit) will not require additional lighting.

Pursuant to clause 3 of the existing lease over the Bunbury Bowling Club premises, both parties have acknowledged (and consent to) the need to "quietly hold" the premises so no disruption is caused to nearby properties.

It will be a condition of approval that the Bunbury Bowling Club Inc. will be required to seek a Development Approval and Building Licence with respect to the installation and maintenance of the security net proposed for the corner of Forrest Avenue and Blair Street.

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

The proposal complies with the City of Bunbury Strategic Plan 2007-2012 and in particular Strategy 2.4 which states that the City will: "*develop a Property Strategy that benefits the City's residents, businesses and community/sporting organisations.*"

The proposed shared-use of a sporting facility also complies with the objectives of the City of Bunbury Recreation Plan adopted in August 2006.

#### **Community Consultation**

No community consultation is required. This is a minor variation to an existing lease of Council-owned freehold land.

### **Councillor/Officer Consultation**

Appropriate Council Officers have been consulted in the preparation of this report.

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

As indicated previously, the Bunbury Bowling Club Inc. pays annual rental of \$4,749.58 including GST. The rental is subject to annual CPI increases and is reviewed by Landgate Valuation Services every three years throughout the term which expires on 18 October 2019.

The Clubs do not intend to enter into formal sub-lease or licence agreement over the new beach volleyball courts or other facilities on-site. Instead, members of the Koombana Beach Volleyball Club will join the Bunbury Bowling Club as social members. This will effectively maximise the potential for future growth of the Bowling Club by exposing younger generations (via Beach Volleyball) to the recreational and social benefits associated with lawn bowls.

Any document preparation or advertising costs associated with amendment to the wording of the lease to change the permitted use of the site, will be the responsibility of the applicant.

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

There will be no direct benefit to the City's economy and there are no environmental or heritage issues to consider. However, there will be social benefits to both Clubs and the local community through provision of improved facilities for beach volleyball in Bunbury. The Beach Volleyball Club will benefit from exposure, increased playing courts and the ability to socialise after games at the clubrooms. The Bowling Club will benefit from an increased use of its clubroom facilities and the potential for future growth of the Bowling Club by exposing younger generations (via Beach Volleyball) to the recreational and social benefits associated with lawn bowls.

### **Council Policy Compliance**

There is no relevant Council policy in this instance.

### **Legislative Compliance**

The intention to amend the permitted use of the site from "*Bowling Club Playing Ground and Clubroom*" to "*Bowling Club Playing Ground, Beach Volleyball and Clubroom*" will be published for public information in accordance with Section 3.58(3) and (4) of the Local Government Act 1995.

It will be a requirement of approval that the Bunbury Bowling Club Inc. seek a Development Approval and Building Licence with respect to the installation and maintenance of the security net proposed for the corner of Forrest Avenue and Blair Street.

### **Delegation of Authority**

The Chief Executive Officer does not have the delegated authority of the Council to authorise amendments to the City's lease agreements.

### **Relevant Precedents**

There is no previous or relevant precedent to refer to.

### **Options**

#### Option 1

Per the recommendation listed in this report.

#### Option 2

Council does not grant approval for amendment of the "Permitted Use" stated in its lease agreement with the Bunbury Bowling Club Inc. dated 7 November 1990, to permit volleyball to be played at the premises.

### **Conclusion**

Permitting green "A" at the Bunbury Bowling Club to be converted into beach volleyball courts will promote the sport of beach volleyball in Bunbury while providing social and financial benefits to both clubs. The Beach Volleyball Club which will receive increased exposure, more playing courts and the ability to socialise after games as social members of the Bunbury Bowling Club. The Bunbury Bowling Club will benefit from the potential for future growth by exposing younger generations (via Beach Volleyball) to the recreational and social benefits associated with lawn bowls. The City of Bunbury will benefit from co-existence of 2 sporting groups at one facility in line with the objectives of its City of Bunbury Recreation Plan.

The Club's have entered into their own *Memorandum of Understanding* to ensure there are no problems concerning use and maintenance of the new beach volleyball courts. Pursuant to clause 3 of the existing lease over the Bunbury Bowling Club premises, both parties have acknowledged (and consent to) the need to "quietly hold" the premises so no disruption is caused to nearby properties.

Any document preparation or advertising costs associated with amendment to the wording of the lease to change the permitted use of the site, will be the responsibility of the applicant.

### **Recommendation**

Council approves amendment of Item 6 of the Schedule to its lease dated 7 November 1990 over a 1.4 hectare portion of Forrest Park (Lot 73 Forrest Avenue, Bunbury) to the Bunbury Bowling Club Inc. to effectively allow beach volleyball to be played on the premises, subject to the following conditions:

1. The Lessee to be responsible for all costs associated with advertising and document preparation in relation to amendment of the lease.
2. The Lessee to seek a Development Approval and Building Licence with respect to the installation and maintenance of the security net proposed for the corner of Forrest Avenue and Blair Street prior to commencement of any works on-site.
3. The City of Bunbury to be provided with a fully signed copy of the *Memorandum of Understanding* detailing the rights and responsibilities of both the Bunbury Bowling Club Inc. and the Koombana Beach Volleyball Club Inc. with respect to use of the volleyball courts and shared use of the other facilities on the lease site.
4. The *Memorandum of Understanding* is to include additional clauses stating:
  - 4.1 In the event that floodlights are required for the new beach volleyball courts, the Bunbury Bowling Club Inc. is to seek the Council's approval prior to installation.
  - 4.2 Pursuant to clause 3 of the existing lease over the Bunbury Bowling Club premises, both parties to the Memorandum of Understanding acknowledge (and consent to) the need to "quietly hold" the premises so no disruption is caused to nearby properties.
  - 4.3 An open weave net to prevent volley balls from going over the fence and onto the road is to be erected inside the fenceline along Blair Street whenever beach volleyball is in play on the site. The net to be removed after play to protect the aesthetics of the site.
  - 4.4 All signs or banners proposed to be erected or affixed to the beach volleyball courts are first to be approved by the Lessor (in writing) and are to comply with the requirements of the City of Bunbury Advertising Devices Local Law and any associated policies.



**Outcome of the Council Committee Meeting – 23 September 2008**

Mr Ken Morrell, President of the Bunbury Bowling Club Inc and Mr Andrew Cresswell, President Bunbury Volleyball Association were present to address Council and respond to questions from members. During discussion, the following points were raised:

- The bowling green is 36x36 meters allowing for three 8x16m Volleyball Courts.
- There will be a three meter buffer situated between each volleyball court and a 10 meter buffer between the end of the courts and Forrest Avenue.
- To stop stray volleyballs possibly ending up on Blair Street, the Volleyball Association will be erecting a collapsible netting fixture along the fence line that can be raised whilst games are being played and removed when not in use.
- Volleyball Association Members will be able to utilise the Bowling Club's Social Club and Meeting Rooms.
- Volleyball games will be rostered between 6.00pm and 8.00pm on Tuesday, Wednesday and Thursday evenings.

The recommendation was moved Cr Slater, seconded Cr Kelly.

Cr Rooney requested the mover and seconder accept an addition of a point 5 to read:

*"5. The Clauses contained in the Memorandum of Understanding be incorporated in to the Bunbury Bowling Club Inc Lease."* The mover and seconder agreed.

The Presiding Member then put the amended recommendation to the vote and it was adopted *12 votes "for" to Nil votes "against"* to become the Committee's recommendation on this issue.

**Committee Recommendation**

Council approves amendment of Item 6 of the Schedule to its lease dated 7 November 1990 over a 1.4 hectare portion of Forrest Park (Lot 73 Forrest Avenue, Bunbury) to the Bunbury Bowling Club Inc. to effectively allow beach volleyball to be played on the premises, subject to the following conditions:

1. The Lessee to be responsible for all costs associated with advertising and document preparation in relation to amendment of the lease.
2. The Lessee to seek a Development Approval and Building Licence with respect to the installation and maintenance of the security net proposed for the corner of Forrest Avenue and Blair Street prior to commencement of any works on-site.
3. The City of Bunbury to be provided with a fully signed copy of the Memorandum of Understanding detailing the rights and responsibilities of both the Bunbury Bowling Club Inc. and the Koombana Beach Volleyball Club Inc. with respect to use of the volleyball courts and shared use of the other facilities on the lease site.

4. The Memorandum of Understanding is to include additional clauses stating:
  - 4.1 In the event that floodlights are required for the new beach volleyball courts, the Bunbury Bowling Club Inc. is to seek the Council's approval prior to installation.
  - 4.2 Pursuant to clause 3 of the existing lease over the Bunbury Bowling Club premises, both parties to the Memorandum of Understanding acknowledge (and consent to) the need to "quietly hold" the premises so no disruption is caused to nearby properties.
  - 4.3 An open weave net to prevent volley balls from going over the fence and onto the road is to be erected inside the fenceline along Blair Street whenever beach volleyball is in play on the site. The net to be removed after play to protect the aesthetics of the site.
  - 4.4 All signs or banners proposed to be erected or affixed to the beach volleyball courts are first to be approved by the Lessor (in writing) and are to comply with the requirements of the City of Bunbury Advertising Devices Local Law and any associated policies.
5. The Clauses contained in the Memorandum of Understanding be incorporated in to the Bunbury Bowling Club Inc Lease.

At this point in proceedings (8.45pm), the Presiding Member called a five minute adjournment to allow members a refreshment break and allow Mayor D Smith to resume the chair.

Mayor D Smith re-opened the meeting as Presiding Member at 8.55pm.

There was no change to the attendance register.

#### **AT THE COUNCIL MEETING – 30 September 2008**

The Committee's recommendation was moved Cr Major, seconded Cr Leigh. The Mayor put the motion to the vote and it was adopted to become a Council Decision.

#### **Council Decision 174/08**

*Council approves amendment of Item 6 of the Schedule to its lease dated 7 November 1990 over a 1.4 hectare portion of Forrest Park (Lot 73 Forrest Avenue, Bunbury) to the Bunbury Bowling Club Inc. to effectively allow beach volleyball to be played on the premises, subject to the following conditions:*

- 1. The Lessee to be responsible for all costs associated with advertising and document preparation in relation to amendment of the lease.*

2. *The Lessee to seek a Development Approval and Building Licence with respect to the installation and maintenance of the security net proposed for the corner of Forrest Avenue and Blair Street prior to commencement of any works on-site.*
3. *The City of Bunbury to be provided with a fully signed copy of the Memorandum of Understanding detailing the rights and responsibilities of both the Bunbury Bowling Club Inc. and the Koombana Beach Volleyball Club Inc. with respect to use of the volleyball courts and shared use of the other facilities on the lease site.*
4. *The Memorandum of Understanding is to include additional clauses stating:*
  - 4.1 *In the event that floodlights are required for the new beach volleyball courts, the Bunbury Bowling Club Inc. is to seek the Council's approval prior to installation.*
  - 4.2 *Pursuant to clause 3 of the existing lease over the Bunbury Bowling Club premises, both parties to the Memorandum of Understanding acknowledge (and consent to) the need to "quietly hold" the premises so no disruption is caused to nearby properties.*
  - 4.3 *An open weave net to prevent volley balls from going over the fence and onto the road is to be erected inside the fenceline along Blair Street whenever beach volleyball is in play on the site. The net to be removed after play to protect the aesthetics of the site.*
  - 4.4 *All signs or banners proposed to be erected or affixed to the beach volleyball courts are first to be approved by the Lessor (in writing) and are to comply with the requirements of the City of Bunbury Advertising Devices Local Law and any associated policies.*
5. *The Clauses contained in the Memorandum of Understanding be incorporated in to the Bunbury Bowling Club Inc Lease.*

**CARRIED**

11 Votes "For" / Nil Votes "Against"

**11.5 ADVISORY COMMITTEE AND/OR PROJECT CONTROL GROUP MINUTES TO BE NOTED AT THE COUNCIL COMMITTEE MEETING (WAS LISTED AS ITEM 11.15 ON THE MEETING AGENDA)**

<b>File Ref:</b>	Various
<b>Applicant/Proponent:</b>	Internal Report
<b>Author:</b>	Various
<b>Executive:</b>	Various

Committee Members to refer to the report circulated **under separate cover**.

**Recommendation**

The following Advisory Committee Meeting Minutes listed in the report circulated under separate cover, are noted for information only:

1. Title: Minutes –Bunbury Environment and Sustainability Advisory Committee (BESAC) (4/09/2008)  
Author: Ben Deeley, Environmental Officer  
File: A02445
2. Title: Minutes –CBD Project Control Committee (1/09/2008)  
Author: Geoff Klem, Executive Manager City Development  
File: A00472

**Outcome of the Council Committee Meeting – 23 September 2008**

The recommendation was moved Cr Slater, seconded Cr Craddock and adopted *11 votes "for" to Nil votes "against"* to become the Committee's recommendation on this issue.

Cr Leigh was late returning from the adjournment of the meeting that immediately proceeded discussion of this item and was absent for the vote of this item.

**Committee Recommendation**

The following Advisory Committee Meeting Minutes listed in the report circulated under separate cover, are noted for information only:

1. Title: Minutes –Bunbury Environment and Sustainability Advisory Committee (BESAC) (4/09/2008)  
Author: Ben Deeley, Environmental Officer  
File: A02445
2. Title: Minutes –CBD Project Control Committee (1/09/2008)  
Author: Geoff Klem, Executive Manager City Development  
File: A00472

**AT THE COUNCIL MEETING – 30 September 2008**

The Committee's recommendation was moved Cr Major, seconded Cr Leigh. The Mayor put the motion to the vote and it was adopted to become a Council Decision.

**Council Decision 175/08**

*The following Advisory Committee Meeting Minutes listed in the report circulated under separate cover, are noted for information only:*

1. *Title: Minutes –Bunbury Environment and Sustainability Advisory Committee (BESAC) (4/09/2008)*  
*Author: Ben Deeley, Environmental Officer*  
*File: A02445*
  
2. *Title: Minutes –CBD Project Control Committee (1/09/2008)*  
*Author: Geoff Klem, Executive Manager City Development*  
*File: A00472*

**CARRIED**

**11 Votes "For" / Nil Votes "Against"**

**11.6 ITEMS TO BE NOTED (NO DISCUSSION) AT THE COUNCIL COMMITTEE MEETING** *(WAS LISTED AS ITEM 11.16 ON THE MEETING AGENDA)*

<b>File Ref:</b>	Various
<b>Applicant/Proponent:</b>	Internal Report
<b>Author:</b>	Various
<b>Executive:</b>	Various

Committee Members to refer to the report circulated **under separate cover**.

**Recommendation**

The following items listed in the report circulated under separate cover, are noted for information only:

1. Title: Accounts for Payment for the Period 1 to 31 August 2008  
Author: David Ransom, City Accountant  
File: A00083
2. Title: Building Approvals Issued 1 to 31 July 2008 & 1 to 31 August 2008  
Author: Gary Fitzgerald, Manager Development Services  
File: A00566

**Outcome of the Council Committee Meeting – 23 September 2008**

The recommendation was moved Cr Rooney, seconded Cr Leigh and adopted *12 votes "for" to Nil votes "against"* to become the Committee's recommendation on this issue.

**Committee Recommendation**

The following items listed in the report circulated under separate cover, are noted for information only:

1. Title: Accounts for Payment for the Period 1 to 31 August 2008  
Author: David Ransom, City Accountant  
File: A00083
2. Title: Building Approvals Issued 1 to 31 July 2008 & 1 to 31 August 2008  
Author: Gary Fitzgerald, Manager Development Services  
File: A00566

**AT THE COUNCIL MEETING – 30 September 2008**

The Committee's recommendation was moved Cr Major, seconded Cr Leigh. The Mayor put the motion to the vote and it was adopted to become a Council Decision.

**Council Decision 176/08**

*The following items listed in the report circulated under separate cover, are noted for information only:*

1. *Title: Accounts for Payment for the Period 1 to 31 August 2008*  
*Author: David Ransom, City Accountant*  
*File: A00083*
  
2. *Title: Building Approvals Issued 1 to 31 July 2008 & 1 to 31 August 2008*  
*Author: Gary Fitzgerald, Manager Development Services*  
*File: A00566*

**CARRIED**

**11 Votes "For" / Nil Votes "Against"**

**11.7 PROPOSAL TO SUBDIVIDE LOT 8 BOYANUP-PICTON ROAD FOR PURPOSE OF AMALGAMATION INTO “ROAD RESERVE” FOR THE PURPOSE OF CITY OF BUNBURY CAPITAL WORKS INTERSECTION WIDENING (WAS LISTED AS ITEM 11.1 ON THE MEETING AGENDA)**

<b>File Ref:</b>	A03179
<b>Applicant/Proponent:</b>	Internal Report
<b>Author:</b>	Beatrice Plant, City Engineer
<b>Executive:</b>	Michael Scott, Executive Manager City Services

**Summary**

The Harris Road upgrade project is part of the City’s 2008/2009 Capital Works Program. The project involves an upgrade to the Harris Road/Boyanup – Picton Road intersection and improvements to the length of Harris Road, up to the City of Bunbury’s boundary with the Shire of Dardanup.

The proposed upgrade at the Harris Road/Boyanup – Picton Road intersection impacts upon the corner of the City’s freehold Lot 8 Boyanup – Picton Road (Certificate of Title Vol 1734 Folio 625 Diagram 90125) and hence it is requested that a subdivision of a portion of Lot 8 and for its amalgamation into the adjacent road reserve occurs.

**Background**

The City was successful in receiving a Road Project Grant (\$106,000) from the Regional Road Group (RRG) for improvements to the Harris Road/Boyanup – Picton Road intersection and for improvements to the length of Harris Road. As Harris Road abuts a Main Roads Western Australia (MRWA) owned road, the concept plans for the intersection upgrade were forwarded through to MRWA for comment. In addition to the funding from the RRG, MRWA are also contributing some additional funds to the Harris Road intersection upgrade.

The intersection upgrade impacts upon the corner of Lot 8 Boyanup – Picton Road. As a result of this the City is requesting Council to approve the subdivision of a portion of Lot 8 and its subsequent amalgamation into the adjacent road reserve. An aerial plan showing the location of this intersection is **attached** at Appendix 1. A copy of the drawing No. 1-2007-027-1 of 2 for this intersection upgrade showing the area to be amalgamated is **attached** at Appendix 2. The area of land to be amalgamated is 53m<sup>2</sup>.

**Strategic and/or Regional Outcomes**

The proposal complies with the City of Bunbury Strategic Plan 2007-2012 and in particular Strategy 3.2 which states that the City will: *“Develop and maintain an integrated and sustainable approach to transport with reference to road hierarchy, traffic management, public transport, cycleways and dual-use paths.”*



### **Community Consultation**

Under Section 56 of the *Land Administration Act 1997* no community consultation is required.

### **Councillor/Officer Consultation**

The City's Executive considered the proposed amalgamation of portion of Lot 8 into the adjacent road reserve and have no objections to this proposal. MRWA have granted approval for this project as shown on drawing no. 1-2007-027-1 of 2.

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

There will be no additional implications of the City's Annual Budget as a result of the proposed amalgamation of Lot 8 into road reserve, as it is currently listed as a project in the City's 2008 /2009 Capital Works Budget.

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

#### *Economic and Social Issues*

There are no known economic and social issues relating to this proposal.

#### *Environmental Issues*

The removal of approximately 8 trees is required in order for this project to progress. Officers have consulted with the City's Environmental Officer regarding this vegetation and the advice is **attached** at Appendix 3. The City has also submitted an application to the Department of Environment and Conservation (DEC) for permission to clear this vegetation. Discussions between the DEC and the City are already occurring in relation to this clearing permit.

#### *Heritage Issues*

The City has been advised by the Department of Indigenous Affairs (DIA) that this area has previously been assessed in relation to Aboriginal heritage and it has been deemed that this location is not to be a site after all. A copy of the correspondence received from the DIA is **attached** at Appendix 4.

### **Council Policy Compliance**

There are no Council policies relevant to this proposal.

### **Legislative Compliance**

Where (in a district of a local government) land is used by the public as a road, compliant to Section 56 of the *Land Administration Act 1997*, the Council is required to pass a decision supporting the dedication of the land as a "Road".

### **Delegation of Authority**

The Department of Planning and Infrastructure requires the official consent of Council to instigate the dedication of a portion of Lot 8 Boyanup-Picton Road as a “Road”.

### **Relevant Precedents**

At its meeting on 29 July 2008, Council resolved to dedicate Lot 100 Robertson Drive as a “Road”.

### **Options**

#### Option 1

Per the recommendation as listed in this report.

#### Option 2

Council not support the dedication of a portion of Lot 8 Boyanup – Picton Road as a “Road”.

### **Conclusion**

In order to complete the upgrade of the Harris Road intersection and the works along Harris Road the subdivision of a portion of Lot 8 Boyanup – Picton Road and its subsequent amalgamation in the adjacent road reserve is required.

The City is now requesting by way of a Council Decision to request the Department of Planning and Infrastructure for a portion of Lot 8 Boyanup-Picton Road to be dedicated as a “Road” under Section 56 of the Land Administration Act.

The City must indemnify the Department of Planning and Infrastructure against all costs arising from the dedication of Lot 8 Boyanup-Picton Road as a “Road”.

### **Recommendation**

1. Council request the Department of Planning and Infrastructure to dedicate a portion of Lot 8 Boyanup-Picton Road as shown on Drawing No. 1-2007-027-1 of 2 as a “Road” under Section 56 of the Land Administration Act.
2. Council indemnify the Department of Planning and Infrastructure against all costs associated with the dedication.

**Outcome of the Council Committee Meeting – 23 September 2008**

The recommendation was moved Cr Slater, seconded Cr Jones.

Cr Jones moved an amendment to the recommendation to include a third point to read  
*“3. The remainder of the land be referred to the Land Rationalisation and Acquisition Committee”.*

Cr Slater accepted the inclusion. The Presiding Member then put the amended recommendation to the votes and it was adopted *11 votes "for" to Nil votes "against"* to become the Committee's recommendation on this issue.

**Committee Recommendation**

1. Council request the Department of Planning and Infrastructure to dedicate a portion of Lot 8 Boyanup-Picton Road as shown on Drawing No. 1-2007-027-1 of 2 as a “Road” under Section 56 of the Land Administration Act.
2. Council indemnify the Department of Planning and Infrastructure against all costs associated with the dedication.
3. The remainder of the land be referred to the Land Rationalisation and Acquisition Committee.

**AT THE COUNCIL MEETING – 30 September 2008**

The Committee's recommendation was moved Cr Slater, seconded Cr Jones. The Mayor put the motion to the vote and it was adopted to become a Council Decision.

**Council Decision 177/08**

1. *Council request the Department of Planning and Infrastructure to dedicate a portion of Lot 8 Boyanup-Picton Road as shown on Drawing No. 1-2007-027-1 of 2 as a “Road” under Section 56 of the Land Administration Act.*
2. *Council indemnify the Department of Planning and Infrastructure against all costs associated with the dedication.*
3. *The remainder of the land be referred to the Land Rationalisation and Acquisition Committee.*

**CARRIED**

**9 Votes "For" / 2 Votes "Against"**

Councillors Major and Harrop requested that their votes “against” be recorded.

**11.8 RESIGNATION OF MEMBER AND PROPOSED APPOINTMENT OF REPLACEMENT – BUNBURY ENVIRONMENT AND SUSTAINABILITY ADVISORY COMMITTEE** *(WAS LISTED AS ITEM 11.2 ON THE MEETING AGENDA)*

<b>File Ref:</b>	A02445
<b>Applicant/Proponent:</b>	Internal Report
<b>Author:</b>	Ben Deeley, Environmental Officer
<b>Executive:</b>	Geoff Klem, Executive Manager City Development

**Summary**

Due to the resignation of Mr Shane Elmore, it is proposed to appoint Ms Amanda Broome as a 'Community Representative' on the Bunbury Environment and Sustainability Advisory Committee (BESAC).

Correspondence was received from Councillor Brendan Kelly on the 12 September 2008, advising that he wished to resign from BESAC. It is proposed that Council appoints a Councillor to BESAC to replace Councillor Brendan Kelly.

An extract from the City's Committee Book showing the committee's Terms of Reference is **attached** at Appendix 5

**Background**

The BESAC was appointed by the Council on 27 November 2007 to provide guidance and recommendations to assist the Council in discharging its duties. Membership of the committee is currently:

Committee Members (Voting):

His Worship the Mayor - Mr David Smith  
Councillor Shane Rooney  
Councillor Brendan Kelly  
Chief Executive Officer  
Executive Manager City Development  
Up to five (5) community representatives, as follows:  
Andrew Obal  
Philip Smith  
Bernhard Bischoff  
Shane Elmore  
Dr Sandra Woollorton

Ex-Officio Members (Non-Voting):

1 Representative - Department of Environment & Conservation  
1 Representative - Leschenault Catchment Council  
1 Representative - South West Development Commission

Correspondence was received from Mr Shane Elmore on the 30 April 2008, advising that he had decided to resign from the BESAC due to family and work commitments.

Expressions of interest were sought from community members wishing to fill the vacated community representative position between the 27 June and the 23 July 2008. A total of three applications were received, which are circulated as a **Confidential Report**.

A review of the three applications was undertaken by BESAC Committee Members during August 2008. The Committee concluded that Ms Amanda Broome was the preferred candidate and subsequently made the following recommendation to Council:

*“Committee Recommendation:*

*That Ms Amanda Broome be appointed to the Bunbury Environment and Sustainability Advisory Committee to fill the vacant community representative position.”*

Correspondence was received from Councillor Brendan Kelly on the 12 September 2008, advising that he wished to resign from the Bunbury Environment and Sustainability Advisory Committee.

It is proposed that Council:

1. Appoints Ms Amanda Broome as a 'Community Representative' on the Bunbury Environment and Sustainability Advisory Committee; and
2. Appoints a Councillor to the Bunbury Environment and Sustainability Advisory Committee to replace Cr Brendan Kelly.

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

The proposal complies with the City of Bunbury Strategic Plan 2007-2012, Strategy 2 which states *“Strengthen the City of Bunbury's governance and leadership”* and Strategy 6 which states *“Develop social capital - having community representatives on council committees helps those committees derive a broader insight into public sentiment concerning the activities of the Council.”*

### **Community Consultation**

Expressions of interest were sought from community members wishing to fill the vacated community representative position between the 27 June and the 23 July 2008 via advertisements on the City of Bunbury's website and email's sent to members of the City of Bunbury Community Conservation Network.

### **Councillor/Officer Consultation**

His Worship the Mayor, Councillor Brendan Kelly, Councillor Shane Rooney, the Chief Executive Officer and Executive Manager City Development are voting members of the Bunbury Environment and Sustainability Advisory Committee.

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

The activities and objectives of advisory committees or project control groups correlate with the City's annual budget, annual programme of works or the City Vision Strategy and are resourced accordingly.

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

As this is a nomination for appointment to an existing committee of the Council, there are no Economic, Social, Environmental or Heritage Issues associated with the proposal.

### **Council Policy Compliance**

The "Terms of Reference" for advisory committees or project control groups appointed by the Council do not contravene established Council policies.

Policy CEO7 (adopted by Council on 27 November 2007) sets out guidelines for establishment and operation of advisory committees.

### **Legislative Compliance**

Section 5.9(2) indicates that an advisory committee of the Council may comprise council members only, officers only, community members only or a combination of any of these.

Appointments to a committee of the Council (or any amendment to its terms of reference) must be by an absolute majority vote.

Tenure of committee membership is specified in Section 5.11 of the WA Local Government Act 1995.

### **Delegation of Authority**

The Chief Executive Officer has not been delegated the authority to appoint members to committees of council.

### **Relevant Precedents**

The Council regularly appoints members to (or updates membership of) its various committees.

### **Options**

#### *Option 1*

Per the recommendation as listed in this report.

Option 2

Per the recommendation as listed in this report (with amendments as stated by members at the meeting)

Option 3

That Ms Amanda Broome not be appointed to the Bunbury Environment and Sustainability Advisory Committee.

**Recommendation**

Council appoints:

1. Ms Amanda Broome as a 'Community Representative' on the Bunbury Environment and Sustainability Advisory Committee with a term to expire October 2009.
2. Councillor \_\_\_\_\_ to the Bunbury Environment and Sustainability Advisory Committee with a term to expire October 2009, to fill the vacancy created by Councillor Kelly's resignation.

**Outcome of the Council Committee Meeting – 23 September 2008**

The recommendation was moved Cr Slater, seconded Cr Leigh. Cr Slater then nominated Cr Harrop fill the vacancy on the Committee. Cr Harrop accepted the nomination.

The Presiding Member put the recommendation to the vote and it was adopted *11 votes "for" to Nil votes "against"* to become the Committee's recommendation on this issue.

**Committee Recommendation**

Council appoints:

1. Ms Amanda Broome as a 'Community Representative' on the Bunbury Environment and Sustainability Advisory Committee with a term to expire October 2009.
2. Councillor Harrop to the Bunbury Environment and Sustainability Advisory Committee with a term to expire October 2009, to fill the vacancy created by Councillor Kelly's resignation.

**AT THE COUNCIL MEETING – 30 September 2008**

The Committee's recommendation was moved Cr Slater, seconded Cr Leigh. The Mayor put the motion to the vote and it was adopted to become a Council Decision.

**Council Decision 178/08**

***Council appoints:***

- 1. Ms Amanda Broome as a 'Community Representative' on the Bunbury Environment and Sustainability Advisory Committee with a term to expire October 2009.***
- 2. Councillor Harrop to the Bunbury Environment and Sustainability Advisory Committee with a term to expire October 2009, to fill the vacancy created by Councillor Kelly's resignation.***

**CARRIED**

**11 Votes "For" / Nil Votes "Against" (ABSOLUTE MAJORITY VOTE OBTAINED)**



**11.9 RESIGNATION OF MEMBER AND PROPOSED APPOINTMENT OF REPLACEMENT – CITY OF BUNBURY ART COLLECTION MANAGEMENT COMMITTEE** (*WAS LISTED AS ITEM 11.4 ON THE MEETING AGENDA*)

<b>File Ref:</b>	A02311
<b>Applicant/Proponent:</b>	Internal Report
<b>Author:</b>	Greg White, Curator / Executive Officer
<b>Executive:</b>	Domenic Marzano, Executive Manager City Life

**Summary**

Councillor Michelle Steck indicated on 16 September 2008 that she wished to resign from the City of Bunbury Art Collection Management Committee.

It is proposed that Council appoints one Councillor to the Committee to fill the vacancy created by Councillor Steck's resignation.

Community member Ronald Middleton has also advised of his resignation from the Committee on 15 September 2008. Expressions of interest will be sought from community members wishing to fill the vacated community representative position.

An extract from the City's Committee Book showing the committee's Terms of Reference is **attached** at Appendix 6.

**Background**

The City of Bunbury Art Collection Management Committee was appointed by the Council on 27 November 2007 to provide guidance and recommendations to assist the Council in discharging its duties. Membership of the committee is currently:

Committee Members (Voting):

Councillor Helen Punch  
Dr Lorna Kaino  
Tresslyn Smith  
Charmian Brigden  
Rosemary Nicholson  
Paul Robertson  
Colleen Gillick

Ex-Officio Members (Non-Voting):

Greg White - Curator  
Paul Hayward - Community Development Officer  
Sonya Dye - Director Bunbury Regional Art Galleries

Councillor Steck indicated on 16 September 2008 that she wished to resign from the City of Bunbury Art Collection Management Committee and as a result, a vacancy for an Elected Member now exists.

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

The proposal complies with the City of Bunbury Strategic Plan 2007-2012, Strategy 2 which states "*Strengthen the City of Bunbury's governance and leadership*" and Strategy 6 which states "*Develop social capital - having community representatives on council committees helps those committees derive a broader insight into public sentiment concerning the activities of the Council.*"

### **Community Consultation**

As this is an appointment of a Councillor to an existing committee of Council, no community consultation is required.

### **Councillor/Officer Consultation**

Councillor Steck has indicated that she wishes to resign from the City of Bunbury Art Collection Management Committee.

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

The activities and objectives of advisory committees or project control groups correlate with the City's annual budget, annual programme of works or the City Vision Strategy and are resourced accordingly.

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

As this is an appointment of a Councillor to an existing committee of the Council, there are no Economic, Social, Environmental or Heritage Issues associated with the proposal.

### **Council Policy Compliance**

The "Terms of Reference" for advisory committees or project control groups appointed by the Council do not contravene established Council policies.

Policy CEO7 (adopted by Council on 27 November 2007) sets out guidelines for establishment and operation of advisory committees.

### **Legislative Compliance**

Section 5.9(2) of the WA Local Government Act 1995 indicates that an advisory committee of the Council may comprise council members only, officers only, community members only or a combination of any of these.

Appointments to a committee of the Council (or any amendment to its terms of reference) must be by an absolute majority vote.

Tenure of committee membership is specified in Section 5.11 of the WA Local Government Act 1995.

### **Delegation of Authority**

The Chief Executive Officer has not been delegated the authority to appoint members to committees of council.

### **Relevant Precedents**

The Council regularly appoints members to (or updates membership of) its various committees.

### **Options**

#### Option 1

Per the recommendation as listed in this report.

#### Option 2

Per the recommendation as listed in this report (with amendments as stated by members at the meeting).

### **Recommendation**

Councillor \_\_\_\_\_ be appointed to the City of Bunbury Art Collection Management Committee with a term to expire October 2009, to fill the vacancy created by Councillor Steck's resignation.

### **Outcome of the Council Committee Meeting – 23 September 2008**

The recommendation was moved Cr Punch, seconded Cr Slater. Cr Punch nominated Cr Harrop fill the vacancy on the committee. Cr Harrop accepted the nomination.

The Presiding Member then put the recommendation to the vote and it was adopted *11 votes "for" to Nil votes "against"* to become the Committee's recommendation on this issue.

**Committee Recommendation**

Councillor Harrop be appointed to the City of Bunbury Art Collection Management Committee with a term to expire October 2009, to fill the vacancy created by Councillor Steck's resignation.

**AT THE COUNCIL MEETING – 30 September 2008**

The Committee's recommendation was moved Cr Steck, seconded Cr Leigh. The Mayor put the motion to the vote and it was adopted to become a Council Decision.

**Council Decision 179/08**

*Councillor Harrop be appointed to the City of Bunbury Art Collection Management Committee with a term to expire October 2009, to fill the vacancy created by Councillor Steck's resignation.*

**CARRIED**

**11 Votes "For" / Nil Votes "Against" (ABSOLUTE MAJORITY VOTE OBTAINED)**

**11.10 PROPOSED AMENDMENT – RETAINING WALL – LOT 57 DP P17746 #5 OCEAN VIEW COURT SOUTH BUNBURY** *(WAS LISTED AS ITEM 11.5 ON THE MEETING AGENDA)*

<b>File Ref:</b>	P07131
<b>Applicant/Proponent:</b>	Mrs R Ghasseb
<b>Author:</b>	Paul Davies, Planning Consultant
<b>Executive:</b>	Geoff Klem, Executive Manager City Development

**Summary**

A planning application has been received from Mrs R Ghasseb for an amendment to the currently approved retaining walls on Lot 57 Ocean View Court. The currently approved plan includes a 1.5 metre setback to the side boundary with adjoining Lot 56 on the north side. The proposed amendment subject of this report is to locate the wall on the boundary of the two lots.

In accordance with the Residential Design Codes, acceptable Development Criteria retaining walls in excess of 0.5 metres are required to be setback from the boundary. The required boundary setback distance varies depending on the height and length of the wall. In this case with the height of the retaining wall up to approximately 3.7 metres in height required a setback of 1.5 metres from the boundary.

The neighbouring property owners were consulted and have submitted an objection to the proposed location of the retaining wall on the boundary. The grounds for objection generally relate to reduced residential amenity and privacy with the wall and associated fencing being located adjacent to the boundary.

The neighbouring property owner also outlines concern in regard to potential for debris to accumulate and damage to the existing fence if the retaining wall is located closer to the boundary.

It is recommended that Council refuse to grant planning approval for the proposed amendment to the retaining wall at Lot 57 Ocean View Court for the following reasons. The proposed reduced side setback is not consistent with setback requirements of the Residential Design Codes for the height and length of the proposed retaining wall.

Also, it is considered that the reduced setback for the wall with associated boundary fence has potential to detract from the amenity of the adjoining property. Further, the adjoining property owner objects to a reduction in the required setback for the retaining wall.

**Background**

In November 2007 Planning approval was granted for proposed retaining walls around the sides and rear of the subject land with a 1.5 metre setback to the adjoining property boundaries. In February 2008 approval was granted for an amended plan to step the rear portion of the wall. A copy of the currently approved site plan is **attached** at Appendix 7.

The 1.5 metre setback to the boundary is required in view of the height of the retaining wall up to approximately 3.7 metres. In accordance with the Residential Design Codes retaining walls in excess of 0.5 metres in height are required to be setback from the boundary. The required boundary setback distance varies depending on the height and length of the wall.

The proponent has submitted an amended plan for the proposed retaining wall requesting no setback along the boundary with the adjoining property Lot 56 to the north. The proponent suggests that a 1.5 metre setback will create a strip which is difficult to maintain and potentially creates a security risk.

The subject land was previously partially filled by up to approximately 1 metre without approval. In accordance with Clause 3.1 of the Mindalong Design Guidelines "The ground levels over any lot shall not be changed from those existing on the day of settlement without Council Approval". Photographs of the site indicating the fill are **attached** at Appendix 8.

Initially, the proponent could have been required to remove the fill from the property. The applicant however submitted a planning application for retaining walls around the boundary of the site. The proponent was also requested to obtain comments from the adjoining owners for the proposed retaining wall on the boundary and the proposal was not supported by the adjoining land owners.

The original proposal was modified following discussions with Council officers to achieve a 1.5 metre setback from the side boundary in accordance with R Codes Requirements. Subsequently a planning approval was issued for the retaining walls including a 1.5 metre setback to the boundary. A site location plan is **attached** at Appendix 9.

The proponent suggests that existing retaining walls in the locality located on the boundary of lots create a precedent for the current proposal. It is acknowledged that there are a number of high retaining walls in the locality although it appears these were constructed prior to revision of the Residential Design Codes in 2002 to include requirements for setback of retaining walls.

On this basis, it is considered by Development Services existing retaining walls in the locality do not create a precedent in considering the current application.

### **Proposal**

A planning application has been received from Mrs R Ghaseb for an amendment to the currently approved retaining walls on Lot 57 Ocean View Court. The current approved plan includes a 1.5 metre setback to the side boundary with adjoining Lot 56 on the north side.

The proposal is to relocate the retaining wall from the current approved 1.5 metre setback to the property boundary. The proposed wall would commence from a height of 1 metre, this being approximately 1 metre higher than the established level of the adjoining lot 56 level, reaching a maximum height of approximately 3.7 metres to the rear of the site.

It is noted that the proposed finished ground level is 0.4 metres lower than the height of the retaining wall. With a boundary fence at the top of the finished ground level the total height on the boundary would be approximately 5.1 metres at the highest point.

Attached at Appendix 10 are Plans which indicate the location and elevations of the proposed retaining wall.

There is an existing brick and timber fence with pillars that appears to be located on the boundary of the two properties which would need to be relocated to build the retaining wall on the boundary. Alternatively, the retaining wall could be setback adjacent/near to the existing fence which would then leave a small gap between the existing fence and the retaining wall.

The proponent has submitted documentation supporting the proposed development which refers mainly to the WAPC document 'Designing out crime', planning guidelines. The guidelines are a publication that suggests ways in which to design out such things as blind alleyways and high screening to vulnerable premises which diminishes surveillance etc.

It is considered that whilst having a level of relevance the Designing out Crime - planning guidelines are not generally relevant for the current application. The Guidelines may be generally aimed at design of public areas and access ways. In this case the 1.5 metre setback is on private property which can be fenced to control access.

A copy of the proponents submission is attached at Appendix 11. The proponent is of the opinion that a 1.5 metre set back space will become a security risk and is not very serviceable.

The adjoining property owner has submitted a letter of objection to the reduction in the setback and states that bringing such a structure up to the shared boundary would be a violation of privacy and a narrower gap would be filled with debris and become unserviceable. A copy of the letter of objection is attached at Appendix 12.

The proponent refers to Section 6.3.2 Buildings on Boundary of the Residential Design Codes (R Codes) as justification for the reduced setback for the retaining walls. Section 6.3.2 of the R Codes, however, relates to building wall setbacks from the boundary, and not retaining walls, and is not considered relevant for consideration of the current application.

The proponent advised that the retaining wall on the boundary could be constructed to a high standard to provide a high level of amenity to the satisfaction of the adjoining property owner. This proposal was discussed with the adjoining property owner by Council officers, however, the adjoining owner maintained objection to the proposal.

While the proposal is to reduce the setback to adjoining lot 56, the other boundary setbacks are retained at 1.5 metres in accordance with the current approved plan. The proponent has not indicated concern with the required 1.5 metre boundary setback to the other adjoining properties to the west and south.

The height of the retaining wall combined with boundary fencing may be considered to detract from the amenity of the adjoining property. It is considered that the 1.5 metre strip could be adequately fenced to prevent unauthorised access. Also, the 1.5 metre strip would facilitate access to the area for maintenance.

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

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**

A letter was sent to the adjoining neighbour (Lot 56) seeking comments on the amended plan as this is the only neighbour likely to be affected by the proposed development. The adjoining owner has submitted a letter of objection to the proposal

The grounds for objection generally relate to reduced residential amenity and privacy with the wall and associated fencing being located adjacent to the boundary. Concern is also raised by the adjoining neighbour in regard to potential for debris to accumulate and damage to the existing fence if the retaining wall is located closer to the boundary.

In order to progress the issue further with a view to resolve any issue, a meeting was held with the objectors. However, none of the main issues were able to be resolved.

The proponent advised that the retaining wall on the boundary could be constructed to a high standard to provide a high level of amenity to the satisfaction of the adjoining property owner. This proposal was discussed with the adjoining property owner by Council officers, however the adjoining owner maintained objection to the proposal.

### **Applicant Consultation**

Discussions have been undertaken with the applicant on a number of occasions to address issues and concerns raised.

### **Councillor/Officer Consultation**

The various issues relating to this matter have been broadly canvassed at staff level with a view to achieving a corporate approach to the decision making process.

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

The proposal would have no adverse impact on the Municipal Budget.



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

### Economic

The economic cost of building the retaining wall will be similar if located on the boundary or on a 1.5 metre setback.

### Social

It is considered that to allow the construction of the proposed retaining wall, given the height in places and proximity, would result in adverse social interaction between landowners.

It is therefore recommended that the set back requirements be retained in accordance with the Residential Design Codes.

### Environmental Issues

There are no known environmental issues relating to the proposed development.

### Heritage

There are no known Heritage issues relating to the proposed development.

## **Council Policy Compliance**

It is considered that the proposal does not conflict with Council Policy; however, it would not be in accordance with the provision of the Residential Design Codes, Clause 6.3.3 and Table 2a.

## **Legislative Compliance**

Legislative requirements relating to section 26 of the Planning and Development Act 2005 would not be complied with as the Residential Design Codes of Western Australia are based on this Act.

## **Delegation of Authority**

On the basis of applicant requesting this application go before Council and submitting the appropriate fee, the matter is referred to Council for it's formal determination.

## **Relevant Precedents**

There are no known precedents similar to that of the proposed development.

## **Options**

### Option 1

Per the recommendation as listed in this report.

### Option 2

Should Council determine to resolve to issue grant of planning approval for the proposed development, 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 to grant conditional planning approval to Mr Gabi Ghasseb for the proposed amendment to the retaining wall at Lot 57 Ocean View Court, Bunbury subject to relevant conditions to the satisfaction of the Manager of Development Services.*

## **Conclusion**

After consideration, Development Services is of the view that a refusal in is order in this instance. The construction of the retaining wall on the shared boundary would be contrary to the provisions of the Residential Design Codes and contrary to the objections raised by the adjoining landowners.

The set back requirement as per the Residential Design Codes would give a minimum of 1.5 metres space between neighbouring lots and the space would be easily fenced securely at the junction with the street/Lot boundary.

The height of the retaining wall combined with boundary fencing is likely to detract from the amenity of the adjoining property. Also, the 1.5 metre strip would facilitate access to the area for maintenance.

It is recommended that Council refuse to grant planning approval for the proposed amendment to the retaining wall at Lot 57 Ocean View Court for the following reasons. The proposed reduced side setback is not consistent with setback requirements of the Residential Design Codes for the height and length of the proposed retaining wall.

Also, it is considered that the reduced setback for the wall with associated boundary fence has potential to detract from the amenity of the adjoining property. Further, the adjoining property owner objects to a reduction in the required setback for the retaining wall.

## **Recommendation**

Council under and by virtue of the powers conferred upon it in that behalf pursuant to the provisions of the Planning and Development Act 2005, hereby resolves to refuse to grant planning approval for the proposed amendment to the retaining wall at Lot 57 Ocean View Court for the following reasons;

- 1) The proposed reduced side setback is not consistent with setback requirements of the Residential Design Codes, Clause 6.3.3 and Table 2a. for the height and length of the proposed retaining wall.
- 2) The proposal conflicts with Clause 10.2.1 (c) of Town Planning Scheme No 7 regarding any approved statement of planning policy of the Western Australian Planning Commission being the Residential Design Codes.
- 3) The proposal conflicts with Clause 10.2.1 (n) of Town Planning Scheme No 7 in regard to preservation of the amenity of the locality.
- 4) The proposal conflicts with Clause 10.2.1 (y) of Town Planning Scheme No 7 in regard to relevant submissions received on the application being objection from the adjoining property owner.
- 5) Approval of the current proposal would create an undesirable precedent for other similar retaining wall proposals.

#### **Outcome of the Council Committee Meeting – 23 September 2008**

Cr Leigh disclosed an impartiality interest and left the chambers at 6.16pm for the duration of discussion and the vote.

Mr Gabi Ghasseb, owner of Lot 57 and Mr Greg Howe, retaining wall builder were present and responded to questions from members.

During discussion, the following points were raised:

- Retaining walls in the area are common practice.
- Structurally there are no issues building a retaining wall on the boundary.
- It is impractical to leave a 1.5 meter gap between the retaining wall and the boundary which already has a fence on it as this would be difficult to maintain and may pose a safety risk for fires etc.

Option 2 as printed in the agenda was moved Cr Whittle, seconded Cr Slater and adopted 7 votes "for" to 3 votes "against" to become the Committee's recommendation on this issue.

Cr Leigh returned to the chamber at 6.37pm

#### **Committee 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 grant conditional planning approval to Mr Gabi Ghasseb for the proposed amendment to the retaining wall at Lot 57 Ocean View Court, Bunbury subject to relevant conditions to the satisfaction of the Manager of Development Services.

**AT THE COUNCIL MEETING – 30 September 2008**

Cr Leigh and the Mayor left the chamber at 6.25pm and Deputy Mayor Craddock took the chair.

The Committee's recommendation was moved Cr Slater, seconded Cr Harrop.

During discussion, it was reiterated that leaving a 1.5 meter gap between the retaining wall and the boundary may pose a safety risk and by moving the setback of the retaining wall to the boundary would improve the amenity of the land.

Some members raised concerns that the objecting submission from the adjoining neighbour was not being taken into consideration and the issue of communication between the applicant and the neighbours.

The Deputy Mayor put the motion to the vote and it was adopted to become a Council Decision.

**Council Decision 180/08**

*Council, under and by virtue of the powers conferred upon it in that behalf by the Planning and Development Act 2005, hereby resolves to grant conditional planning approval to Mr Gabi Ghasseb for the proposed amendment to the retaining wall at Lot 57 Ocean View Court, Bunbury subject to relevant conditions to the satisfaction of the Manager of Development Services.*

**CARRIED**

**6 Votes "For" / 3 Votes "Against"**

It was requested that all votes be recorded:

For: Cr's Harrop, Slater, Craddock, Whittle, Steck, Spencer

Against: Cr's Jones, Rooney and Major

Cr Leigh and the Mayor returned to the chamber at 6.38pm and the Mayor resumed the Chair.

**11.11 DRAFT BUILDING HEIGHTS STUDY AND PROPOSED DRAFT LOCAL PLANNING POLICY – BUILDING HEIGHT** *(WAS LISTED AS ITEM 11.6 ON THE MEETING AGENDA)*

<b>File Ref:</b>	A03541
<b>Applicant/Proponent:</b>	Internal Report
<b>Author:</b>	Kelly Shore, Strategic Planner Kelvin Storey, Senior Strategic Planner Thor Farnworth, Coordinator Strategic & Environmental Planning
<b>Executive:</b>	Geoff Klem, Executive Manager City Development

### Summary

Consistent with the objectives of Western Australian Planning Commission's (WAPC) Statement of Planning Policy No. 2.6: State Coastal Planning Policy and the City Vision Strategy (September 2007), the draft City of Bunbury Building Heights Study (the "Study") seeks to establish the methodology and approach by which the City of Bunbury will determine the appropriate maximum building height for all new development.

The Study has been developed to support the preparation of the draft Local Planning Policy - Building Height (the "Policy"). The comprehensive performance based Policy provides guidance on the designing and assessment of development proposals, and establishes a policy framework for the way the Local Government may exercise discretion in granting planning approval for development with respect to building height. The Policy designates appropriate maximum buildings heights across the City, including:

- the Strategic Regional Centre, which incorporates the Central Business District (CBD) and Outer Business District;
- the hierarchy of district and neighbourhood centres, as delineated in the WAPC's Interim Greater Bunbury Commercial Centres Strategy (April 2007);
- the Ocean Beach coastal strip; and
- the balance of residential neighbourhoods.

Copies of the documents titled draft City of Bunbury Building Heights Study and draft Local Planning Policy - Building Height have been issued **under separate cover**.

### Background

Presently the Local Government has limited guidance and control over the height of buildings across the City beyond the use of:

- (a) 'plot ratio' provisions under the City of Bunbury Town Planning Scheme No. 7 (TPS7), which is the principle statutory instrument for development control in relation to building height;
- (b) the State Coastal Planning Policy (SPP2.6); and
- (c) the City Vision Strategy and associated City Vision Action Plan, which expresses Council's strategic intent.

The City of Bunbury Townscape Study (prepared in 1990 by Jordan Pregelj Associates and Considine & Griffiths Architects Pty Ltd) identified 'Landmarks' and 'Corridors' that are consistent with the landmarks and corridors identified in the current draft Local Planning Policy - Building Height. In particular, structures of significant height or vantage point have been recognised.

The Bunbury Tower, colloquially referred to as the 'Milk Carton', was constructed in 1986 to a height of 63 meters tall or 68.7 metres above the Australian Height Datum (AHD), and to date remains the City's tallest building and landmark. The City of Bunbury Townscape Study recommends that the City should allow no further high-rise development within the CBD with the exception of a ring of four to five storey developments surrounding the tower, diminishing in scale as development proceeds away from it down to a maximum building height of 2 to 3 storeys.

In 2001, Koltasz Smith prepared the Back Beach Tourist Development Guidelines (unpublished) as a discussion paper to outline issues affecting current and future tourist sites along Back Beach. The recommendations of the Back Beach Tourist Development Guidelines suggested that a maximum building height of 15 metres or four storeys was appropriate on tourist sites north of Beach Road, including the Welcome Inn Site and the Lighthouse Hotel Site.

The amended SPP2.6 State Coastal Planning Policy, gazetted 19 December 2006, stipulates that development within 300 metres of the horizontal setback datum (or high water mark) is limited to a maximum of five storeys (and not exceeding 21 metres). Development up to a maximum eight storeys (and not exceeding 32 metres) may be considered where:

- there is evidence of broad community support following a process of consultation;
- it is suitable for the location having regard to the character of its surroundings;
- it is part of a major tourist or activity node;
- it does not detrimentally affect the amenity of the coastal foreshore as a result of significant overshadowing; and
- visual permeability of the foreshore and ocean from nearby residential areas, roads and public spaces is reasonably maintained.

A strategic approach to applying building heights within the City is fundamental to the future development of Bunbury in a manner that is consistent with a Strategic Regional Centre. The necessity for a Local Planning Policy dealing with the issue of building heights has been identified as a high priority throughout the Local Planning Policy Framework and City Vision Strategy as a result of increasing demand for land within the CBD to accommodate higher forms of built development.

## **Proposal**

### *Building Height Study*

The Building Height Study is written to help establish a statutory basis for the designing and assessment of development proposals in order to ensure a smooth transition from the present landscape and built form to the anticipated future form and structure of Bunbury. It is anticipated that as redevelopment occurs throughout the City, the Local Planning Policy will guide appropriate forms of development height in line with the City Vision Strategy and the rest of the City's Local Planning Policy Framework (i.e. the Scheme and its subordinate Local Planning Policies).

The Study provides an analysis of the existing significant view corridors, natural and built landmarks and opportunities for achieving greater height limits in appropriate locations across the City. The Study articulates the desired aims and objectives for building heights and then translates the analysis into a model that expresses the desired future outcomes for the City's skyline. The aims and objectives of the Study were derived from the community's input during the City Vision community consultation phase; and through an appreciation of appropriate land use planning of commercial and residential development that meets the needs of a rapidly growing population.

Building heights will complement the permitted land uses in correlation to that zone or local area. With compatible land uses already formulated in the current zoning of the City, the building height requirements will give added definition to the recognition of the function and use of a locality, by stimulating growth in areas that are appropriate for such development. The City will take the form of a graduating envelope away from the core of the CBD along an east-west axis and accentuating the north-south saddle effect with a low lying central axis that already exists.

### *City Vision for Building Heights*

Building heights have been analysed across the City in view of where this issue presents both constraints and opportunities. The City Vision Strategy identifies Building Height under 'Priority Issues/ Proposals' in the Environmental, Social and Economic Strategies for the CBD.

Earlier precinct visioning work done for the City Vision Strategy recommended that buildings should have a maximum of five storeys for mixed use, commercial and tourist sites and notes that the broader community would support taller buildings in limited and special situations where they are light and tall rather than wide and bulky and designed to optimise views between structures.

The City Vision Strategy specifically makes the following recommendations in relation to building heights:

*CBD 28: That the State Coastal Planning Policy Amendment relating to height is supported where the maximum height for coastal areas (including the Bay and Inlet) should be five storeys or 21 metres and under certain conditions and subject to criteria including broad community support, consideration may be given to developments up to eight storeys or 32 metres. The Ocean Drive coastal strip between Fawltly Towers and the Lighthouse Beach Resort and inland to approximately 300 metres is defined as a coastal tourism and recreation precinct containing key sites that have the potential to accommodate major tourism development that optimises views for all developments and includes up to a 25% component for residential development.*

*CBD 29: That height in the commercial core of the CBD defined as both sides of Wittenoom, Stephen, Victoria and Carey Streets is determined on the basis of complementary development with the Bunbury Tower and the Old Silos redevelopment. Areas outside of the commercial core to be planned and designed within the two to five storey range and depending on topography, accessibility and community acceptance up to eight storeys.*

The Study and the proposed draft Policy are based on the philosophy that development should be appropriate to its surroundings within each locality - such that it contributes to the achievement of the overall desired outcomes for both the City and its local area.

The principles of this philosophy consist of:

- orderly development of the City;
- retaining the unique built form of Bunbury whilst evolving to accommodate the future needs of the population and economic growth;
- suitable spatial form and land use compatibility; and
- maintaining significant view sheds, and protecting views of the 'three waters'.

The planning principles applied in the Study and subsequent draft Policy were derived from the State Planning Framework and the City Vision Strategy. As the majority of land in the study areas falls within the SPP2.6, the parameters for deriving maximum building height provisions are already set by the WAPC. These provisions allow for buildings of up to five storeys, and may allow for a maximum of up to eight storeys where they satisfy prescribed criteria and are subject to the discretion of the Local Government.

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

### Local Planning Scheme

Part 5 – General Development Requirements of TPS7 requires that any development of land for any of the residential purposes dealt with by the State Planning Policy 3.1 Residential Design Codes (or R-Codes) is to conform to the provisions of those Codes. The applicable residential density is superimposed as an R-Code number on the Scheme Map, and is shown as an overlay of the zone for the given properties as designated.



Development of dwellings within the “Residential Zone” will principally be assessed under the R-Codes. However, it is proposed that residential and mixed use development in other zones be assessed under the draft Local Planning Policy - Building Height in conjunction with the R-Codes. Consequently, where a development proposal is made against the Performance Criteria of the proposed draft Policy it would be subject to community consultation in the same way as for Performance Criteria assessment under the R-Codes.

Clause 5.9.1.2 of the Scheme deals with any residential development in a residential zone that incorporates a building or buildings where the average building height in respect of the existing ground level exceeds nine metres, and in the opinion of the Local Government, may have a detrimental effect on nearby/adjoining properties. In such circumstances the Local Government is to advertise the development proposal in accordance with the provisions of clause 9.4 of the Scheme.

Under clause “5.9.2 City Centre Zone” of the Scheme there are currently no height limitations for development in the CBD. However, ‘plot ratio’ provisions under Table 3 Development Standards of the Scheme indirectly control this aspect of built form. Buildings within the “City Centre Zone” have a plot ratio of 3.5, with 100% site coverage, and may be granted a 20% increase in excess of this ratio if the proposal meets certain listed criteria. Notwithstanding the adoption of the proposed draft Policy, some modifications to the provisions and general definitions of the Scheme may be required in the future.

#### Local Planning Strategy for Tourism (DRAFT)

The draft City of Bunbury Local Planning Strategy for Tourism will seek to provide a clear and robust spatial planning framework for tourism development in context of all other uses. As part of the Strategy, the evolving character of Ocean Drive / Back Beach as a Strategic Tourism Location is addressed, with emergent building heights acknowledged a key factor in this respect.

#### City of Bunbury Strategic Plan

The formulation of the Study and subsequent proposed draft Policy has been developed in support of Strategic Objective 4.2: Implement City Vision, under the Bunbury Strategic Plan 2007-2012.

#### City Vision Strategy

The Study supports the implementation of the City Vision Strategy and associated City Vision Action Plan by providing an appropriate best practice solution to achieve the desired outcomes and recommendations for the:

- Central Business District Investigation Area (refer to Priority Issues / Proposal Site Analysis for the CBD, p.9); and
- Outer Business District Investigation Area (refer to Priority Issues / Proposal Site Analysis for the OBD, p.12).

### **Community Consultation**

Part 1.13 titled “Preparation & Consultation” of the Building Heights Study document outlines the nature of community consultation that has informed the Study and the preparation of the draft Policy to date. Further community consultation is proposed as part of the public advertising period for the proposed draft Policy.

### **Councillor/Officer Consultation**

This matter has been extensively discussed over a twelve month period amongst both the strategic and statutory planning staff, as well as with the Manager Development Services and Executive Manager City Development. A briefing session on the Study findings was presented to Council on Tuesday, 26 August 2008.

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

With the exception of public advertising costs, the recommendation is not expected to impact on the existing Annual Budget. Adoption of the draft Policy can expect to have positive financial implications for the administration of the Scheme by limiting the number/time/nature of potential appeals against the decision of the Local Government in granting planning approval with respect to building height.

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

#### *Economic Issues*

The Study’s approach for devising building heights has two distinct purposes:

- to facilitate economic certainty and viability over time for floor space supply and demand; and
- to maintain and enhance the coastal amenity and character of Bunbury.

The adoption of the draft Policy can reasonably be expected to promote a positive net economic outcome for the City. This expectation is based upon the assumption that investment by landowners/developers will occur with greater certainty given the establishment of a transparent policy position by which development proposals will be assessed and approved by the Local Government.

#### *Social Issues*

There are no known negative social impacts resulting from the proposal.

#### *Environmental Issues*

There are no significant environmental impacts generated by the proposal.

Heritage Issues

There are no impacts to heritage values generated by the proposal. The Stirling Street Heritage Area is not affected by the proposed draft Policy. Please also refer to clause 8.2 of the proposed draft Policy, which defines the area affected by the provisions of the Policy.

**Council Policy Compliance**

This is a proposed new Local Planning Policy, and as such, is required to be publicly advertising in accordance with clause 2.3 of the Scheme.

**Legislative Compliance**

The proposal is in line with the current Scheme and the Planning and Development Act 2005.

**Delegation of Authority**

The Chief Executive Officer does not have the delegated authority of Council to adopt a Local Planning Policy, and as such, this is a decision of Council.

**Relevant Precedents**

The procedure for considering the adoption of the proposed draft Local Planning Policy is stipulated under Part 2 – Local Planning Policy Framework of the Scheme. From time to time the Local Government may adopt, amend or rescind Local Planning Policies as required in order to ensure that it administers the Scheme Area in an orderly and proper manner in accordance with the State Planning Framework.

For a discussion of how local government authorities locally, interstate and internationally manage the issue of building heights, please refer to section 1.11 titled “Case Studies” of the Building Heights Study document

**Options**

Option 1

As per the recommendation as listed in this report..

Option 2

Council resolve not to proceed with publicly advertising of the proposed draft Local Planning Policy: Building Height.

Should Council determine not to proceed with the implementation of the Building Heights Study, the issue of building height shall continue to be assessed under plot ratio requirements of the relevant zoning under the current statutory arrangements. This situation will remain in place until such time as the Scheme is reviewed or an alternate Local Planning Policy for each relevant local area is adopted.

It should be noted that the current plot ratio requirements under the Scheme create an incongruent pattern across the City, as the calculations for determining the plot ratio are based on the size of allotment. With 100% site coverage and a plot ratio of 3.5, it is possible to achieve greater height by amalgamating lots. This effect is diminishing to the adjoining buildings that may not be able to achieve the same plot ratio.

The proposed policy applies a methodical principle of applying heights and in the case of the CBD, the graduation model allows for the greatest height in the core descending towards the coast and around the edges of the CBD. With this policy applied consistently for the assessment of all development applications, the Council's position in the State Administrative Tribunal (SAT) has a solid foundation should a determination be appealed by a proponent.

### **Conclusion**

The Study stemmed from a growing need to establish a method for assessing high rise development applications within the "City Centre Zone". With no statutory requirement for building height limits in place, the only tools for which the Council may impose building heights is under the plot ratio requirements of TPS7 and the City Vision Strategy. The Study provides general guidance for future development within precincts of the "City Centre Zone" and for other key areas of the City.

The findings of the CBD indicate that the approach for devising building heights has two distinct purposes; facilitating economic certainty and viability over time for floor space supply and demand, and to maintain and enhance the coastal amenity and character of Bunbury. For this reason, a rigid maximum level of development in the 'CBD Coastal Fringe' is suggested as opposed to a level of flexibility built into the maximum height layers of the 'Commercial Core Precinct' and 'Commercial Core Frame'. This measure will ensure the protection of inner city views to the three waters as specified in the Study objectives. By providing flexibility in the Commercial Core of the CBD, development applications will be assessed against Performance Criteria dealing with the issues of amenity, overshadowing, and the bulk and scale of proposals.

The Outer Business District is an extension of the CBD outfitted for service trade premises, show rooms, consulting rooms, small offices, retail and the like. The reason that it has been included in the Study is to reinforce the hierarchy between the "City Centre Zone" and the "Mixed Business Zone" by:

- limiting the height of buildings that interface with residential / sensitive land uses; and
- reaffirming the scale of development that is desired in the area complimentary to existing Local Planning Policies and land uses permitted in the Scheme.

The Ocean Beach local area comprises residential development, retail and office use and tourism nodes. An identified strip of the coastal frontage referred to as “Ocean Beach North” (refer to Map 4 of the Policy) is identified as an area where a mix of residential development and tourist activities may coexist. The land uses may range from hotel/motel developments, short-stay accommodation, permanent residential and complementary retail premises. Building heights recommended for sites already zoned for hotel use are appropriately reflected in the Policy (see Map 4 of the Policy) based on individual assessments of each site in relation to topography, surrounding land uses, affect on character and amenity in the locality and consistency with the draft Local Planning Strategy for Tourism. There is not a blanket height given across the strip as the technique for assessment has been based on working with the natural landform.

The residential component of the “Ocean Beach North” precinct has been devised to suit this basis as well. The maximum building height is assessed under Category “C” of the R-Codes; however, the point of measuring building height for the purpose of assessment under Acceptable Development Criteria has been set at the lowest point of the lot boundary. This requirement ensures that residential lots with extreme changes in topography are not advantaged by the R-Codes method of measuring natural ground level from the point immediately below the relevant wall and therefore seriously disadvantaging adjoining properties with the height gained across the site (refer to Appendix 8 of the Building Heights Study document)

However, where the topography of a site is reasonably constrained by differing levels in “Ocean Beach North” development applications may be assessed from natural ground level as the R-Codes specifies under Performance Criteria. The assessment will be determined using the ‘Lot Boundary Building Envelope for Ocean Beach North’, in which the building mass must fit within an envelope consisting of a 45 degree angle taken nine metres above the side and rear boundaries with a maximum height of 12 metres from natural ground level at the relevant point on the site.

The Study evolved into a citywide project after identifying that it stands to reasons that the residential zone, which forms a large portion of the Council area, and the commercial/activity which service the community, be included in the Study to assess the impacts of building height on neighbourhood character and amenity. Whilst the assessment of building height is written into the R-Codes, the addition of a Lot Boundary Building Envelope has been recommended to assist in achieving satisfactory outcomes for overshadowing and privacy issues affecting adjoining properties and in maintaining outlook between dwellings. The envelope consists of a 45 degree angle taken six metres above the side and rear boundaries with a maximum height of nine metres achieved above natural ground level.

For the purpose of assigning maximum building heights for developments within commercial/activity centres, namely shopping centres of a neighbourhood and district scale, the factors of gross floor area, and character and amenity have been considered.

### **Recommendation**

Council, pursuant to Part 2 – Local Planning Policy Framework of the City of Bunbury Town Planning Scheme No. 7 and the Planning and Development Act 2005, hereby resolves to:

- 1) Advertise the draft Local Planning Policy - Building Height for public comment for a period of not less than 42 days, in accordance with clause 2.3 of the City of Bunbury Town Planning Scheme No. 7.
- 2) Council receives and notes the findings of the draft Building Heights Study document, and makes the document available during the public advertising period for the draft Local Planning Policy - Building Height.

### **Outcome of the Council Committee Meeting – 23 September 2008**

Cr Slater moved Option 2 which reads “Council resolve not to proceed with publicly advertising of the proposed draft Local Planning Policy: Building Height.” The motion lapsed due to no seconder.

The recommendation was then moved Cr Steck, seconded Cr Leigh.

During discussion, the following points were raised:

- It was requested that reference made to Three Waters through the document be capitalised.
- The Three Waters comprises of the Ocean, Koombana Bay & Outer Harbour and the Lower Leschenault Inlet.
- The maximum height allowed is 50 meters, with surrounding buildings being graduated at smaller heights eg: 32 meters, 21 meters.

It was requested that stronger definitions for schedule 1 be obtained and that prior to the document being advertised for public comment, that the maps included in the document contain main streets to enable easy identification. The Executive Manager City Development advised he would look in to acquiring further definitions for schedule 1, and confirmed that the maps would include the City’s main identifiable streets.

Cr Rooney then moved an amendment to the recommendation to increase the advertising period from 42 days to 60 days. The mover and seconder accepted the amendment.

The Presiding Member then put the amended recommendation to the vote and it was adopted *10 votes "for" to 1 vote "against"* to become the Committee's recommendation on this issue.

**Committee Recommendation**

Council, pursuant to Part 2 – Local Planning Policy Framework of the City of Bunbury Town Planning Scheme No. 7 and the Planning and Development Act 2005, hereby resolves to:

- 1) Advertise the draft Local Planning Policy - Building Height for public comment for a period of not less than 60 days, in accordance with clause 2.3 of the City of Bunbury Town Planning Scheme No. 7.
- 2) Council receives and notes the findings of the draft Building Heights Study document, and makes the document available during the public advertising period for the draft Local Planning Policy - Building Height.

**AT THE COUNCIL MEETING – 30 September 2008**

The Committee's recommendation was moved Cr Jones, seconded Cr Craddock.

During discussion, members queried various heights of buildings as specified in the Building Heights Study. The Executive Manager City Development clarified these heights.

The Mayor confirmed that the recommendation is to advertise the Policy for public comment. The matter will then be referred back to Council following the close of the submission period.

The Mayor put the motion to the vote and it was adopted to become a Council Decision.

**Council Decision 181/08**

***Committee Recommendation***

***Council, pursuant to Part 2 – Local Planning Policy Framework of the City of Bunbury Town Planning Scheme No. 7 and the Planning and Development Act 2005, hereby resolves to:***

- 1) Advertise the draft Local Planning Policy - Building Height for public comment for a period of not less than 60 days, in accordance with clause 2.3 of the City of Bunbury Town Planning Scheme No. 7.***
- 2) Council receives and notes the findings of the draft Building Heights Study document, and makes the document available during the public advertising period for the draft Local Planning Policy - Building Height.***

**CARRIED**

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

**11.13 PROPOSED STRUCTURE PLAN – LOT 1 AND 6 BOYANUP-PICTON ROAD, PICTON (WAS LISTED AS ITEM 11.7 ON THE MEETING AGENDA)**

<b>File Ref:</b>	P11650
<b>Applicant/Proponent:</b>	Griffiths Planning on behalf of JW Cross & Sons
<b>Author:</b>	Teshome Tadesse, Planning Officer
<b>Executive:</b>	Geoff Klem, Executive Manager City Development

**Summary**

Griffiths Planning on behalf of the landowners (JW Cross & Sons) has submitted a structure plan for Lots 1 and 6 Boyanup-Picton Road for consideration by Council.

In early May 2008, Development Services released the structure plan for 21 days public comment. Public comments and governmental referrals were undertaken over the second half of May 2008 and at the end of the comment period only one submission from the general public and seven government agencies comments were received.

This report addresses issues as identified in the proposal and matters raised in the submissions during the 21 days comment period and recommends approval.

**Background**

In September 2006, the City recommended deferral (to WAPC) to the proposed amalgamation and re-subdivision of Lots 1 and 6 Boyanup –Picton Road on the basis of TPS 7 requirement, specifically Clause 6.2.1.3.1 of TPS 7. In December the same year, the Western Australian Planning Commission (WAPC) refused the proposed subdivision (WAPC Ref: 132444). The WAPC letter lists four main reasons for the refusal. (**Attached** at Appendix 13 is the WAPC refusal letter). One of the reasons of the refusal reads as follows:

- “1. The proposal does not comply with Clause 6.2.1.3.1 of the City of Bunbury Town Planning Scheme by way that an endorsed structure plan does not exist for the subject land and surrounding area. Subdivision of the subject land cannot proceed until a Structure Plan is prepared and endorsed by Council and the WAPC for the Development Investigation Policy Area which includes the subject land.”*

In February 2007, the applicant approached the City to explore the possibility of a structure plan for the subject lots with a view to facilitating the amalgamation and re-subdivision of the subject lots (rationalisation of lots 1 and 6 Boyanup-Picton Road). The applicant was encouraged by the City to proceed with the preparation of a structure plan for the lots with the understanding that the subject site is a discrete site where a structure plan can be considered, and subject to issues raised under WAPC Ref: 132444 being successfully addressed in terms of the Preston Industrial Park structure planning process and flood plain issues associated with the Ferguson River.



In addition to the above, the City advised the applicant specific matters to be taken into considerations in the preparation of a structure plan for the subject lots.

The applicant, in the report, claims that discussions have been undertaken with the relevant authorities such as DPI, DOW, DEC, WP, DOH, Main Roads and GHD consultants in the preparation of the structure plan for the subject lots and that the structure plan addresses issues raised by various agencies.

The proposal was advertised for 21 days. The advertisement of the proposal included 9 letters to the adjoining landowners, advertisement in Bunbury Herald – in the City Update Section (twice), on City’s web page and letters to the relevant Government agencies. At the end of the advertisement period, 8 submissions were received (i.e. seven from service agencies and one from the general public). A schedule of submission received is **attached** at Appendix 14.

The structure plan covers Lots 1 and 6 Boyanup Picton Road. The structure plan site is partly zoned “Industry” and the portion of the site in the south east, which abuts Ferguson River, is a “Reserve – Parks and Recreation” under TPS 7. The subject land is subject of a special Development Control Area under the Scheme; namely Development Investigation Policy Area and also given the proximity of the site to the Ferguson River, the site can be considered as a Flood Prone Land.

**Attached** at Appendix 15 is an opportunities and constraints plan

### **Proposal**

The applicant has requested Council, pursuant to Clause 5.9.13.1 of TPS 7, to designate Lots 1 and 6 Boyanup Picton Road as a structure plan area and adopt the structure plan for the subject site.

**Attached** at Appendix 16 is the location plan

The structure plan will establish the future development direction of Lots 1 & 6 Boyanup-Picton Road, Picton.

The structure plan can be best described by reference to Plan No. GP 080702A (**Attached** at Appendix 17 is the proposed structure plan). The structure plan aims to rationalize Lots 1 and 6 Boyanup Picton Road through the amalgamation and re-subdivision of the two lots to create 4 industrial lots.

The main components of the structure plan are: the creation of 4 industrial lots ranging from 4106 m<sup>2</sup> to 17580m<sup>2</sup>, provision of one additional access from Boyanup-Picton to the proposed Lot 3 and designation of 6381m<sup>2</sup> POS along the Ferguson River in the south east.

The structure plan specifically presents:

- A brief description of the site
- Planning context and considerations
- The structure plan for the site
- Stormwater Management Plan.

In addition to the creation of 4 lots on the subject site, the structure plan provides guidelines for industrial development on the subject lots.

The main propose of the structure plan is to guide industrial developments on the subject land. It will provide opportunities and actions in the promotion of a “dry” industrial development on the subject site. In relation to the acceptability of a “dry” industry development format on-site, the applicant has suggested the following definition of “dry” industry to be incorporated under the proposed draft structure plan:

*“means any industrial use permitted by the City of Bunbury Local Planning Scheme where it can be demonstrated that the quality and volume of effluent to be disposed of on-site can be successfully disposed of, without adverse environmental or health effects, utilizing effluent disposal systems approved by the Health Department of Western Australia and the Department of Environment and Conservation, and Department of Water. In addition, development shall be restricted to the type which is predicted to generate wastewater intended for disposal on site at a daily volume no exceeding 540 litres per 2000m<sup>2</sup>.”*

There are three industrial enterprises on-site, and these industries are considered to be “dry” industry format given the operations conducted on-site.

The proposed one additional industry site (Lot 3) will have the same “dry” industry development arrangement. The structure plan appropriately acknowledges the matter of dry industry on the subject site by incorporating a provision which addresses the matter.

It is noted that the “dry” industry format will be maintained until such time that reticulated water and sewerage supplies are in place. It also promotes the need for the provision of essential services. The provision of essential services on-site is entirely the responsibility of the applicant. To this effect, the draft structure plan suggests notification on titles in the form of Section 70A notification under the Transfer of Land Act 1893 to ensure connection to a reticulated water and sewerage supply when available on-site.

The applicant argues “dry” industry format on the subject site is in line with the WAPC Policy DC 4.1. Clause 3.7.2 of the Policy provides dispensation to a reticulated sewerage connection when the development is limited to dry industry and when the site condition allows for disposal of effluent on-site on a long-term basis.

It is considered that the applicant’s position can be justified in that the structure plan promotes the existing development format (dry industry). In addition, the proposal is considered to be consistent with WAPC Policy DC 4.1.

Town Planning Scheme No.7 (TPS 7)

Lots 1 & 6 are currently zoned “Industry” and a portion of Lot 1 is designated as a “Reserve-Parks and Recreation” under TPS7. The subject land is not only zoned industry in the Scheme, but it is also within the Development Investigation Policy Area as indicated in the Scheme.

In reference to Development Investigation Policy Area, Clause 6.2.1.3.1 of the Scheme provides in the following terms:

*“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.”*

In accordance with the above-mentioned Scheme requirements, the applicant has submitted a structure plan over the subject site for Council consideration and ultimately for adoption.

Clause 5.9.13 of TPS 7 provides procedures and requirements in the adoption of a structure plan. The comments from service authorities, by and large, support the proposed structure plan with some cautionary notes in the future development of the site.

Following consideration of the structure plan by council, it will be referred to the Western Australian Planning Commission for final endorsement pursuant to Clause 5.9.13.7 of the Scheme.

Flood Prone Land

The subject site abuts the Ferguson River, and it is considered to be Flood Prone Land. The Department of Water advised that the 100 ARI flood level in the Ferguson River area is 9.00m AHD (**Attached** at Appendix 18 is the 100 ARI Flood Levels). The Department advised that development above 9.00m AHD is acceptable, but it also recommended 9.5m AHD minimum habitable floor level to ensure adequate flood protection. The requirement for a minimum habitable floor level of 9.5m AHD does not seem to correlate to the class of use proposed. It is considered, however, that the matter of acceptable finished floor level will be established either at subdivision or development stage.

Land Use

In terms of Industry zone nomination, the Scheme requirements are clear and straightforward i.e. the provisions and standards applicable to the Industry zone will apply to the structure plan area.

Table 1 of the Scheme (land-use matrix) provides the permissibility of land uses in respective zones including industry zone. It is expected that all land uses that are permissible under the industry zone can be considered for approval. However, until such time that a reticulated water and sewerage supply are provided, it is practical to follow a “dry” industry development format on-site as suggested under the provision section of the structure plan.

Greater Bunbury Region Scheme (GBRS)

The subject lots are designated as “Industrial” and the south-east portion adjoining the Ferguson River as “Regional Open Space (ROS)” under the GBRS. It is noted that structure plan indicates the ROS as identified in the GBRS. The ROS is also indicated as a local reserve “Parks and Recreation” under the current Town Planning Scheme.

In relation to the protection of the remnant vegetation, the Department of Environment and Conservation (DEC) states that:

“The remnant vegetation on Lot 1, adjoining the Ferguson River, is referred to in the EPA Report as Investigation Area 8 and has been found to be a regionally significant natural area. The EPA has recommended that this area be retained as Regional Open Space as a future amendment to the Greater Bunbury Region Scheme where not previously reserved.”

In the subsequent e-mail message dated 2 July 2008, DEC has stated that “Given that it appears that POS will in fact include all of the remnant vegetation, DEC has no further comment on this matter.”

The applicant has proposed that the current POS be maintained as a foreshore management area instead of the 30m foreshore reserve along the Ferguson River (refer the **attached** draft structure plan). Alternatively, the applicant has suggested that the landowner is willing to incorporate the 1m2 foreshore reserve which is outside the POS to be included under a future omnibus amendment to the City of Bunbury Local Planning Scheme. It is considered that the existing POS is essentially within the proposed 30m foreshore reserve, and the applicant’s proposition to designate the POS as a foreshore reserve has a merit.

Industry 2030

The subject site falls within the Preston Industrial Park (PIP) study area. The Preston Industrial Park (PIP) Interim Strategy (Industry 2030) identifies the site as a “Transitional Industry Precinct”.

**Attached** at Appendix 19 is the Interim Strategy Plan – Industry 2030

The applicant argues that the structure plan would not compromise the PIP structure planning process and has put forward the following justification:

- The site is zoned for industry
- The site is discrete which is bounded by the regional transport route (Boyanup-Picton Road) to the north, railway to the south and the Ferguson River to the East
- The subject site is elevated and has established industries on-site.

The Preston Industrial Park Structure Planning process is more of a regional concern than a local interest. However, at the local level, it is reasonable to recognise that the site can be considered as a structure plan area in that it is a discrete site with clear demarcation in all directions. The proposed land use is also essentially consistent with Industry 2030 nomination of the site.

It is considered that the details of the structure plan and its implication to the Preston Industrial Park Structure Plan will be further analysed at the regional level.

#### Acid Sulphate Soil

The DEC has recommended the need to investigate the matter of Acid Sulphate Soils on the subject land and measures to be undertaken if it is found on-site. The recommendation by DEC will be taken into consideration and will be incorporated in the final format as one of the provisions under the structure plan.

#### **Strategic Outcomes**

Council's 2007 – 2012 Strategic Plan, Strategy 5 states "*Promote Ecological Sustainable Development of the City's Built and Natural Environment.*" The current structure plan attempts to address the protection of natural environment (Ferguson River- foreshore management area) while promoting dry industry development format on the subject site.

The recommendation has had regard to Council's 2007-2012 Strategic Plan.

#### **Community Consultation**

The proposed structure plan was advertised for a period of 21 days pursuant to Clause 9.4 of TPS 7. Council must take into account any submissions received during this period prior to determination on the structure plan. The submissions and the structure plan documents are then referred to the WA Planning Commission for final endorsement.

#### **Councillor/Officer Consultation**

Discussions have been undertaken with Technical Officers within Development Services.

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

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

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

The proposed draft structure plan indicates that the subject site maintains the existing industrial development format and proposes one additional industrial site.

The environmental factor could be considered important under the proposed draft structure plan given its proximity to the waterway (Ferguson River). The applicant is willing to address the foreshore management matter and the recommended finished floor level requirements for the site.

No heritage building has been identified on-site.

### **Council Policy Compliance**

City's Local Planning Policy – Development in Flood Affected Areas is a relevant Policy. The Department of Water recommended that development above 9.00m AHD can be accepted in the case of major flooding; however, the Department recommended a minimum habitable floor level of 9.5m AHD to ensure adequate flood protection.

It is considered that the matter of minimum finished floor level will be further addressed either at the subdivision or development stage.

### **Legislative Compliance**

If Council resolves to adopt the structure plan, the proponent will be required to submit formal documents which are then referred to the Western Australian Planning Commission for endorsement by the Commission.

### **Delegation of Authority**

Adoption of the structure plan is by the decision of Council.

### **Relevant Precedents**

At its ordinary meeting on 28 August 2008, Council adopted the proposed Development Guide Plan – Preston River Technology Park – Lots 51, 52, 63, 120 and 123 Dodson Road and Olive Road.

### **Options**

#### Option 1

Per the recommendation as listed in this report.

#### Option 2

Refuse the proposed draft structure plan for Lots 1 and 6 Boyanup Picton Road. Should Council resolve to proceed with this option, a suggested format is as follows:

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

- 1. Refuse to support the structure plan for the reason that consideration of the structure plan at this point in time is premature prior to the finalisation of the Preston Industrial Park structure planning process at the regional level.*

### **Conclusion**

The structure plan will facilitate the amalgamation and re-subdivision of Lots 1 and 6 Boyanup Picton Road (lot rationalisation). Approval of the proposed draft structure plan by Council will promote the continuation of the existing dry industry developments and assists in the creation four self contained industrial lots on –site.

### **Recommendation**

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. Note the submissions received.
2. Designate Lots 1 and 6 Boyanup-Picton Road as a structure plan area in accordance with Clause 5.9.13.1 of TPS 7 which empowers Council to designate one or more parts of the Scheme Area including areas within a Development Investigation Area as a structure plan area.
3. Support the applicant’s proposition that the existing public open space (reserve) to be designated as a foreshore management area.
4. Adopt the structure plan – Lots 1 and 6 Boyanup-Picton Road with an additional provision which reads as follows:

Preliminary investigations to be undertaken to determine the presence of Acid Sulphate Soils. If the site is found to contain Acid Sulphate Soil, an Acid Sulphate Soil management plan shall be developed and all site works conducted with provisions of the approved plan.

5. Advise the applicant that the following matters to be taken into consideration at subdivision or development stage:
  - 5.1 All proposed lots to be provided with essential services (power, water, telecommunication, gas).
  - 5.2 The land shall be graded compacted and stabilised against the generation of dust or loss of soil generally, at the subdivider’s cost to the specification and satisfaction of the City of Bunbury – if fill is used.

- 5.3 The proposed access to the new Lot 3 is required to comply with Australian Standards, including but not limited to the proximity to intersection as detailed in AS 2890.1
- 5.4 Swales to have 1.6 on both sides, if water is going to pond on site.
- 5.5 Application for permission to construct or install an apparatus for the treatment of sewage and the disposal of effluent and liquid wastes will be required at the same time as the application for a building licence.
- 5.6 Disposal of septic effluent may require inverted leach drains depending on site conditions.
- 5.7 Leach drains or soak wells must not be located beneath areas subject to vehicular traffic.
- 5.8 Proposed boundaries must not encroach upon any existing effluent disposal facilities.
- 5.9 Compliance with the Health Act 1911 is required.
- 5.10 Compliance with the City of Bunbury Health Local Laws 2001 is required.
6. Forward the Structure Plan – Lot 1 and 6 Boyanup-Picton Road to the Western Australian Planning Commission for its endorsement pursuant to Clause 5.9.13.7 of TPS 7.
7. Advise the applicant and submitters of Council's decision.

### **Outcome of the Council Committee Meeting – 23 September 2008**

The recommendation was moved Cr Jones, seconded Cr Punch.

It was clarified that if Acid Sulphate Soil is found on the site, it is the responsibility of the applicant to develop the Acid Sulphate Soli Management Plan as stated in point 4 of the recommendation.

The Presiding Member put the recommendation to the vote and it was adopted *11 votes "for" to Nil votes "against"* to become the Committee's recommendation on this issue.



### **Committee Recommendation**

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. Note the submissions received.
2. Designate Lots 1 and 6 Boyanup-Picton Road as a structure plan area in accordance with Clause 5.9.13.1 of TPS 7 which empowers Council to designate one or more parts of the Scheme Area including areas within a Development Investigation Area as a structure plan area.
3. Support the applicant's proposition that the existing public open space (reserve) to be designated as a foreshore management area.
4. Adopt the structure plan – Lots 1 and 6 Boyanup-Picton Road with an additional provision which reads as follows:

Preliminary investigations to be undertaken to determine the presence of Acid Sulphate Soils. If the site is found to contain Acid Sulphate Soil, an Acid Sulphate Soil management plan shall be developed and all site works conducted with provisions of the approved plan.

5. Advise the applicant that the following matters to be taken into consideration at subdivision or development stage:
  - 5.1 All proposed lots to be provided with essential services (power, water, telecommunication, gas).
  - 5.2 The land shall be graded compacted and stabilised against the generation of dust or loss of soil generally, at the subdivider's cost to the specification and satisfaction of the City of Bunbury – if fill is used.
  - 5.3 The proposed access to the new Lot 3 is required to comply with Australian Standards, including but not limited to the proximity to intersection as detailed in AS 2890.1
  - 5.4 Swales to have 1.6 on both sides, if water is going to pond on site.
  - 5.5 Application for permission to construct or install an apparatus for the treatment of sewage and the disposal of effluent and liquid wastes will be required at the same time as the application for a building licence.
  - 5.6 Disposal of septic effluent may require inverted leach drains depending on site conditions.

- 5.7 Leach drains or soak wells must not be located beneath areas subject to vehicular traffic.
- 5.8 Proposed boundaries must not encroach upon any existing effluent disposal facilities.
- 5.9 Compliance with the Health Act 1911 is required.
- 5.10 Compliance with the City of Bunbury Health Local Laws 2001 is required.
6. Forward the Structure Plan – Lot 1 and 6 Boyanup-Picton Road to the Western Australian Planning Commission for its endorsement pursuant to Clause 5.9.13.7 of TPS 7.
7. Advise the applicant and submitters of Council’s decision.

**AT THE COUNCIL MEETING – 30 September 2008**

The Committee's recommendation was moved Cr Jones, seconded Cr Slater.

During discussion, a member raised concern in relation to the wording “taken into consideration’ in point 5 of the recommendation and if there any implications from changing the zoning from Public Open Space (Reserve) to Foreshore Management Area.

Cr Steck then moved, Cr Harrop seconded the procedural motion “*The motion be referred back to Committee*”. The motion was lost 2 votes “for” to 9 votes “against”.

The Mayor then put the Committee’s recommendation to the vote and it was adopted to become a Council Decision.

**Council Decision 182/08**

*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. *Note the submissions received.*
2. *Designate Lots 1 and 6 Boyanup-Picton Road as a structure plan area in accordance with Clause 5.9.13.1 of TPS 7 which empowers Council to designate one or more parts of the Scheme Area including areas within a Development Investigation Area as a structure plan area.*
3. *Support the applicant’s proposition that the existing public open space (reserve) to be designated as a foreshore management area.*
4. *Adopt the structure plan – Lots 1 and 6 Boyanup-Picton Road with an additional*

*provision which reads as follows:*

*Preliminary investigations to be undertaken to determine the presence of Acid Sulphate Soils. If the site is found to contain Acid Sulphate Soil, an Acid Sulphate Soil management plan shall be developed and all site works conducted with provisions of the approved plan.*

5. *Advise the applicant that the following matters to be taken into consideration at subdivision or development stage:*
  - 5.1 *All proposed lots to be provided with essential services (power, water, telecommunication, gas).*
  - 5.2 *The land shall be graded compacted and stabilised against the generation of dust or loss of soil generally, at the subdivider's cost to the specification and satisfaction of the City of Bunbury – if fill is used.*
  - 5.3 *The proposed access to the new Lot 3 is required to comply with Australian Standards, including but not limited to the proximity to intersection as detailed in AS 2890.1*
  - 5.4 *Swales to have 1.6 on both sides, if water is going to pond on site.*
  - 5.5 *Application for permission to construct or install an apparatus for the treatment of sewage and the disposal of effluent and liquid wastes will be required at the same time as the application for a building licence.*
  - 5.6 *Disposal of septic effluent may require inverted leach drains depending on site conditions.*
  - 5.7 *Leach drains or soak wells must not be located beneath areas subject to vehicular traffic.*
  - 5.8 *Proposed boundaries must not encroach upon any existing effluent disposal facilities.*
  - 5.9 *Compliance with the Health Act 1911 is required.*
  - 5.10 *Compliance with the City of Bunbury Health Local Laws 2001 is required.*
6. *Forward the Structure Plan – Lot 1 and 6 Boyanup-Picton Road to the Western Australian Planning Commission for its endorsement pursuant to Clause 5.9.13.7 of TPS 7.*
7. *Advise the applicant and submitters of Council's decision.*

**CARRIED**

8 Votes "For" / 3 Votes "Against"

**11.13 COMMUNITY CULTURAL ARTS FACILITIES FUND 2008 FUNDING ROUND – CO-CONTRIBUTION REQUEST** (WAS LISTED AS ITEM 11.9 ON THE MEETING AGENDA)

<b>File Ref:</b>	A02640
<b>Applicant/Proponent:</b>	Bunbury Regional Art Galleries
<b>Author:</b>	Domenic Marzano, Executive Manager City Life
<b>Executive:</b>	Domenic Marzano, Executive Manager City Life

**Summary**

A funding application is currently being prepared for the Department of Culture and the Arts' Community Cultural and Arts Facilities Fund (CCAFF) for a feasibility study into upgrading needs of the Bunbury Regional Art Galleries building. The feasibility study would examine the requirements of the building to meet the needs of the growing region.

A financial contribution of \$15,000 is being requested from the Department of Culture and the Arts, \$15,000 of in kind assistance would be provided by Bunbury Regional Art Galleries (BRAG) and a \$15,000 contribution is required from the City of Bunbury.

The CCAFF is the only state government program which provides funds for capital upgrades to regional facilities. Under the guidelines the fund would provide up to one third of the cost of a project with the remaining two thirds to be procured from other sources. The funds requested from the City of Bunbury will be required in the 2009/10 financial year.

**Background**

The City of Bunbury requires a Feasibility Study for BRAG, 64 Wittenoom Street Bunbury. This project is undergoing funding application from the Department of Culture and the Arts through the Arts Cultural Communities Arts Facilities Fund.

The underlying aim of the Feasibility Study is to identify the opportunities, investment and benefits for expanding the galleries to include a range of additional facilities to service the growing needs of the regional community over the next two decades. The study should enable the City of Bunbury to make well informed strategic decisions in planning any expansion of the Galleries site.

The Feasibility Study fulfils the objectives set out in the BRAG Strategic plan for development towards its Mission - *To be recognised as the leader in the pursuit of excellence for visual arts in Bunbury and the South West* and Vision - *To contribute to the lasting growth and viability of visual arts in the South West*, by creating and promoting innovative opportunities to increase community interest, awareness and active participation in the arts, in various capacities, across the Galleries' client base.

In addition to this the study will complement the gallery's Conservation Plan and create an all embracing development with the current upgrade project management plan

The Western Australian State Government has instituted a funding initiative, via the Department of Culture and the Arts, to be known as the CCAFF. This fund provides financial assistance for capital works to improve and increase cultural and arts facilities. Applications must be submitted to the local government authority for assessment and endorsement. A positive endorsement of each application is dependent of financial support being approved by Council.

BRAG operates with some specific-purpose use deficiencies within the facility on a daily basis such as lack of adequate exhibition space for both the City Art collection, visiting exhibitions, storage and work space. The Galleries have reached critical mass with all gallery spaces, hallways, meeting rooms and stairwells being used to mount exhibitions. Additional exhibitions from local and regional practitioners are available however a lack of space often prevents these from being acquired by the galleries while a waiting list exists. This lack of space is hindering access for artists and audiences to this important regional cultural resource.

This project would assist BRAG to maintain its 'A' class status, improve flexibility as an exhibition space enabling improved scheduling of exhibitions and increase the opportunities for local and regional artists to show their work. The total cost of the project will be approximately \$45,000 with a request to Council for a contribution of \$15,000.

<b>Income</b>	
CCAFF Request	\$15,000
Galleries Contribution	\$15,000
Request to Council	\$15,000
<b>Total</b>	<b>\$45,000</b>

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

This request complies with the City of Bunbury Strategic Plan 2007-2012, Strategy 6.3 which states "*Community planning and infrastructure achieves a city that is inclusive and accessible*". It relates specifically to the following deliverable – "*Community and cultural needs assessment*".

This project will ensure the BRAG maintains its position as the premier public gallery south of Perth, ensuring excellent access to the visual arts for local and regional audiences. The increased exhibition, storage and working space would allow flexibility and provide opportunities to enhance Bunbury's appeal as a cultural tourism destination.

### **Community Consultation**

Bunbury Regional Art Management Board and the City Art Collection Committee through the Curator and Annette Green Heritage Consultant have been consulted. Further, feedback has been received from other industry professionals and factored into this proposal.

### **Councillor/Officer Consultation**

The Mayor, Deputy Mayor, Chief Executive Officer and City Arts Curator have been consulted. Councillor Helen Punch is a member of the Bunbury Regional Art Management Board, which has approved the project.

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

The request is for Council to contribute \$15,000 in the 2009/10 budget.

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

Improvement of the BRAG would increase community access to the arts and the City or Bunbury Art Collection, increase the local and regional visual arts community's access to quality facilities, improve the diversity of visual arts product in Bunbury and increase economic benefits to the community by creating a flexible space more attractive to the needs of cultural tourism. The proposed improvements would not affect the heritage status of the building and the feasibility study would highlight the commitment to preserving the important heritage value of the building while ensuring it is optimally used for its current purpose as a functioning, peak regional art gallery.

### **Council Policy Compliance**

There is no Council policy related directly to this matter.

### **Legislative Compliance**

There is no legislation related directly to this matter.

### **Delegation of Authority**

The Chief Executive Officer does not have delegated authority to approve capital funding from the 2009/10 budget.

### **Relevant Precedents**

Council provides funds through the five year plan and annual budget process for the purpose of improving City of Bunbury owned buildings through capital works.

### **Options**

#### *Option 1*

Council approves \$15,000 of capital funding to the Bunbury Regional Art Galleries to be referred to 2009/10 budget process for the purpose of conducting a feasibility study to upgrade the building through the provision of exhibition, storage and work space provided the application to the Community Cultural Art Facilities Fund is successful.

Option 2

Council does not support the project in principle and does not approve \$15,000 of funding to be referred to 2009/10 budget process for the purpose of conducting a feasibility study to upgrade Bunbury Regional Art Galleries through the provision of exhibition, storage and work space.

**Conclusion**

This proposal presents a cost effective option to obtain a feasibility study to improve the City's leading visual arts facility. Future improvements would allow the galleries to attract significant national and state exhibitions, benefit local and regional artists and arts audiences, as well as visitors to Bunbury motivated by a cultural tourism experience. It will increase the opportunities available via the visual arts to demonstrate to visitors the distinctive character of Bunbury and of the region.

The Community Cultural Art Facilities Fund and the BRAG offers the chance to share the cost of maintaining and growing a key regional facility with the state government. The support of this proposal would encourage the investment of state government funds in regional cultural infrastructure, thereby alleviating the overall cost to be borne by the City of Bunbury.

**Recommendation**

Council approves \$15,000 of capital funding to the Bunbury Regional Art Galleries to be referred to 2009/10 budget process for the purpose of conducting a feasibility study to upgrade the building through the provision of exhibition, storage and work space on the proviso that the application to the Community Cultural Art Facilities Fund is successful.

**Outcome of the Council Committee Meeting – 23 September 2008**

The recommendation was moved Cr Punch, seconded Cr Harrop.

During discussion it was noted that the current storage at the Art Gallery is not practical, the Gallery is running out of space, the fund would enable the Gallery to improve on its facilities and exhibitions and that a feasibility study is required.

The Presiding Member put the recommendation to the vote and it was adopted *10 votes "for" to 1 vote "against"* to become the Committee's recommendation on this issue.

**Committee Recommendation**

Council approves \$15,000 of capital funding to the Bunbury Regional Art Galleries to be referred to 2009/10 budget process for the purpose of conducting a feasibility study to upgrade the building through the provision of exhibition, storage and work space on the proviso that the application to the Community Cultural Art Facilities Fund is successful.

**AT THE COUNCIL MEETING – 30 September 2008**

The Committee's recommendation was moved Cr Slater, seconded Cr Harrop.

During discussion the following points were raised in support of the recommendation:

- The City would be funding only 1/3 of the total cost of the feasibility study.
- If the City was not to contribute, the Art Gallery would need to fund the full cost (\$45,000) of the study out of their own budget as it is a co-funded project.
- The Gallery is urgently in need of storage space and exhibition space.
- The current value of the Galleries collection is estimated at \$1.3M.

Points raised against the recommendation were:

- Council is contributing more funds towards another study rather than spending the funds on looking at other possible building options for the Gallery.
- The building being repaired/renovated almost every year. These funds may be able to be used to build a new Gallery with sufficient storage space, work space and exhibition space.
- The money would be better utilised exploring the combined Museum/Art Gallery at the future Three Waters Centre.

The Mayor put the motion to the vote and it was adopted to become a Council Decision.

**Council Decision 183/08**

*Council approves \$15,000 of capital funding to the Bunbury Regional Art Galleries to be referred to 2009/10 budget process for the purpose of conducting a feasibility study to upgrade the building through the provision of exhibition, storage and work space on the proviso that the application to the Community Cultural Art Facilities Fund is successful.*

**CARRIED**

**6 Votes "For" / 5 Votes "Against"**

It was requested that all votes be recorded:

For: Cr's Harrop, Slater, Whittle, Craddock, Spencer and the Mayor

Against: Crs Jones, Major, Rooney, Leigh and Steck.



**11.14 LAND RATIONALISATION - SALE OF CITY OF BUNBURY OWNED FREEHOLD LAND, PORTION LOT 453 SOUTH WESTERN HIGHWAY, BUNBURY (WAS LISTED AS ITEM 11.11 ON THE MEETING AGENDA)**

<b>File Ref:</b>	A00420
<b>Applicant/Proponent:</b>	Industrial Progress Corporation Pty Ltd ( <i>refer to Confidential Report for Directorship details</i> )
<b>Author:</b>	John Beaton, Manager Administration & Property Services
<b>Executive:</b>	Ken Weary, Executive Manager Corporate Services

**Summary**

This application was considered by Council's Land Rationalisation Project Control Group at its meeting of 8 September 2008.

An application has been received from Industrial Progress Corporation Pty Ltd to purchase Council-owned freehold land being portion of Lot 453 South Western Highway, Bunbury (Certificate of Title Vol. 2133 Fol. 242). The land has been set aside as a drainage reserve but does not contain any infrastructure and is deemed to be surplus to the City's requirements. The subject land is zoned "Industrial".

The applicant owns the adjoining Lots 73 and 74 Proffit Street as follows:

Applicant	Proposal
Industrial Progress Corporation Pty Ltd Lot 73 Proffit Street, Bunbury (Depicted as "A" on the plan)	Purchase 1218 sq.m of adjoining Lot 453 (depicted as "B" on the plan <b>attached</b> at Appendix 20) at Landgate Valuation Service Market Valuation (3 June 2008) based on \$75.00 sq.m inclusive of GST totalling \$91,350.00
Industrial Progress Corporation Pty Ltd Lot 74 Proffit Street, Bunbury (Depicted as "C" on the plan)	Purchase 617 sq.m of adjoining Lot 453 (depicted as "D" on the plan <b>attached</b> at Appendix 20) at Landgate Valuation Service Market Valuation (3 June 2008) based on \$75.00 sq.m inclusive of GST totalling \$46,275.00

The adjoining property owners to the South on Craigie Street have been advised and have no objection to the proposed land transaction.

## **Background**

The applicant is seeking Council's consideration to purchase portion of (Council-owned) Lot 453 South Western Highway, for amalgamation with the parent lots to reduce demands for storage and vehicle parking.

A condition of sale of the land will require the applicant to meet the full costs associated with:

- New fencing or relocation of existing fencing
- Surveying and land amalgamation
- Legal document preparation/registration
- Statutory advertising
- Valuation assessment
- Settlement fees

## **Market Valuation Assessment**

Landgate Valuation Services has assessed the Market Value of the land based on "Industrial" zoning, the site being land locked and growth in property market valuations.

The fair market value for addition of 1218 sq.m for amalgamation with Lot 73 owned by Industrial Progress Corporation Pty Ltd, is \$75.00 per sq.m (inclusive of GST) which totals \$91,385.

The fair market value for addition of 617 sq.m for amalgamation with Lot 74 owned by Industrial Progress Corporation Pty Ltd, is \$75.00 per sq.m (inclusive of GST) which totals \$46,275.

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

Proposals to sell land that is surplus to requirements complies with the City of Bunbury Strategic Plan 2007-2012 through Strategic Direction 2.4 which states that the City will *"develop a property strategy that benefits the City's residents, businesses, community and sporting organisations."*

## **Community Consultation**

Subject to Council's approval to sell the land, statutory advertising will be carried out in accordance with Sections 3.58(4) and (5) of the Local Government Act 1995. Members of the public will be given a fourteen (14) day submission period in which to lodge their comments concerning the proposal.

## **Councillor/Officer Consultation**

At the Land Rationalisation Project Control Group meeting held 8 September 2008, it was decided to support the application and refer the proposal to Council for consideration.

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

The fair market value used in determining the recommended sale price has been specified under the heading "Market Valuation Assessment" above.

In determining the fair market value, Landgate Valuation Services took into consideration that the land is unencumbered, is not required by the City for drainage purposes and the solid growth being experienced in the industrial property market.

As detailed in the heading "Background" above, the applicant will be responsible for all costs incidental to and associated with the land sale.

Income received from the land rates will be allocated to the development of City Infrastructure and facilities within Council's Five Year Corporate Financial Plan.

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

#### *Economic Issues*

The City's support of this proposal would underline the importance of growth of Bunbury's businesses and their important role as a regional supplier of employment, goods and services.

#### *Social Issues*

The land (once amalgamated) will reduce the strong demand being experienced by the applicant for storage and vehicle parking on-site thus enabling their businesses to operate more effectively.

#### *Environmental Issues*

The subject land does not contain any drainage infrastructure and is deemed to be surplus to the City's requirements.

#### *Heritage Issues*

There are no known heritage issues associated with this proposal.

### **Council Policy Compliance**

The process for sale and amalgamation of the land into adjoining lots will comply with Council policy and Town Planning Scheme No. 7.

### **Legislative Compliance**

The intention to sell the land will be advertised for a period of fourteen (14) days pursuant to the requirement stated in Sections 3.58(3) and (4) of the Local Government Act 1995.

### **Delegation of Authority**

Clause 3.13 under "Delegation of Authority - Statutory Planning" in the City's Delegations Register, permits the Chief Executive Officer to approve or refuse amalgamation applications. However, the Chief Executive Officer does not have the delegated authority of the Council to negotiate any resulting land sales.

Subject to no objecting submissions being received from members of the public, it is proposed that the Chief Executive Officer be authorised to finalise the sales at no cost to the Council.

### **Relevant Precedents**

In 2004, the Council agreed to sell portion of the drainage reserve (Location 26 on Certificate of Title Vol. 538 Fol. 23) to the adjoining owner of Lot 1 and Lot 58 Forrest Avenue to enable construction of a residential strata subdivision.

### **Options**

#### Option 1

Per the recommendation listed in this report.

#### Option 2

Per the recommendation listed in this report (as amended by Council Members)

#### Option 3

The application received from Industrial Progress Corporation Pty Ltd to purchase Council-owned freehold land being portion of Lot 453 South Western Highway, Bunbury (Certificate of Title Vol. 2133 Fol. 242), is refused.

### **Conclusion**

The application does not restrict or compromise other nearby property owners.

Amalgamation of the purchased land into the parent lots will assist the operation of the business.

The assessment of the fair market value for the land by Landgate Valuation Services takes into consideration that the land is unencumbered, it does not contain any drainage infrastructure and reflects the property sales in close proximity.

The applicant has agreed to meet all costs associated with the land sale.

**Recommendation**

1. Council agrees to sell portion of Lot 453 South Western Highway (Certificate of Title Vol. 2133 Fol. 242), to Industrial Progress Corporation Pty Ltd as follows:
  - 1.1 Sell 1218 sq.m for amalgamation with adjoining Lot 73 Proffit Street at a sale price of \$75.00 per sq.m (inclusive of GST) - totalling \$91,350.
  - 1.2 Sell 617 sq.m m for amalgamation with adjoining Lot 74 Proffit Street at a sale price of \$75.00 per sq.m (inclusive of GST) - totalling \$46,275.
2. The sale to be subject to the following conditions:
  - 2.1 The land to be upgraded at the cost of the purchasers.
  - 2.2 The City's intention to sell the land is to be advertised for public information and comment pursuant to Sections 3.58(3) and (4) of the Local Government Act 1995 with a submission period of 14 days. The notice is to be published in the City Update column of the Bunbury Mail Newspaper and displayed on notice boards at the City's administration building, libraries and website.
  - 2.3 Subject to no objecting submissions being received in relation to point 2.2 above, the Chief Executive Officer is authorised to finalise the land sale.
  - 2.4 The purchasers are to be responsible for payment of all costs associated with the land sale including the following: statutory advertising, land valuations, surveying, amalgamation of the land parcels, title documentation, settlement fees, upgrade of the land and fencing.

**Outcome of the Council Committee Meeting – 23 September 2008**

The recommendation was moved Cr Jones, seconded Cr Kelly.

It was confirmed the purchase value of the subject land is the fair market value provided by Landgate Valuation Services and takes into consideration that the land is unencumbered, it does not contain any drainage infrastructure and reflects the property sales in close proximity.

The Presiding Member put the recommendation to the vote and it was adopted *10 votes "for" to 1 vote "against"* to become the Committee's recommendation on this issue.

**Committee Recommendation**

1. Council agrees to sell portion of Lot 453 South Western Highway (Certificate of Title Vol. 2133 Fol. 242), to Industrial Progress Corporation Pty Ltd as follows:
  - 1.1 Sell 1218 sq.m for amalgamation with adjoining Lot 73 Proffit Street at a sale price of \$75.00 per sq.m (inclusive of GST) - totalling \$91,350.
  - 1.2 Sell 617 sq.m m for amalgamation with adjoining Lot 74 Proffit Street at a sale price of \$75.00 per sq.m (inclusive of GST) - totalling \$46,275.
2. The sale to be subject to the following conditions:
  - 2.1 The land to be upgraded at the cost of the purchasers.
  - 2.2 The City's intention to sell the land is to be advertised for public information and comment pursuant to Sections 3.58(3) and (4) of the Local Government Act 1995 with a submission period of 14 days. The notice is to be published in the City Update column of the Bunbury Mail Newspaper and displayed on notice boards at the City's administration building, libraries and website.
  - 2.3 Subject to no objecting submissions being received in relation to point 2.2 above, the Chief Executive Officer is authorised to finalise the land sale.
  - 2.4 The purchasers are to be responsible for payment of all costs associated with the land sale including the following: statutory advertising, land valuations, surveying, amalgamation of the land parcels, title documentation, settlement fees, upgrade of the land and fencing.

**AT THE COUNCIL MEETING – 30 September 2008**

The Committee's recommendation was moved Cr Jones, seconded Cr Slater.

It was clarified for members that were absent from the Committee Meeting that the purchase value of the subject land is the fair market value provided by Landgate Valuation Services and takes into consideration that the land is unencumbered, it does not contain any drainage infrastructure, it is a land locked remnant, is not serviced by sewerage, power or water and will need to be amalgamated with the adjoining Lots.

The Mayor put the motion to the vote and it was adopted to become a Council Decision.

**Council Decision 184/08**

1. *Council agrees to sell portion of Lot 453 South Western Highway (Certificate of Title Vol. 2133 Fol. 242), to Industrial Progress Corporation Pty Ltd as follows:*

- 1.1 Sell 1218 sq.m for amalgamation with adjoining Lot 73 Proffit Street at a sale price of \$75.00 per sq.m (inclusive of GST) - totalling \$91,350.*
- 1.2 Sell 617 sq.m m for amalgamation with adjoining Lot 74 Proffit Street at a sale price of \$75.00 per sq.m (inclusive of GST) - totalling \$46,275.*
- 2. The sale to be subject to the following conditions:*
  - 2.1 The land to be upgraded at the cost of the purchasers.*
  - 2.2 The City's intention to sell the land is to be advertised for public information and comment pursuant to Sections 3.58(3) and (4) of the Local Government Act 1995 with a submission period of 14 days. The notice is to be published in the City Update column of the Bunbury Mail Newspaper and displayed on notice boards at the City's administration building, libraries and website.*
  - 2.3 Subject to no objecting submissions being received in relation to point 2.2 above, the Chief Executive Officer is authorised to finalise the land sale.*
  - 2.4 The purchasers are to be responsible for payment of all costs associated with the land sale including the following: statutory advertising, land valuations, surveying, amalgamation of the land parcels, title documentation, settlement fees, upgrade of the land and fencing.*

**CARRIED**

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

Cr Major requested his vote “against” be recorded.

**11.15 LAND RATIONALISATION PROJECT CONTROL GROUP - PROPOSAL TO AMEND NAME AND TERMS OF REFERENCE (WAS LISTED AS ITEM 11.12 ON THE MEETING AGENDA)**

<b>File Ref:</b>	A03518
<b>Applicant/Proponent:</b>	Internal Report
<b>Author:</b>	John Beaton, Manager Administration & Property Services
<b>Executive:</b>	Ken Weary, Executive Manager Corporate Services

**Summary**

The members of Council's Land Rationalisation Project Control Group seek consent to change the name and terms of reference of their Group to permit it to make recommendations on strategic land acquisitions. The new name would be "*Land Rationalisation and Acquisitions Committee*".

**Background**

The Land Rationalisation Project Control Group was appointed on 27 November 2007 with the following terms of reference:

- "1. To oversee the review of Council's Land Rationalisation Programme.
2. To report to Council with recommendations."

Membership of the Group is currently: Deputy Mayor - Councillor Stephen Craddock; Councillor Judy Jones; Councillor Brendan Kelly and Councillor Noel Whittle.

The Group is provided with technical and financial advice at meetings by the City's Executive Manager Corporate Services (or his nominee) and the Executive Manager City Development. The Executive Officer for the Group is the City's Planning Consultant.

No community representation on the Group is required as any proposals for the City to dispose of (or lease) land assets is subject to statutory public advertising and consideration of submissions under the provisions of the Local Government Act 1995.

At its meeting on 8 September 2008, the members of the Land Rationalisation Project Control Group discussed a proposal for the Group to make recommendations to Council on acquisition of property of a size and/or strategic location ideally suited for current (or future) conversion into facilities such as car parks, public buildings, etc., and that the Group could nominate expenditure of income from land sales or leasing arrangements proposed by it for expenditure on such land acquisitions.

It is noted that some of the land proposed for disposal as surplus to the City's requirements (e.g., 20A Reserves) is subject to legislative restrictions requiring income to be spent on specific items. Notwithstanding this however, the members of the Group consider that they have a role to play in assisting the Council in allocating income from land sales toward



acquisition of property that will help the City meet the needs of the community both now and in the future. For this purpose, it is proposed that the Group's terms of reference be amended to read:

- "1. To oversee the review of Council's Land Rationalisation Programme.
2. To investigate (and regularly review) options for acquisition of reserve and/or private land that would assist the City in meeting the objectives listed in its City Vision Strategy and other strategic plans for provision of infrastructure and community facilities in the future.
3. To report to Council with recommendations."

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

The City's Strategic Plan 2007-2012 states that the City's vision is: *"To enhance our community's pride in our City by demonstrating the pursuit of excellence by our leadership, advocacy, service delivery and facilities."* Permitting the Land Rationalisation Project Control Group to expand its terms of reference to include investigation of options for acquisition of land suitable for facilities such as car parks, public buildings, etc., will give the members of the Council and the Executive a tactic for realising some of the objectives listed in the City Vision Strategy and other strategic plans.

### **Community Consultation**

No community consultation is required for amendment of a Council Committee's name or its terms of reference.

### **Councillor/Officer Consultation**

The decision to seek a change to the name and terms of reference for the Land Rationalisation Project Control Group was put forward by the Group itself at a meeting on 8 September 2008. Council officers involved in the City's Land Rationalisation Project have been consulted.

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

The activities and objectives of advisory committees or project control groups correlate with the City's annual budget, annual programme of works or the City Vision Strategy and are resourced accordingly.

The change to the terms of reference for the Land Rationalisation Project Control Group would not affect the Budget directly as the Group does not have the delegated authority of the Council to make decisions or consent to acquisitions. The Group would simply investigate options and report to Council with a plan for possible (or future) acquisition of reserve and/or private land to assist in meeting the objectives listed in its City Vision Strategy and other strategic plans.

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

### Economic

If authorised by Council, the strategic land acquisition plan the Land Rationalisation Project Control Group would be required to compile would be in line with the City Vision Strategy and other strategic plans. These planning strategies are regularly reviewed in line with the City's annual budget projections and current economic trends.

### Social, Environmental and Heritage Issues

Compilation of the City Vision Strategy involved extensive community consultation and issues such as the social and environmental effects of objectives listed in the strategy (and their effect on natural, native and built heritage in Bunbury) were the subject of considerable scrutiny at the time. It is proposed the Land Rationalisation Project Control Group investigate and report to Council on possible land acquisitions that would meet some of the objectives listed in the City Vision Strategy or other strategic plans. It is anticipated that should the Council elect to proceed with a recommended land acquisition, Council officers would be requested to review the social and environmental aspects of the land's future use and check for any possible heritage issues the City would need to consider before negotiations commence.

## **Council Policy Compliance**

The "Terms of Reference" for advisory committees or project control groups appointed by the Council do not contravene established Council policies. There is no Council policy prohibiting a committee from making recommendations on strategic land acquisitions.

## **Legislative Compliance**

Section 5.8 of the Local Government Act 1995 permits the Council to establish committees of three (3) or more people to assist it in discharging its duties. Such appointments are to be by an absolute majority vote. In order to comply with this legislation, the change of committee name (and change to the terms of reference proposed) would need to be approved by an absolute majority vote of the Council.

## **Delegation of Authority**

Not applicable - the Chief Executive Officer does not have the authority of the Council to make changes to the names or functions of committees of council.

## **Relevant Precedents**

There is no relevant precedent to refer to.

## **Options**

### Option 1

Per the recommendation as listed in this report.

### Option 2

Per the recommendation listed in this report (with amendments as stated by members at the meeting)

### Option 3

The application by the members of Council's Land Rationalisation Project Control Group to change the name and terms of reference of their committee to include investigation and report on strategic land acquisitions; is denied.

## **Conclusion**

As previously stated, the City's Strategic Plan 2007-2012 states that the City's vision is: *"To enhance our community's pride in our City by demonstrating the pursuit of excellence by our leadership, advocacy, service delivery and facilities."* Permitting the Land Rationalisation Project Control Group to expand its terms of reference to include investigation of options for acquisition of land suitable for facilities such as car parks, public buildings, etc., will give the members of the Council and the Executive a tactic for realising some of the objectives listed in the City Vision Strategy and other strategic plans.

## **Recommendation**

The name of Council's Land Rationalisation Project Control be changed to *"Land Rationalisation and Acquisitions Committee"* and its terms of reference be amended to read as follows:

1. To oversee the review of Council's Land Rationalisation Programme.
2. To investigate (and regularly review) options for acquisition of reserve and/or private land that would assist the City in meeting the objectives listed in its City Vision Strategy and other strategic plans for the provision of infrastructure and community facilities in the future.
3. To report to Council with recommendations.

**Outcome of the Council Committee Meeting – 23 September 2008**

The recommendation was moved Cr Jones, seconded Cr Slater.

It was clarified that the process would involve the Land Rationalisation and Acquisitions Committee in conjunction with Council Officers presenting and reviewing proposals. Decisions will then be presented to Council in an Agenda Item format for its consideration.

The Presiding Member put the recommendation to the vote and it was adopted *11 votes "for" to Nil votes "against"* to become the Committee's recommendation on this issue.

***Committee Recommendation***

The name of Council's Land Rationalisation Project Control be changed to ""Land Rationalisation and Acquisitions Committee" and its terms of reference be amended to read as follows:

1. To oversee the review of Council's Land Rationalisation Programme.
2. To investigate (and regularly review) options for acquisition of reserve and/or private land that would assist the City in meeting the objectives listed in its City Vision Strategy and other strategic plans for the provision of infrastructure and community facilities in the future.
3. To report to Council with recommendations.

**AT THE COUNCIL MEETING – 30 September 2008**

The Committee's recommendation was moved Cr Slater, seconded Cr Major.

Cr Rooney moved, Cr Leigh seconded an amendment to point 3 to read *"To report to Council with recommendations with such recommendations to include comment from Council Officers and BESAC as to any Economic, Social, Environmental and Heritage issues."* The Mayor put the amendment to the vote and it was carried *6 votes "for" to 5 votes "against"*.

The Mayor put the amended recommendation to the vote and it was adopted to become a Council Decision.

**Council Decision 185/08**

1. *To oversee the review of Council's Land Rationalisation Programme.*
2. *To investigate (and regularly review) options for acquisition of reserve and/or private land that would assist the City in meeting the objectives listed in its City Vision Strategy and other strategic plans for the provision of infrastructure and community facilities in the future.*

3. *To report to Council with recommendations with such recommendations to include comments from Council Officers and BESAC as to any Economic, Social, Environmental and Heritage issues..*

**CARRIED**

**11 Votes "For" / Nil Votes "Against"(ABSOLUTE MAJORITY VOTE OBTAINED)**

**11.16 CAF-FEZ ALFRESCO AREA** (WAS LISTED AS ITEM 11.13 ON THE MEETING AGENDA)

<b>File Ref:</b>	A00472
<b>Applicant/Proponent:</b>	Internal Report
<b>Author:</b>	Geoff Klem, Executive Manager City Development
<b>Executive:</b>	Geoff Klem, Executive Manager City Development

**Summary**

The CBD Parking Project Control Group resolved at its meeting of 1 September 2008 to advise Council *“That the Project Control Group Recommends to Council that the allocation of kerbside parking in front of Café-fez be deferred and that the matter be reconsidered at such time as a traffic and road planning study is completed for the Central Business District”*.

A copy of the Minutes of the CBD Parking Project Control Group has been circulated to members **under separate cover** in the booklet title “Advisory Committee & Project Control Group Minutes to be Noted”.

**Background**

The owners of Caf-Fez have formally requested that an existing parking bay in front of their business be developed to accommodate alfresco dining. Advice has been conveyed to the owners on a regular basis in relation to the development of a parking strategy and policy the CBD.

One of the actions in the parking strategy is to progress a one-way traffic system for Wellington Street and Princep Street and to access the traffic implications of the redevelopment of the Stirling’s Centre.

During the public comment period for the parking strategy the owners of Caf-Fez supported the above action. Following adoption of the parking strategy Council established a CBD Parking Project Control Group to progress various actions outlined in the report. The Caf-Fez proposal was discussed by the Project Control Group and a formal recommendation has been made to Council in response to the request from Caf-Fez.

**Community Consultation**

Extensive public consultation associated with the parking strategy and policy.

**Councillor/Officer Consultation**

Council has been briefed on several occasions as to the content of the parking strategy and policy and the Caf-Fez proposal has been the subject of numerous discussions between Officers and City Services and City Development.

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

Funds have been budgeted to undertake a traffic management strategy for the CBD.

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

There are no significant issues.

### **Council Policy Compliance**

Council has adopted the parking strategy and policy and established an implementation Project Control Group.

### **Legislative Compliance**

There are no legislative compliance issues.

### **Delegation of Authority**

There are no delegation issues.

### **Relevant Precedents**

Council has many adopted planning policies and committees that assist Council in the application of those policies.

### **Options**

#### Option 1

As per the recommendation as listed in this report.

#### Option 2

Council not support the recommendation of the Project Control Group for the CBD Parking.

### **Recommendation**

Council endorse the recommendation of the CBD Parking Project Control Group relating to the Caf-Fez alfresco area being the allocation of kerbside parking in front of Caf-Fez be deferred and the matter be reconsidered at such time as a traffic and road planning study is completed for the Central Business District.

### **Outcome of the Council Committee Meeting – 23 September 2008**

Mayor D. Smith arrived at 7.48pm – he did not preside at the meeting until after the adjournment following item 11.14.

Mr Phil Johnson, owner of Caf-Fez was present to address Council and respond to questions from members.

It was confirmed that the proposal is only for an initial trial period and following the trial period, Council would be able to decide whether to grant Caf-fez the Alfresco Dining Licence.

The Executive Manager City Service advised that the Traffic and Road Planning Study scope for Tender is being developed for release as soon as possible. The aim is to commence the process to prior to Christmas to enable the Study to be tabled prior to the end of the Financial Year. Due to the nature of the study, there may be limited suitable providers to undertake the works and these may have to be resourced from the Eastern States. The collection of traffic data could take a minimum of three months with extrapolation study to follow as soon as possible after that.

Cr Kelly moved, Cr Slater seconded, Option 2 as printed in the report as the proposal is for an initial trial period which Council would be able to cease at any point, and it may be unreasonable to make the proponents wait until next year for the Traffic Study to be completed.

Cr Steck moved an amendment to Option 2 with to include the addition of a point 2 which read: *"2) The Traffic and Road Planning Study for the Central Business District, be undertaken as a matter of urgency and the recommendations be referred back to Council."* Cr Kelly accepted the amendment.

Cr Steck then moved a further addition to the motion, to include a point 3 which read: *"3) The Caf-Fez proposal for Alfresco dining be referred back to Council for consideration."* The mover accepted the amendment.

The Presiding Member advised that he would put each point to the vote separately.

Point 1 was carried *7 votes "for" to 5 votes "against"*. It was requested that all votes be recorded.

For: Cr's Kelly, Jones, Slater, Whittle, Punch, Steck, and Spencer  
Against: Cr's Leigh, Craddock, Rooney, Harrop and Mayor D Smith.

Point 2 was carried *11 votes "for" to Nil votes "against"*.

Point 3 was carried *8 votes "for" to 4 votes "against"*. It was requested that all votes be recorded.

For: Cr's Kelly, Jones, Harrop, Slater, Whittle, Steck, Leigh, Spencer  
Against: Cr's Punch, Rooney, Craddock and Mayor D Smith



**Committee Recommendation**

- 1) Council not support the recommendation of the Project Control Group for the CBD Parking.
- 2) The Traffic and Road Planning Study for the Central Business District, be undertaken as a matter of urgency and the recommendations be referred back to Council.
- 3) The Caf-Fez proposal for Alfresco dining be referred back to Council for consideration.

**AT THE COUNCIL MEETING – 30 September 2008**

The Committee's recommendation was moved Cr Slater, seconded Cr Steck.

During discussion, Cr Jones moved, Cr Major seconded, an amendment to point 3 to read:

*“The Caf-Fez proposal for Alfresco dining be referred back to the Council Committee Meeting of 28 October 2008 for consideration.”*

Cr Steck indicated that should the recommendation be lost, she would foreshadow the following motion:

*Council by Virtue of the Local Government Act 1995, grant approval to Caf-fez to utilise 1 car parking bay for Alfresco dining for a trial period of 12 months.”*

The Mayor put the amendment to Point 3 to the vote and it was carried 6 votes “for” to 5 votes “against”.

Following further discussion, Cr Steck moved the procedural motion *“The Motion now be put”* which was carried 9 votes “for” to 2 votes “against”.

The Mayor advised that he would put each point to the vote separately.

Point 1 was carried 7 votes "for" to 4 votes "against".

Point 2 was carried 11 votes "for" to Nil votes "against".

Point 3 was carried 7 votes "for" to 4 votes "against".

For ease of reference the Council Decision is listed overleaf

**Council Decision 186/08**

- 1) *Council not support the recommendation of the Project Control Group for the CBD Parking.*
- 2) *The Traffic and Road Planning Study for the Central Business District, be undertaken as a matter of urgency and the recommendations be referred back to Council.*
- 3) *The Caf-Fez proposal for Alfresco dining be referred back to the Council Committee Meeting of 28 October 2008 for consideration.*

**CARRIED**

**11.17 MOTION ON NOTICE –TURKEY POINT FEASIBILITY STUDY** (*WAS LISTED AS ITEM 12.1 ON THE MEETING AGENDA*)

<b>File Ref:</b>	A00217
<b>Applicant/Proponent:</b>	Councillor Stephen Craddock
<b>Author:</b>	Councillor Stephen Craddock
<b>Executive:</b>	<i>If adopted by Council refer to: Greg Trevaskis, Chief Executive Officer</i>

Cr Craddock submitted the following motion for consideration at the Council Committee Meeting on 23 September 2008:

- “1) That a feasibility study be undertaken by suitably qualified professionals into the viability of establishing a short stay accommodation facility / caravan park in the vicinity of Turkey Point.*
- 2) That the CEO and the Executive Manager, City Development be requested to prepare an appropriate brief for this study.*
- 3) That the source of funds for this study be from the existing funds allocated in the 2008/9 budget towards facilities at Turkey Point.*
- 4) That the study, complete with executive recommendations as to an action plan, be returned to council by 30 April 2009.”*

**Comments - Cr Craddock**

In support of his motion, Cr Craddock states that,

*The Turkey Point Master Management Plan was finalised by Hames Sharley in November 2005. The study set out options for developing Turkey Point for eco-tourism. A series of recommendations was made. Since then there has been little progress in progressing these options. I believe a more focussed investigation is warranted. One of these recommendations (p.22) was that council should engage consultants to review the feasibility of a short term camp ground on the rehabilitated fly ash ponds at Turkey Point. As yet nothing has been done to follow up this recommendation.*

*On a recent bus tour several councillors visited the Turkey Point area and commented on its apparent underutilised potential. With its close proximity to the ocean and inlet it would appear to be an ideal location for investigation as a caravan park site and /or camping ground.*

*Councillors will be aware of the current shortage of short stay, low cost family style accommodation in Bunbury and the closure of the Punchbowl Caravan Park has worsened this situation. It may be that the Turkey Point area may prove a suitable replacement site which could be leased out and pay for itself over a number of years.*

*The study done by Hames Sharley identified a number of potential sources of grant funding which could possibly assist. Tourism WA has recently offered to discuss assistance with identifying factors involved in site release, marketing and investor attraction if council was interested.*

*Landcorp has identified that a replacement public boat launching ramp will need to be found for the one currently located at the Bunbury Power Boat Club when this club moves to the proposed marina in Casuarina Harbour. Unsatisfactory replacement locations for this boat ramp have been suggested by Landcorp such as adjacent to the Dolphin Discovery Centre. The development of the existing launch ramp at "The Cut" near Turkey Point should be investigated as part of the proposed study as a possible alternative .*

*Council has allowed \$250,000 in the 2008/9 budget for part funding the provision of power and water to the recreation areas at Turkey Point. The 5 Year plan provides for a further \$250,000 to be spent during 2009/10, 2010/2011, and 2011/2012. Hence council's commitment to the area is for \$1 million dollars over 4 years. This is a very considerable amount of money to commit without a clear vision for future of this beautiful waterside area.*

### **Executive Comments**

The planning investigations that have been undertaken for the Turkey Point area have been general and lacking in detailed and thorough research. It is agreed that further investigation is required to substantiate the level and type of short stay facilities that could be located at Turkey Point.

However, prior to making a commitment to a specific area of investigation, an overall assessment of constraints and opportunities at Turkey Point needs to be undertaken that particularly addresses proximity to the Port and the constraints imposed by cumulative impacts of noise, dust, odour and vibration, and risk and hazard that would be associated with commodities that may be located on the northern side of the Inner Harbour. In addition the suitability of land that has been filled with fly-ash requires thorough examination as does the risk and hazard of providing additional boating facilities at a location that is potential dangerous to small boat users.

It is also noted that the Masterplan does not adequately address the environmental significance of the Leschenault Estuary and the implications and ramifications of the area being contained within a Regional Open Space Reservation under the Greater Bunbury Region Scheme.

Finally the budget allocation to progress the implementation of the Masterplan starts in the 2009/10 budget (\$250,000) and for three consecutive years subsequently (\$1 million total).

In conclusion, there is a need to establish the constraints and opportunities for development of Turkey Point based on thorough and comprehensive research. This may or may not result in areas being suitable for short stay accommodation. As there is no money in the 2008/09 budget to undertake research, it is recommended that the matter be considered as part of the

review of the five year plan where the brief for the necessary overall planning research can be discussed and the year by year funding reviewed.

**Cr Craddock's Motion**

- “1) That a feasibility study be undertaken by suitably qualified professionals into the viability of establishing a short stay accommodation facility / caravan park in the vicinity of Turkey Point.*
- 2) That the CEO and the Executive Manager, City Development be requested to prepare an appropriate brief for this study.*
- 3) That the source of funds for this study be from the existing funds allocated in the 2008/9 budget towards facilities at Turkey Point.*
- 4) That the study, complete with executive recommendations as to an action plan, be returned to council by 30 April 2009.”*

**Outcome of the Council Committee Meeting – 23 September 2008**

Mr Grahame Repacholi, spoke on motion stating he would like to see a joint caravan park and camping site on the ground.

Cr Leigh returned to the Chamber at 8.58pm.

Cr Craddock moved an amended motion following prior discussions with the Executive Manager City Development. The amended motion reads:

- a) That the Executive Manager, City Development be requested to prepare a proposed brief for the necessary overall planning research into alternative land uses for Turkey Point.*
- b) That this brief, together with costing estimates to complete the brief, be returned to council for consideration as part of the next review of the five year plan.*

The amended motion was seconded Cr Slater. During discussion members raised their concerns at the current dilapidated state of the facilities and the area, the possibility of ash ponds being on the site and that currently there is no clear indicated for how funds contained in the 2009/10, 2010/11, 2011/12 and 2012/13 budgets for the area, are to be expended

Members noted the potential for the area for a low impact development that may accommodate for Bunbury short fall in short term accommodation and agreed that a brief would assist in identifying possible uses for the site.

The Presiding Member put the amended motion to the vote and it was adopted *12 votes "for" to Nil votes "against"* to become the Committee's recommendation on this issue.

**Committee Recommendation**

- a) That the Executive Manager, City Development be requested to prepare a proposed brief for the necessary overall planning research into alternative land uses for Turkey Point.
- b) That this brief, together with costing estimates to complete the brief, be returned to council for consideration as part of the next review of the five year plan.

**AT THE COUNCIL MEETING – 30 September 2008**

The Committee's recommendation was moved Cr Craddock, seconded Cr Slater. The Mayor put the motion to the vote and it was adopted to become a Council Decision.

**Council Decision 187/08**

- a) *That the Executive Manager, City Development be requested to prepare a proposed brief for the necessary overall planning research into alternative land uses for Turkey Point.*
- b) *That this brief, together with costing estimates to complete the brief, be returned to council for consideration as part of the next review of the five year plan.*

**CARRIED**

**11 Votes "For" / Nil Votes "Against"**

**11.18 MOTION ON NOTICE – RECOGNITION OF TRADITIONAL OWNERSHIP** (WAS LISTED AS ITEM 12.2 ON THE MEETING AGENDA)

<b>File Ref:</b>	A00217-02
<b>Applicant/Proponent:</b>	Councillor Noel Whittle
<b>Author:</b>	Councillor Noel Whittle
<b>Executive:</b>	<i>If adopted by Council refer to:</i> Domenic Marzano, Executive Manager City Life

Cr Whittle submitted the following motion for consideration at the Council Committee Meeting on 23 September 2008:

*“The City, through consultation with representatives of the Nyoongar community, review existing policy or create new policy to demonstrate increased recognition of traditional ownership of the lands and waters of the Bunbury locality.*

*Specific outcomes to be investigated, reporting timeframe to be determined as appropriate through discussion:*

- 1. To investigate and recommend on the incorporation of a ‘Welcome to Country’ or similar welcome as part of the Councillor Swearing-In ceremony, commencing with the scheduled 2009 local government election.*
- 2. To investigate and recommend on the appropriateness of the modification of City **boundary** signage to include recognition of traditional ownership by Nyoongar People.*
- 3. To investigate and recommend on the appropriateness of the modification of City of Bunbury website to include recognition of traditional ownership of the Bunbury locality by Nyoongar People.*
- 4. To recommend on other initiatives the may be identified as appropriate.”*

**Executive Comments**

Council will refer this matter to our recently established Nyoongar Reference Group comprising of members of the local Nyoongar community and government organisations including the Department of Indigenous Affairs.

These matters will be investigated and the relevant protocols will be established for all these suggestions through the Nyoongar Reference Group.

### **Cr Whittle's Motion**

*"The City, through consultation with representatives of the Nyoongar community, review existing policy or create new policy to demonstrate increased recognition of traditional ownership of the lands and waters of the Bunbury locality.*

*Specific outcomes to be investigated, reporting timeframe to be determined as appropriate through discussion:*

- 1. To investigate and recommend on the incorporation of a 'Welcome to Country' or similar welcome as part of the Councillor Swearing-In ceremony, commencing with the scheduled 2009 local government election.*
- 2. To investigate and recommend on the appropriateness of the modification of City **boundary** signage to include recognition of traditional ownership by Nyoongar People.*
- 3. To investigate and recommend on the appropriateness of the modification of City of Bunbury website to include recognition of traditional ownership of the Bunbury locality by Nyoongar People.*
- 4. To recommend on other initiatives the may be identified as appropriate."*

### **Outcome of the Council Committee Meeting – 23 September 2008**

The motion was moved Cr Whittle, seconded Cr Steck. Mayor D Smith requested that an additional point be added to the motion to read: *"These matters be referred to the recently established Nyoongar Reference Group."* Cr Whittle accepted the inclusion.

During discussion, Cr Leigh moved the procedural motion *"That the motion be referred back to Committee"*

The Presiding Member put the procedural motion to the vote and it was adopted 7 votes *"for"* to 5 votes *"against"* to become the Committee's recommendation on this issue.

### **Committee Recommendation**

That the motion be referred back to Committee.

### **AT THE COUNCIL MEETING – 30 September 2008**

The Committee's recommendation was moved Cr Slater, seconded Cr Leigh. The Mayor put the motion to the vote and it was adopted to become a Council Decision.



**Council Decision 188/08**

*That the motion be referred back to Committee.*

**CARRIED**

**9 Votes "For" / 2Votes "Against"**

**11.19 MOTION ON NOTICE – BRIEFING SESSIONS** (WAS LISTED AS ITEM 12.3 ON THE MEETING AGENDA)

<b>File Ref:</b>	A00217-02
<b>Applicant/Proponent:</b>	Councillor Michelle Steck
<b>Author:</b>	Councillor Michelle Steck
<b>Executive:</b>	<i>If adopted by Council refer to:</i> Greg Trevaskis, Chief Executive Officer

Cr Steck submitted the following motion for consideration at the Council Committee Meeting on 23 September 2008:

*“That all future briefing sessions be open to the public and all information be available to the public as per normal Council Meetings.”*

**Comments - Cr Steck**

In support of her motion, Cr Steck states that,

*On many occasions matters before Council presented during briefing sessions, which are closed sessions, and the information provided is on pink paper, which means sensitive information and not intended for the public, in my view is not sensitive information at all.*

*We live in a democratic modern society, with governments operating with open accountability. The present method of council business conducted in briefing sessions could be considered as counter-productive towards an open and accountable democratic process.*

*Citizens of Bunbury expect Councillors to act on their behalf, but that should not mean that a lot of business is conducted behind closed doors. The broader public should be entitled to view all business of council, after all what does council have to hide.*

*Further, in our own recent “Code of Conduct” document it clearly states that Councillors shall keep the community informed of all matters.*

*Pink paper information currently is over used and should be restricted to information which could be used to seriously jeopardise the institutions that they protect ie – Emergency Accommodations.*

**Executive Comments**

Council undertook a review of it’s Committee System on 19th September 2007.

The Briefing Session concept, adopted by Council is based on the “Council Forums” model developed and supported by the Western Australian Local Government Association (WALGA), details of which are explained in Local Government Operational Guideline number 5 of January 2004.

Briefly, these sessions are designed to involve elected members and staff meeting to propose, discuss and formulate philosophies, ideas, strategies and concepts for the development of the local government and the district.

Such forums often involve projects that are in the early planning stage and are some time away from being presented to Council for decision. In discussing such issues, staff are looking for guidance from the elected members as they research the matter and draft the report.

Examples of such forums, identified by WALGA include:

- Current matters of local or regional significance;
- Matters relating to the future development of the local government;
- Significant revenue raising requirements or expenditure needs;
- The development of internal strategic planning, management and financial documents; and
- Development of the selection criteria and performance objectives of the Chief Executive Officer.

Being held behind closed doors, and in a relatively informal manner, are two notable characteristics of these sessions. Holding such meetings behind closed doors is justified in that many of the ideas and concepts are preliminary, may be extreme, expensive or impractical and never be adopted.

Discussion on such matters in a public forum would be counter productive. Privacy and informality allows elected members to propose ideas, ask questions and discuss issues for the better understanding of those in attendance.

Outside parties may be invited to attend in order to present proposals and clarify specific issues that elected members and staff are otherwise unaware of.

Section 5.23 of the Local Government Act 1995 also identifies a number of specific matters that are not to be discussed or considered in meetings that are open to the public.

Briefing Sessions are therefore considered an ideal forum for these issues to be initially discussed, prior to identifying an appropriate course of action.

### **Cr Steck's Motion**

*"That all future briefing sessions be open to the public and all information be available to the public as per normal Council Meetings."*

### **Outcome of the Council Committee Meeting – 23 September 2008**

The motion was seconded by Cr Kelly (pro-forma).

Mrs Lorna Worthington, Nevin Court Resident, spoke in favour of Cr Steck's motion referring to the Local Government Operational Guidelines, in particular Guideline Number 5 and the Local Government Act 1995 Regulations.

Cr Steck clarified that the wording “...and all information be available to the public as per normal Council Meetings” is to be in accordance with Section 5.2.3 of the *Local Government Act 1995*.

During discussion, Cr Craddock indicated that should the motion be defeated, he wished to foreshadow the following motion:

*“The matter of public access to Briefing Sessions be referred to the next meeting of the Meeting Working Group due for 24 October 2008, with a request that this committee make a recommendation to full Council.”*

The Presiding Member put the original motion to the vote and it was defeated *1 vote "for" to 11 votes "against"*.

The foreshadowed motion was moved Cr Craddock, seconded Cr Kelly and adopted *10 votes "for" to 2 votes "against"* to become the Committee's recommendation on this issue.

#### **Committee Recommendation**

The matter of public access to Briefing Sessions be referred to the next meeting of the Meeting Working Group due for 24 October 2008, with a request that this committee make a recommendation to full Council.

#### **AT THE COUNCIL MEETING – 30 September 2008**

The Committee's recommendation was moved Cr Steck, seconded Cr Craddock.

Cr Steck moved an amendment to the recommendation to remove the word “*full*” as this will allow the recommendation to follow the usual meeting process of Committee then Council.

The Mayor put the motion to the vote and it was adopted to become a Council Decision.

#### **Council Decision 189/08**

*The matter of public access to Briefing Sessions be referred to the next meeting of the Meeting Working Group due for 24 October 2008, with a request that this committee make a recommendation to Council.*

#### **CARRIED**

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

**12. MOTIONS ON NOTICE**

There were no new Motions on Notice.

**13. "URGENT" BUSINESS WITH THE APPROVAL OF THE MAJORITY OF MEMBERS PRESENT AS PERMITTED UNDER STANDING ORDER 5.1.13**

Nil.

**14. ITEMS TO BE NOTED (NO DISCUSSION)**

There were no new items for noting.

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

Ni.

**16. CLOSE OF MEETING**

The Mayor declared the meeting closed at 8.51pm.

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CONFIRMED this day 4 November September 2008 to be a true and correct record of proceedings of the Bunbury City Council Meeting held 30 September 2008.

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**MR DAVID SMITH**  
**MAYOR**