

28 October 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 |

| Term | Explanation |
|-----------------|---|
| GBRP | Greater Bunbury Resource Plan report |
| GBRS | Greater Bunbury Region Scheme |
| GL | Gigalitres |
| GRV | Gross Rental Value |
| GST | Goods and Services Tax |
| HCWA | Heritage Council of Western Australia |
| ICLEI | International Council for Local Environmental Initiatives |
| ICT | Information and Communications Technology |
| 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. |
| 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 |
| SWDC | South West Development Commission |
| SWDRP | South West Dolphin Research Program |

| Term | Explanation |
|-------------|---|
| 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 (STANDING) COMMITTEE MINUTES

Minutes of an Ordinary Meeting of the Council (Standing) Committee held in the Council Chambers, City of Bunbury Administration Building, 4 Stephen Street, Bunbury on Tuesday, 28 October 2008.

MINUTES

28 October 2008

NOTE: The committee recommendations contained in this document are not final and are subject to adoption, amendment (or otherwise) at the Council Meeting on 4 November 2008.

1. DECLARATION OF OPENING BY THE PRESIDING MEMBER

In the absence of Mayor David Smith, Deputy Mayor Craddock took the chair.

The Presiding Member declared the meeting open at 6.03pm.

2. RECORD OF ATTENDANCE, APOLOGIES AND LEAVE OF ABSENCE

PRESENT

| Council Committee Members | |
|---|--|
| Presiding Member: | Deputy Mayor, Councillor S Craddock |
| Members: | Councillor J Jones |
| | Councillor S Rooney |
| | Councillor B Kelly |
| | Councillor H Punch |
| | Councillor N Whittle |
| | Councillor R Slater |
| | Councillor A Leigh |
| | Councillor J Harrop |
| | Councillor W Major (<i>left chamber at 8.26pm</i>) |
| | Councillor D Spencer |
| Executive Management Team (Non-Voting) | |
| Chief Executive Officer: | Mr G Trevaskis |
| Executive Manager Corporate Services | Mr K Weary |
| Executive Manager City Services: | Mr M Scott |
| Executive Manager City Development: | Mr G Klem |
| Executive Manager City Life: | Mr D Marzano |
| Council Officers (Non-Voting): | |
| Manager Development Services | Mr G Fitzgerald |
| Senior Planner | Mr S McNeilley |
| Administration Officer Corporate Services: | Ms F Wood |
| Others (Non-Voting): | |
| Members of the Public: | 12 (approx.) |
| Members of the Press: | 1 |

APOLOGIES:

His Worship the Mayor, D Smith – Apology
Councillor Steck - Apology

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

Nil.

4. PUBLIC QUESTION TIME

A summary of questions/responses follows:

Mr Bernhard Bishoff, Forster Street Resident

Question 1: What are Council's views on the suggested Leschenault Homestead's Relocation?

The Presiding Member advised Mr Bishoff the Homestead is on Port Authority Land which is required for the Port expansion. The Leschenault Homestead Committee produced a report in which it suggested the relocation of the Homestead to an alternative site. Unfortunately due to the Homestead being on Port Authority Land, Council has no jurisdiction over the Homestead but do consider it to be an important part of Bunbury's heritage.

Mrs Karen Steel, McQueen Street Resident

Question 1: In relation to the Queensland Study Tour, Council went on a similar trip to Melbourne just over a year ago. What is Council's expecting to find that is different in Queensland that that of Melbourne.

Question 2: In relation to the Bunbury Waterfront Submissions that are on the City's website, what do the numbers contained next to each submission mean. Is there a key that identifies to the public what these are?

Question 2: Will the members of the public be able to see the Annexure's to the submissions?

In response to Question 1, the Presiding Member advised that the trip to Melbourne was in conjunction with the Mainstreet Conference. The trip to Queensland is specifically designed to view waterfront developments and the types of built form and non-built forms that work well and those that do not.

In response to Questions 2 and 3, the Executive Manager City Development informed Mrs Steele that the report will come to Council and will contain a key. For the submissions on the website, these are categorised from those who fully support the development through to those who fully oppose. At this point in time the Annexure's are not be able to viewed as a vast majority of these identify the submitters details. We will be looking at how to present these without identifying the submitters.

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

Cr Craddock submitted the following questions (in writing) prior to the close of the meeting agenda. A response has been provided by the Executive Manager City Services:

Question 1: What do Council Executives recommend as to the piping of the open drain which runs alongside Blair Street now that the proposed arrangement with the Homemaker Centre owners for piping some of the drain has been refused by the Department of Planning and Infrastructure?

Question 2: Are there alternative sources of assisting Council with part funding the piping of this drain (.i.e grants)?.

Response: The issue of drainage in and around Bunbury is complex. The open drain that runs along Blair Street adjacent to the Homemaker Centre has been built as a compensation basin in the event of an extreme flood loading being placed on the city's drainage system.

During a significant deluge combined with a high tide and storm surge, the floodgates at the Koombana Bridge are closed so that the inlet absorbs the city's run off. The Blair Street drain has sufficient capacity to capture the run off so that the discharge into the inlet is controlled. It understood that an event like this last occurred in the late 1990's and that each year greater than 30mm of rainfall in a short time causes the Blair Street drains to back up to some extent.

Piping the drains may compromise this capacity.

With this in mind, the DPI has previously not approved the piping of the drains. This came to light with the analysis of the application from the Homemaker Centre owners to pipe the drain for additional parking space.

Engineering Services is not aware of any external funding which may be sourced for drainage matters.

To give a better understanding of the complex nature of the city's drainage system, and the Blair Street drains in particular, Operations Engineer Chris Gibberd is preparing a briefing for Council for delivery before the Christmas recess.

Cr Jones submitted the following questions (in writing) prior to the close of the meeting agenda. Responses have been provided by the Executive Manager City Services:

Question 1: On how many occasions has the City Vision Implementation Committee been convened in 2008?

Question 2: What recommendations have resulted from the meetings?.

Question 3: On how many occasions in the past 30 days have Bunbury City Rangers policed the parking in the area bounded by Constitution Street, Clarke Street and Spencer Street?.

Question 4: How many infringements were issued during that time in that area?.

Response to Question 1:

There has been 2 meeting held in 2008 however there was also a meeting held in December 2007.

Response to Question 2:

A copy of the recommendations from the Minutes of the July and August meetings are issued to member under separate cover in the Minutes to be Noted Booklet.

Response to Question 3:

The Rangers department do not keep official statistics on areas that are patrolled. Therefore we have no accurate way of knowing if or when Constitution Street, Clark Street and Spencer Street were patrolled in the last 30 days other than consulting with staff.

Indications and the fact that no infringements were issued in this period are that it is unlikely that the area was patrolled.

Response to Question 4:

No infringements or cautions were issued.

Cr Steck submitted the following questions (in writing) prior to the close of the meeting agenda. Responses have been provided by the respective Executive Managers:

Question 1: Why was Mrs Karen Steele, advised during council question time, that the proposed waterfront development was not the only reason that council is touring waterfronts around Australia?

Question 2: For what other purpose would council consider this series of waterfront visits around Australia?

Question 3: Does Council have an agreement with the contractors working on the Mantra building and adjacent area to allow parking on the verge or reserve during construction?

Question 4: Does the council Ranger police the verge and reserves next to the Mantra development site?

Question 5: Why do at least 30 vehicles per day, park on the verge next to the Mantra construction site everyday from 7.30am to 5pm, when there is a car-park that is barely used over the road?

Question 6: Does this council have varying rules or policies for persons or companies apart from Council staff, executives and councillor permits allowing free parking permits around the city?

Question 7: If so, what are the parking rules or allowances for those persons or companies?

Question 8: If council has offered or granted free parking during construction stage around the mantra building and adjacent verges, to the developers or construction company, what policy of council or local law of council have the council executives acted upon to allow this decision?

Question 9: Has the Council Rangers department, been alerted to or had reports of complaints of the continual parking of vehicles for the last six months and more on the verge and reserve near the Mantra Development?

Question 10: If so, how many and what action was taken?

Question 11: Do council executives have the authority to place a cost of a particular item for an approved project development of council, to be placed into another fund management account of council for payment?

Question 12: Will council confirm that the transformer for the library project has been placed for payment out of the car-parking fund?

Question 13: Does the car parking fund account contain monies from the specified area rate, applicable to the CBD for car parking purposes?

In response to questions 1 and 2, the Mayor provided the following response to Ms Steel during public questions time at the Council Meeting of 30 September 2008:

“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.

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.”

In response to Questions 3 to 10, the Manager Community Law and Safety has provided the following:

Response to Question 3:

We are not aware of an agreement with the contractors working on the Mantra building regarding car parking.

Response to Question 4:

Council Rangers do not currently police the verge and reserves next to the Mantra development site as the Rangers have not received any reports or complaints and have not been requested to police the area.

Response to Question 5:

We are not aware as to why vehicles are parked in this area. Some vehicles may be parked to attend the Marlston Waterfront precinct, the beach area and some vehicles that are parked may have something to do with the development. However, the majority of vehicles that park in proximity to the development are parked on private property.

Response to Questions 6, 7 and 8:

Council does not have varying rules or polices relating to free parking permits. Car parking requirements together with other matters (I.e. traffic management) are normally determined during the development approval process.

Response to Questions 9 and 10:

No reports or complaints have been received by Community Law and Safety relating to car parking on the verge and reserve near the Mantra Development.

In response to Questions 11 to 13, the Executive Manager Corporate Services provided the following responses:

Response to Question 11:

No. Funds for an approved project can not be transferred to another project unless approved by Council.

Response to Question 12:

No. Payment for the relocation of the transformer for the library project has been made from Council's library budget and **not** from a car parking reserve.

Response to Question 13:

Yes. Council has four reserve accounts for car parking based on the purpose of the reserve and the funding source as follows:

- a) City of Bunbury General Parking Reserve
Purpose: To fund Council's general motor vehicle parking requirements within the City of Bunbury.
- b) Specified Area CBD Parking Reserve
Purpose: To receipt funds received from Council's specified area rate from CBD properties to provide parking in the CBD.
- c) CBD Contribution Parking Reserve
Purpose: To receipt contributions from developers within the CBD other than from the specified area parking reserve fund to provide motor vehicle parking in the CBD.
- d) Central Traffic Area Reserve
Purpose: To receipt funds received from Council's specified area rate on the Central Traffic Area for the future provision of car parking, road improvements & traffic management measures to benefit the Central Traffic Area.

6. CONFIRMATION OF PREVIOUS MINUTES

Committee Decision

The minutes of the Council (Standing) Committee Meeting held 23 September 2008, be confirmed as a true and accurate record.

CARRIED

11 Votes "For" / Nil Votes "Against"

7. DISCLOSURES OF INTEREST UNDER THE LOCAL GOVERNMENT ACT 1995

Cr Whittle disclosed an impartiality interest for item 12.1 titled "*Motion on Notice – Tree Protection Barriers*" as he is a resident of a street identified for tree replanting. Cr Whittle indicated he would take part in the discussion and the vote.

8. ANNOUNCEMENTS BY THE PRESIDING MEMBER (WITHOUT DISCUSSION)

The Presiding Member wished to congratulate Felicity Anders, Visitor Centre Manager who won the Golden i Award for Visitor Centre Manager of the Year at the recent GWN Top Tourism Town Awards. The Visitor Centre has also been nominated in the 2008 WA Tourism Awards for the category Visitor Information Services. Congratulation to Felicity and all Visitor Centre Staff on these achievements.

The Presiding Member also drew attention to a recent press announcement for the Busselton Jetty. Brendan Grills has announced that the Busselton Jetty will receive \$24M towards to Busselton Jetty. The Presiding Member advised that this positive news for Bunbury as this will assist Council in obtaining \$3.5M for the restoration of the Bunbury Timber Jetty from the State Government. The Chief Executive Officer further added that he had been in contact with the Ministers Office and is awaiting a return call.

9. CHIEF EXECUTIVE OFFICER REPORTS/DISCUSSION TOPICS

9.1 REQUEST FOR LEAVE OF ABSENCE - COUNCILLOR ALFRED LEIGH

| | |
|-----------------------------|---|
| File Ref: | A00215 |
| Applicant/Proponent: | Councillor Alfred Leigh |
| Author: | Greg Trevaskis, Chief Executive Officer |
| Executive: | Greg Trevaskis, Chief Executive Officer |

Summary/Background

Councillor Leigh requests leave of absence from all Council-related business from 16 December 2008 to 16 March 2009 (inclusive).

Section 2.25 of the Local Government Act 1995, allows a council to grant leave of absence to one of its members provided that the period of leave does not exceed six consecutive ordinary meetings of the Council.

Recommendation

Pursuant to Section 2.25 of the Local Government Act 1995, Councillor Alfred Leigh is granted leave of absence from all Council-related business from 16 December 2008 to 16 March 2009 (inclusive).

Outcome of the Council Committee Meeting – 28 October 2008

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

Committee Recommendation

Pursuant to Section 2.25 of the Local Government Act 1995, Councillor Alfred Leigh is granted leave of absence from all Council-related business from 16 December 2008 to 16 March 2009 (inclusive).

9.2 AUSTRALIAN COUNCIL OF LOCAL GOVERNMENT – INAUGURAL CONFERENCE – CANBERRA 18 NOVEMBER 2008

| | |
|-----------------------------|---|
| File Ref: | A00106 |
| Applicant/Proponent: | Internal Report |
| Author: | Jack Dyson, Senior Administration Officer |
| Executive: | Greg Trevaskis, Chief Executive Officer |

Summary

On 18 September 2008, the Prime Minister, The Honourable Kevin Rudd MP and the Minister for Infrastructure, Transport, Regional Development and Local Government, the Honourable Anthony Albanese MP, announced the establishment of the Australian Council of Local Government (ACLG)

As mentioned by His Worship the Mayor, David Smith at the Council Meeting 30 September 2008, an invitation has been extended to Mayors and Shire Presidents across Australia to attend the inaugural meeting of the ACLG on Tuesday 18 November 2008 at Parliament House in Canberra.

Background

Invitations have been extended to all Mayors and Shire Presidents across Australia to attend the inaugural one (1) day meeting of the ACLG in Canberra on Tuesday 18 November 2008.

The meeting will discuss the following issues:

- Building national and local infrastructure to boost economic capacity and improve the quality of life in our communities;
- Tackling immediate challenges facing major cities and growth corridors including urban congestion, urban planning and design; and
- Steps toward constitutional recognition for local government.

It is anticipated that at this first meeting the Federal Government will announce the ongoing membership and charter of the ACLG to establish a regular dialogue with local government on issues of national significance.

The conference will commence with the Government hosting a welcome function on the evening of the 17 November where the National Awards for Local Government will be presented.

Strategic and/or Regional Outcomes

This item can be aligned with the City of Bunbury Strategic Plan 2007 – 2012, Strategic Objective 1, “Improve the relationships with State, Federal and Other Local Governments. It also ties in with strategy 1.1, to “place Bunbury and the South West on the Agenda for the Federal Regional Development Council”.

Community Consultation

There is no requirement for this matter to be referred for community consultation.

Councillor/Officer Consultation

His Worship the Mayor has previously advised of the receipt of this invitation and of his intention to attend. Acceptances were required to be lodged by the 8 October 2008.

This report serves to provide Council with the formal process to approve attendance by His Worship, in accordance with Council policy CEO1, “Conferences, Seminars, Training and Induction Courses – Attendance by Elected Members”.

Analysis of Financial and Budget Implications

Councils 2008/09 budget, contains sufficient funding allocations to accommodate attendance at this conference.

Economic, Social, Environmental and Heritage Issues

It is anticipated that attendance at this conference will assist in long term identification of several economic, social and potentially environmental issues, and will contribute to the development of policy and future planning processes that will enhance the City of Bunbury’s capacity to continue to provide good governance for it’s communities.

Council Policy Compliance

Attendance at this conference complies with existing Council Policy CEO1, “Conferences, Seminars, Training and Induction Courses – Attendance by Elected Members”.

Legislative Compliance

There is no legislative compliance issues associated with this matter other than compliance with the aforementioned policy CEO1.

Delegation of Authority

The Chief Executive Officer does not have the delegated authority to approve attendance at this conference.

Relevant Precedents

Council has on numerous occasion in the past, approved the attendance of His Worship the Mayor and/or other elected members to attend relevant conferences.

Options

Option 1

Per the recommendation as listed in this report.

Option 2

Council not approve attendance at the Inaugural Australian Council of Local Government Conference in Canberra, on Tuesday 18 November 2008.

Conclusion

All Mayors and Shire Presidents from Australian Local Government have been invited, by the Prime Minister, The Honourable Kevin Rudd MP and the Minister for Infrastructure, Transport, Regional Development and Local Government, the Honourable Anthony Albanese MP, to attend the inaugural Australian Council of Local Government conference in Canberra on Tuesday 18 November 2008.

It is anticipated that the conference will address issues relevant to the City of Bunbury with regards to infrastructure development, economic sustainability, urban planning and congestion and constitutional recognition for local government.

Recommendation

Council approve the attendance of His Worship the Mayor, David Smith at the Inaugural Australian Council of Local Government conference in Canberra, on Tuesday 18 November 2008.

Outcome of the Council Committee Meeting – 28 October 2008

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

Committee Recommendation

Council approve the attendance of His Worship the Mayor, David Smith at the Inaugural Australian Council of Local Government conference in Canberra, on Tuesday 18 November 2008.

9.3 PROPOSED QUEENSLAND STUDY TOUR

| | |
|-----------------------------|---|
| File Ref: | A03183 |
| Applicant/Proponent: | Internal Report |
| Author: | Greg Trevaskis, Chief Executive Officer |
| Executive: | Greg Trevaskis, Chief Executive Officer |

Summary

Confirming arrangements for a Council Study Tour of relevant waterfront developments in the Queensland cities of Cairns, Townsville, Gold Coast and Brisbane.

Queensland has, in recent years, seen some major urban redevelopment in a number of areas that have been attributed with significant improvements in amenity, bringing vibrancy to previously underutilised waterfront areas and provide relevant examples of good design/best practice.

The Study Tour will visit selected areas of redevelopment and meet with key Council representatives to discuss such matters as planning issues, amenity, lessons learnt, public areas and facilities, successes and failures associated with the various sites and projects. A report will be provided back to Council on the outcomes and observations of the Study Tour.

Background

Council at its Special Meeting on 5th August 2008, adopted the 2008/09 Budget which specifically provided approval for:-

| | |
|-----------------------|----------|
| Study Tour Queensland | \$18,000 |
|-----------------------|----------|

(The relevant page of the 2008/09 Budget is **attached** at Appendix 6)

Given that Council had considered and authorised the Study Tour arrangements, planning was undertaken to determine a suitable time for the visit to Queensland. In accordance with Council protocol the most senior elected members of Council and 2 relevant executive staff formed the touring party with 2 more Councillors to be nominated, as provided for in the Budget.

At Council's Briefing Session on 16th September 2008 it was generally agreed that Councillors Spencer and Whittle would accompany the Mayor, CEO, Deputy Mayor and Executive Manager City Development on the Study Tour.

As no objection was subsequently received from other Councillors as to the make up of the touring party this was considered an internal matter and not subject to a report to Council as the Study Tour itself had been previously approved through the adoption of the 2008/09 Budget.

However, due to recent media coverage about the proposed Study Tour the Mayor requested that an item on this subject be referred to Council to clarify any misunderstandings from within Council or the community.

Strategic and/or Regional Outcomes

The Bunbury Waterfront Project which has a 30 year outlook has the following key statistics:-

| | |
|-----------------------------------|--------|
| LandCorp investment | \$200m |
| Private investment | \$800m |
| Economic Impact Direct & Indirect | \$1.9b |
| Construction Jobs | 3,000 |
| Ongoing Jobs | 7,400 |

This is the most important and strategic project to be ever developed for Bunbury which will have significant regional outcomes for the South West.

The Study Tour will provide practical, relevant and recent evidence of projects undertaken at other locations in Queensland of a scale and type that is planned for the Bunbury Waterfront. First hand knowledge of this type will be conveyed back to Councillors and staff to assist with preparation, planning, consultation and expected dealings associated with a project of this scale and importance.

The Bunbury Waterfront project is identified within both the City's Strategic Plan 2007-2012 and City Vision Strategy 2007 as a key objective for Bunbury.

Community Consultation

This item has been treated as an internal organisational matter not requiring community consultation. Any member of the public on inspection of Council's Adopted Budget for 2008/09 can identify the approval of the line item – Study Tour Queensland.

Councillor/Officer Consultation

Council considered this matter as part of the 2008/09 Annual Budget process. Councillors were again consulted on the make-up of the touring party at the Council Briefing Session on 16th September 2008. No subsequent comment or issue has been referred to Council staff on this topic by any elected member.

Analysis of Financial and Budget Implications

There are no budget or financial implications as this matter and funds have been provided for within the 2008/09 Budget. Costs will be well below the budgeted provision of \$18,000.

Economic, Social, Environmental and Heritage Issues

The Study Tour will have no impact in these areas.

Council Policy Compliance

Council has a policy with respect to attendance by elected members at Interstate conferences, seminars, training and induction courses which requires a decision by Council. However, as this matter is a Study Tour and is not a designated activity under the provisions of the Conference Policy, separate consideration by Council is not applicable in this instance. In any event, Council approval for the Tour was specifically provided for in the 2008/09 Budget program.

Legislative Compliance

There are no known statutory processes other than Council approval for undertaking the expenditure of funds for this purpose which was satisfied through the adoption of the 2008/09 Budget.

Delegation of Authority

Once Council had approved the Annual Budget the Chief Executive Officer has delegated authority to arrange and implement various actions, programs and events as specified within that Budget.

Relevant Precedents

Council undertook a recent Study Tour of Mandurah and Rockingham waterfront precincts to visit and inspect recent developments in these areas.

Options

Option 1

As per the recommendation listed in this report.

Option 2

That the report be not received.

Conclusion

That Council has acted in accordance with all relevant statutory, policy and regulatory provisions in considering to undertake a study tour of Queensland for the reasons as described in this report.

Recommendation

That the report be received.

Outcome of the Council Committee Meeting – 28 October 2008

The recommendation was moved Cr Major, seconded Cr Slater.

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

That the report be received.

9.4 PROPOSED CAF-FEZ ALFRESCO AREA – LOT: 5 #20 PRINSEP STREET, BUNBURY

| | |
|-----------------------------|--|
| File Ref: | P07977 |
| Applicant/Proponent: | Insitu Planning & Design |
| Author: | Ann-Kristin Jank, Planning Officer |
| Executive: | Geoff Klem, Executive Manager City Development |

Summary

The City is in receipt of a Development Application from Insitu Planning & Design on behalf of the owners of Caf-Fez to develop an existing car parking bay to accommodate a temporary alfresco area on the City's Road Reserve in front of their business at Lot 5 (No. 20) Prinsep Street, Bunbury. The applicant also requests to utilize the car parking bay for alfresco dining with a licence under the City of Bunbury Local Law.

The location plan is in the **Report Under Separate Cover** at Attachment 1.

It is recommended that Council does not approve the application.

Background

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*".

Advice has been conveyed to the owners of Caf-Fez on a regular basis in relation to the development of a parking strategy and policy in the CBD.

One of the actions in the parking strategy is to progress a one-way traffic system for Wellington Street and Prinsep Street and to assess the traffic implications of the redevelopment of the Stirling's Centre. The potential for alfresco dining was linked to the one way system which would have created a wider footpath area that could accommodate the proposed outdoor dining area (similar to Victoria Street).

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.

The matter was considered at the Council Meeting on 30/09/2008 and Council resolved as follows:

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.*

Proposal

The proposed development comprises of removable timber decking of 6.6m in length and 2.4m in width over one car parking bay on the Road Reserve. It is proposed that the timber decking will be anchored to the pavement via nine removable bollards. Stainless steel railings will separate the alfresco area from the street. A minimum of 1.5m free passage area on the footpath is proposed to be maintained at all times.

Plans are **attached in Report Under Separate Cover** at Attachments 2 & 3.

The applicant suggests that if the car parking bays along Prinsep Street would be remarked accurately, no car parking bays would be lost.

Town Planning Scheme No.7 (TPS7)

The development is proposed on a 'Local Reserve – Access Road' under TPS7. In accordance with Clause 3.4.1 of TPS7, a person must not commence or carry out development on a Local Reserve without first having obtained planning approval under Part 9 of the Scheme.

In determining an application for planning approval the local government is to have due regard to the ultimate purpose intended for the Reserve. In this case, the proposed alfresco area is clearly not in keeping with the purpose of an 'Access Road'.

City of Bunbury Local Government and Public Property Local Law 2003 (CoB Local Law)

A road is Crown land, therefore Local Government does not own the road but has the right of care, control and management of the road.

The CoB Local Law regulates outdoor eating area licences and other agreements with respect to the operation and use of any 'Local Government property', whereby the definition of 'Local Government property' includes anything which is under the care, control and management of a Local Government, *other than a thoroughfare*. 'Thoroughfare' is defined as "...road or other thoroughfare and includes structures or things appurtenant to the thoroughfare that are within its limits and nothing is prevented from being a thoroughfare only because it is not open at each end". The term 'street' is also defined under CoB Local

Law as being “...a highway and thoroughfare as defined in the Local Government Act 1995 which the public are allowed to use and includes every part of the highway or thoroughfare and other things including bridges and culverts are pertinent to it.”

Therefore, a parallel car parking bay along Prinsep Street is part of a thoroughfare.

To confirm the officer’s interpretation of the CoB Local Law, legal opinion was obtained. The opinion clearly prevents the City from granting approval or entering into agreements for an alfresco dining use on a thoroughfare.

Strategic and/or Regional Outcomes

There are no relevant Strategic and Regional Outcomes.

Community Consultation

No community consultation required. The proponents have obtained comments from business owners in Prinsep Street.

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 but only recently (on 14/10/2008) a Development Application has been received in this regard.

Council also discussed the matter in Committee Meetings and Council Meetings on 23/09/2008 and 30/09/2008.

This matter has been reviewed by Council staff within the Development Coordination Unit meetings consisting of officers from Engineering, Planning, Building and Health. Further discussions have taken place with the Executive Manager City Development and the Manager Administration & Property, and after assessment and several discussions Legal Opinion has been obtained.

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 known economic, social, environmental or heritage issues.

Council Policy Compliance

Council has adopted the parking strategy and policy and established an implementation Project Control Group.

Legislative Compliance

Legal Opinion was obtained and is summarised in the conclusion.

Delegation of Authority

No delegated Authority to approve development on a 'thoroughfare'.

Relevant Precedents

There are no known precedents.

Options

Option 1

As per the recommendation as listed in this report.

Conclusion

After several discussions with officers from the City's Development Services and Corporate Services the question has been raised if the City would have the power to approve the proposed alfresco dining area on the Road Reserve and enter into any licence with respect to the operation and use of the a part of the Road Reserve. Preliminary findings revealed that the City would not have the power to enter into such agreement.

Council has obtained legal advice that suggests it does not have the power to either consider the application or to issue the licence being sought. The advice suggests that the relevant local laws cannot be construed so as to give the City the power to grant a licence for alfresco dining in verge parking forming part of a road reserve.

Therefore the City cannot approve an application to conduct an outdoor eating licence in respect of land that forms part of a street in the form of a car parking bay.

Recommendation

Council not approve an application for planning approval for an on-street alfresco area adjacent to Caf-Fez at Lot 5 (No. 20) Prinsep Street, Bunbury.

Outcome of the Council Committee Meeting – 28 October 2008

Mr Dave Jones of Insitu Planning spoke against the recommendation and responded to questions from members.

Cr Major moved, Cr Slater seconded the motion:

“Council approve the application for planning approval for an on-street alfresco area adjacent to Caf-Fez at Lot 5 (No. 20) Prinsep Street, Bunbury.”

During discussion the following points were raised:

- The application has been to Council on numerous occasions since December 2005.
- The applicants are prepared to cover all costs associated with the proposal.
- The structure is removable.
- The primary period of use will be Spring to Autumn.
- The proponents are happy to cover all costs associated with remarking parking bays.
- There are currently two other café’s that have alfresco dining on what can be considered a thoroughfare.
- Council may not lose a car parking bay if they were to remove the loading zone and remark this to be one car parking bay.

The CEO advised Council that legal advice had been received which indicated the City did not have the power to approve or even consider the application. Council was obliged to act within the law and any decision to proceed with the application would, in the CEO’s opinion be ‘ultra vires’. It was clarified that the legal advice obtained by Council is able to be viewed by Councillors through the CEO.

The question was raised to the proponents if they had or intended seeking legal advice on the matter. The proponents advised they had sought legal advice and expect this will be received by either Wednesday or Thursday. It was requested that this be made available to members to assist in making a decision.

Following this advice, Cr Kelly moved the procedural motion:

“That the Motion lie on the table”

The Presiding Member clarified that the matter would be put direct to the Council Meeting of 4 November 2008. He then put the motion to the vote and it was adopted *11 votes "for" to Nil votes "against"* to become the Committee's recommendation on this issue.

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| <p><i>Committee Recommendation</i></p> |
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| <p><i>That the Motion lie on the table.</i></p> |
|--|

10. RECEPTION OF FORMAL PETITIONS AND MEMORIALS

Nil.

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

11.1 **LOCAL STRUCTURE PLAN (MODIFIED) – LOT 74 BEDDINGFIELD STREET BUNBURY – OUTDOOR STORAGE, STORAGE SHEDS AND AN INCIDENTAL OFFICE) (WAS LISTED AS ITEM 11.11 ON THE MEETING AGENDA)**

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

The matter was reported on to Council at its meeting held on 30th September 2008.

Council then resolved that:

“Council Decision 170/08

The item be referred back to Committee.

CARRIED

10 Votes "For" / Nil Votes "Against"

A copy of the prior report to Council is reiterated as follows.

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 at Attachment 1 **Report Under Separate Cover.**

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. Attachment 2, **Report Under Separate Cover** 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 Attachment 3, **Report Under Separate Cover** 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 13 Aug 08 Attachment 9, **Report Under Separate Cover** 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 Attachment 4, **Report Under Separate Cover** (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 Attachment 5, **Report Under Separate Cover.**

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 Attachment 6, **Report Under Separate Cover**

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 Attachment 7, **Report Under Separate Cover**. 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 Attachment 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 Attachment 10, **Report Under Separate Cover** Environmental Complaints Action Report) 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 Attachment 8, **Report Under Separate Cover**. 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 dated September 2008 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 dated September 2008 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 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 dated September 2008 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.

Further Report (post Council meeting held on 30th September 2008)

Subsequent to Council's resolution to refer the matter back to Committee, Development Services re-considered the matter in light of further comments by the applicant, and any other relevant submissions.

The City met (15 October 2008) with Koltasz Smith to work through the various issues. The Dept. of Environment and Conservation was requested (by the applicant) to attend such meeting. The DEC declined to attend, citing that its advice to date was sufficient as a reason for non-attendance.

The City made the following points to the meeting:

- For the City to progress the matter, the City needs the support of the DEC as the responsible State authority.
- DEC has advised the City in prior 29th July 2008 – 446468 – Attachment 11, **Report Under Separate Cover** correspondence (refer to main body of report) that it is “highly likely” that the established “surrounding industries” will have an impact on the proposed development. Furthermore DEC has re-stated letter dated 7th October 2008 - Attachment 12, **Report Under Separate Cover** that its prior advice stands as is.
- That Development Services would endeavour to clarify with DEC details of a recent determination by DEC in respect of a matter in the City of Coburn.
- The City asked the applicant if he had explored the logistics of undertaking an odour modelling Study. The applicant's response was that he would not under any circumstances undertake an Odour Modelling Study and that he would appeal any adverse decision relating to Odour Modelling.
- That the City would consider the applicant's further request that Development Services should present a further option to Council to the effect that an “Odour Modelling Study” should not be required, and that the applicant should be required to provide mechanisms whereby the building(s) would meet required environmental criteria. Note: this option is, essentially, in place; Option 2 (of the original Report Recommendation to Council) for example states that a note be added to the approved Structure Plan to the effect that ... *“any structures are fitted with reverse cycle air-conditioning, or any other mechanisms(s) to the satisfaction of the City, to ensure*

minimum impact from any nearby odour-emitting premises". Notwithstanding this option has been further amended and as set out below.

- That the City would consider the applicant's request to amend the condition relative to the preparation of a Landscape Plan based on further information received from the EPA. Note: on further discussion (post meeting) with KS, KS was not able to produce any further communication from EPA.
- In terms of the condition proposed on the Structure Plan regarding Aboriginal Heritage assessment, the City agreed to re-consider the drafting of such condition.
- The City raised concerns regarding the matter of Legionnaires being a possible issue relative to the proximity of the proposed development to odour, and particulate emitting industries which are currently located in close proximity to the proposed development. Note: the City has sought further advice in this regard from relevant authorities through its Environmental Health Dept.; such information is set out below.
- The City also stated that the applicant is at liberty to submit any further data to Development Services for consideration prior to the finalisation of the further report to Council.

Further submissions

It is noted that, since Council's last determination on the matter, Development Services has received further submissions from various State authorities specifically on the Modified Structure Plan (Note: prior submissions related to the original application for the entire lot). Such further submissions are Attachment 13, **Report Under Separate Cover**.

The EPA has written to Council to qualify its prior advice (to the effect that there should be no presumption that if the currently proposed Structure Plan is approved, that further development on the subject to state that Council should attach a specific note to any approved Structure Plan to read as follows: "*The majority of Lot 74 has been identified by the EPA in Bulletin 1282 as a regionally significant natural area. As such there should be no presumption that further redevelopment of the land outside of Precinct 1: Development Site Area will occur. Any proposal for development or subdivision on the subject land is considered likely, if implemented, to have a significant effect on the environment and will require referral to the EPA*". Such suggested text has been added to the relevant parts of the further report to Council.

DEC has further written to the City (letter dated 7 October 2008; Attachment 12, **Report Under Separate Cover**. DEC has confirmed that "*DEC does not have any further comments to its advice provided to the City of Bunbury dated 29th July 2008*".

City's Health Dept. comments

Council's Environmental Health Section has provided the following further advice in respect of the matter:

Manager Health Comments – Lot 74 Beddingfield Street

“In relation to the possibility of contracting Legionella infections from bulk potting mix premises, the association of Legionnaire's disease with soil disturbances or excavation has not been clearly established. Epidemiological evidence supports air-borne transmission however other modes of transmission including aspiration of water are possible.

Legionella infections occur most frequently with increased age and especially in people who smoke and those with diabetes mellitus, chronic lung disease, renal disease or malignancy and in the immuno-compromised.

Advice has been sought from the Department of Health's Environmental Health Directorate & Population Health Unit (South West) and from Work Safe.

- *Legionella is generally found in the aerosol above potting mix bags and although while it is found in composting soils, it is not readily transmissible*
- *There has been no “work related cases” of Legionella from people working at bulk potting mix premises*
- *No documented cases, reports or clustered outbreaks of disease associated with bulk potting mix premises*
- *Investigations into Legionella infections in the South West area have only established that the infection is acquired from gardening activities rather than from air conditioning systems. No further clarification is sought on where the potting mix is from or whether it is bulk or bagged*

As there is a possibility of Legionella being transmissible through mist and dust, the turning of stock piles in prevailing winds should be enforced through licence conditions which are regulated by the Department of Environment.”

Applicant's further written submission

Most recently, the applicant has written to the City letter dated 20 October 2008; it appears that the principle purpose of the letter Attachment 14, **Report Under Separate Cover** is to refute the proposed requirement (by the City) for an Odour Modelling Study. The principle reasons given by the applicant in terms of his position that an Odour Modelling Study is not necessary are that:

- A senior odour modelling specialist at the Air Quality Branch within the DEC doubts that it is technically possible to “model” odour generated from compost mounds....”
Note: the applicant has not provided any written confirmation to support this statement.

- There is no evidence that the odour is coming from the Malatesta facility.
- The matter of odour should be addressed by the EPA relative to the licence issued to Malatesta any effects from outside the site. The applicant proposes an alternative Option to be presented to Council for consideration; (copy of relevant letter dated 20 October 2008, is Attachment 14, **Report Under Separate Cover.**) The applicant also disputes the Landscaping (and retention of vegetation) condition on the Structure Plan, and mentions that the Dept. of Water only requires a Drainage Management Plan thereby allowing the possible deletion of the related Condition on the Structure Plan.

Development Services has considered the further points made by Koltasz Smith and the further Report Recommendation has been adjusted accordingly.

Based on further analysis by Development Services the detail of the various Options which are open to Council are re-stated as follows:

Options

Option 1

Per the recommendation as listed in this report.

Option 2

Support development as proposed (with the provision of devices to make the building odour proof as far as possible.

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 dated September 2008 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.*

- *The majority of Lot 74 has been identified by the EPA in Bulletin 1282 as a regionally significant natural area. As such there should be no presumption that further development of the land outside of Precinct 1: Development Site Area will occur. Any proposal for development or subdivision on the subject land is considered likely, if implemented, to have a significant effect on the environment and will require referral to the EPA.*
- *Prior to any development an Aboriginal heritage survey shall be undertaken, to include examinations of the ethnographic and archaeological heritage values of the area prior to the implementation of any proposed works, if both notification and surveys have not already been undertaken. Note: this is to ensure that Aboriginal sites not previously recorded are avoided, and those sites that have been recorded can be recorded more accurately so that a development can avoid these sites.*
- *All persons employed or engaged in any project should be made aware (by the applicant and/or developer) of their obligations under the AHA. Should cultural material be discovered during the project, work should cease immediately and the site should be recorded and the DIA notified. If an unrecorded/recorded site cannot be avoided, then a notice under Section 18 of the AHA is required to be submitted to obtain the Minister of Indigenous Affairs' consent to use the land on which the site is located. Note: additional information on the AHA can be found on the DIA Website under Heritage and Culture.*
- *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 (of the Eucalyptus rudis Priority 4 species) in accordance with advice (letter dated 24 June 2008 from EPA to Correctline Drainage) of the EPA and to show any new landscaping proposed.*
- *The developer is to ensure that all Western Ringtail Possums are moved to the adjacent vegetated area (by persons expert in this area of work and to the satisfaction of the City of Bunbury) prior to any clearing of vegetation; all such movement of such species is to occur on the day prior to clearing. Note: the developer is to notify, in*

writing, the City of Bunbury when such movement of Western Ringtail Possums is planned to occur.

- *The developer is to consult with the local regional office of the DEC to determine whether a Clearing Permit is required in accordance with the provisions of the Environmental Protection (Clearing of Native Vegetation) Regulations 2004. Note: Clearing is not to be undertaken until the clearing permit application process is concluded.*
- *A Stormwater Management Plan is to be prepared and implemented by the developer (and to the satisfaction of the EPA) to ensure that the Water Quantity and Quality of the Preston River is not negatively impacted as a result of the development and activities undertaken on the site.*
- *Compliance with any requirements of the Dept. of Water.*
- *The applicant is to prepare and implement a strategy which seeks to reduce the potential impact of external odour on the office component of the proposal. The strategy shall detail the following building design and construction measures:*
 1. *Office to be located, as far as practicable from the potential odour source;*
 2. *Enclosure of eaves;*
 3. *Minimise size/ number of windows and doors facing odour source;*
 4. *Sealing of doors and windows Raven RP 10 and RP 99 seals or equivalent;*
 5. *Preference for awning style windows enclosable onto compressible seals; and,*
 6. *Installation of mechanical air-conditioning systems.*

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 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.*
- *The majority of Lot 74 has been identified by the EPA in Bulletin 1282 as a regionally significant natural area. As such there should be no presumption that further development of the land outside of Precinct 1: Development Site Area will occur. Any proposal for development or subdivision on the subject land is considered likely, if implemented, to have a significant effect on the environment and will require referral to the EPA.*
- *Prior to any development an Aboriginal heritage survey shall be undertaken, to include examinations of the ethnographic and archaeological heritage values of the area prior to the implementation of any proposed works, if both notification and surveys have not already been undertaken. Note: this is to ensure that Aboriginal sites not previously recorded are avoided, and those sites that have been recorded can be recorded more accurately so that a development can avoid these sites.*
- *All persons employed or engaged in any project should be made aware (by the applicant and/or developer) of their obligations under the AHA. Should cultural material be discovered during the project, work should cease immediately and the site should be recorded and the DIA notified. If an unrecorded/recorded site cannot be avoided, then a notice under Section 18 of the AHA is required to be submitted to obtain the Minister of Indigenous Affairs consent to use the land on which the site is located. Note: additional information on the AHA can be found on the DIA Website under Heritage and Culture.*
- *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 (of the Eucalyptus rudis Priority 4 species) in accordance with advice (letter dated 24 June 2008 from EPA to Corrrrectline Drainage) of the EPA and to show any new landscaping proposed.*
- *The developer is to ensure that all Western Ringtail Possums are moved to the adjacent vegetated area (by persons expert in this area of work and to the satisfaction of the City of Bunbury) prior to any clearing of vegetation; all such movement of such species is to occur on the day prior to clearing. Note: the developer is to notify, in writing, the City of Bunbury when such movement of Western Ringtail Possums is planned to occur.*
- *The developer is to consult with the local regional office of the DEC to determine whether a Clearing Permit is required in accordance with the provisions of the Environmental Protection (Clearing of Native Vegetation) Regulations 2004. Note: Clearing is not to be undertaken until the clearing permit application process is concluded.*
- *A Stormwater Management Plan is to be prepared and implemented by the developer (and to the satisfaction of the EPA) to ensure that the Water Quantity and Quality of the Preston River is not negatively impacted as a result of the development and activities undertaken on the site.*
- *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.

Further conclusion

On analysis and after further meetings with the applicant, and discussions with DEC, it is considered that the direction of the original recommendation to Council (as stated above) is appropriate. Notwithstanding, the detail of the conditions proposed as part of the various options has been amended. It is noted however that Development Services does not accept some propositions put by the applicant, and this position is reflected in the current report recommendation to Council.

On balance therefore it is considered that weight should be given to the fact that there is likely to be some level of adverse impact (and which may be significant) as a result of odours and particulate transfer from the established industries in the vicinity, and that the exact impact of such industries on the proposed development, should, as far as possible, be proven up by scientific study. Furthermore, it is noted that the buffer distances recommended in the EPA document titled "Guidance for the Assessment of Environmental Factors – Separation Distances between Industrial and Sensitive Land Uses No. 3 June 2005", have not been satisfied in respect particularly of the closely located Composting facility and the Asphalt plant, and the applicant has not sufficiently addressed the matter of non-compliance in this respect.

DEC has previously stated that it is "highly likely" that there will be an impact by the "surrounding industries" on the proposed development, and has stated that it would be preferable for there to be in place an Odour Modelling Study prior to consideration to supporting the proposed Structure Plan.

Subsequent to the last report to Council, the applicant has not provided any scientific studies from say, an Environmental Consultant, as one would have expected to have been provided, or from any relevant State authority such as the DEC, to prove-up that the proposed development would be in order, and sufficient to convince the City to support the proposed Structure Plan.

It is noted that, and as indicated above, Council has a number of options which it may consider. Specific mention is made of the fact that should Council determine not to support the proposed structure plan, the applicant has a right to ask the WAPC to determine the matter. Such right is in accordance with Clause 5.9.13.11 which states: "*should the local government not adopt a structure plan prepared in accordance with the provision of this Scheme, then an aggrieved applicant may submit the structure plan to the Commission for its determination.*"

Furthermore, should the applicant be aggrieved by the subsequent decision by the Commission (WAPC) the applicant has a right of appeal to the SAT. Clause 5.9.13.12 reads as follows: "*should an applicant be aggrieved by a determination of the Commission made under Clause 5.9.13.10 the applicant may appeal in accordance with the provisions of Clause 10.11.*"

On balance, therefore, Development Services is of the view that its prior recommendation is still valid in the circumstances, and on that basis it is re-submitted for Council's consideration and determination.

Report 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 dated September 2008) 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 Council (as part of its site-specific Structure Plan) that the proposed development can co-exist with the established industrial 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, in the opinion of Council, meet the requirements for orderly and proper planning in terms of the provisions of Clause 10.2.1. (a), (b), (d), (e), (i), (o), (y), and (z) of the current TPS.

Part B

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

Outcome of the Council Committee Meeting – 28 October 2008

Mr Chris Kennedy and Mr Kevin Pears of Correctline Drainage addressed Council speaking against the recommendation and responded to questions from Members. Mr Kennedy requested members permission to hand out some information on the company. No Councillor objected.

During discussion, some points raised included:

- As no tests or investigations have been carried out relating to the issue of odour, there is no way to determine where the odour is emanating from.

- If an employee of Correctline was to fall ill due to the odour, would Council be held responsible. The proponents informed members that in their view, Council would not be held responsible as the issue of odour would be considered to form part of licence conditions granted by the EPA.
- The proponents have addressed the issue of odour by incorporating appropriate building safeguards in their concept plans.
- The site will only be used for the storage of equipment, car parking for employees and there will only be minimum employees based on the site permanently.
- Currently, there are only 3 people who will be situated on site for full days. The remainder of office staff are only on site for 2 to 3 hours per day. All other staff work away from the site out in the field.
- The proponents have been through the EPA process which identified where they can develop without impact on vegetation on the Lot.
- The company employs two permanent safety officers which attend not only off site projects but will attend the offices to monitor any safety issues.

Option 2 was moved Cr Slater, seconded Cr Spencer and was adopted 9 votes "for" to 2 votes "against" to become the Committee's recommendation on this issue.

Committee Recommendation

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 dated September 2008 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.***
- ***The majority of Lot 74 has been identified by the EPA in Bulletin 1282 as a regionally significant natural area. As such there should be no presumption that further development of the land outside of Precinct 1: Development Site Area will occur. Any proposal for development or subdivision on the subject land is considered likely, if implemented, to have a significant effect on the environment and will require referral to the EPA.***

- *Prior to any development an Aboriginal heritage survey shall be undertaken, to include examinations of the ethnographic and archaeological heritage values of the area prior to the implementation of any proposed works, if both notification and surveys have not already been undertaken. Note: this is to ensure that Aboriginal sites not previously recorded are avoided, and those sites that have been recorded can be recorded more accurately so that a development can avoid these sites.*
- *All persons employed or engaged in any project should be made aware (by the applicant and/or developer) of their obligations under the AHA. Should cultural material be discovered during the project, work should cease immediately and the site should be recorded and the DIA notified. If an unrecorded/recorded site cannot be avoided, then a notice under Section 18 of the AHA is required to be submitted to obtain the Minister of Indigenous Affairs consent to use the land on which the site is located. Note: additional information on the AHA can be found on the DIA Website under Heritage and Culture.*
- *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 (of the Eucalyptus rudis Priority 4 species) in accordance with advice (letter dated 24 June 2008 from EPA to Corrrrectline Drainage) of the EPA and to show any new landscaping proposed.*
- *The developer is to ensure that all Western Ringtail Possums are moved to the adjacent vegetated area (by persons expert in this area of work and to the satisfaction of the City of Bunbury) prior to any clearing of vegetation; all such movement of such species is to occur on the day prior to clearing. Note: the developer is to notify, in writing, the City of Bunbury when such movement of Western Ringtail Possums is planned to occur.*
- *The developer is to consult with the local regional office of the DEC to determine whether a Clearing Permit is required in accordance with the provisions of the Environmental Protection (Clearing of Native Vegetation) Regulations 2004. Note: Clearing is not to be undertaken until the clearing permit application process is concluded.*

- *A Stormwater Management Plan is to be prepared and implemented by the developer (and to the satisfaction of the EPA) to ensure that the Water Quantity and Quality of the Preston River is not negatively impacted as a result of the development and activities undertaken on the site.*
- *Compliance with any requirements of the Dept. of Water.*
- *The applicant is to prepare and implement a strategy which seeks to reduce the potential impact of external odour on the office component of the proposal. The strategy shall detail the following building design and construction measures:*
 1. *Office to be located, as far as practicable from the potential odour source;*
 2. *Enclosure of eaves;*
 3. *Minimise size/ number of windows and doors facing odour source;*
 4. *Sealing of doors and windows Raven RP 10 and RP 99 seals or equivalent;*
 5. *Preference for awning style windows enclosable onto compressible seals; and,*
 6. *Installation of mechanical air-conditioning systems.*

Part B

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

At this point in proceedings (8.18pm), the Presiding Member called a five minute adjournment to allow members a refreshment break. The Deputy Mayor re-opened the meeting at 8.26pm.

There was one change to the attendance register. Cr Major extended an apology for the remainder of the meeting.

11.2 BUNBURY INNER HARBOUR STRUCTURE PLAN (WAS LISTED AS ITEM 11.12 ON THE MEETING AGENDA)

| | |
|-----------------------------|--|
| File Ref: | A03436 |
| Applicant/Proponent: | Bunbury Port Authority |
| Author: | Thor Farnworth, Coordinator Strategic & Environmental Planning |
| Executive: | Geoff Klem, Executive Manager City Development |

Summary

The Bunbury Port Authority's proposed draft Bunbury Port Inner Harbour Structure Plan is returned to Council with this report in order to inform Council on the:

- results of the public advertising as documented by the Schedule of Submission received commenting on the proposed draft Bunbury Port Inner Harbour Structure Plan; and
- implications of the Department for Planning and Infrastructure's advice on the procedure for considering the proposed draft Bunbury Port Inner Harbour Structure Plan following the public advertising period.

The proposed draft Structure Plan was referred to all relevant state government agencies and publicly advertised for comment during a formal advertising period of 60 days, from the week beginning 7th of April until the week ending 6th of June 2008. Of the 27 submissions received, 17 (mostly from government agencies and non-government organisations) either did not object or gave qualified support for the proposal with or without modifications. Ten of the submission (mostly from residents) objected to the proposal.

During the public advertising period, advice was sought from the Department for Planning and Infrastructure on the procedure for the consideration of the draft Structure Plan by Council given the gazettal of the Greater Bunbury Region Scheme. The Department's response confirmed the City's position that it did not have jurisdiction for the adoption of the proposed draft Structure Plan. The Department advised that the Council should forward the assessed submissions and its own comments on to the Department, which will then assess the submissions and Council's comments before forwarding its own comments on to the Bunbury Port Authority. It was advised that the Board of the Bunbury Port Authority would then consider the submissions and comments prior to endorsing the Structure Plan.

Consequently, this report makes a number of recommendations on the desired approach to the resolution of the macro level structure planning and environmental management issues and processes. These recommendations are made in order to permit the efficient and effective land use planning and development of the Inner Harbour in a manner that:

- protects the public's health and safety; and
- promotes ecological sustainability; whilst
- ensuring administrative efficiency and appropriate regulatory responsibilities.

It is considered that the approach taken by the State Government in relation to the Minister of Planning's decision to endorse the "Inner Harbour Lease Structure Plan" to permit the WA Plantation Resources Pty Ltd woodchip mill is relevant to the consideration of the currently proposed draft Bunbury Port Inner Harbour Structure Plan. Specifically, it is the principle recommendations of the City that Western Australian Planning Commission should:

- direct the Bunbury Port Authority to address those relevant matters raised in the submissions through the revision of the proposed draft Bunbury Port Inner Harbour Structure Plan and/or the draft Port Buffer Definition Study, where appropriate, to the satisfaction of the Commission;
- provide for the continuation of the conditions imposed on the adopted Inner Harbour Lease Structure Plan, by way of imposing the same and/or similar Environmental Conditions on an endorsed Bunbury Port Inner Harbour Structure Plan to the satisfaction of both the Commission and the Environmental Protection Authority;
- consider the proposed draft Bunbury Port Inner Harbour Structure Plan and the draft Port Buffer Definition Study for endorsement, pursuant to the *Planning and Development Act 2005* and the Greater Bunbury Region Scheme.

Background

This report deals with the proposed draft Bunbury Port Inner Harbour Structure Plan as submitted by the Bunbury Port Authority (BPA) and formerly received by the City on 17 April 2008 (fee outstanding). Attachments referred to throughout the body of this report are included in the Report Under Separate Cover.

The findings and recommendations of a preliminary assessment of the proposed draft Bunbury Port Inner Harbour Structure Plan document was reported to Council's Committee meeting of 11 March 2008, and which at the Ordinary Meeting of Council on 18 March 2008, it was resolved that:

Council, pursuant to the Planning and Development Act 2005 and clause 5.9.13 of the City of Bunbury Town Planning Scheme No. 7, hereby resolves to:

1. *Publicly advertise the proposed Draft Bunbury Port Inner Harbour Structure Plan for a period of 60 days and for this purpose a joint public advertising/communication strategy be developed between (and implemented by) the City of Bunbury and the Bunbury Port Authority.*
2. *Following public advertising of the proposed draft "Bunbury Port Inner Harbour Structure Plan", the proposal and any public submissions lodged with the City during the advertising period are to be returned to Council for further consideration.*
3. *Councillors to be provided with all records from the general public submissions relating to the Draft Bunbury Inner Harbour Structure Plan.*
4. *Council to have a special briefing session to address the potential community issues lodged with the City of Bunbury.*

CARRIED (Council Decision 44/08)

The report to Council on the preliminary assessment of the proposed draft Bunbury Port Inner Harbour Structure Plan and Council's deliberations is contained in the relevant Minutes of the Ordinary Meeting of Council held on 18 March 2008 (refer to **Attachment 1 of the Report Under Separate Cover**).

It was advised at the time that the proposed draft Bunbury Port Inner Harbour Structure Plan may be deemed a "Strategic Proposal" by the Environmental Protection Authority (EPA), and as a consequence of the resolution to publicly advertise the draft Structure Plan in accordance with clause 5.9.13 of the City of Bunbury Town Planning Scheme No. 7 (TPS7), it was referred to the Western Australian Planning Commission (WAPC) and the EPA for its assessment under Section 37B of the *Environmental Protection Act 1986*.

It should be noted that the EPA's Service Unit responded to the City on 6 June 2008, commenting that it considered that the proposal would be deemed a "Strategic Proposal" under the Act, but that only the proponent could refer such a proposal to the EPA. The EPA Service Unit's recommendation was that they would seek to meet with representatives of both the City and the BPA to discuss how best to proceed with the consideration of the proposed draft Structure Plan.

During the public advertising period for the proposed draft Bunbury Port Inner Harbour Structure Plan, advice was sought from the Department for Planning and Infrastructure (DPI) on the procedure for the consideration of the draft Structure Plan by Council given the gazettal of the Greater Bunbury Region Scheme (GBRS), the associated Notice of Resolution made under clause 27 of the GBRS published in the Government Gazette (No. 13) on 25 January 2008 and the WAPC's own notice of delegation given under section 16 of the *Planning and Development Act 2005*.

Considering that the proposed draft Bunbury Port Inner Harbour Structure Plan was advertised under a head of power given by clause 5.9.13 of TPS7, the reason for seeking this advice was based upon:

- the promulgation of the Region Scheme and its associated instruments of delegation have since established a statutory framework that overrides the Local Planning Scheme and any local structure plans adopted or presently being considered by Local Government; and
- the proposed draft Bunbury Port Inner Harbour Structure Plan pertains to land that is now included within a Region Scheme reservation.

Therefore, despite what the TPS7 Scheme Map presently depicts, the GBRS regional reserves and zones override the Local Planning Scheme. Therefore, in the case of the proposed draft Bunbury Port Inner Harbour Structure Plan, whilst TPS7 shows the affected land as "Port Industry Zone", the land is actually reserved "Port Installations Reserve" under the GBRS. Consequently, it was identified that there was a critical need to resolve the procedure for finalising the consideration of the draft Structure Plan, and the administrative responsibilities for the assessment of applications for planning approval over land included within the regional reserve.

The result of this inquiry was that the DPI sought legal opinion that confirmed the City's own interpretation of the GBRS and its instrument of delegation. That is, the Local Government has no delegated authority to deal with structure planning or development approval over regional reserves where this seeks to change the purpose of the reservation. Hence, Council's consideration of the draft Structure Plan under TPS7 had become void (refer to correspondence from the Department to the City dated 12 September 2008 at **Attachment 2 of the Report Under Separate Cover**).

The proposed draft Bunbury Port Inner Harbour Structure Plan is now returned to Council for consideration in order to provide its recommendations to the WAPC and BPA on the future treatment of the draft Structure Plan once Council has had the opportunity to consider both the submissions and the legal advice given by the DPI. The Schedule of Submissions and a copy of the individual submission includes correspondence received during and after the public advertising period (refer to **Attachment 3 and 4 of the Report Under Separate Cover**).

Proposal

The DPI's advice in summary is that the BPA is exempt from obtaining planning approval for port related development from the Local Government or the Western Australian Planning Commission (WAPC). However, it should be noted that this exemption extends only so far as approbated by the *Port Authorities Act 1999* and the *Public Works Act 1902*. Specifically, the GBRS and its instruments of delegation ¹ do not confer the authority for the BPA to carry-out or approve development which is not "port works" ² as defined under the *Port Authorities Act 1999*.

(Note 1. Notice of Resolution made under clause 27 of the GBRS published in the Government Gazette (No. 13) on 25 January 2008 and the WAPC's own notice of delegation given under section 16 of the Planning and Development Act 2005.

Note 2. Relevant sections being 35(8), (9) and 38(3) of the Act.)

The GBRS does empower the BPA as a public authority to use (and hence develop the Port for the purposes of such use) its reserved land according to its intended purpose, as given below:

26. *Use of reserved land by a public authority*
Without limiting clause 25, reserved land may be used by a public authority without the approval of the Commission if the land is used -
- (a) *for the purpose for which it is reserved under the Scheme; or*
 - (b) *for any purpose for which the land may be lawfully used by the public authority.*

But this clause alone does not override all other provisions of the Region Scheme, nor any other legislation, Statement of Planning Policy or Environmental Protection Policy; and hence, should not be construed to mean that the BPA has the imprimatur to deal with all possible development proposals it may consider as falling within the intended purpose of the "Port Installations Reserve", irrespective of a self endorsed document titled Bunbury Port Inner Harbour Structure Plan.

Whilst it is self evident that port works accords with the intended purpose of the “Port Installations Reserve” under the GBRS, as given by the following provision:

10. Purpose of reserves

Land is reserved under the Scheme for the following public purposes -

- (e) Port Installations - to provide for the current and future expansion needs of the Port of Bunbury;*

It is however arguable that not all foreseeable land uses and development that may be proposed or inferred under the draft Inner Harbour Structure Plan will fall within the interpretation of a “port works” or “public works” as defined under the *Port Authorities Act 1999* and the *Public Works Act 1902* respectively (refer to **Attachment 5 and 6 of the Report Under Separate Cover**)).

Whilst a development/use that is not strictly port related or public works may still be desirable within the context of the purpose of the “Port Installations Reserve” under the GBRS, the approval of such development does not automatically fall under the jurisdiction of the BPA. Therefore, the endorsement of the proposed draft Bunbury Port Inner Harbour Structure Plan by the WAPC may be prudent to ensure that the statutory parameters/procedures for the Commission’s consideration of non port works development are in place. This would ensure clarity regarding the status of the draft Structure Plan regarding its application in assessment and approval of development that is not port works or public works by the DPI under the head of power conferred by the Region Planning Scheme.

It is also acknowledged that TPS7 prescribes the necessity for a structure plan to be prepared and adopted by the City and endorsed by the WAPC. This requirement was by virtue of the subject area being included in a “Development Investigation Policy Area” designation on the Scheme Map. Consequently, with the promulgation of the GBRS, the Department’s legal advice is premised on the fact that the Region Scheme does not have a comparable requirement. Despite this, it is still assumed that there remains the need for a requisite structure plan to be endorsed by the WAPC.

The procedure outlined in DPI’s letter of the 12 September 2008 states that:

DPI will assess your comments, and provide its own comments, and will forward both to the Bunbury Port Authority, to enable the Port Authority Board to consider same, prior to the Board endorsing the plan.

This approach treats the proposed draft Bunbury Port Inner Harbour Structure Plan more akin to a subsidiary document of the Port’s own ‘strategic development plan’, which is arguably not appropriate. The approach outlined above has not been communicated with an indication of any statutory basis, and moreover, the Port’s Board is not compelled to address any comments the DPI or the City may have had to either party’s satisfaction. Furthermore, the comment that the WAPC does not have any provision for endorsing the draft Structure Plan can be practically overcome by using the GBRS as the statutory instrument intended by the Act (i.e. amend it to incorporate provisions akin to that of the Local Planning Scheme).

The obvious need for the proposed draft Bunbury Port Inner Harbour Structure Plan to be endorsed by the WAPC, and any non port works approved by the DPI, is assumed given the significance of the BPA's proposed port expansion articulated by the draft Structure Plan and the inherent risks associated with inadequate oversight by an independent planning authority. In this respect the City has consistently made a number of comments in regard to the potential deficiencies, perceived or real, of the draft Structure Plan. Hence, it can be appreciated that the exercising of responsibility by the WAPC is considered necessary to ensure that these issues are resolved in a balanced and efficacious manner to the public's benefit.

The issues identified by the City from the outset of the planning process generally fall within one of the following categories:

- (a) Need for agreement between the WAPC, BPA and the City on the future use of land not included in the "Port Installations Reserve" but shown in the proposed draft Bunbury Port Inner Harbour Structure Plan (e.g. that land zoned "Rural" along Australind Bypass not required for port related activities or the Preston River diversion). The WAPC will need to take a position on the requisite process for the further detailed structure planning of surplus land.
- (b) Responsibility for ensuring flood mitigation for a 1 in 500 year event and the future of Glen Iris Relief Floodway (GIRF) means that the WAPC and the City will need to be satisfied with the modelling of the expected risks and the associated mitigations arising from the proposal (including funding arrangements, administrative responsibilities and construction timeframes).
- (c) Need for an Implementation Plan to accompany the proposed draft Bunbury Port Inner Harbour Structure Plan, which is referenced in the draft Structure Plan in order to provide a programme of works and the timelines for further assessment and approvals by each agency.
- (d) Need for a formal Environmental Review to be carried out by the BPA in accordance with the *Planning and Development Act 2005* and *Environmental Protection Act 1986*, in order to set Environmental Conditions as part of the proposed draft Bunbury Port Inner Harbour Structure Plan as endorsed under the Region Planning Scheme.
- (e) Need to establish an adequate legal framework for land use planning and development control (reflecting decision making authority), as the proposed draft Bunbury Port Inner Harbour Structure Plan in its present form may not be satisfactorily drafted as a statutory planning instrument.
- (f) Need for final versions of all relevant supporting technical and environmental studies/reports (as referenced in the Structure Plan text) to be supplied as appendices to the Structure Plan report; or alternatively as part of the Port Buffer Definition Study, which is then translated into a revised draft Structure Plan.

It is also worth noting that without the incorporation of the Port Buffer Definition Study into an endorsed Structure Plan by the WAPC, there would be no statutory framework to ensure the implementation of the Study's findings and recommendations (e.g. the

setting of maximum accumulative emission limits as Environmental Conditions of the Structure Plan).

- (g) Need for consequential Scheme Amendment documentation to TPS7 (and the GBRS) to be prepared and submitted by the BPA as part of the structure planning process.

Should the BPA progress the expansion of the Port in line with the proposed draft Bunbury Port Inner Harbour Structure Plan, it is reasonable to expect that the Local Government would need to adopt mechanisms for requiring the development of new residential dwellings and other sensitive land uses to account for the expected range of impacts from the Port's operations through their layout, design and construction (e.g. by the incorporation of noise attenuation measures such as insulation, double glazing, acoustically dampening wall materials, and building orientation with respect to the location of openings and habitable rooms). This approach would be crucial in ensuring that planning approval was obtained by all affected development (e.g. as a condition of planning approval for the development of on single houses on a lot that would otherwise only require a building license).

As mooted in the past, the mechanism for achieving this outcome may be through the amendment of TPS7 to include a Special Control Area and/or the adoption of a Local Planning Policy for the affected areas. Other supporting measures may also include the imposition of a memorial on titles to warn potential buyers of the existence and proximity of the Port and its potential for noise and other impacts. However, as can be appreciated, this proactive approach effectively shifts/imposes some of the cost of managing the Port's impacts back onto the surrounding community. This may have political implications, and as such, the implementation of a planning instrument by the Local Government to accommodate expected impacts from an expanded Port cannot be guaranteed. The result of this later course of action would then be to expose residents to potential hazards.

Consequently, in the interest of orderly and proper planning for the region it is recommended that the South West Region Planning Committee (SWRPC), as a delegated committee of the WAPC, should fulfil its role and functions as the independent and ultimate decision-making authority by:

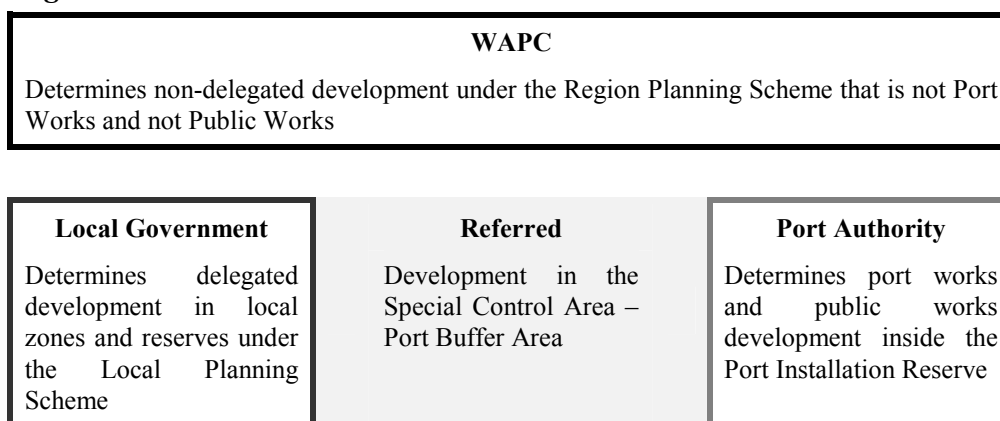
- (a) regulating Port operations with respect to its potential for impacting on land outside of its boundaries through the imposition of Environmental Conditions upon the proposed draft Bunbury Port Inner Harbour Structure Plan, which establishes a head of power for monitoring an enforcement of individual port user approvals/licenses (refer to Conditions of the Inner Harbour Lease Structure Plan at **Attachment 7 of the Report Under Separate Cover**);
- (b) providing oversight of the Bunbury Port's future development by assuming the responsibility for the endorsement of the proposed draft Bunbury Port Inner Harbour Structure Plan;
- (c) devolving the responsibility for the implementation of the proposed draft Bunbury Port Inner Harbour Structure Plan to the DPI with respect to the assessment of applications for planning approval and the enforcement of conditions of planning approval for development that is not deemed to be either port works or public works; and

- (d) coordinating and integrating the functions of the various authorities and agencies in the assessment and implementation of the proposed draft Bunbury Port Inner Harbour Structure Plan (including the Department of Environment and Conservation, Department of Water, Main Roads Western Australia, Department of Health, etc.)

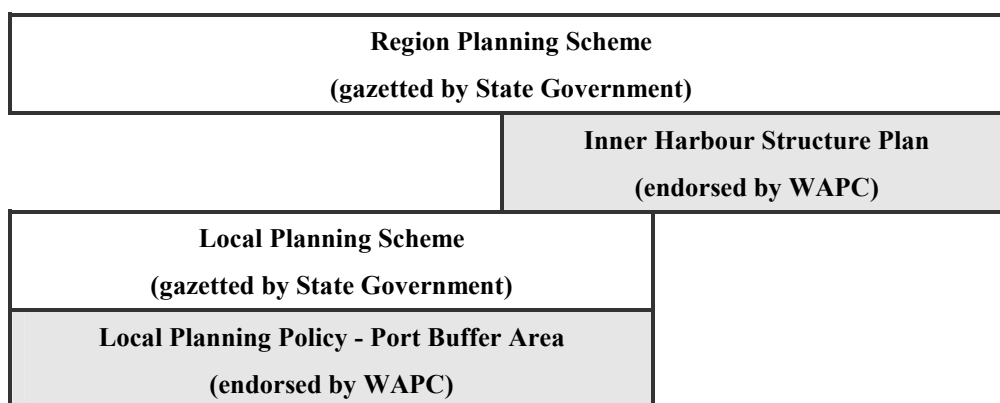
The recommend model for the desired approach is graphically expressed in the Figure 1 below.

Figure 1: Framework for Agencies and Statutory Instruments for the Planning and Development Control of the Port and Buffer areas.

Agencies:



Instruments:



Whilst acknowledged as having resource implications for the DPI, the desired course of action discussed in this letter is nevertheless considered reasonable given the lessons learnt from the City’s own perspective of the Fremantle Port Authority (FPA) experience³. This case study explicates the two main sets of issues:

- (a) strategic planning issues, and in particular, the land use planning intent for interface areas between port related activities and the rest of the City in which non-port uses were countenanced; and

- (b) statutory planning issues, specifically the procedure for referral of applications for planning approval to the Port Authority for comment prior to determination.

(Note 3 The WAPC's primary statutory instrument for managing the land use planning of both authorities is the Metropolitan Region Scheme (MRS), which designates the majority of the FPA boundary as "Port Installations Reserve" in common with the Bunbury Port under the GBRS.)

In the first instance, the benefit of the Commission endorsing the proposed draft Bunbury Port Inner Harbour Structure Plan would be to mitigate against the problems arising from the ambiguity created by the Fremantle Port's Waterfront Masterplan⁴. In the City's view the draft Structure Plan has the potential to unduly repeat similar errors of process and content, in which the Fremantle's case was conceded by the Commission thus⁵:

Although the WAPC endorsed Fremantle Ports' waterfront masterplan in 2001, strategies and plans for the quay left significant aspects open to interpretation. There is a consensus that the proposal as originally submitted exceeded the commonly understood intentions of the masterplan.

(Note 4. The Fremantle Port Waterfront Masterplan was endorsed by the WAPC in 2001. The Waterfront Masterplan applies to that areas referred to as "West Victoria Quay", which is revered as "Public Purposes – Special Uses under the MRS. The remainder of the Port's land is reserved "Port Installations Reserve".

Note 5. WAPC Statement regarding "Approval of office and retail in new and existing buildings on West Victoria Quay, Port of Fremantle", made by Mr Jeremy Dawkins, WAPC Chairman, 21 December 2007.)

The "limited strategic detail" in the Fremantle Port's Waterfront Masterplan meant that significant community concern was generated in reaction to subsequent development proposals by the Fremantle Port Authority. The City of Fremantle was placed in the invidious position of attempting to resolve the matter over an extended timeframe at significant organisational cost in resources and cohesion. Given greater planning and procedural oversight by the Commission, the potential for similar circumstances to arise in Bunbury's case may arguably be reduced or avoided.

In the second instance, the benefit of the Commission endorsing the draft Structure Plan would be to provide an enhanced statutory framework by which each authority may exercise their respective role and responsibilities for the granting of development approval. Again, as in the strategic sense, it is not the core matter of regulating port related activities that is in doubt or being contested. Rather, it is the Port's interface issues and which authority has primary decision making power in less obvious circumstances.

As in the case for the City of Fremantle, the Local Government's responsibilities for the assessment of applications for planning approval is limited to only that land zoned under its Local Planning Scheme. As such, it can be envisaged that subject to the City adopting a commensurate approach to that of the Fremantle case example - the City will only refer applications for planning approval to the Port Authority where they fall within one of referral areas under a Special Control Area and/or Local Planning Policy. The Port Authority responsibilities for the assessment of development proposals should then be limited to only those developments/uses that are port works or public works within its area.

Given the above, it can be expected that the administration of the proposed draft Bunbury Port Inner Harbour Structure Plan will remain problematic when it is accepted that numerous developments/uses will be proposed from time to time that will exceed the commonly understood intentions of the draft Structure Plan due to its limited strategic and statutory detail. This expectation is based on the fact that to some extent all plans are drafted with partial knowledge and cannot be prescriptive enough to reasonably foresee all contingencies, nor flexible enough to respond to all changing circumstances. To this end it is the role of the WAPC to balance and trade off competing desires/outcomes in exercising its responsibility for the implementation of the State Planning Framework.

It is considered that the approach taken by the State Government in relation to the Minister of Planning's decision to endorse the "Inner Harbour Lease Structure Plan" for the WA Plantation Resources Pty Ltd (WAPRES) site is relevant to the consideration of the currently proposed draft Bunbury Port Inner Harbour Structure Plan (refer to Special Council Meeting held on 13 October 2005 regarding the proposed WAPRES Woodchip Mill at Berth 3 of the Inner Harbour and the ongoing appeal to the State Administrative Tribunal (Council Decision 224/05) at **Attachment 7 of the Report Under Separate Cover**).

At the time the need for the Inner Harbour Lease Structure Plan was as a direct result of there not being an adopted structure plan for the Port at the time, and as such, was adopted as an interim measure until such time as a structure plan could be adopted by the Local Government and endorsed by the Commission for the entire Port area included within the Development Investigation Policy Area under the Local Planning Scheme.

The Inner Harbour Lease Structure Plan was to permit an "Industry" use (i.e. non-port related activity or works) to be developed inside the Port's boundary. At the time the Inner Harbour Lease Structure Plan was adopted by a Ministerial decision, it was accepted that there was a need to impose a set of conditions, which were then reflected in the development approval for the WAPRES woodchip mill. The conditions required, inter alia, the preparation of a Port Environmental Management Plan (EMP). The condition of the Structure Plan and development approval also required that the proponent annually reports on the woodchip mill's performance against the EMP.

Whilst the Inner Harbour Lease Structure Plan was called in during an appeal process and adopted as a decision by the then Minister for Planning under the powers of the previous *Town Planning and Development Act 1928*, it is nevertheless considered a relevant precedent for the treatment of the currently proposed draft Bunbury Port Inner Harbour Structure Plan.

Strategic and/or Regional Outcomes

There has been no change to the information provided in the report to the Ordinary Meeting of Council on 18 March 2008 (refer to **Attachment 1 of the Report Under Separate Cover**).

Community Consultation

In accordance with Council's resolution (Decision number 44/08) and pursuant to the Planning and Development Act 2005, the Town Planning Regulations 1967 and clause 5.9.13 of the City of Bunbury Town Planning Scheme No. 7, the proposed draft Structure Plan was referred to all relevant state government agencies and publicly advertised for comment during a formal advertising period of 60 days, from the week beginning 7th of April until the week ending 6th of June 2008.

The Schedule of Submissions and a copy of each individual submission are enclosed at **Attachment 3 and 4 of the Report Under Separate Cover**). Table 1 and 2 provide a synopsis of the level of support for and objection to the proposal, and the predominant types and frequency of concerns raised in the 27 submissions received. Of the submissions received, 17 (mostly from government agencies and non-government organisations) either did not object or gave qualified support for the proposal with or without modifications. Ten of the submission (mostly from residents) objected to the proposal.

Table 1: Level of Support for or Objection to the Proposal.

| Submitters | Support | No Objection | No Objection / Support with Changes | Object | Further Investigation / Management Required |
|---|---------|--------------|-------------------------------------|--------|---|
| Resident Submissions | | | | | |
| <i>Refer to Schedule of Submissions</i> | | 4 | 1 | 10 | 3 |
| Agency Submissions | | | | | |
| City of Bunbury (City Services) | | | ✓ | | ✓ |
| Environmental Protection Authority | | ✓ | | | ✓ |
| Department for Planning and Infrastructure (BikeWest) | | | ✓ | | |
| Department of Water | | ✓ | | | ✓ |
| Heritage Council of Western Australia | | | ✓ | | ✓ |
| Public & Private Sector Industry Submissions | | | | | |

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| Submitters | Support | No Objection | No Objection / Support with Changes | Object | Further Investigation / Management Required |
|--|-----------|--------------|-------------------------------------|-----------|---|
| Chamber of Minerals & Energy | ✓ | | | | |
| South West Development Commission | ✓ | | | | |
| ARG | ✓ | | | | |
| Taylor Burrell Barnett (submitted on behalf of LandCorp) | | ✓ | | | ✓ |
| Public & Private Sector Infrastructure Provider Submissions | | | | | |
| Water Corporation Bunbury | | ✓ | | | |
| WestNet Rail | ✓ | | | | ✓ |
| Western Power | | ✓ | | | |
| Community Organisation Submissions | | | | | |
| Friends of the Earth (South West WA) | | | ✓ | | ✓ |
| Sub-total = | 4 | 9 | 4 | 10 | |
| Total = | 17 | | | 10 | |

Table 2: Predominant Type and Frequency of Concerns (n = 27).

| Type of Concern | Frequency of Concern | Comment |
|----------------------------|----------------------|---|
| Retaining of Estuary Drive | 1 | <p>The design of the proposed Structure Plan as drafted would not allow for the retention of Estuary Drive in its present form. The primary reasons given for closing Estuary Drive are:</p> <ol style="list-style-type: none"> 1. to accommodate the extension and expansion of the Inner Harbour, including its ramifications on the layout of framing land use; and 2. to maximise the security of the Port by removing unregulated public access along a road that bisects the Port and hence reducing the number/amount of interfaces with publicly accessible areas. <p>The implications for the closing of Estuary Drive are however, also acknowledged and will require mitigation. It is therefore recommended that upgrades be made to Australind Bypass, and associated pedestrian and cycle pathway networks, to accommodate for the expected increase in traffic volume resulting from the closure the existing linkage along Estuary Drive.</p> |

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| Type of Concern | Frequency of Concern | Comment |
|--|----------------------|---|
| Traffic and transport impacts on road system (road freight movement) | 4 | <p>The Port's expansion according to the draft Structure Plan will potentially have significant impacts on the City's northern transport networks in regards to:</p> <ul style="list-style-type: none"> • expected increased traffic volumes on Australind Bypass and Koombana Drive; • reduced vehicle and bicycle connectivity to northern suburbs via Estuary Drive; and • increased traffic congestion at key intersection points. <p>The creation of the grade separated Port Access Road (within the Service Corridor, which includes rail) is expected to mitigate against increased freight (truck) traffic volumes accessing/egressing the Port. Port users should be required to utilise the Port Access Road as the primary access point.</p> <p>It is recommended that with the prerequisite of the Port Access Road's construction and transfer of Outer Harbour uses into the Inner Harbour, the designation of Koombana Drive as a "Primary Freight Route" should be reconsidered.</p> <p>The transport planning component of the draft Structure Plan should take account of not only port related transport movements, but also the resulting impacts of the Port's design and operations on other road users (with respect to safety, amenity and convenience).</p> <p>Therefore, further detailed investigation of the overall transportation and traffic implications generated by the Port's expansion is required, and the results of such investigations should be incorporated into the draft Structure Plan to the satisfaction of both Main Roads Western Australia (MRWA) and the City.</p> <p>Specifically, the outcomes of this investigation should inform the infrastructure planning of the Port and its surrounds, including costing and funding arrangements, for the upgrading and/or duplication of roads, intersections, pedestrian and bicycle pathways.</p> <p>Notwithstanding, it should be noted that the affected roads are reserved under the GBRS as "Primary Regional Roads" under the control of MRWA, or "Other Regional Roads" for which the planning responsibilities are shared between the Commission and the Local Government.</p> |
| Prevention of general industry (production) uses in the Port | 2 | <p>It has been the position of the City that no additional general industry uses should be permitted within the Port, and instead should be reserved for port related activities, services and works within the Inner Harbour.</p> <p>It must be recognized that general industry uses are not "port works" or "public works", and therefore, as the land is included in the "Port Installations Reserve" will still require the planning approval of the Western Australian Planning Commission (WAPC) under the Greater Bunbury Region Scheme (GBRS).</p> |
| Retention of Leschenault Homestead | 7 | <p>The <u>Leschenault Homestead Planning Committee Final Report</u> (December 2007) provided justification of why it would not be feasible to retain the Homestead in its present location should the Port</p> |

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| | | <p>be expanded in line with the draft Structure Plan.</p> <p>The principle recommendation of the <u>Leschenault Homestead Planning Committee Final Report</u> (December 2007) on the relocation of the Leschenault Homestead has been reflected in the draft Structure Plan. Whilst the Homestead remains within the boundaries of the “Port Installations Reserve”, the matter is outside of the jurisdiction of the City as given by the GBRs; and the ownership and maintenance of the Homestead remains the responsibility of the BPA.</p> <p>The opportunity to create a museum or commercial enterprise on the site of the Leschenault Homestead has been discounted in the <u>Leschenault Homestead Planning Committee Final Report</u>. An alternative site where this opportunity may be realised in some form has been suggested on Port land located along Australind Bypass in the vicinity of Vitoria Road.</p> |
| Retention of current Preston River alignment (Acid Sulfate Soils) | 2 | <p>Should the Preston River realignment be approved, then it can be expected that the BPA will seek to reserve the land for the purposes of “Waterways” and “Regional Open Space”. The creation of these reserves will occur through an amendment procedure to the GBRs.</p> <p>The primary reasons given for the realignment of the Preston River are:</p> <ol style="list-style-type: none"> 1. to accommodate the extension and expansion of the Inner Harbour, including its ramifications on the layout of framing land use; and 2. to provide for a buffer area between the Port’s operations and the surrounding residential areas of Glen Iris, Moorlands and East Bunbury. <p>The secondary benefit given for the Preston River’s realignment is that it will provide an opportunity to enhance the visual landscape aesthetics of the Port boundary, and will increase the level of accessibility and recreational functionality of the River’s foreshore.</p> <p>It is understood that the testing for Potential Acid Sulfate Soils (PASS) and/or Actual Acid Sulfate Soils (AASS) is being undertaken by the BPA prior to any development, including for the diversion of the Preston River. The management of potential or actual Acid Sulfate Soils should then be in accordance with WAPC <u>Planning Bulletin No. 64 Acid Sulfate Soils</u>.</p> |
| Unjustified expansion of the Port (either economically or geographically) | 5 | <p>Information on matters relating to the economic rationale and justification for the Port’s expansion should be obtained from the relevant State Government agencies, such as the Department of Industry and Resources and the South West Development Commission. Further information may be obtained from independent organisations, such as the Chamber of Minerals & Energy.</p> |
| Relocation of Port to Kemerton Industrial Park | 4 | <p>The State Government reserved the land where the Port is currently located for the purposes of “Port Installations Reserve” under the GBRs. The option to relocate the Port has not been considered. The State Government has presently not made provision for the relocating of the Bunbury Port to a site west of Kemerton Industrial Park. Therefore, the City of Bunbury must ensure that further growth is accommodated within its present urban footprint through practicable</p> |

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| | | and appropriate land use planning solutions as part of its own Local Planning Policy Framework review processes. |
| Noise emissions (either from railway and/or port operations) | 2 | <p>A noise impact study is expected to accompany the draft Structure Plan and/or Port Buffer Definition Study (and should ideally be the basis for any environmental conditions), and should take account of the cumulative impact of the Port's operations over time, not excluding noise generated by "24/7" freight train operation.</p> <p>It is recommended that the noise impact modelling shown in the draft Structure Plan be amended to reflect the potential for exceedance of the LA₁₀ (41dB(A)) level due to rail operations, in particular at night.</p> |
| Dust and other pollutant/emission impacts on public health, air water and soil quality | 4 | <p>Flooding, dust, noise and other emissions that have the potential for off-site impacts that injuriously affect the amenity (public health as well as quality of life) of surrounding residential areas must be mitigated in accordance with, inter alia, the EPA's Environmental Protection Policy standards and the WAPC's <u>Statement of Planning Policy No. 4.1 State Industrial Buffer Policy</u>.</p> <p>The BPA is required under the State Industrial Buffer Policy to prepare a Port Buffer Definition Study, to be endorsed by the WAPC, which should make a series of recommendations for the management of impacts and the mitigation/treatment of risks. It is expected that one or more recommendations will directly relate to the City of Bunbury; and may require the City to accept some level of responsibility for the management of potential impacts on residential and other sensitive land uses (e.g. development control through a Special Control Area under the Scheme and/or a Local Planning Policy for noise attenuation in new dwellings).</p> <p>It is also likely that the BPA will request that any local planning policy instruments require referral of development proposals to the BPA for comment/decision within a prescribed area. This may have statutory and business implications for the City's development assessment operations (i.e. may extend assessment timeframes and complicate responsibilities for clearance and enforcement of conditions).</p> |
| Risks from hazardous or noxious materials (storage and/or movement) | 3 | <p>It must be noted that the licensing and enforcement of conditions on the storage, movement and exportation of hazardous materials is controlled by the EPA.</p> <p>It is noted that the rationale for the arrangement of Indicative Land Uses within the draft Structure Plan seeks to expose sensitive use areas to the least amount of noise, dust, and hazardous material impacts. However, numerous issues were raised in the first report to Council (18 March 2008), which have not yet been resolved. It is expected that the Port Buffer Definition Study should provide adequate detail of information and solutions for the risk management of all anticipated hazards.</p> <p>Notwithstanding, further risk evaluation is required for noxious and hazardous materials to be incorporated in the cumulative impacts assessment, including for gases, odours and chemical spills. Whilst the draft Structure Plan does seek to limit the extent of the noxious and hazardous industry use classes (ie. processing), the storage or stockpiling, handling and transportation of hazardous and noxious</p> |

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| Type of Concern | Frequency of Concern | Comment |
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| | | materials may occupy an extensive area under the Draft Structure Plan. It is therefore, recommended that a Risk Management Plan be prepared to guide specific noxious and hazardous materials storage and transportation. |
| Protection of terrestrial and marine ecosystems/habitats/species | 4 | Impacts on marine and terrestrial environments, including those caused by the dredging and widening/extending of the Inner Harbour, are expected to be assessed by the EPA as part of an environmental review/assessment of the entire draft Structure Plan or aspects of it (e.g. channel dredging, river realignment, land reclamation, etc). |
| Public open space and access to recreational opportunities | 2 | <p>The BPA has constructed a new Turkey Point Access Road to grantee public access to Turkey Point prior to and during all stages of the Port's expansion.</p> <p>Subject to the Preston River's realignment, greater accessibility and increased recreational opportunities should be expected along the River's foreshore. The rationale and justification for the creation of a 'Preston River Parkland' is contained in the report titled <u>Bunbury Port Authority Inner Harbour Expansion Structure Plan – Urban Design Structure</u> (2006). It is recommended that with the implementation of the draft Structure Plan, the BPA should prepare a Landscape Plan for the subject area in support of its reservation as "Regional Open Space" and "Waterways" under the GBRS.</p> |
| Damage from channel dredging and/or harbour expansion (blasting) activities | 2 | The terms of reference for any environmental review/assessment by the EPA of the draft Structure Plan should include consideration of the potential for damage to be caused by dredging of the harbour channel and basin, with particular emphasis on the likely effects of blasting on both natural and urban environments. |
| Risks to groundwater resources (aquifer) | 1 | The terms of reference for any environmental review/assessment by the EPA of the draft Structure Plan should include consideration of the potential risks to groundwater resources (aquifer) used for the supply of public drinking water. |
| Flood hazards and longer risks from term sea level rise | 2 | The terms of reference for any environmental review/assessment by the EPA of the draft Structure Plan should include consideration of the potential risks to groundwater resources (aquifer) used for the supply of public drinking water. |
| Adequacy of railway infrastructure | 2 | <p>It is accepted that the freight transport corridor is to be protected and upgraded as part of the draft Structure Plan where relevant to this proposal.</p> <p>A noise impact study is expected to accompany the draft Structure Plan and/or Port Buffer Definition Study (and should ideally be the basis for any environmental conditions), and should take account of the cumulative impact of the Port's operations over time, not excluding noise generated by "24/7" freight train operation.</p> <p>The Port Service Corridor is being implemented under the GBRS by its inclusion within "Railways" and "Public Purposes" reservations, which are augmented by Special Control Areas where designated. As such, the City's own land use planning must respond to the State interest/priorities, and must accord with the State Planning Framework. That is, the Local Planning Scheme must be consistent with the Region Planning Scheme. Therefore, land use planning</p> |

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| | | proposals generated by the City or any other party must be referred to the WAPC for approval under the GBRS. |
| Protection of transport (port services) corridor from encroachment by sensitive uses | 2 | The Port Service Corridor is protected under the GBRS by its inclusion within “Railways” and “Public Purposes” reservations, which are augmented by Special Control Areas where designated. As such, the City’s own land use planning must respond to the State interest/priorities, and must accord with the State Planning Framework. That is, the Local Planning Scheme must be consistent with the Region Planning Scheme. Therefore, land use planning proposals generated by the City or any other party must be referred to the WAPC for approval under the GBRS. |
| Acquisition of private land for port expansion and/or Preston River diversion | 1 | <p>Affected landowners should be referred to the DPI’s Property & Management Services unit, which provides land asset management services to the WAPC in meeting the State’s obligations for land reserved under the Region Scheme. These services include the acquisition, management, development and disposal of properties reserved under region planning schemes for primary regional roads, other regional roads, railways, parks and recreation/regional open space, special uses, and major land development projects under particular legislation that is amended by an act of Parliament. In addition, Property & Management Services deals with all claims for compensation for injurious affection and the provision of internal valuation advice in respect of proposed planning outcomes of the WAPC.</p> <p>Further information and advice in regards to the land acquisition programme, procedures for the negotiation of voluntary purchase and or compensation may be provided by contacting the Department’s representatives on (08) 9264 7531 or by going on-line at:</p> <p>www.wapc.wa.gov.au/Property+and+land+management/default.aspx.</p> |
| Implications for tourism | 2 | <p>The balance and trade-offs made for tourism must be considered relevant to what it contributes to the local and regional economy in comparison to the Port. The impact of the Port on the liveability and quality of life experienced in the City is as relevant to visitors as it is for its residents.</p> <p>With respect to the Port’s development and operations - the draft Structure Plan report concedes on page 55 that:</p> <p><i>Given the population growth around the Inner and Outer Harbours, the Port Authority should update the cumulative individual and societal risk models as part of the ongoing management of risk.</i></p> <p>Therefore, an Environmental Management Plan for the entire Port area (as currently applied to the WAPRES site) is recommended.</p> <p>With respect to the Port’s visual aesthetics (both landscape and built form) – boundary/buffer treatments should be located, designed, constructed and maintained in such a manner that provides a suitably positive visual image that is compatible with and reinforces the identity of the City.</p> |
| Community engagement (consultation) | 1 | TPS7 statutorily provides for a minimum level of consultation for structure planning, which is commensurate to an application for planning approval for a discretionary (“A”) use that requires public |

| Type of Concern | Frequency of Concern | Comment |
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| | | <p>advertising. This is usually adequate when dealing with the bulk of structure plans that do not involve such significant and complex proposal as the Port. Council resolved at it Ordinary Meeting of 18 March 2008 to publicly advertise the draft Structure plan for not less than 60 days.</p> <p>The BPA commenced the structure planning process in 2005 and have conducted consultation with affected landowners prior to submitting the plan to the City for assessment. It is understood that the BPA have sought to provide a number of opportunities for community and stakeholder comment (both collectively and individually) during the process above and beyond the minimum statutory requirement.</p> <p>To date the BPA has sought community and stakeholder input in the preparation of the draft Structure Plan through:</p> <ul style="list-style-type: none"> • public forums; • meetings with landowners, especially owners within the structure plan area; • an open forum (held at the Lord Forest hotel on 23 March 2006, called Bunbury Port Authority Structure Plan Public Consultation) in which the City's staff participated along with other affected stakeholders who had registered an interest in attending; • Port Liaison Group; • various media releases; and • the Bunbury Port Authority website and newsletter Portal. <p>Given the BPA is a public authority, it is recommended that the BPA should continue to involve all interested parties and affected stakeholders during the implementation of the draft Structure Plan. As the BPA is an instrument of the State Government, community engagement processes should ideally accord with the Guide produced by the Department of the Premier and Cabinet's Office of Citizens and Civics: Consulting Citizens Series titled <u>Working Together: Involving Community and Stakeholders in Decision-Making</u>.</p> |

Councillor/Officer Consultation

The City was consulted during the formulation of the proposed draft Structure Plan by way of an open forum held at the Lord Forest hotel on 23 March 2006 (called Bunbury Port Authority Structure Plan Public Consultation) in which staff participation along with other affected stakeholders who had registered an interest in attending the event.

The BPA provided a presentation on a preliminary draft of the Structure Plan at a Council Briefing session on 8 May 2007. Officers of City Development, and other City staff, have also sought to contribute to the formulation of the proposed draft Structure Plan and the Port Buffer Definition Study at all opportunities provided by the BPA.

During the public advertising period, and whilst assessing submissions, opinion was also sought from the City of Fremantle on its:

- perspective in managing the urban interface with a Port;
- experiences of working with a Port Authority that has undergone a Buffer Definition Study process;
- practices in administrating a port related Local Planning Policy and Special Control Area under its Scheme.

Obtaining this opinion helped to inform the officer's understanding of the procedures, possible lessons learnt and shaped the recommended process and outcomes in relation to Bunbury.

Analysis of Financial and Budget Implications

The financial implications of the proposal on the City's Annual Budget have not been quantified.

Economic, Social, Environmental and Heritage Issues

The comments made by submissions relate to all three spheres of sustainability issues. In the absence of supplementary information, and until the Port Buffer Definition Study has been released, there has been no change to the information provided in the report to the Ordinary Meeting of Council on 18 March 2008 (refer to **Attachment 1 of the Report Under Separate Cover**).

Legislative and Council Policy Compliance

With respect to the City's statutory obligations - the gazetting of the Region Planning Scheme, the City of Bunbury has no longer the jurisdiction to adopt the proposed draft Bunbury Port Inner Harbour Structure Plan under the head of power of its Local Planning Scheme. Specifically, the proposed draft Structure Plan was advertised for adoption under clause 5.9.13 of TPS7, which no longer applies to the bulk of the Bunbury Port Authority's land that is now reserved as "Port Installations Reserve" under the GBRS.

With respect to the proposal - as stated in the previous report, how effective any structure plan is as both a policy tool for guiding land use planning outcomes and as a statutory planning (legal) instrument for granting planning approval is dependant upon the veracity and efficaciousness of the structure plan itself. It is also fundamentally dependant upon the head of power that the structure plan is created under. Should the WAPC not establish responsibility for endorsing the proposed draft Structure Plan under the GBRS, then its effectiveness as a statutory planning instrument can be considered limited.

Delegation of Authority

There is no relevant delegation of authority in respect of this proposal.

Relevant Precedents

There is no relevant precedent within the City of Bunbury with respect to this proposal. An investigation of the Fremantle Port was undertaken in order to provide the City with a synopsis of a case example where a Local Government is abutting a Port Authority and is subject to a Region Planning Scheme. The case example chosen for its relevance to Bunbury was the City of Fremantle and the Fremantle Port Authority. The Region Scheme applying to the case example is the Metropolitan Region Scheme (MRS), which like the Greater Bunbury Region Scheme (GBRS), also has its own instruments of delegation. The brief into this case example was undertaken to provide staff with an understanding the City's, and other stakeholders, likely roles and responsibilities for the planning and development of land within and around the Bunbury Port Inner Harbour area - specifically that area reserved under the GBRS as "Port Installations Reserve" (refer to **Attachment 8 of the Report Under Separate Cover**).

Options

Option 1:

As per the recommendation as listed in this report.

Option 2:

Council may delete, modify or add to any of the suggested recommendations, but it cannot make any resolution that is binding on a third party such as the BPA.

Conclusion

Whilst it is acknowledged that the statutory planning (legal) framework has changed, it is still considered prudent that the State Government should follow a similar approach to the adoption of the proposed draft Bunbury Port Inner Harbour Structure Plan for the entire Port area as was taken for the Inner Harbour Lease Structure Plan to permit the development of the WAPRES Woodchip Mill at Berth 3 of the Inner Harbour. The adoption of the Inner Harbour Lease Structure Plan by the then Minister for Planning under the powers for the *Town Planning and Development Act 1928* was made through the gazetted Local Planning Scheme on behalf of the Local Government.

Given that the need for a "Development Investigation Policy Area" designation requiring a structure plan under the Local Planning Scheme was gazetted by the State Government, it is reasonable to assume that the same rationale should apply under the Region Planning Scheme. As the "Development Investigation Policy Area" designation was made in the absence of a Region Planning Scheme. Therefore, the currently proposed draft Inner Harbour Structure Plan should be endorsed by the WAPC under the powers of the *Planning and Development Act 2005* through the Region Planning Scheme on behalf of the State Government. Following such a common approach would ensure adherence to sound planning and environmental management principles and continuity of administrative practice.

Finally, it is recommended that as in the case of the Inner Harbour Lease Structure Plan, the currently proposed draft Inner Harbour Structure Plan should include as a condition the need for an Environmental Management Plan to be approved by both the WAPC and EPA, which applies the findings of the Port Buffer Definition Study, and which is reported on to the EPA on an annual basis by the Bunbury Port Authority.

This does not preclude other approvals that would expect to be required by the BPA in order to implement the proposed draft Inner Harbour Structure Plan, such as:

- Approval required under Environmental Protection Act 1986 for diversion of the Preston River channel:
 - Acid sulphate soil management of channel excavation and dewatering;
 - effects on estuarine and marine habitat areas and associated communities, e.g. bird species within the Japanese and Australian Migratory Birds Agreement (JAMBA) and Chinese and Australian Migratory Birds Agreement (CAMBA) sites;
 - effects on hydrology – deposition of sediments into Leschenault Inlet.
- Approval required under the Heritage of Western Australia Act 1990 for relocation of Leschenault Homestead.
- Approval required under Aboriginal Heritage Act 1972 for potential impacts on Indigenous cultural heritage values:
 - Ministerial consent s.18 of Act in order to disturb Registered Aboriginal Heritage Sites;
 - Ethnographic & Archaeological Survey required to determine presence of un-registered sites, which are similarly protected under Act.
- Approval required under Environmental Protection Act 1986 for changes to natural ground level:
 - 1 in 500 year flood mitigation.
- Approval required under Environmental Protection Act 1986 for dredging of harbour:
 - dredging and blasting impacts on marine habitat (eg. approx 80 dolphins that live in Koombana Bay);
 - liaison with Dolphin Discovery centre required to manage impacts;
 - measures required to guide dolphins to safer areas during the dredging period.
- Approvals under Commonwealth Environment Protection and Biodiversity Conservation Act 1999 may also be required.
- Approval required under Environmental Protection Act 1986 for clearing of vegetation and filling of EPP wetlands.
- Flood mitigation for 1 in 500 year event and the future of Glen Iris Relief Floodway (GIRF) – need to see modelling for the proposal.
- Future land uses for BGC site and process for further detailed structure planning

Recommendation

- 1) Council notes the submissions received on the Bunbury Port Authority's proposed draft Bunbury Port Inner Harbour Structure Plan.
- 2) Council forwards copies of the Schedule of Submissions and the individual submissions for consideration by the Bunbury Port Authority, and recommends that the Bunbury Port Authority addresses the concerns raised in the submissions through the revision of the proposed draft Bunbury Port Inner Harbour Structure Plan and/or the preparation of the draft Port Buffer Definition Study where appropriate.
- 3) Council forwards copies of the Schedule of Submissions and the individual submissions for consideration by the Western Australian Planning Commission, and recommends that the Commission directs the Bunbury Port Authority to address those relevant matters raised in the submissions to the satisfaction of the Commission; and that the Commission acts to supervise the revision of the proposed draft Bunbury Port Inner Harbour Structure Plan and/or preparation of the draft Port Buffer Definition Study.
- 4) Council requests the Western Australian Planning Commission considers the continuation of the conditions imposed on the adopted Inner Harbour Lease Structure Plan, by way of imposing the same and/or similar environmental conditions on an endorsed Bunbury Port Inner Harbour Structure Plan to the satisfaction of the Environmental Protection Authority.
- 5) Council requests that the Western Australian Planning Commission assumes the responsibility of the decision-making authority, and that considers the proposed draft Bunbury Port Inner Harbour Structure Plan and the draft Port Buffer Definition Study for endorsement, pursuant to the *Planning and Development Act 2005* and the Greater Bunbury Region Scheme.
- 6) Council requests that the decision-making authority refers the proposed draft Bunbury Port Inner Harbour Structure Plan to the Environmental Protection Authority for environmental impact assessment of the proposal and the associated draft Port Buffer Definition Study, pursuant to the *Environmental Protection Act 1986*.
- 7) Council advises that, subject to the assessment of the proposal by the Environmental Protection Authority and the endorsement of the proposed draft Bunbury Port Inner Harbour Structure Plan and the draft Port Buffer Definition Study by the Western Australian Planning Commission, it will rescind the existing Inner Harbour Lease Structure Plan.

Outcome of the Council Committee Meeting – 28 October 2008

Mr Gilbert Fisher, addressed Council raising his concerns of the proposed Inner Harbour Project and provided members with details of the 1970's Port expansion and problems that were encountered with basalt rock drilling and cost blowouts.

Mr Bernard Bishoff and Mrs Judith Johnston also addressed members raising concerns about the relocation of the Leschenault Homestead and reiterated the historical meaning of the building to Bunbury.

The recommendation was moved Cr Whittle, seconded Cr Leigh.

During discussion, it was clarified that Council has no jurisdiction over the Leschenault Homestead as it is on Port Authority Land. It was also clarified that information obtained through the Port Authority Community Liaison Committee that the Port Authority have been undertaking works on the Homestead including the removal of asbestos and are currently in the process of restoring wall linings.

The Presiding Member put the recommendation to the vote and it was adopted *9 votes "for" to 1 vote "against"* to become the Committee's recommendation on this issue.

Committee Recommendation

- 1) Council notes the submissions received on the Bunbury Port Authority's proposed draft Bunbury Port Inner Harbour Structure Plan.***
- 2) Council forwards copies of the Schedule of Submissions and the individual submissions for consideration by the Bunbury Port Authority, and recommends that the Bunbury Port Authority addresses the concerns raised in the submissions through the revision of the proposed draft Bunbury Port Inner Harbour Structure Plan and/or the preparation of the draft Port Buffer Definition Study where appropriate.***
- 3) Council forwards copies of the Schedule of Submissions and the individual submissions for consideration by the Western Australian Planning Commission, and recommends that the Commission directs the Bunbury Port Authority to address those relevant matters raised in the submissions to the satisfaction of the Commission; and that the Commission acts to supervise the revision of the proposed draft Bunbury Port Inner Harbour Structure Plan and/or preparation of the draft Port Buffer Definition Study.***
- 4) Council requests the Western Australian Planning Commission considers the continuation of the conditions imposed on the adopted Inner Harbour Lease Structure Plan, by way of imposing the same and/or similar environmental conditions on an endorsed Bunbury Port Inner Harbour Structure Plan to the satisfaction of the Environmental Protection Authority.***

- 5) *Council requests that the Western Australian Planning Commission assumes the responsibility of the decision-making authority, and that considers the proposed draft Bunbury Port Inner Harbour Structure Plan and the draft Port Buffer Definition Study for endorsement, pursuant to the Planning and Development Act 2005 and the Greater Bunbury Region Scheme.*
- 6) *Council requests that the decision-making authority refers the proposed draft Bunbury Port Inner Harbour Structure Plan to the Environmental Protection Authority for environmental impact assessment of the proposal and the associated draft Port Buffer Definition Study, pursuant to the Environmental Protection Act 1986.*
- 7) *Council advises that, subject to the assessment of the proposal by the Environmental Protection Authority and the endorsement of the proposed draft Bunbury Port Inner Harbour Structure Plan and the draft Port Buffer Definition Study by the Western Australian Planning Commission, it will rescind the existing Inner Harbour Lease Structure Plan.*

11.3 PROPOSED CHANGE OF NAME OF THE TEMPORARY BUNBURY PORT ACCESS ROAD *(WAS LISTED AS ITEM 11.1 ON THE MEETING AGENDA)*

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| File Ref: | R00561 |
| Applicant/Proponent: | Landgate – Geographic Names Section |
| Author: | Beatrice Plant, City Engineer |
| Executive: | Michael Scott, Executive Manager City Services |

Summary

On the 29 August 2008 the City of Bunbury received a request from the Geographic Names Section of Landgate (**attached** at Appendix 1) requesting Council to authorise the use of the name Willinge Drive on the proposed temporary port access road. The temporary port access road will cross the unconstructed section of Temple Road, Woodley Road and Wimbridge Road.

The temporary port access road will also encompass Winsor Street however the name Winsor Street will be applied to a proposed new road which will join the temporary port access road to the permanent port access road as per the plan **attached** at Appendix 2.

It is expected that once the ultimate alignment of the Bunbury Port Access Road is constructed to the east of the first stage. The name Willinge Drive will be applied to its entire length from its intersection with the Bunbury Outer Ring Road to Estuary Drive. The redundant portion of Willinge Drive (first stage) and the Boyanup Picton Road west of its intersection with Willinge Drive will be deproclaimed and revert to local government under a new name.

Background

In October 2007 Landgates Geographic Names Section, approved the name Willinge Drive for the Port Access Road.

Main Roads WA is planning to divert part of the port access route via a temporary road which is now being surveyed. The temporary route will be known as Willinge Drive and that name is being shown on the survey plans.

The route crosses a portion of Temple Road, Woodley Road and Wimbridge Road (which are currently unconstructed) and encompasses Winsor Street. Landgates Geographic Names Section request Council's endorsement for the surveyed route to have only one road name, that being Willinge Drive

Strategic and/or Regional Outcomes

There are no strategic or regional outcomes to consider.

Community Consultation

A Public Notice Advertisement has been placed in the 11 September 2008 South Western Times. Details of the proposed street name changes were made available for public inspection at the City of Bunbury Customer Service Counter. There were no submissions received.

Affected property owners were contacted and advised of the proposed change of the street names. There were no submissions received from affected property owners.

The City has attempted, unsuccessfully, to locate the descendants of Winsor. The only record the City of Bunbury and Geographic Names have on the origins of the name Winsor is that he was a serviceman in World War I. His christian name is not known.

Enquiries to the RSL and internet investigations have been unable to provide any information on Winsor or his descendents.

Councillor/Officer Consultation

The City's Executive has considered the proposal and has no objections to the dedication.

Analysis of Financial and Budget Implications

The proposal has no financial or budget implications.

Economic, Social, Environmental and Heritage Issues

The proposed dedication will have no economic, social, environmental or heritage implications for the City of Bunbury.

Council Policy Compliance

There are no Council Policies relevant to this proposal.

Legislative Compliance

The proposal does not contravene any legislative requirements.

Delegation of Authority

The Chief Executive Officer does not have delegated authority of Council to authorise the action listed in the Executive Recommendation. Landgate require authorisation from Council to proceed with the name changes.

Relevant Precedents

All current names on the City's Streetname Register were approved via a Council Resolution as required under the Geographic Names Committee Guidelines.

Options

Option 1

Per the recommendation as listed in this report.

Option 2

Council elect not to support the name change of the temporary port access road and reallocation of the street name Winsor Street.

Conclusion

To satisfy Landgate requirements the City is now requested by way of a Council Decision to endorse the use of the name Willinge Drive being applied to the temporary port access road so that the surveyed road has only one road name, and for the street name Winsor Street to be applied to a proposed road joining the temporary port access road to the permanent port access road.

Recommendation

That Council endorses:-

1. The use of the name Willinge Drive being applied to the temporary port access road.
2. The street name Winsor Street to be applied to the proposed new road which will join the temporary port access road to the permanent port access road.

Outcome of the Council Committee Meeting – 28 October 2008

The recommendation was moved Cr Jones , seconded Cr Leigh and adopted *10 votes "for" to Nil votes "against"* to become the Committee's recommendation on this issue.

Committee Recommendation

That Council endorses:-

1. ***The use of the name Willinge Drive being applied to the temporary port access road.***
2. ***The street name Winsor Street to be applied to the proposed new road which will join the temporary port access road to the permanent port access road.***

11.4 ANNUAL MEETING OF ELECTORS AND ANNUAL REPORT 2007/2008 (WAS LISTED AS ITEM 11.2 ON THE MEETING AGENDA)

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| File Ref: | A00221 |
| Applicant/Proponent: | Internal Report |
| Author: | Jack Dyson, Senior Administration Officer |
| Executive: | Ken Weary, Executive Manager Corporate Services |

Summary

Council is required to adopt its Annual Report for the 2007/2008 financial year and confirm a date for the Annual Meeting of Electors.

Background

In accordance with the provisions of Section 5.27(1) of the *Local Government Act 1995*, a general meeting of electors of a district is to be held once every financial year.

The 2007/2008 Draft Annual Report (copy issued under separate cover) includes an abridged version of the Annual Financial Statements and Audit Report.

Council is now in a position to adopt the report, arrange printing of the document and set a date for the Annual Meeting of Electors. The agenda for the Annual Meeting of Electors will be:

- To receive the Annual Report of the City of Bunbury for the year ended 30 June 2008; and
- General; Business

Strategic and/or Regional Outcomes

To adopt the Annual Report and conduct the Annual Meeting of Electors in compliance with the provisions of the Local Government Act 1995.

Community Consultation

Public Notice of the Annual Meeting of Electors will be advertised, giving the statutory fourteen (14) days notice of the meeting and advising that the draft Annual Report is available for inspection at the Council Office.

Once the date for the meeting is confirmed by Council, a further advertising feature will be implemented in an attempt to stimulate public interest.

Councillor/Officer Consultation

Councillors are advised (through this report) that a draft copy of the Annual Report is ready for adoption. All managers and officers have assisted in the preparation of the report.

Analysis of Financial and Budget Implications

The preparation and printing of the Annual Report has been catered for in the current Council Budget.

Economic, Social, Environmental and Heritage Issues

There are no Economic, Social, Environmental or Heritage issues associated with the adoption of the Annual Report.

Council Policy Compliance

There are no Council Policies that impact on this matter.

Legislative Compliance

By adopting the Annual Report and confirming a date for the conduct of the Annual Meeting of Electors, Council complies with the provisions of Section 5.27 of the Local Government Act 1995.

Delegation of Authority

Adoption of the Annual Report is not a process able to be delegated.

Relevant Precedents

Council has complied with legislative requirements to conduct the Annual Meeting of Electors in order to meet statutory compliance.

The last Annual Meeting of Electors was held on Thursday 29 November 2007.

Options

Option 1

Per the recommendation listed in this report.

Option 2

Council is required, under the provisions of Section 5.27 of the Local Government Act 1995, to hold an Annual Meeting of Electors. Should Council not agree with Option 1, then it needs to determine an alternative date for the Annual Meeting of Electors.

Conclusion

It is necessary for Council to adopt the Annual Report and confirm a date on which to conduct the Annual Meeting of Electors in order to meet statutory requirements.

Recommendation

1. The draft 2007/2008 Annual Report be accepted.
2. The Annual General Meeting of Electors be conducted on Thursday 27 November 2008, commencing at 7.00pm in the Function Room of the Council Chamber, 4 Stephen Street, Bunbury.

Outcome of the Council Committee Meeting – 28 October 2008

The recommendation was moved Cr Harrop, seconded Cr Leigh and adopted *10 votes "for" to Nil votes "against"* to become the Committee's recommendation on this issue.

Committee Recommendation

1. *The draft 2007/2008 Annual Report be accepted.*
2. *The Annual General Meeting of Electors be conducted on Thursday 27 November 2008, commencing at 7.00pm in the Function Room of the Council Chamber, 4 Stephen Street, Bunbury.*

11.5 FINANCIAL STATEMENTS - SEPTEMBER 2008 (*WAS LISTED AS ITEM 11.3 ON THE MEETING AGENDA*)

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

Financial Statements for the period ending 30 September 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> |

Recommendation

Financial Statements for the period ending 30 September 2008 be received.

Outcome of the Council Committee Meeting – 28 October 2008

The recommendation was moved Cr Jones, seconded Cr Leigh and adopted *10 votes "for" to Nil votes "against"* to become the Committee's recommendation on this issue.

Committee Recommendation

Financial Statements for the period ending 30 September 2008 be received.

11.6 BUNBURY AIRPORT - RESERVE 27686, LOT 455 SOUTH WESTERN HIGHWAY, BUNBURY (NEW LEASE SITE NO. 51 - JOHN WILLIAM MOIR) (WAS LISTED AS ITEM 11.4 ON THE MEETING AGENDA)

| | |
|-----------------------------|---|
| File Ref: | F00080 |
| Applicant/Proponent: | John William Moir |
| Author: | John Beaton, Manager Administration & Property Services, and; Nigel Archibald, Airport Reporting Officer |
| Executive: | Michael Scott, Executive Manager City Services |

Summary

Eaton resident, Mr John William Moir, has made application to lease a new aircraft hangar site (No. 51) at the Bunbury Airport.

It is proposed to grant the lease for an initial 2.5 year term commencing 1 December 2008 with an option to renew for a further term of 5 years. The initial term will expire 30 June 2011 to coincide with existing lease agreements at the airport as required by the *Bunbury Airport Strategic Plan Directions 2000–2010* document.

A site/location plan is **attached** at Appendix 3.

Background

The Bunbury Airport is located on Reserve 27686, Lot 455 South Western Highway, Bunbury. The land is held by the City of Bunbury under Management Order Crown Land Record 3040/63 (Crown Land title Vol 3007 Folio 583) for the purpose of an “Aerodrome” with the power to lease for a term of up to 21 years.

The term of lease agreements at the airport are determined in accordance with the *Bunbury Airport Strategic Plan Directions 2000–2010* which requires all leases to have corresponding expiry dates (currently 30 June 2011) and corresponding terms and conditions.

The City's Executives and the applicant have mutually agreed on the terms and conditions of the lease and the generic terms and conditions are as follows;

| | |
|--------------------|---|
| Commencement Date: | 1 December 2008 |
| Term: | 2.5 years with an option to renew for a further 5-year term |
| Expiry Date: | 30 June 2011 |
| Annual Rental: | 150 sq.m @ \$3.94 p/sq.m = \$591 per annum inclusive of GST (plus Annual Administration Fee \$34.50) |
| Rent Review | Increased in line with the City's <i>Commercial and Industrial Rate</i> throughout the term of the lease. The Administration Fee will be adjusted annually in accordance with the Consumer Price Index. |
| Permitted Use: | Aircraft storage |
| Outgoings: | To be the responsibility of the Lessee (includes payment of |

| | |
|-----------------------|--|
| | municipal property rates) |
| Insurance: | Lessee is to maintain Public Risk and General insurance policies over the land/buildings/property/equipment on his lease site. The Public Risk component is to be set at \$10(M). |
| Document Preparation: | The Lessee will be responsible for the full costs of document preparation, registration and advertising associated with the lease. |
| Special Condition: | The Lessee will be required to construct (or be shown to have made significant progress towards) construction of a hangar on the lease site within the first 12-months of the lease. If this condition is not met the Council has the right to cancel the lease. |

Strategic and/or Regional Outcomes

Strategic 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 proposal also complies with the *Bunbury Airport Strategic Directions Plan 2000-2010*.

Regional Outcomes

Development of new hangar sites at the Bunbury Airport provides opportunities to interested persons from the Greater Bunbury Region to use the Bunbury Airport.

City Vision Strategy

Future expansion (and anticipated future use) of the Bunbury Airport was considered as part of the City Vision Strategy process.

Community Consultation

The proposal to grant the lease must be advertised pursuant to Section 3.58 of the Local Government Act 1995 and requires a public submission period of fourteen (14) days.

Councillor/Officer Consultation

Council officers have held discussions with the lessee and have mutually agreed on the terms and conditions of the lease.

Analysis of Financial and Budget Implications

The method for calculation of annual lease rental and the annual administration fee applicable to all new lease sites at the Bunbury Airport, was adopted at the Council's Budget Meeting held on 5 August 2008. Additionally, the lessee will be responsible to meet the cost of the headworks levy applicable to this lease site and the cost of document preparation associated

with the lease; as well as payment of municipal rates and charges throughout the term of the lease.

Economic, Social, Environmental and Heritage Issues

Economic Issues

The use of aircraft provides economic benefits to suppliers.

Social Issues

The provision of an increased number of aircraft hangar sites at the Bunbury Airport will alleviate the increasing demand on the airport to cater for business and recreational aviators.

Environmental Issues

An increase in the number of aircraft hangar sites at the airport will not conflict with the "Bunbury Airport Location Analysis Study City of Bunbury" compiled by Connell Wagner Pty Ltd in April 2004: and is in keeping with the amenity of the area.

Heritage Issues

There are no known heritage issues relative to the proposal.

Council Policy Compliance

There is no Council policy concerning the granting of new leases at the airport.

Legislative Compliance

The intention to grant the new lease will be advertised for public information with a submission period of fourteen (14) days in accordance with Section 3.58 (3) and (4) of the Local Government Act 1995.

Pursuant to Section 18 of the *Land Administration Act 1997* the Office of the Minister for Lands has no objection to the leasing proposal.

Delegation of Authority

The Chief Executive Officer has the delegated authority to negotiate the terms and conditions of property leases provided the settled terms/conditions are presented to Council for endorsement before documentation is finalised.

It is proposed that subject to no objecting submissions being received as a result of public advertising, the Chief Executive Officer will proceed with preparation of the individual lease documents.

Relevant Precedents

Council currently leases fifty (50) hangar sites at the Bunbury Airport and regularly considers requests for new and assigned leases due to the growing demand for aircraft hangers in the region.

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

Council may elect not to support the application from Mr John William Moir to lease Site No. 51 at the Bunbury Airport (Reserve 27686, Lot 455 South Western Highway).

Conclusion

The officer's recommendation was drafted in line with the following objectives:

1. As required under the Management Order for the reserve, the City must meet its responsibilities for management, care and control of Crown Reserve 27686 (Lot 455) South Western Highway, Bunbury; and ensure the land is utilised for the purpose of an "Airport".
2. The allocation of new Airport Lease Site No. 51 underlines the City's commitment in meeting the growing demand for hangar space at the Bunbury Airport.

Recommendation

Council agrees to grant Mr John William Moir a lease over newly created Site No. 51 at the Bunbury Airport being portion of Reserve 27686 (Lot 455) South Western Highway, Bunbury; subject to the terms and conditions as specified in the report to Council together with the conditions set out in points 1. to 4. below:

1. The term of the lease to be for 2.5 years to 30 June 2011 with an option to renew for a further 5-year term.
2. Public notice of the intention to lease to be provided pursuant to Section 3.58 of the Local Government Act 1995, through notices displayed on Public Notice Boards at the City's Administration Centre and Libraries; and a notice published in the "City Update" column of the Bunbury Mail Newspaper.

3. Subject to no objecting submissions being received, the Chief Executive Officer to proceed with preparation (and signing) of the Lease documents.
4. All costs associated with the proposal to be the responsibility of the applicant.

Outcome of the Council Committee Meeting – 28 October 2008

Cr Slater left the chamber at 9.22pm.

The recommendation was moved Cr Jones, seconded Cr Whittle and adopted 9 votes "for" to Nil votes "against" to become the Committee's recommendation on this issue.

Committee Recommendation

Council agrees to grant Mr John William Moir a lease over newly created Site No. 51 at the Bunbury Airport being portion of Reserve 27686 (Lot 455) South Western Highway, Bunbury; subject to the terms and conditions as specified in the report to Council together with the conditions set out in points 1. to 4. below:

1. ***The term of the lease to be for 2.5 years to 30 June 2011 with an option to renew for a further 5-year term.***
2. ***Public notice of the intention to lease to be provided pursuant to Section 3.58 of the Local Government Act 1995, through notices displayed on Public Notice Boards at the City's Administration Centre and Libraries: and a notice published in the "City Update" column of the Bunbury Mail Newspaper.***
3. ***Subject to no objecting submissions being received, the Chief Executive Officer to proceed with preparation (and signing) of the Lease documents.***
4. ***All costs associated with the proposal to be the responsibility of the applicant.***

Cr Slater returned the chamber at 9.24pm

11.7 BUNBURY REGION ROADWISE COMMITTEE – CHANGE OF MEMBERSHIP
(WAS LISTED AS ITEM 11.5 ON THE MEETING AGENDA)

| | |
|-----------------------------|--|
| File Ref: | R00692 |
| Applicant/Proponent: | Internal Report |
| Author: | Beatrice Plan, City Engineer |
| Executive: | Michael Scott, Executive Manager City Services |

Summary

Mr Murray Cook (Fire & Emergency Services) has nominated for appointment to the Bunbury Region Roadwise Committee to fill a position allocated to Fire & Emergency Services.

The appointment of Mr Murray Cook is supported.

An extract from the City's Committee Book showing the committee's Terms of Reference is **attached** at Appendix 4.

Background

The Bunbury Region Roadwise Committee was formed in 1998 and consists of interested members of the public and representatives of organisations concerned with road safety. The committee's terms of reference reflects these concerns and are as follows:-

- Continue the development of road safety within the Bunbury Region.
- Develop and maintain a Road Safety Strategy document.
- Prioritise and recommend actions to be adopted.

Currently, the committee comprises the Mayor, Cr Slater and the following community representatives:

- Alan McDonald, Main Roads Bunbury
- Paul Cassidy, Southern Road Services
- Catherine Ferguson, Community Member
- Jo-Anne Moore, SW Population Health Services
- Charles Wilks, St John's Ambulance
- Lisa Gartrell, School Drug Ed & Road Aware
- Brad Brooksby, Opus International
- Richard Oborn, Community Member
- Lindsay Harding, Community Member

The committee also consists of a Roadwise Officer (position currently vacant), Beatrice Plant (City Engineer - City of Bunbury) and Myles Bovell (Senior Engineering Technical Officer - City of Bunbury) who do not have voting rights.

The nomination form received from Mr Murray Cook has been **circulated to members** as a Confidential Report.

Strategic and/or Regional Outcomes

The Committee's terms of reference are in line with the City's strategy to "coordinate and promote community safety initiatives".

Community Consultation

No community consultation has been undertaken concerning this proposal

Councillor/Officer Consultation

The members of the Bunbury Region Roadwise Committee unanimously support appointment of the nominated committee member.

Analysis of Financial and Budget Implications

There are no budget implications as a result of this proposal.

Economic, Social, Environmental and Heritage Issues

There are no issues to consider.

Council Policy Compliance

There is no Council policy relative to the proposal to appoint new members to the Bunbury Region Roadwise Committee.

Legislative Compliance

Section 5.10(1) of the Local Government Act 1995 stipulates that appointment of members to committees of the Council is to be by way of a formal Council decision (an absolute majority vote is required).

Delegation of Authority

The Chief Executive Officer can not be delegated the authority to appoint members to Council's committees.

Relevant Precedents

Council has previously resolved to appoint new members to its committees.

Options

Option 1

Per the recommendation as listed in this report.

Option 2

Council may elect to reject the appointment of Murray Cook to the Bunbury Region Roadwise Committee at this time.

Recommendation

Council endorse the appointment of Murray Cook to the Bunbury Region Roadwise Committee.

NOTE: AN ABSOLUTE MAJORITY VOTE WILL BE REQUIRED AT THE COUNCIL MEETING.

Outcome of the Council Committee Meeting – 28 October 2008

The recommendation was moved Cr Jones, seconded Cr Leigh and adopted *10 votes "for" to Nil votes "against"* to become the Committee's recommendation on this issue.

Committee Recommendation

Council endorse the appointment of Murray Cook to the Bunbury Region Roadwise Committee.

11.8 CITY OF BUNBURY AUDITORS REPORT AND AUDITED FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2008 (WAS LISTED AS ITEM 11.6 ON THE MEETING AGENDA)

| | |
|-----------------------------|---|
| File Ref: | A00084-06 |
| Applicant/Proponent: | As required under the Local Government Act 1995 |
| Author: | David Ransom, City Accountant |
| Executive: | Executive Manager Corporate Services |

The Auditors Report and Audited Financial Statements of the City of Bunbury for the financial year ended 30 June 2008 have been received and are issued for the information of Councillors under separate cover.

Executive Overview

Council's management and internal control systems are sound. In addition to being monitored internally on a daily and monthly basis they are also strengthened by an independent assessment each year on the City's financial management systems and external audit reporting. The independent assessment reviews Council's financial position, financial management practices and compliance with the requirements of the Local Government Act, the Local Government (Financial Management) Regulations, and Accounting Standards.

The audited Annual Financial Report for the year ended 30 June 2008 key financial figures include:

| | | |
|---|---------------|---------------|
| <u>Income Statement:</u> | <u>2008</u> | <u>2007</u> |
| Operating Revenue | \$46,923,838 | \$40,498,311 |
| Operating Expenses | \$33,478,706 | \$31,463,890 |
| Net Profit (utilised for capital works) | \$13,445,132 | \$ 9,034,421 |
| <u>Balance Sheet:</u> | | |
| Current Assets | \$23,040,606 | \$20,921,171 |
| Current Liabilities | \$ 8,533,439 | \$ 7,751,241 |
| Current Assets over Current Liabilities | \$14,507,167 | \$13,728,951 |
| Non Current Assets | \$186,990,811 | \$176,420,854 |
| Non Current Liabilities | \$ 8,102,070 | \$ 9,640,008 |
| Total Equity | \$193,395,908 | \$179,950,776 |

| | | | | | |
|--|-------------|-------------|-------------|-------------|-------------|
| <u>Financial Information by Ratio:</u> | <u>2008</u> | <u>2007</u> | <u>2006</u> | <u>2005</u> | <u>2004</u> |
| Current Ratio | 101% | 94% | 106% | 110% | 109% |
| Untied Cash to Trade Creditors | 182% | 136% | 135% | 115% | 68% |
| Debt Ratio | 7.9% | 8.8% | 10.8% | 10.7% | 8.0% |
| Debt Service Ratio | 6.9% | 7.4% | 9.5% | 8.3% | 7.3% |
| Gross Debt to Revenue | 26% | 31% | 43% | 49% | 37% |
| Gross Debt to Economically Realisable Assets | 13% | 17% | 19% | 21% | 19% |
| Rate Coverage Ratio | 50% | 52% | 52% | 48% | 51% |
| Outstanding Rates Ratio | 6.4% | 2.9% | 2.9% | 2.5% | 3.6% |
| Change in Equity Ratio | 7.5% | 5.3% | 1.5% | 4.4% | 4.2% |

Review by Audit Committee

The Audit Committee reviewed the Auditors Report and the Audited Financial Statements at its meeting 21 October 2008 and have referred these reports to Council for endorsement.

Recommendation

The Auditors Report and the Audited Annual Financial Statements of the City of Bunbury for the financial year ended 30 June 2008 be accepted.

Outcome of the Council Committee Meeting – 28 October 2008

The recommendation was moved Cr Jones, seconded Cr Leigh and adopted *10 votes "for" to Nil votes "against"* to become the Committee's recommendation on this issue.

Committee Recommendation

The Auditors Report and the Audited Annual Financial Statements of the City of Bunbury for the financial year ended 30 June 2008 be accepted.

11.9 COLLEGE GROVE SUBDIVISION (NORTH OF SOMERVILLE DRIVE) – AUDITED FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2008
(WAS LISTED AS ITEM 11.7 ON THE MEETING AGENDA)

| | |
|-----------------------------|--------------------------------------|
| File Ref: | A00084-06 |
| Applicant/Proponent: | N/A |
| Author: | David Ransom, City Accountant |
| Executive: | Executive Manager Corporate Services |

The College Grove Subdivision (North of Somerville Drive) Audited Financial Statements for the financial year ended 30 June 2008 are **attached** at Appendix 5.

The Financial Statements have been prepared for the City of Bunbury and Department for Planning and Infrastructure to fulfil Council's financial reporting requirements under the agreement with Department for Planning and Infrastructure for the College Grove Subdivision. The City of Bunbury is the appointed manager of the subdivision for the north side of Somerville Drive, with Landcorp managers for the remainder of the subdivision.

The Financial Statements include an Income Statement, Balance Sheet, Notes to the Statements and an independent Audit Report.

Recommendation

The Audit Report and the Audited Financial Statements for the College Grove Subdivision (North of Somerville Drive) for the financial year ended 30 June 2008 be accepted.

Outcome of the Council Committee Meeting – 28 October 2008

The recommendation was moved Cr Jones, seconded Cr Spencer and adopted *10 votes "for" to Nil votes "against"* to become the Committee's recommendation on this issue.

Committee Recommendation

The Audit Report and the Audited Financial Statements for the College Grove Subdivision (North of Somerville Drive) for the financial year ended 30 June 2008 be accepted.

11.10 BUNBURY HARVEY REGIONAL COUNCIL - ANNUAL REPORT AND AUDITED FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2008 *(WAS LISTED AS ITEM 11.8 ON THE MEETING AGENDA)*

| | |
|-----------------------------|--------------------------------------|
| File Ref: | A00255-08 |
| Applicant/Proponent: | Internal Report |
| Author: | David Ransom, City Accountant |
| Executive: | Executive Manager Corporate Services |

The Annual Report and Audited Financial Statements of the Bunbury Harvey Regional Council (BHRC) for the financial year ended 30 June 2008 have been issued to Councillors under separate cover for their information. These reports were tabled at the BHRC Council Meeting on the 23 October 2008.

The BHRC is an independent council under Part 3, Division 4 of the Local Government Act 1995 and its constitution requires (3) representatives each from the City of Bunbury and the Shire of Harvey. The City is represented on the BHRC by Councillors Jones (Chairperson), Major and Punch. The City of Bunbury has an 89.6% interest in the BHRC.

The audited Financial Statements for the year ended 30 June 2008 show revenues of \$1,475,962, expenditures of \$1,122,040, resulting in a net profit for the year of \$353,922. Reserves held for plant and equipment replacement, site trenching and maintenance, and site rehabilitation total \$3(M).

Recommendation

The Annual Report and Audited Financial Statements of the Bunbury Harvey Regional Council for the financial year ended 30 June 2008 be received.

Outcome of the Council Committee Meeting – 28 October 2008

The recommendation was moved Cr Jones, seconded Cr Punch and adopted *10 votes "for" to Nil votes "against"* to become the Committee's recommendation on this issue.

Committee Recommendation

The Annual Report and Audited Financial Statements of the Bunbury Harvey Regional Council for the financial year ended 30 June 2008 be received.

11.11 TENDER RFT 2008/2009-04 ROAD RESEALING PROGRAM (WAS LISTED AS ITEM 11.9 ON THE MEETING AGENDA)

| | |
|-----------------------------|--|
| File Ref: | New File |
| Applicant/Proponent: | Internal Report |
| Author: | Mark Robson, Contract Coordinator |
| Executive: | Michael Scott, Executive Manager City Services |

Summary

The council invited suitable companies to tender for the annual Road Resealing Program for 2008-2009.

Background

Tenders were prepared and advertised in the West Australian on the 20 September 2008 and the South Western Times on 25 September 2008. The tender was for the supply of materials, sampling, testing and operations necessary to provide asphalt resealing to various roads in Bunbury with asphaltic concrete.

| ROAD NUMBER | LOCATIONS |
|--------------------|-------------------------------------|
| 1 | Picton Road |
| 2 | Beach Road |
| 3 | Bitumen Products -Schedule of Rates |
| 4 | Asphalt - Schedule of Rates |

Tenders closed at 3:00pm on Thursday 16 October 2008. Manager Building Construction Maintenance, Senior Engineering Technical Officer and Senior Engineer opened the tender box.

A total of four interested companies requested the tender documents with two tenders being received.

Term of Contract

The Contract shall be for a period of One (1) Year.

Evaluation

An evaluation panel comprising the Contract Coordinator, Senior Engineer Technical Officer and Senior Design and Development Engineer assessed the responses on 17, 20 & 21 October 2008.

The tenders were evaluated under the following criteria:

- Compliance
- Qualitative
- Price

Compliance Criteria

| Description of Compliance Criteria | Yes/No |
|---|--------|
| (a) Standard of tender submission. 1 Have you complied with the Conditions of Tendering in this Request? 2 Have you complied with and completed the Price Schedule? | Yes/No |
| (b) Confirm you are able to complete the works in the time period nominated. | Yes/No |
| (c) Confirm you are in a Financial position to complete the works. (See item 3.3.2) | Yes/No |
| (d) Confirm you currently hold Public liability & employee insurance as per AS 4000-1997, clauses 17 & 18. | Yes/No |

Qualitative Criteria

| Description of Qualitative Criteria | Weighting |
|--|-----------|
| (a) Quality Assurance /Systems A description of your in-house quality system | 4 |
| (b) Understanding/ Methodology An Understanding of the required tasks | 6 |
| (c) Demonstrated Experience Demonstrated experience and success in completing similar projects | 6 |

Price

The evaluation of the tenderer's prices and ranking has been assessed and because they are commercial-in-confidence, details have been provided under separate cover.

Strategic and/or Regional Outcomes

Acceptance of the Executive Recommendation is consistent with Councils Strategic Plan and will enhance the City's road networks.

Community Consultation

Community consultation was not carried out during the process.

Councillor/Officer Consultation

The tender specifications were developed in consultation with Operational Staff involved in the daily operations of the subject. The Manager Operations, Senior Design & Development Engineer and Senior Engineering Technical Officer who were also involved in this tender and the evaluation process.

Analysis of Financial and Budget Implications

Funding for these projects contained in this tender is part of the “Roads to Recovery” and the “Regional Road Group” programs.

The Roads to Recovery program is fully funded by the Federal Government

The Regional Roads Group is 2/3 funded by Mainroads W.A and 1/3 funded by City of Bunbury

Economic, Social, Environmental and Heritage Issues

Local purchasing will assist the local businesses.

Policy Compliance

The tender process complies with the requirements of Work Procedure WP4.6 – Tender Procedure, and associated legislation.

Both Tenderers are located in Bunbury so any adjustments for the “Buy Local Policy” does not apply or affect the outcome of this tender.

Legislative Compliance

Advertising and processing of tenders has been conducted in accordance with the Local Government (Function and General) Regulation 1996, Part 4 – Tenders for Providing Goods or Services (S.3.57).

Delegation of Authority

The total cost of the contract will exceed \$100,000 therefore this contract has been dealt with in accordance with the Local Government (Function and General) Regulation 1996, Part 4 – Tenders for Providing Goods or Services (S.3.57).

Relevant Precedents

Council has dealt with all tenders previously called.

Options

Option 1

Per the recommendation listed in this report.

Option 2

Council elect to reject all tenders received.

Conclusion

Based on the panel's evaluation of the submitted tender, the recommended Tenderer is Pioneer Road Services for the following reasons:

- 1) This company has provided the City with competitive prices, demonstrated the ability to provide quality products and is considered to be the most advantageous tenderer to the City.
- 2) This company demonstrated that it possesses a very high standard quality management system. Not only does the system comply with ISO 9001 (which is a minimum requirement) but the tenderer submitted the company Quality Policy, demonstrated in depth how the system works by including procedures and a summary of specific accountabilities and responsibilities for a large number of activities the city is expecting the contractor to perform as part of this contract.
- 3) The methodology showed that the tenderer has a good understanding and appreciation of the requirements of the contract.
- 4) The experience information received was very good.

Recommendation

Council to undertake the following with respect to Tender 2008/2009-04 for annual Road Resealing Program:

1. Accept the schedule of rates submitted by Pioneer Road Services.
2. Record the successful tender price in the Council minutes.

Outcome of the Council Committee Meeting – 28 October 2008

The recommendation was moved Cr Slater, seconded Cr Spencer.

The Executive Manager City Services responded to questions from members relating to details of the tender.

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

Committee Recommendation

Council to undertake the following with respect to Tender 2008/2009-04 for annual Road Resealing Program:

- 1. Accept the schedule of rates submitted by Pioneer Road Services.*
- 2. Record the successful tender price in the Council minutes.*

11.12 PROPOSED LEASE OF CITY OF BUNBURY FREEHOLD LOT 3 SOUTH WESTERN HIGHWAY TO GARRY UTTERSON PENDING CONSTRUCTION OF PORT ACCESS ROAD *(WAS LISTED AS ITEM 11.10 ON THE MEETING AGENDA)*

| | |
|-----------------------------|---|
| File Ref: | A00420 |
| Applicant/Proponent: | Mr Garry Utterson |
| Author: | John Beaton, Manager Administration & Property Services |
| Executive: | Ken Weary, Executive Manager Corporate Services |

Summary

Application has been made by Mr Garry Utterson to purchase City of Bunbury freehold property at Lot 3 South Western Highway, Picton. Lot 3 is deemed surplus to the City's requirements. It is a flat, cleared, low lying triangular piece of land that abuts Mr Utterson's properties at Lots 10 and 12 South Western Highway. A location plan and aerial view are **attached** at Appendices 7 and 8.

A large portion of Lot 3 will be required for the State Government's proposed Port Access Road and until the project is complete, the City's Land Rationalisation and Acquisitions Committee has recommended that the land be leased to Mr Utterson for an initial period of 12 months and that he be granted "First Option to Purchase" should the land become available for development.

Mr Utterson intends to use the land for storage and vehicle parking which is consistent with its current zoning of "Industrial" under the Town Planning Scheme No. 7.

Background

As stated above, Mr Garry Utterson has applied to purchase City of Bunbury freehold property at Lot 3 South Western Highway, Picton (Certificate of Title Vol. 1388 Fol. 384). The land has been cleared and fronts onto the South Western Highway. A rail reserve is located immediately to its east and an electricity grid runs along its eastern and southern boundaries.

The land totals 2,714 sq.m of which approximately 750 sq.m (the southern portion) is zoned "Industrial". The rest of the land is zoned "Primary Distributor Road" and most of this (approximately 1,950 sq.m) is reserved under the Greater Bunbury Region Scheme for acquisition by the State Government for use in constructing the Port Access Road. Sale of the land (or issue of a building licence for it) cannot be considered until after the Port Access Road has been constructed and all associated road works are complete. Hence it is proposed to lease the land to Mr Utterson for a period of 12 months on the condition that no capital improvements are made to the land during the lease term except fencing and application of road base to the ground (to be at the applicant's cost).

The proposal was submitted to a meeting of the Council's Land Rationalisation and Acquisitions Committee at its meeting on 8 September 2008. The meeting endorsed the following recommendation: *"Council agrees to lease Lot 3 South Western Highway to Mr Garry Utterson (owner of adjoining Lots 10 and 12) for a term of 12 months for the purpose of open storage and parking of motor vehicles only at Landgate Valuation Services' market lease rental of \$6,000 per annum, indexed by CPI during the term."*

Market Valuation Assessment

Landgate Valuation Services has assessed the proposal to lease Lot 3 South Western Highway to the adjoining land owner for the purpose of overflow storage and vehicle parking. The assessment takes into account the current status of the land, restrictions due to the surroundings, its future prospects and that no development of the land is necessary in order for the applicant to utilise it for overflow storage and vehicle parking. The current fair market rental value is considered to be \$6,000 per annum.

Proposed Lease Details

| | |
|--|---|
| Commencement Date: | 1 December 2008 |
| Term: | Twelve (12) months |
| Expiry Date: | 30 November 2009 |
| Rental: | \$6,000 per annum indexed to CPI |
| Rent Review: | Not applicable |
| Permitted Use: | Overflow outdoor storage and parking of vehicles |
| Land Area: | 2,714 sq.m |
| Outgoings: | To be the responsibility of the Lessee |
| Insurance: | Lessee required to hold Public Liability Cover of \$10(M) and appropriate workers' compensation and general insurance cover to indemnify the City against any claims of loss for the term of the lease. |
| Preparation and Registration of Lease Documents: | The Lessee will be required to meet all costs associated with document preparation, registration, advertising and valuation assessments. |
| Special Conditions: | <ol style="list-style-type: none"> 1. No capital improvements are to be made to the land during the lease term except for the following items which will be at the applicant's cost: <ul style="list-style-type: none"> - Application of road base to the ground to make the property suitable for storage of machinery, and; - fencing. 2. Should the City require the whole or part of the leased property for redevelopment or ground rationalisation during the lease term, the City may terminate the lease by giving the Lessee 3 months' notice in writing. |

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 Greater Bunbury Region Scheme designates approximately 1,950 sq.m of Lot 3 South Western Highway as part of the road reserve for the new Port Access Road. This portion of Lot 3 is already zoned "Primary Distributor Road" in Town Planning Scheme No. 7.

Community Consultation

Should the Council agree to lease the land to the Applicant (and grant him "First Option to Purchase") then pursuant to part (3) of Section 3.58 of the Local Government Act 1995, the City will advertise the proposed disposal of land for public information in a local newspaper with a submission period of no less than 2 weeks. Should submissions be received, the proposal will be brought back before the Council for further consideration.

Councillor/Officer Consultation

The Council's Land Rationalisation and Acquisitions Committee agreed to the proposal to lease the land to Mr Utterson at its meeting on 8 September 2008. The Group comprises Crs Craddock, Jones, Kelly and Whittle. The Executive Managers of City Development and Corporate Services together with the City's Consultant Planner are responsible for providing the committee with technical advice.

Analysis of Financial and Budget Implications

The fair market value used in determining the recommended annual lease rental has been specified under the heading "Market Valuation Assessment" above. The applicant will be responsible for the costs of advertising, document preparation and registration associated with the lease agreement.

Should the applicant take up the option to purchase the land once the Port Access Road is complete, he will become responsible for the costs incidental to the sale i.e., surveying, valuation, land amalgamation, legal fees, fencing costs, etc. Any such proposal to purchase will be presented for a decision at a meeting of the Council.

Economic, Social, Environmental and Heritage Issues

Economic Issues

The land is currently under-utilised and the intention to lease it to a neighbouring property owner will ensure the land is maintained while providing the applicant with additional land area on which to accommodate his growing demand for storage and parking space.

Social Issues

The applicant intends to lease the land for the purpose of storage and vehicle parking and to this end will erect some fencing around the boundary of the property and cover the property with road base material. This use is consistent with the current zoning of the land i.e., portion zoned "Industrial" and a portion zoned "Primary Distributor Road". The land is situated in a primarily industrial area next to a road, railway reserve and power lines. Hence, there are no social issues to consider.

Environmental Issues

The subject land does not contain any drainage infrastructure and is deemed to be surplus to the City's requirements. The land has already been cleared. It is flat and low lying and with its location next to a (future) major road and power lines it is considered to be of little benefit to local wildlife. On this basis, the plan to lease the land for the purpose of outside storage and vehicle parking will not affect the amenity of the surrounding area.

Heritage Issues

There are no known heritage issues associated with this proposal.

Council Policy Compliance

There is no Council policy concerning leasing of land.

Legislative Compliance

Disposal of Council-owned land will require the City to comply with the requirement stated in Sections 3.58(3) and (4) of the Local Government Act 1995 i.e., advertise for public information in a local newspaper with a submission period of no less than 2 weeks, and, any submissions to be considered by the Council.

Delegation of Authority

The Chief Executive Officer has the delegated authority of the Council to negotiate the terms of an application for a lease provided the settled terms and conditions are presented to Council for approval before documentation is finalised. It is proposed that subject to no objecting submissions being received from public advertising of the proposal to lease, the Chief Executive Officer proceed to prepare the lease and arrange for the lease to be signed by all parties.

Relevant Precedents

There is no previous or relevant precedent to refer to.

Options

Option 1

Lease the land to the applicant per the recommendation listed in this report.

Option 2

The application from Mr Garry Utterson to lease Council-owned freehold land at Lot 3 South Western Highway for a period of 12 months, is refused.

Conclusion

It is recommended that the land be leased to the applicant until the Port Access Road is completed. The applicant intends to use the land for overflow storage and vehicle parking which is consistent with the current zoning of the land i.e., portion zoned "Industrial" and a portion zoned " Primary Distributor Road". The land is situated in a primarily industrial area with frontage onto South Western Highway. As it is already situated next to a railway reserve and power lines its intended use during the proposed lease term is unlikely to affect the amenity of the surrounding area. The income from lease of the land can be used for appropriate infrastructure projects within the City.

Recommendation

Council agrees to lease Lot 3 South Western Highway to Mr Garry Utterson (owner of adjoining Lots 10 and 12) for an initial term of 12 months commencing 1 December 2008, for the purpose of open storage and vehicle parking subject to the terms and conditions (as stated in the report to Council) and the following:

1. The intention to lease be advertised in accordance with Section 3.58 of the Local Government Act 1995, in the City Update Column of the Bunbury Mail Newspaper and by providing notice on public notice boards at the City's libraries, Administration Centre and internet website.
2. Subject to no submissions being received, the Chief Executive Officer to proceed with preparation and signing of the lease agreement.
3. The applicant to pay the full cost of document preparation, registration, land valuations and advertising associated with the lease.
4. The applicant is not to make any capital improvements to the land during the term of the lease other than erection of fencing and application of road-base or gravel material to the ground to make the property suitable for machinery storage (at the applicant's cost).

5. Employees, agents or contractors of the State Government or the City to be granted access onto the leased area in order to conduct surveys or testing associated with the State Government's proposed Port Access Road Project.
6. Mr Utterson to be granted "First Option to Purchase" should the City decide to sell the land once the State Government's Port Access Road Project is complete.
7. Should the City require the whole or part of the leased property for redevelopment or ground rationalisation during the lease term, the City may terminate the lease by giving the Lessee 3 months' notice in writing.

Outcome of the Council Committee Meeting – 28 October 2008

The recommendation was moved Cr Slater, seconded Cr Jones.

During discussions, Cr Rooney raised his concern at Point 6 of the recommendation and the fact the proponent be granted First Option to Purchase. With the permission of the mover and seconder, the following amendment to point 6 was accepted:

- “6. *Consideration be given to Mr Utterson’s request to purchase Lot 3 South Western Highway, should the City decide to sell the land on completion of the State Government's Port Access Road.*”

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

Committee Recommendation

Council agrees to lease Lot 3 South Western Highway to Mr Garry Utterson (owner of adjoining Lots 10 and 12) for an initial term of 12 months commencing 1 December 2008, for the purpose of open storage and vehicle parking subject to the terms and conditions (as stated in the report to Council) and the following:

1. ***The intention to lease be advertised in accordance with Section 3.58 of the Local Government Act 1995, in the City Update Column of the Bunbury Mail Newspaper and by providing notice on public notice boards at the City's libraries, Administration Centre and internet website.***
2. ***Subject to no submissions being received, the Chief Executive Officer to proceed with preparation and signing of the lease agreement.***
3. ***The applicant to pay the full cost of document preparation, registration, land valuations and advertising associated with the lease.***
4. ***The applicant is not to make any capital improvements to the land during the term of the lease other than erection of fencing and application of road-base or gravel***

material to the ground to make the property suitable for machinery storage (at the applicant's cost).

5. *Employees, agents or contractors of the State Government or the City to be granted access onto the leased area in order to conduct surveys or testing associated with the State Government's proposed Port Access Road Project.*
6. *Consideration be given to Mr Utterson's request to purchase Lot 3 South Western Highway, should the City decide to sell the land on completion of the State Government's Port Access Road.*
7. *Should the City require the whole or part of the leased property for redevelopment or ground rationalisation during the lease term, the City may terminate the lease by giving the Lessee 3 months' notice in writing.*

11.13 ADVISORY COMMITTEE AND/OR PROJECT CONTROL GROUP MINUTES TO BE NOTED AT THE COUNCIL COMMITTEE MEETING

| | |
|-----------------------------|-----------------|
| File Ref: | Various |
| Applicant/Proponent: | Internal Report |
| Author: | Various |
| Executive: | 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 Regional Visitor Centre Investigation Group (22/09/2008)
Author: Stewart Parkinson, Project Manager
File: A003386
2. Title: Minutes – Big Swamp Wildlife Park Steering Committee(11/09/2008)
Author: Grant Bilton, Senior Technical Officer Parks and Urban Design
File: A00143
3. Title: Minutes – Bunbury Environment and Sustainability Advisory Committee (BESAC) (02/10/2008)
Author: Ben Deeley, Environmental Officer
File: A02445
4. Title: Minutes – Bunbury Library Project – Project Control Group (03/10/2008)
Author: Stewart Parkinson, Project Manager
File: A02351
5. Title: Minutes – Land Rationalisation Project Control Group (08/09/2008)
Author: Paul Davies, Planning Consultant
File: A03518
6. Title: Minutes – Bunbury Region Roadwise Committee (01/09/2008 & 06/10/2008)
Author: Myles Bovell, Senior Engineering Technical Officer
File: A02351
7. Title: Minutes – City Vision Implementation Committee (01/07/2008 & 11/08/2008)
Author: Thor Farnworth, Senior Town Planner
File: A02076
6. Title: Minutes – Audit Committee (21/10/2008)
Author: David Ransom, City Accountant
File: A00083

Outcome of the Council Committee Meeting – 28 October 2008

The recommendation was moved Cr Slater, seconded Cr Jones and adopted *10 votes "for" to Nil votes "against"* to become the Committee's recommendation on this issue.

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 Regional Visitor Centre Investigation Group (22/09/2008)***
Author: Stewart Parkinson, Project Manager
File: A003386
- 2. Title: Minutes – Big Swamp Wildlife Park Steering Committee(11/09/2008)***
Author: Grant Bilton, Senior Technical Officer Parks and Urban Design
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Author: Ben Deeley, Environmental Officer
File: A02445
- 4. Title: Minutes – Bunbury Library Project – Project Control Group (03/10/2008)***
Author: Stewart Parkinson, Project Manager
File: A02351
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Author: Paul Davies, Planning Consultant
File: A03518
- 6. Title: Minutes – Bunbury Region Roadwise Committee (01/09/2008 & 06/10/2008)***
Author: Myles Bovell, Senior Engineering Technical Officer
File: A02351
- 7. Title: Minutes – City Vision Implementation Committee (01/07/2008 & 11/08/2008)***
Author: Thor Farnworth, Senior Town Planner
File: A02076
- 6. Title: Minutes – Audit Committee (21/10/2008)***
Author: David Ransom, City Accountant
File: A00083

12. **MOTIONS ON NOTICE**

12.1 **MOTION ON NOTICE – TREE PROTECTION BARRIERS**

| | |
|-----------------------------|---|
| File Ref: | R00558 |
| Applicant/Proponent: | Councillor Noel Whittle |
| Author: | Councillor Noel Whittle |
| Executive: | If adopted by Council refer to: Executive Manager City Services |

Cr Whittle submitted the following motion for the Council Committee Meeting on 28 October 2008:

"The City to develop and trial a substantial tree protection barrier device as part of the Tree Street tree replacement program. The barrier to have a simple ornamental form, approx 2 metres in height, constructed of steel with a durable coating such as hot dipped galvanising. The barrier will have legs that are to be buried in the ground to a suitable depth to provide stability against expected forces from malicious attempts. Dis-assembly points will allow the barrier to be split vertically for removal after the initial tree establishment phase and allow redeployment of the barrier elsewhere. A quantity of 15 barriers to be deployed initially"

Comments - Cr Whittle

In support of his motion, Cr Whittle states that,

"Ongoing vandalism presents a significant barrier to the establishment of healthy trees throughout the City. A pattern is clear that during school holidays and weekend nights/early mornings the incidents of vandalism are more common, and in particular streets scapes or landscaped projects in localities which act as pedestrian routes from the CBD are plagued by setbacks to tree planting programs.

Vandalism to trees planted as a landscaping project is a particular problem in that for many years the aesthetics of the treescape is disrupted by the irregular height, profiles and growth rates of the replacement trees which are typically younger and smaller stock.

The implementation of a temporary tree guard during the initial period of tree establishment will provide a significant measure of protection and has the potential to return control of the landscaping process back to the City or private landscaping contractors.

The tree replacement program for the Tree Street area, which is recognised as having significant contribution to heritage fabric of the City itself will be challenged as many of the streets are already subject to nocturnal vandalism on weekends, apparently due to its proximity to the CBD.

Stockley Road in particular is already an iconic tree lined boulevard for most of its length. The City has a significant responsibility to ensure that the establishment of the replacement trees matches the planned removal rate of the diseased trees.”

Executive Comments

The following comments have been provided by the Executive Manager City Services:

The Senior Technical Officer supervising the tree replacement programme has developed a recommended list of species to be planted. This will be discussed at the proposed community meeting (Monday 27th October, Council Chambers, 5.30 – 7.30pm) where the programme roll out will be outlined. A process for reporting vandalism will be discussed with community members at this meeting. Council maintenance staff has been briefed on the importance of ensuring the success of this programme.

It is intended to use 200 litre plant stock that is grown to approximately 2 metres to minimise vandalism and maximise the chance of survival. Tree costs have been calculated at \$240 each. The bulk of the cost is in removal of the diseased trees, root guard placement, new soil and installation. For the first year of the programme (FY0910), it is planned to remove and replace 16 trees and plant 30 new trees. The programme has been designed to roll out over 10 years.

It is estimated that the recommended tree guards will cost approximately \$500 each, which does not include labour for installation. Vandalism may still occur where tree guards have been installed. The City has previously only used tree guards in CBD situations.

Council’s budget consideration for FY0910 will be \$41,000. No budget amount has been allocated for tree guards for this programme. Should Council wish to proceed with their use, an additional \$7,500 plus labour for installation would need to be allocated for this project. (\$7,500 would purchase 30 replacement trees)

The matter could come to Council during this year’s 5 Year Plan development where this project will be tabled and discussed. Any additional items relating to this project can also be considered.

While it is agreed that vandalism and theft can be a problem for the City Services works programme, it is not confined to this precinct and can be managed with the community’s support.

Cr Whittle's Motion

"The City to develop and trial a substantial tree protection barrier device as part of the Tree Street tree replacement program. The barrier to have a simple ornamental form, approx 2 metres in height, constructed of steel with a durable coating such as hot dipped galvanising. The barrier will have legs that are to be buried in the ground to a suitable depth to provide stability against expected forces from malicious attempts. Dis-assembly points will allow the barrier to be split vertically for removal after the initial tree establishment phase and allow redeployment of the barrier elsewhere. A quantity of 15 barriers to be deployed initially"

Outcome of the Council Committee Meeting – 28 October 2008

Cr Whittle disclosed an impartiality interest for item 12.1 titled *"Motion on Notice – Tree Protection Barriers"* as he is a resident of a street identified for tree replanting. Cr Whittle indicated he would take part in the discussion and the vote.

The recommendation was seconded Cr Leigh (proforma).

During discussion it was clarified that the cost of the tree barriers range between \$500 and \$1000 for each barrier approximately 1.5 meters in height.

Members agreed that there is a need to address vandalism in the City but the cost of the barriers is not feasible.

The Presiding Member put the motion to the vote and it was lost *3 votes "for" to 7 votes "against"*.

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 OR ENDORSED

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

| | |
|-----------------------------|-----------------|
| File Ref: | Various |
| Applicant/Proponent: | Internal Report |
| Author: | Various |
| Executive: | 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 30 September 2008
Author: David Ransom, City Accountant
File: A00083
2. Title: Building Approvals Issued 1 to 30 September 2008
Author: Gary Fitzgerald, Manager Development Services
File: A00566

Outcome of the Council Committee Meeting – 28 October 2008

The recommendation was moved Cr Leigh, seconded Cr Jones and adopted *10 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 30 September 2008***
Author: David Ransom, City Accountant
File: A00083

| |
|--|
| <p>2. Title: <i>Building Approvals Issued 1 to 30 September 2008</i> Author: <i>Gary Fitzgerald, Manager Development Services</i> File: <i>A00566</i></p> |
|--|

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

Nil.

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

Nil

16. CLOSE OF MEETING

The Presiding Member declared the meeting closed at 10.26pm.

CONFIRMED this day 18 November 2008, to be a true and correct record of proceedings of the Council (Standing) Committee Meeting held 28 October 2008.

DEPUTY MAYOR S CRADDOCK
PRESIDING MEMBER