



8 April 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
CAFF	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
GFA	Gross Floor Area
GL	Gigalitres
GRV	Gross Rental Value
GST	Goods and Services Tax
HCWA	Heritage Council of Western Australia
ICLEI	International Council for Local Environmental Initiatives
ICT	Information and Communications Technology
IP	Internet Protocol
IT	Information Technology
ITC	In Town Centre
ITLC	Former In-Town Lunch Centre (now the "In Town Centre")
LAP	Local Action Plan
LCC	Leschenault Catchment Council
LEMC	Bunbury Local Emergency Management Committee
LIA	Light Industrial Area
LN (2000)	Liveable Neighbourhoods Policy (2000)
LSNA	Local Significant Natural Area
MHDG	Marlston Hill Design Guidelines
MRWA	Main Roads Western Australia
NDMP	National Disaster Mitigation Program
NEEDAC	Noongar Employment & Enterprise Development Aboriginal Corp.
NLA	Nett Lettable Area
NRM	Natural Resource Management
NRMO	Natural Resource Management Officer
ODP	Outline Development Plan
PAW	Public Access Way
PHCC	Peel-Harvey Catchment Council
PR	Plot Ratio
R-IC	Residential Inner City (Housing) - special density provisions
RDC	Residential Design Codes
RDG	Residential Design Guidelines
Residential R15	Town Planning Zone – up to 15 residential dwellings per hectare
Residential R20	Town Planning Zone – up to 20 residential dwellings per hectare
Residential R40	Town Planning Zone – up to 40 residential dwellings per hectare
Residential R60	Town Planning Zone – up to 60 residential dwellings per hectare
RFDS	Royal Flying Doctor Service
RMFFL	Recommended Minimum Finished Floor Levels
ROS	Regional Open Space
ROW	Right-of-Way
RSL	Returned Services League
SBCC	South Bunbury Cricket Club Inc.
SCADA	Supervisory Control and Data Acquisition
SGDC	Sportsgrounds Development Committee
SW	South West
SWACC	South Western Area Consultative Committee
SWAMS	South West Aboriginal Medical Service
SWBP	South West Biodiversity Project
SWCC	South West Catchments Council

Term	Explanation
SWDC	South West Development Commission
SWDRP	South West Dolphin Research Program
SWEL	South West Electronic Library
SWSC	South West Sports Centre
TME	Thompson McRobert Edgeloe
TPS	Town Planning Scheme
USBA	Union Bank of Switzerland Australia
VGO	Valuer General's Office
VOIP	Voice-Over Internet Protocol
WALGA	Western Australian Local Government Association
WAPC	Western Australian Planning Commission
WAPRES	Western Australian Plantation Resources
WAWA	Water Authority of Western Australia
WC	Water Corporation
WML	WML Consultants
WRC	Waters and Rivers Commission

COUNCIL MEETING MINUTES

Minutes of an Ordinary Meeting of the Bunbury City Council held in the Council Chambers, City of Bunbury Administration Building, 4 Stephen Street, Bunbury on Tuesday, 8 April 2008.

MINUTES

8 April 2008

NOTE: These minutes are subject to confirmation at the Council Meeting on 13 May 2008.

1. DECLARATION OF OPENING BY THE MAYOR

His Worship the Mayor, Mr David Smith, declared the meeting open at 6.01pm.

2. RECORD OF ATTENDANCE, APOLOGIES AND LEAVE OF ABSENCE

PRESENT

Council Committee Members	
Presiding Member:	His Worship the Mayor, Mr D Smith
Deputy Presiding Member:	Deputy Mayor, Councillor S Craddock
Members:	Councillor J Jones
	Councillor T Dillon
	Councillor S Rooney
	Councillor L Worthington
	Councillor B Kelly
	Councillor W Major
	Councillor H Punch
	Councillor N Whittle
	Councillor R Slater
Councillor M Steck	
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 Life:	Mr D Marzano
A/Executive Manager City Development:	Mr G Fitzgerald
Council Officers (Non-Voting):	
Manager - Ranger Services/Law Enforcement:	Mr J Kowal
Business Development Officer:	Mr T Ayers
Planning Consultant:	Mr P Davies
Administration Assistant:	Ms F Wood
Administration Officer Corporate Services:	Ms D Ryan

PRESENT (continued)

Others (Non-Voting):	
Members of the Public:	20 (approx.)
Members of the Press:	1

APOLOGIES:

Councillor Alfred Leigh - Leave of absence 4 to 14 April 2008

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

Not applicable.

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

Nil.

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

Nil.

6. CONFIRMATION OF PREVIOUS MINUTES

Cr Major moved, Cr Slater seconded the following motion which was adopted to become a decision of the Council:

Council Decision 45/08

The minutes of the Council Meeting held 18 March 2008, be confirmed as a true and accurate record.

CARRIED

12 Votes "For" / Nil Votes "Against"

7. DISCLOSURES OF INTEREST UNDER THE LOCAL GOVERNMENT ACT 1995

Cr Worthington disclosed a proximity interest in the item titled "*Proposed Town Planning Amendment No. 20 - Rezoning Lot 28 Mangles Street From Reserved for 'Public Purpose Water Supply' to 'Residential R15'*" as Lot 28 Mangles Street (subject of the rezoning proposal) adjoins her residential property by way of a common boundary.

Cr Craddock disclosed an interest-in-common in the item titled "*Report From Retail Trading Implementation Committee - Options for Deregulation of Retail Trading Hours in Bunbury*" as he is the owner of a business located in the Bunbury CBD

Cr Craddock disclosed an interest-in-common in the item titled "*Central Business District Parking*" as he is the owner of a business located in the Bunbury CBD.

At this point in proceedings, Cr Major expressed concern that Cr Craddock was intending to stay and vote on these matters. The Mayor requested Cr Craddock to leave the meeting so that members could vote on whether they agreed that Cr Craddock's interests are "in common" with other business operators/property owners in the Bunbury CBD. Cr Craddock left at 6.05pm. Cr Dillon moved, Cr Slater seconded the following motions which were adopted to become Council decisions:

Council Decision 46/08

Councillor Craddock's interest in the item titled "Report From Retail Trading Implementation Committee - Options for Deregulation of Retail Trading Hours in Bunbury" be declared as an interest-in-common with other business owners in Bunbury and unlikely to influence his conduct in relation to the item - Cr Craddock to be permitted to take part in the discussion and vote on this matter.

CARRIED

10 Votes "For" / 1 Vote "Against"

Cr Major requested that his vote "against" this decision, be recorded.

Council Decision 47/08

Councillor Craddock's interest in the item titled "Central Business District Parking" be declared as an interest-in-common with other business owners in Bunbury and unlikely to influence his conduct in relation to the item - Cr Craddock to be permitted to take part in the discussion and vote on this matter.

CARRIED

10 Votes "For" / 1 Vote "Against"

Cr Craddock returned to the meeting at 6.06pm.

8. ANNOUNCEMENTS BY THE MAYOR (WITHOUT DISCUSSION)

The Mayor announced that the Corporate Financial Plan Workshop held on Monday, 7 April 2008 to discuss the 5-Year Plan, had been adjourned and is set to resume at 5.30pm on Thursday, 10 April 2008. He urged all Council members to attend.

9. CHIEF EXECUTIVE OFFICER REPORTS/DISCUSSION TOPICS

Nil.

10. RECEPTION OF FORMAL PETITIONS AND MEMORIALS

Nil.

11. RECEPTION OF REPORTS AND RECOMMENDATIONS FROM THE COUNCIL
(STANDING) COMMITTEE MEETING HELD 1 APRIL 2008

At this point in proceedings, the Council adopted *en bloc* committee recommendations listed under items 11.7, 11.8, 11.9, 11.10 and 11.14 of the meeting agenda (as permitted under the City's Standing Orders).

Items 11.1, 11.2, 11.3, 11.4, 11.5, 11.6, 11.11, 11.12, 11.13, 11.15, 11.16 and 11.17 of the meeting agenda were then dealt with (and voted on) individually.

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

11.1 REQUEST FOR LEAVE OF ABSENCE - COUNCILLOR ALFRED LEIGH (*WAS LISTED AS ITEM 11.7 IN THE MEETING AGENDA*)

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 4 to 14 April 2008 (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 4 to 14 April 2008 (inclusive).

Outcome of the Council Committee Meeting - 1 April 2008

The recommendation was moved Cr Dillon, seconded Cr Jones. The Presiding Member put the motion to the vote and it was adopted *13 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 4 to 14 April 2008 (inclusive).

AT THE COUNCIL MEETING

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

Council Decision 48A/08

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 4 to 14 April 2008 (inclusive).

CARRIED

12 Votes "For" / Nil Votes "Against"

11.2 PROPOSED CHANGE OF USE FROM "OFFICE" TO "MEDICAL CENTRE" - LOT 32 (NO. 31) VICTORIA STREET, BUNBURY *(WAS LISTED AS ITEM 11.8 IN THE MEETING AGENDA)*

File Ref:	P10181
Applicant/Proponent:	Griffiths Planning (on behalf of Australian Hearing)
Author:	Ann Jank, Planning Officer
Executive:	Geoff Klem, Executive Manager City Development

Summary

The City has recently received a planning application for a change of use from Office to Medical Centre ('Hearing Centre' for Australian Hearing) at Lot 32 (No. 31) Victoria Street in the "City Centre" zone.

A location plan is **attached** at Appendix 4.

The key planning issue relates to the matter of car parking. In accordance with Table No. 2 of the City's Town Planning Scheme No.7 (TPS 7), the subject site attracts four additional car parking spaces as a result of the proposed development. On the other hand, the Scheme provides that development up to 2000 m² gross floor area in the "City Centre" zone may be exempted from the provision of parking spaces.

However, this provision of the Scheme is under review along with car parking requirements in the Central Business District (CBD) generally. The City of Bunbury Central Business District, 'Parking Strategy' was adopted by Council in August 2007. The draft Local Planning Policy, 'Central Business District Parking', dated February 2008 is currently under review and is scheduled to be considered by Council in the near future for adoption. In section 2.9.1 of the draft Local Planning Policy under 'Proposed Clause' it states that 'In exercising its discretion, Council may not require parking for development of less than 500 m² GFA.' and section 2.9.3 (proposed new clause) states that 'In the case of different uses on different floors of the same building, parking requirements will only apply to the floor subject of the change of use'.

Council may wish to consider this application in light of the "seriously entertained" proposed new Parking Policy document.

On analysis, it is considered that a grant of approval with nil additional parking requirements would be in order. It is considered that this action would be generally consistent with recent decision-making by Council whereby Council has determined to waive car-parking deficits in cases where such deficits are relatively minor.

Background

Council will recall its Decision 134/07 at the meeting of 3 July 2007 regarding car-parking requirements in the CBD that states that:

“Prior to the final adoption of a new Local Planning Policy for the CBD, the Council shall exercise full discretion for approval on all Development Applications requiring parking provision on a case-by-case basis.”

It is on this principle therefore that the matter is referred to Council for its consideration.

The subject site formerly contained the “Fast Eddy’s” Restaurant. After the Restaurant closed, a planning approval was granted on 20 April 2007 to convert the existing building into Offices (Stage 1). Council further considered the site for an extension of Office space and Council decided (Decision 191/07) to waive additional car parking requirements and approve Stage 2 at the meeting of 18 September 2007.

The current planning application is accompanied by a justification report, which provides the following background information in regard to the proposed Medical Centre (‘Hearing Centre’):

“The Australian Hearing office is currently located on Symmons Street in Bunbury. The lease on the premises has recently expired and therefore Australian Hearing is seeking alternative premises in the CBD.

The Bunbury office provides the administrative base for the delivery of Australian Hearing Services to communities in Peel, South West and Great Southern Region of Western Australia. Professional, qualified staff provide hearing services including sales, fitting and information on correct use of hearing aids to eligible clients.”

The site is located within the “City Centre” zone whereby the use-class ‘Medical Centre’ is a permitted (‘P’) use in accordance with Table No.1 – Zoning Table, (TPS 7). One of the objectives of the Local Government in respect of the “City Centre” zone is to promote a broad range of compatible uses that are appropriate to the functioning of the “City Centre”. The matter of land-use is therefore considered to be in order.

The gross floor area of the whole building is approximately 657m² and the building consists of 4 separate office units. The part of the building to be used for the proposed Medical Centre (‘Hearing Centre’) is only 194.5m².

Floor plan and elevations are **attached** at Appendix 5.

The current planning application is accompanied by a justification report, which provides further information in regard to the operation of proposed Medical Centre (‘Hearing Centre’):

“Four practitioners service the catchment area and its headquarters are located in Bunbury. Practitioners visit Mandurah, Pinjarra, Narrogin, Manjimup, Busselton and Albany. Two practitioners are offsite every given day conducting visits to clients in these other locations.

The operating times of the service are Monday-Friday between 9am-5pm. The duration of an appointment onsite is between 30-60 minutes. Given the low turnover of clients, there will be a maximum of four patients onsite at any one time (two waiting and two with practitioners).”

Car Parking

Generally ‘Medical Centre’ car parking requirements are assessed on the same basis as ‘Consulting Rooms’ which require 4 spaces for each consulting room. The Local Planning Policy “Medical Centres – Car Parking Analysis” bases car parking calculation on the number of practitioners in the case where supporting data as to how many practitioners will use the facility is provided where a greater number of consulting rooms is indicated. As stated in the justification report of the applicant two practitioners will be on site and therefore 8 spaces are required (4 spaces per practitioner).

A copy of the Local Planning Policy “Medical Centres – Car Parking Analysis” and Table 2 of TPS 7 is **attached** at Appendix 6.

The existing office building has been approved with 10 car parking bays on site. The part of the building to be used for the proposed Medical Centre (‘Hearing Centre’) has an area of 194.5m² and would require 4 spaces for the existing Office (1 space per 50m²). The use as Medical Centre requires 8 spaces which leaves a shortfall of 4 spaces.

The applicant is aware of the review of the draft Local Planning Policy, ‘Central Business District Parking’ but given the time constraints, requests consideration of the application based on current scheme provisions and Clause 5.7.1.9 of TPS 7. This clause of the Scheme specifies that within the "City Centre" zone, car parking spaces associated with developments of up to 2000m² gross floor area may not be required. Therefore Council has the power to grant approval in this instance that is, without enforcing parking requirements.

The applicant has provided the following justification in support of the proposal for a reduction in parking requirements under the Scheme:

- That “a high proportion of Australian Hearing clients are elderly (50% or more) and often are not able to drive, therefore they will often travel by taxi, public transport or can be dropped off by relatives/carers.”
- That parking is provided in the locality due to “the provision of public parking on street and in nearby car parks”.
- That there will be no structural changes to the premises (the floor area remains the same).

The proposed change of use from Office to Medical Centre ('Hearing Centre') requires 4 additional car parking spaces in accordance with strict interpretation of the Scheme. However, Development Services is of the view that, given the scale and nature of the development/ land use and the fact that it is in the "City Centre", the proposal does not, arguably, warrant further car parking spaces. Under the Scheme, the previously approved Restaurant use on the site required a much higher parking amount than the Office and Medical Centre use. It is considered that parking within the "City Centre" would not be overstretched as the result of the current proposal.

It should be noted that the officer's recommendation provided is consistent with the provisions for allowing discretion under the proposed Parking Policy i.e. "Council may not require parking for development of less than 500 m2 GFA". The part of the building to be used for the proposed Medical Centre ('Hearing Centre') has an area of 194.5m2 and Council could therefore waive car-parking requirements in light of the proposed Parking Policy.

Strategic and/or Regional Outcomes

It is considered that the broad direction of the City of Bunbury 2007 –2012 Strategic Plan would not be compromised to any significant extent by supporting the proposed development.

Community Consultation

It is considered that formal community consultation is not necessarily required in this instance.

Councillor/Officer Consultation

Discussions have been undertaken with Technical Officers within Development Services and the Manager Development Services prior to the finalisation of the report.

Analysis of Financial and Budget Implications

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

Economic, Social, Environmental and Heritage Issues

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

Council Policy Compliance

It is considered that the proposed development complies in principle with relevant Policies. Currently, the City of Bunbury Local Planning Policy titled 'Parking Strategy' is under review. It is envisaged that new car parking provisions for the CBD within the Scheme, as well as a draft revised Local Planning Policy, 'Central Business District Parking' will be presented for Council consideration in the near future.

Legislative Compliance

Legislative requirements relating to the Local Government Act 1995 or any other Act, Local Law or Regulations have been complied with. The proposal will be required to comply with the requirements of the Health Act 1911 and the City of Bunbury Health Local Laws 2001.

Delegation of Authority

On the basis of Council's past determinations in respect of car parking for developments in the City Centre zone, the matter is referred to Council for its formal overview and determination.

Relevant Precedents

Council at its meeting on 28 August 2007, resolved to grant planning approval in respect of a proposal of change of use from Office to Consulting Room at Lot 191 (No. 83A) Victoria Street which had a marginal shortfall in respect of car parking provision. This example is typical of recent decisions in this regard over the past six months approximately.

Options

Option 1

Per the recommendation printed in this report.

Option 2

Should Council determine to resolve to issue grant of planning approval with a requirement for cash-in-lieu for the parking deficit for the proposed development, a suggested format for such action is as follows: "Council, under the Planning and Development Act 2005, resolves to grant conditional planning approval to Griffiths Planning for the proposed change of use from "Office" to "Medical Centre" (specifically a Hearing Centre) at Lot 32 (No. 31) Victoria Street, Bunbury, on the basis that \$100,000 (being 4 parking bays at \$25,000) is submitted to the City of Bunbury prior to any commencement of development activity."

Option 3

Should Council determine not to resolve to issue grant of planning approval for the proposed development, a suggested format for such action is as follows:

"Council, under the Planning and Development Act 2005, resolves to refuse grant of planning approval to Griffiths Planning for the proposed change of use from "Office" to "Medical Centre" (specifically a Hearing Centre) at Lot 32 (No. 31) Victoria Street, Bunbury, for the reason that the applicant has failed to provide sufficient car parking in accordance with Town Planning Scheme No. 7."

(plus any other reasons as determined by Council following discussion of the matter).

Conclusion

Development Services is of the view that a grant of planning approval would be in order in this instance. Principally, Council has the power to issue a grant of planning approval. This power is derived from the fact that the use-class ("Medical Centre") proposed is a permitted use in the respective zone ("City Centre"). In terms of the matter of the number of car parking spaces required, whilst the proposed development may be marginally short of the technical requirement in this instance, Council has the power to grant approval due to the fact that Clause 5.7.1.9 of TPS 7 permits Council to grant approval for commercial developments up to 2000m² in area in the "City Centre" zone without a parking requirement.

It is considered that this specific clause has been formulated in the current Scheme for this particular purpose. That is, in cases where any development is of such a nature in terms of size and impact etc. that it warrants approval for broader benefits such as commercial synergies and benefits the "City Centre" zone in terms of contributing to its commercial and social vitality, then, Council would have the power to exercise its judgement.

It would be reasonable in the circumstances presented that the proposed change of use from Office to Medical Centre ('Hearing Centre') is acceptable without the requirement for additional parking provision or a cash in lieu option. All other planning issues are considered to be in order.

It should be noted that the officer's recommendation provided is consistent with the provisions for allowing discretion under the proposed Parking Policy i.e. "Council may not require parking for development of less than 500 m² GFA".

Recommendation

Council, under the Planning and Development Act 2005, resolves to grant planning approval to Griffiths Planning for the proposed change of use from "Office" to "Medical Centre" (specifically a Hearing Centre) at Lot 32 (No. 31) Victoria Street, Bunbury, subject to the following conditions:

1. The premises being used only in accordance with the definition of "Medical Centre" contained in Schedule 1 of Town Planning Schemed No. 7, unless otherwise approved by Council.

2. This approval shall expire unless the works hereby authorised have been substantially commenced within 2 years of the date of issue or within any extended period for which Council has granted written consent. Any application for such consent shall be received within 1 month prior to the expiration of the Planning Approval.
3. All development shall be generally in accordance with the approved development plans which form part of this Planning Approval.
4. All other normal operational condition(s) to the satisfaction of the Manager of Development Services.

Outcome of the Council Committee Meeting - 1 April 2008

The applicants, Ms Janine Griffiths (Griffiths Planning) and Ms Louise Webb (Australian Hearing) together with the City's Executive Manager of City Development responded to questions from committee members. It was confirmed that the testing and services to be conducted at the medical centre form part of a Commonwealth Government program so the clientele will be mainly pensioners and children. No OSH-based testing will be carried out.

The recommendation was moved Cr Dillon, seconded Cr Major and adopted *13 votes "for" to nil votes "against"* to become the Committee's recommendation on this issue.

Committee Recommendation

Council, under the Planning and Development Act 2005, resolves to grant planning approval to Griffiths Planning for the proposed change of use from "Office" to "Medical Centre" (specifically a Hearing Centre) at Lot 32 (No. 31) Victoria Street, Bunbury, subject to the following conditions:

1. The premises being used only in accordance with the definition of "Medical Centre" contained in Schedule 1 of Town Planning Schemed No. 7, unless otherwise approved by Council.
2. This approval shall expire unless the works hereby authorised have been substantially commenced within 2 years of the date of issue or within any extended period for which Council has granted written consent. Any application for such consent shall be received within 1 month prior to the expiration of the Planning Approval.
3. All development shall be generally in accordance with the approved development plans which form part of this Planning Approval.
4. All other normal operational condition(s) to the satisfaction of the Manager of Development Services.

AT THE COUNCIL MEETING

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

Council Decision 48B/08

Council, under the Planning and Development Act 2005, resolves to grant planning approval to Griffiths Planning for the proposed change of use from "Office" to "Medical Centre" (specifically a Hearing Centre) at Lot 32 (No. 31) Victoria Street, Bunbury, subject to the following conditions:

- 1. The premises being used only in accordance with the definition of "Medical Centre" contained in Schedule 1 of Town Planning Schemed No. 7, unless otherwise approved by Council.*
- 2. This approval shall expire unless the works hereby authorised have been substantially commenced within 2 years of the date of issue or within any extended period for which Council has granted written consent. Any application for such consent shall be received within 1 month prior to the expiration of the Planning Approval.*
- 3. All development shall be generally in accordance with the approved development plans which form part of this Planning Approval.*
- 4. All other normal operational condition(s) to the satisfaction of the Manager of Development Services.*

CARRIED

12 Votes "For" / Nil Votes "Against"

11.3 TOWN PLANNING SCHEME NO. 7 AMENDMENT NO. 23 - REZONE PORTION LOT 7 SOUTH WESTERN HIGHWAY FROM "MIXED BUSINESS" AND "DEVELOPMENT ZONE RESIDENTIAL" TO "INDUSTRY"; AND, REZONE PORTION OF MILL STREET ROAD RESERVE FROM "ACCESS ROAD" TO "INDUSTRY" (WAS LISTED AS ITEM 11.9 IN THE MEETING AGENDA)

File Ref:	A00398
Applicant/Proponent:	J W Cross and Sons
Author:	Paul Davies, Planning Consultant
Executive:	Geoff Klem, Executive Manager City Development

Summary

Council at its meeting on 18 December 2007 resolved to rezone a portion of Lot 7 South Western Highway, Picton from “Mixed Business” and “Development Zone - Residential” to Industry and portion of Mill Street Road reserve from “Access Road” to “Industry”.

The subject land is generally identified as Industry in the draft Glen Iris - Moorlands Local Area Plan. The proponents have requested an Industrial zoning to accommodate more industrial type uses than can be accommodated under the current zoning which is predominantly Mixed Business.

The subject land is located adjacent to the existing Picton Industrial area to the east with existing residential properties to the west. The adjoining Residential properties are currently zoned Residential R20 under the City of Bunbury Town Planning Scheme No7.

The adjoining residential properties are, however, identified as Mixed Business under the draft Glen Iris - Moorlands Local Area Plan. On this basis, the proposed Industry zone does not conflict with the proposed future zoning of the adjoining land.

The proponents own the portion of Mill Street proposed to be closed in freehold and this land area is proposed to be amalgamated into the new subdivision lots. The proponent will be required to obtain the approval of the adjoining owners who have access rights to the road prior to closure of the road.

Advertising for the amendment closed on 12 March 2007 and four submissions were received. Details of submissions are outlined in the Schedule of submissions and discussed in the report.

It is recommended that Council resolve to finally adopt Amendment No 23 to Town Planning Scheme No 7 without modification and forward the amendment to the Hon Minister for Planning for final approval.

Background

The subject land is located approximately 5km southeast of the Bunbury City Centre in Picton and is located on the north side of South Western Highway. See Location Plan **attached** at Appendix 7.

The subject land is generally identified as Industry in the draft Glen Iris - Moorlands Local Area Plan (GIMLAP). It is anticipated that a further report in regard to the proposed GIMLAP will be presented to Council following closure of the current advertising period for community comment.

The proponents have requested an Industrial zoning to accommodate more industrial type business uses than can be accommodated under the current zoning which is predominantly Mixed Business.

It is considered that the subject land is well located for Industrial land uses in view of its proximity to the existing Picton industrial area and major transport routes including existing South Western Highway and Railway line and the proposed future realignment for the South Western Highway.

The subject land is located adjacent to the existing Picton Industrial area to the east with existing residential properties to the west. The adjoining Residential properties are currently zoned Residential R20 under the City of Bunbury Town Planning Scheme No7.

The adjoining residential properties are, however, identified as Mixed Business under the draft Glen Iris - Moorlands Local Area Plan. On this basis, the proposed Industry zone does not conflict with the proposed future zoning of the adjoining land.

The subject land is also proposed to be separated from existing residential development and schools by a future realignment of South Western Highway. The proposed alignment for the deviation of the Highway includes resumption of a portion of Lot 7 generally to the north of the area proposed to be rezoned.

The proposed realignment of the South Western Highway will provide a buffer between the proposed industrial zoned land and the existing residential areas and school sites to the north and east including the Djidi Djidi School and the Bunbury Community School. Possible timing for construction of the realignment of the South Western Highway is not known at this time.

The subject land has recently been predominantly subdivided with construction of new subdivision access roads. The subdivider has provided a bond to Council for construction of an earth bund and landscaping within the Mill Street Road Reserve as a buffer to adjoining residential properties if necessary. In view of the future change of the residential lots to Mixed Business under the Local Area Plan a landscape buffer is not considered necessary.

It is recommended that Council resolve to grant final approval to Amendment No 23 to rezone the subject land without modification and endorse the documents accordingly and refer the amendment to the Hon Minister for Planning for final approval.

The proposed scheme amendment has been advertised for public comment for a period of 42 days with the submission period closing on 12 March 2008 and four submissions were received. **Attached** at Appendix 8 is a plan of the proposed rezoning.

Two submissions were received from Government Service agencies advising that they have no objection to the amendment. One submission from an adjoining property owner on Mill Street requests that the rezoning be refused until the issue of closure of Mill Street is resolved.

The fourth submission from a property owner in the rezoning area supports the rezoning proposal. Details of the submissions are outlined in the Schedule of Submissions **attached** at Appendix 9.

The subject land has subdivision approval from the Western Australian Planning Commission (WAPC Ref 134139 dated 1 November 2007). The proposed rezoning rationalises the zoning of the approved subdivision land to a single zone "Industry."

Condition 1 of the Subdivision approval requires the proponent to close the existing Mill Street private road reserve to the satisfaction of the Western Australian Planning Commission prior to any subdivision works being undertaken.

The proponents own the portion of Mill Street proposed to be closed in freehold and this land area is proposed to be amalgamated into the proposed new subdivision lots. The proponent is required to obtain approval of any proprietors which have implied rights of way over the private road prior to the road being closed and amalgamated with the proposed subdivision lots.

The issue of road closure will need to be addressed by the proponent and approval of other property owner will be required by Landgate prior to approving Diagrams of Survey for the proposed subdivision. Closure of the private road is required to be undertaken in accordance with the Landgate, Land Titles Registration Practice Manual, Clause 8.4.3 (a copy is **attached** at Appendix 10).

As outlined in the submission from the adjoining owner suitable arrangements for access to the adjoining property could include provision of an easement over the proposed subdivision lot, creation of a right of way or possibly a short section of road reserve.

It is considered that the closure of the road reserve and provision of suitable alternative access for the adjoining property can be appropriately addressed through the subdivision requirements as outlined above. Also, it is considered that the rezoning of the Mill Street road area does not affect access rights of the adjoining property owner.

Strategic and/or Regional Outcomes

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

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

Community Consultation

The proposed scheme amendment has been advertised for public comment for a period of 42 days with the submission period closing on 12 March 2008 and four submissions were received. Details of submissions are outlined in the Schedule of submissions and discussed in the report.

Two submissions were received from Government Service agencies advising that they have no objection to the amendment. One submission from an adjoining property owner on Mill Street requests that the rezoning be refused until the issue of closure of Mill Street is resolved. The fourth submission from a property owner in the rezoning area supports the rezoning proposal.

The submission from the adjoining property owners outlines that they will not surrender their right of carriageway over Mill Street until a legally binding consideration has been granted in the form of an easement or private right of way or a small portion of public road that provides the same level of access to the lot.

It is considered that the closure of the road reserve and provision of suitable access arrangements for the adjoining property can be appropriately addressed through the subdivision requirements as discussed in the report.

Councillor/Officer Consultation

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

Analysis of Financial and Budget Implications

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

Economic, Social, Environmental and Heritage Issues

In economic terms, the proposal will provide economic benefit by facilitating additional business development. There are no anticipated social, environmental or Heritage issues associated with the proposal.

Council Policy Compliance

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

Legislative Compliance

Rezoning of the site is required to be undertaken in accordance with the requirements of the Planning and Development Act 2005.

Delegation of Authority

Delegation of decision-making is not an option in this instance.

Relevant Precedents

Council has rezoned a number of sites throughout the City. There are no known relevant precedents in respect of the specific matter being considered by Council.

Options

Option 1

Per the recommendation listed in this report.

Option 2

Council to refuse to finally adopt the proposed Amendment No. 23 to TPS No. 7. If this action is chosen, a suggested recommendation is provided below:

- "1. Council under the Planning and Development Act 2005 (as amended) resolves not to finally adopt Amendment No. 23 to the City of Bunbury Town Planning Scheme No. 7 for:
 - 1.1 rezoning a portion of Lot 7 South Western Highway, Picton from "Mixed Business" and "Development Zone - Residential" to "Industry", and;
 - 1.2 portion of Mill Street road reserve from "Access Road" to "Industry".
2. The amendment to be forwarded to the Hon. Minister for Planning with a recommendation that the amendment not be granted final approval."

Conclusion

The subject land is generally identified as Industry in the draft Glen Iris - Moorlands Local Area Plan. The proponents have requested an Industrial zoning to accommodate more industrial type uses than can be accommodated under the current zoning which is predominantly Mixed Business.

The subject land is located adjacent to the existing Picton Industrial area to the east with existing residential properties to the west. The adjoining Residential properties are currently zoned Residential R20 under the City of Bunbury Town Planning Scheme No7.

The adjoining residential properties are, however, identified as Mixed Business under the draft Glen Iris - Moorlands Local Area Plan. On this basis, the proposed Industry zone does not conflict with the proposed future zoning of the adjoining land.

It is considered that the subject land is well located for Industrial land uses in view of its proximity to the existing Picton industrial area and major transport routes including existing South Western Highway and Railway line and the proposed future realignment for the South Western Highway.

Recommendation

Council, under the Planning and Development Act 2005 (as amended), hereby resolves to:

1. Grant final approval of Amendment No. 23 in respect of the City of Bunbury Town Planning Scheme No. 7 to rezone the following:
 - 1.1 portion of Lot 7 South Western Highway, Picton from "Mixed Business" and "Development Zone - Residential" to "Industry", and;
 - 1.2 portion of the Mill Street road reserve from "Access Road" to "Industry".
2. Forward the signed and sealed Scheme Amendment documents to the Minister for Planning and Infrastructure via the Western Australian Planning Commission, with a request for final approval.

Outcome of the Council Committee Meeting - 1 April 2008

The Presiding Member advised committee members that the applicant Ms Janine Griffiths (Griffiths Planning) was available to answer any questions they may have. There were no questions.

The recommendation was moved Cr Dillon, seconded Cr Jones and it was adopted *13 votes "for" to nil votes "against"* to become the Committee's recommendation on this issue.

Committee Recommendation

Council, under the Planning and Development Act 2005 (as amended), hereby resolves to:

1. Grant final approval of Amendment No. 23 in respect of the City of Bunbury Town Planning Scheme No. 7 to rezone the following:
 - 1.1 portion of Lot 7 South Western Highway, Picton from “Mixed Business” and “Development Zone - Residential” to "Industry", and;
 - 1.2 portion of the Mill Street road reserve from “Access Road” to “Industry”.
2. Forward the signed and sealed Scheme Amendment documents to the Minister for Planning and Infrastructure via the Western Australian Planning Commission, with a request for final approval.

AT THE COUNCIL MEETING

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

Council Decision 49/08

Council, under the Planning and Development Act 2005 (as amended), hereby resolves to:

1. *Grant final approval of Amendment No. 23 in respect of the City of Bunbury Town Planning Scheme No. 7 to rezone the following:*
 - 1.1 *portion of Lot 7 South Western Highway, Picton from “Mixed Business” and “Development Zone - Residential” to "Industry", and;*
 - 1.2 *portion of the Mill Street road reserve from “Access Road” to “Industry”.*
2. *Forward the signed and sealed Scheme Amendment documents to the Minister for Planning and Infrastructure via the Western Australian Planning Commission, with a request for final approval.*

CARRIED

12 Votes "For" / Nil Votes "Against"

11.4 PROPOSED SHORT STAY ACCOMMODATION - LOT 57 (NO. 102) STOCKLEY ROAD, BUNBURY *(WAS LISTED AS ITEM 11.10 IN THE MEETING AGENDA)*

File Ref:	P09191
Applicant/Proponent:	Ms Robyn Spragg
Author:	Lindsay Bergsma, Planning Officer
Executive:	Geoff Klem, Executive Manager City Development

Summary

Council has received a development application from Robyn Spragg for short stay accommodation at Lot 57 (No. 102) Stockley Road, Bunbury.

The subject site is zoned “Residential R15” and ‘short stay accommodation’ is a use not listed under the City’s Town Planning Scheme No. 7 (TPS No. 7). The proposal was advertised and 6 submissions received, 5 of which object to the proposal and 1 in support. Since objections to the proposal have been received, the matter is being referred to Council for determination.

Background

The subject land is zoned “Residential R15” and currently there is an existing single house on site. The zoning of the subject land will remain the same. A location plan of the subject lot is **attached** at Appendix 11.

Short stay accommodation is a use that is not listed under TPS No. 7. The Scheme states that in regard to a use not listed, the local government may do one of three things. Firstly, it may determine that the use is consistent with the objectives of the particular zone and is therefore permitted. Second, it may determine that the use may be consistent with the objectives of the particular zone and thereafter follow the advertising procedures of the Scheme in considering an application for planning approval. Finally, the local government may determine that the use is not consistent with the objectives of the particular zone and is therefore not permitted.

In this case, the second option was chosen and advertising of the proposal took place for a period of twenty one days. Overall, six submissions were received by the City with five objecting to the proposal and one submission stating no objection. Pursuant to the City’s Local Planning Policy – Development Applications Assessment Processes: Rights of the Applicant and the Community, “Upon closure of the advertising period, all submissions are [to be] compiled and incorporated into agenda item to Council for their consideration.” This then, is the purpose of this report.

The first objective stated in the City’s TPS No. 7 for controlling development within the residential zone is “to promote and safeguard the health, safety, convenience, general welfare and the amenities of residential areas and their residents.” The City needs to ensure that this objective is met and that the issues just mentioned are not compromised in relation to the residential area concerned.

The proposal is for short stay accommodation at Lot 57, No. 102 Stockley Road, Bunbury. The maximum number of people permitted to stay on site at any one time is proposed to be six (initially the proposal was for seven people). Currently situated on site is a single house (a three bedroom, one bathroom dwelling). An existing shed is also present at the rear of the property. No changes are proposed to any of the buildings on site. There is an existing laneway at the rear of the property but parking and access for the subject site is proposed from Stockley Road.

A site plan/ floor plan and a photo of the front of the dwelling are **attached** at Appendix 12.

Since the 'short stay accommodation' use is not listed under TPS No. 7, there are no requirements for short stay accommodation specified in the Scheme.

Applicant's Justification

At the City's request, the applicant provided justification in regards to the proposed use. The applicant stated that the use is proposed because in her opinion, Bunbury is a great place for a holiday and there is currently a lack of places to stay. Her targeted market is holiday makers and those in the area for business and the anticipated length of stay is between one week and twelve weeks. The site is located approximately one kilometre from the City Centre, just over one kilometre from the beach and approximately 400m from the Plaza Shopping Centre.

The applicant has stated that the premises is suitable for use as short stay accommodation because the dwelling and site have the following characteristics. The dwelling is a double brick and tiled house with minimal garden that needs to be maintained. The dwelling has roller shutters, security screens, lockable storage, garage roller door and an enclosed outdoor eating area. No work is needed to be carried out on the premises prior to occupation. The existing shed at the rear of the property is proposed to be made available for use by the guests for storage.

In regards to the operational plan for the site, the applicant plans to undertake the house and garden cleaning herself. If for any reason she is not available, two other people have been organised to take over these duties. The applicant's contact numbers will be available to the occupants. She has spare keys for the residence and if the house is empty, the keys will be held in a lock box at the property. An emergency plan will be displayed in the kitchen. Also, the guests will be informed of the rubbish collection day in order to allow them to place the bins on the verge on the appropriate day.

The applicant confirmed that there were two parking bays on site (one in the existing garage and the other on the existing driveway). It was noted in discussions with the applicant that the crossover was in poor condition and that the driveway did not currently connect to the existing garage (see photo referred to earlier). The applicant intends to realign the crossover/ driveway in the near future. No access is proposed to the rear of the property via the laneway adjoining the north boundary of the lot.

The maximum number of guests to be allowed to stay on site at any one time is proposed to be six. A copy of the 'conditions of accommodation' sheet as well as guidelines for guests staying at the proposed accommodation are **attached** at Appendix 13.

It should be noted also that the applicant, who wishes to manage the operation of the short stay accommodation herself, lives in Garvey Place (a small cul-de-sac off Stockley Road, approximately 40m from the subject site). In the applicant's own words, this will allow her to know first hand what is going on.

Submissions

The proposal was advertised for a period of three weeks in which time six submissions were received. These submissions will now be discussed (which are also **attached** in full in the 'schedule of public submissions' at Appendix 14).

Submission 1

The first submitter stated that after speaking with the relevant Planning Officer about the proposal, they had no objection.

Submission 2

The second submitter stated that the proposal in their opinion was not suitable at all but gave no justification or further explanation as to why.

Submissions 3, 4, 5

These submissions were received in the form of a petition with reasons why the proposal was opposed and signatures from three lots of landowners. The main reasons given for the objection are noise and the precedent it will set (more home owners will apply for a similar use).

In regard to any precedent set by the approval of this application, it should be noted that all relevant landowners have opportunity to lodge applications for this use at this time and any application received by the City would be considered on its merits.

In regards to the noise issue however, it is acknowledged that more noise is likely to result from short stay accommodation than a single dwelling. People staying on site for holidays or for a short period of time for work are more likely to socialise, have parties, recreate outside etc. The impact of noise on the neighbouring properties is therefore likely to be increased if a short stay accommodation use was approved for the site.

Submission 6

A few of the arguments/ concerns raised in this submission are the same as those raised in the previous submission (i.e. the precedent that the approval of this application will set and the noise issue). Both of these issues have already been discussed earlier.

The submitter goes on to state that safety is also a concern since it is uncertain who will be staying on the site and this is a concern for both residents and school students at Bunbury Primary School. The uncertainty itself is not an issue since it is considered by Development Services that uncertainty in who will buy or rent any property (in relation to houses for sale or available for rent) is a potential concern for any residential area. However, in regards to the specific people that use the proposed accommodation on site and the relatively high turnover of people over a short period of time, there potentially could be negative impacts on the residents.

Increase in traffic and parking have also been raised as issues in relation to the proposal. The argument put forward states that parking on site is limited and that there will be, potentially, a large increase in the number of cars. It is acknowledged that currently the site does not have adequate access and parking. There is sufficient room for two parking bays on site (one in the existing garage and one on the driveway) but the existing crossover is in poor condition (basically non-existent) and the driveway does not currently connect to the existing garage. The applicant has stated that their intention is to realign the crossover/ driveway in the near future. However, the current parking and access is not sufficient, especially if there will be an increase in the number of vehicles to be parked on site.

The Residential Design Codes require two parking bays for each single residential dwelling. With the proposed short stay accommodation, the parking requirement for the site would potentially be increased. With a proposed maximum number of six people staying on site (which could be six adults), it could be argued that the parking requirements for the site would be quite different from a standard single house and therefore the current parking on site is not sufficient.

General Comments

It should be noted briefly that, if for any reason Council decides to approve the application, a time limit of the approval would be recommended in order to allow a review of the land use. At the same time the land use approved should not be limited to 'short stay accommodation' but should include 'single house'. If this does not occur, then a planning application would be required for a change of use to 'single house' if the use was to revert back to what it is currently, which would be a pointless exercise.

Overall however, it is considered by Development Services that the proposed change of use will potentially have quite a large impact on the surrounding, well established residential area. The concerns raised in the considerable number of objections received help to substantiate this. It is therefore recommended that the proposed change of use not be approved but rather, be refused.

Strategic and/or Regional Outcomes

The City's 2007 – 2012 Strategic Plan states that “The City will ensure that it maintains a comprehensive and fully integrated planning system to meet community expectations.” In this case, the proposal has been considered in the context of its compliance with the current Scheme and the proposal was advertised for public comment. The considerable number of objections that have been received by the City have been noted and a recommendation has been made accordingly.

Community Consultation

The proposal was advertised for a three week period between 19 December 2007 and 9 January 2008. As part of the advertising, all adjoining landowners received letters informing of the proposal and were given opportunity to comment. Six submissions were received with five objecting to the proposal.

Councillor/Officer Consultation

This matter has been discussed amongst both the Strategic and Statutory Planning staff.

Analysis of Financial and Budget Implications

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

Economic, Social, Environmental and Heritage Issues

There are no known environmental implications regarding the proposal. The economic implication is that the proposal will create employment opportunity. The premises is not listed under the City's Municipal Inventory. With regard to social implications, these have been discussed earlier in the report.

Council Policy Compliance

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

Legislative Compliance

There are no specific requirements for short stay accommodation in TPS No. 7 since the use is not listed under the Scheme. After receiving the application, the City determined that the proposed use may be consistent with the objectives of the residential zone and followed the advertising procedures of the Scheme in considering the application for planning approval.

Delegation of Authority

The City's Local Planning Policy –Development Applications Assessment Processes: Rights of the Applicant and the Community requires that, following any advertising period, all submissions are to be compiled and incorporated into an agenda item to Council for their consideration.

Relevant Precedents

There are no known relevant precedents.

Options

Option 1

Per the recommendation as printed in this report.

Option 2

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

"Council, pursuant to the Planning and Development Act 2005, grants Planning Approval for short stay accommodation on Lot 57 (No. 102) Stockley Road, Bunbury subject to the following conditions:

- 1. The premises being used only in accordance with the definition of "Short Stay Accommodation" (generally defined as a building(s) used for providing accommodation on a temporary basis not exceeding 3 months within each 12-month period) and "Single House" contained under the Residential Design Codes as adopted by the City's Town Planning Scheme No. 7, unless otherwise approved by Council.*
- 2. All development shall be generally in accordance with the approved development plans which form part of this Planning Approval.*
- 3. The existing dwelling can be used as short-stay accommodation for a maximum period of one year from the date of this approval. Upon completion of the one year period, the applicant is to submit a new planning application along with explanatory notes for consideration by the City.*
- 4. The short stay accommodation is only permitted to operate with a maximum of 6 people residing on-site at any one time.*
- 5. The existing driveway is to be modified or re-aligned to allow vehicle access to the existing garage on-site to the satisfaction of the City's Manager of Development Services.*

6. *The provision of a minimum of 3 car parking bays on-site, to the satisfaction of the Manager Development Services.*
7. *The applicant shall construct and maintain vehicle crossovers to the development. Existing crossovers not required for the proposed development shall be removed, the verge made good and kerbing reinstated, immediately upon completion of the building. Crossovers shall be in accordance with Council's Standard Drawings MISC-01-03; MISC-01-04, MISC-01-05 or approved alternative design and shall not vary from the standard designs without prior written approval from the City Engineer. Pedestrian access across the crossover shall be free of tripping hazards. Paths shall take priority over crossovers and in accordance with Local Planning Policy "Vehicle Crossovers" a crossover rebate will only be issued where construction has been completed in accordance with the standard drawings.*
8. *Any other condition(s) to the satisfaction of the City's Manager of Development Services."*

Conclusion

It has been determined that the proposed short stay accommodation is not consistent with the objectives of the residential zone in which it is proposed to be located and it is therefore recommended that the proposal be refused. The area in which the subject site is located is a well established residential area. After completing assessment of the proposal and taking into account the five objections received, it has been determined that the proposal does not meet the first objective stated in the Scheme for controlling development within the residential zone. The proposal does not promote and safeguard the health, safety, convenience, general welfare and the amenities of residential area and its residents but rather puts them at risk. The proposal is likely to detrimentally affect the surrounding residential area.

Recommendation

Council, under the Planning and Development Act 2005, resolves not to grant Planning Approval for the proposed short stay accommodation for Lot 57 (No. 102) Stockley Road, Bunbury on the following grounds:

1. The proposed short-stay accommodation is likely to detrimentally affect the amenity of the residential area in which it is proposed to be located.
2. The vehicle access and parking is inadequate for the proposed use.

Outcome of the Council Committee Meeting - 1 April 2008

Mr David Lindsay of 98 Stockley Road, Bunbury, was invited to speak on behalf of Stockley Road residents and respond to questions from committee members. Mr Lindsay claimed that all appearances are that the owners of 102 Stockley Road have been operating the premises as short-stay holiday accommodation without a licence since at least Christmas last year. As most of the tenants have been people on holiday, they have been noisy and/or disruptive and this is not an appropriate use for a home in a (normally) quiet suburban street. A primary school is located nearby and many young families live in the street so late night disturbances and increased traffic are matters of concern. Mr Lindsay concluded by stating that Stockley Road residents would prefer that the owners of No. 102 lease their property long-term so that neighbours can have the opportunity to get to know the tenants.

It was noted that the applicant, Ms Robyn Spragg, was not in attendance at the meeting to respond to Mr Lindsay's claims or answer questions.

The City's Executive Manager of City Development responded to questions from committee members and confirmed that if approval for short-stay accommodation at the property is refused (as recommended) the City's Compliance Officer will be instructed to continue to monitor the property to ensure the appropriate use is being observed.

The recommendation was moved Cr Leigh, seconded Cr Craddock and adopted *12 votes "for" to 1 vote "against"* to become the Committee's recommendation on this issue.

Committee Recommendation

Council, under the Planning and Development Act 2005, resolves not to grant Planning Approval for the proposed short stay accommodation for Lot 57 (No. 102) Stockley Road, Bunbury on the following grounds:

1. The proposed short-stay accommodation is likely to detrimentally affect the amenity of the residential area in which it is proposed to be located.
2. The vehicle access and parking is inadequate for the proposed use.

AT THE COUNCIL MEETING

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

Council Decision 50/08

Council, under the Planning and Development Act 2005, resolves not to grant Planning Approval for the proposed short stay accommodation for Lot 57 (No. 102) Stockley Road, Bunbury on the following grounds:

- 1. The proposed short-stay accommodation is likely to detrimentally affect the amenity of the residential area in which it is proposed to be located.*
- 2. The vehicle access and parking is inadequate for the proposed use.*

CARRIED

12 Votes "For" / Nil Votes "Against"

11.5 LIQUOR LICENCE - NICOLA'S RISTORANTE, 62-64 VICTORIA STREET, BUNBURY (WAS LISTED AS ITEM 11.14 IN THE MEETING AGENDA)

File Ref:	P10188
Applicant/Proponent:	Nicola's Ristorante
Author:	Tim Hunger, Manager Health
Executive:	Geoff Klem, Executive Manager City Development

Summary

The proprietors of Nicola's Ristorante have lodged an application with the Department of Racing, Gaming and Liquor for grant of a Restaurant Licence for their premises situated at 62-64 Victoria Street, Bunbury.

As a part of the application process the applicant must conduct a "Public Interest Assessment" and consult with the local authority amongst others.

A copy of the Public Interest Assessment submission made to the Department of Racing, Gaming and Liquor by the proponent, is **attached** at Appendix 2.

Background

A Restaurant Licence authorises the Licensee to sell and supply liquor ancillary to a meal to a patron seated at a dining table. For a Restaurant Licence to be considered, a venue must have a kitchen equipped to provide meals, sufficient toilet facilities and a dining area must always be set up with tables and chairs for dining.

The *Liquor Control Act 1988* (as amended in 2007) requires a Public Interest Assessment to be carried out before issue of a Liquor Licence. To satisfy the public interest test, the licensing authority may take into account:

- harm or ill-health that may be caused to people, or any group of people, due to the use of liquor;
- impact on the amenity of the locality within which the licensed premises, or proposed licensed premises, is to be situated;
- whether offence, annoyance, disturbance or inconvenience might be caused to people who reside or work in the vicinity of the licensed premises, or proposed licensed premises, and;
- any other matter stipulated in the Liquor Control Regulations 1988.

The Guidance Note relating to Public Interest Assessment published by the Department of Racing Gaming and Liquor, is **attached** at Appendix 3.

Nicola's currently has an Outdoor Eating Area Licence for 5 tables and 20 chairs which, in accordance with Council Work Procedure WP 16.3, has the following as a condition of the licence

"6. Consumption of alcohol

Where alcohol is served it shall be served to the table and the patrons must remain seated at all times while it is being consumed."

Strategic and/or Regional Outcomes

The proposal does not contravene any of the strategies and objectives of the *City of Bunbury 2007-2012 Strategic Plan*.

Community Consultation

Consultation with the community by the proponent is a requirement of the Public Interest Assessment as a part of the Liquor Licensing process and comment is submitted to the Department of Racing, Gaming and Liquor for consideration.

Councillor/Officer Consultation

The proposal has been assessed for compliance by officers in the City's Health, Building and Planning Divisions and found to comply with all relevant legislation. A Section 39 and a Section 40 certificate indicating compliance have been issued to the proponent.

Analysis of Financial and Budget Implications

The proposal will have no effect on the City's annual budget.

Economic, Social, Environmental and Heritage Issues

The proponent believes that there are benefits to the amenity of the local population and to tourism by being able to provide alcohol in a responsible manner with a meal as a part of the restaurant's service. They submit that the granting of the application will not:

- result in harm or ill health to any section of the public within the relevant locality;
- cause offence, annoyance, disturbance or inconvenience, or;
- adversely impact upon the amenity of the area.

Council Policy Compliance

There is no Council policy that relates to the issue.

Legislative Compliance

Granting of a liquor licence is carried out by the Department of Racing, Gaming and Liquor under the provisions of the *Liquor Control Act 1988* (it is not administered by the Council).

Delegation of Authority

The City's Executive does have the delegated authority of the Council to comment on Extended Liquor Trading Permits but does not have authority to comment on new Liquor Licence applications.

Relevant Precedents

The Public Interest Assessment component of the Liquor Licensing process is a relatively new component replacing the Public Needs Assessment previously carried out. This application is the first one to be considered by the City and therefore there are no precedents.

Options

Option 1

The Council may make comment that it has no objection to the proposal per the recommendation as printed in this report.

Option 2

The Council may elect not to make any comment.

Option 3

The City of Bunbury supports the proposal on the grounds that the issue of a Restaurant Licence will improve the amenity for the local population and for tourism.

Option 4

The City of Bunbury objects to the proposal on the grounds that the issue of a Restaurant Licence may increase the level of harm to the community from the effects of the sale of alcohol.

Conclusion

There appears to be little evidence that licensed restaurants contribute to alcohol related anti-social behaviour in the City but there does appear to be a demand for patrons to be able to consume moderate quantities of alcohol in a restaurant associated with their dining experience. In considering an application, the Department of Racing, Gaming and Liquor take into consideration the positive and negative aspects that relate to the sale and supply of alcohol.

Recommendation

The City of Bunbury to advise the Department of Racing, Gaming and Liquor that it has no objection to the issue of a Restaurant Licence to Nicola's Ristorante, 62-64 Victoria Street, Bunbury.

Outcome of the Council Committee Meeting - 1 April 2008

It was pointed out that the City's Manager of Health was in attendance to respond to any questions from the committee concerning this matter.

The recommendation was moved Cr Jones, seconded Cr Major and adopted *13 votes "for" to nil votes "against"* to become the Committee's recommendation on this issue.

Committee Recommendation

The City of Bunbury to advise the Department of Racing, Gaming and Liquor that it has no objection to the issue of a Restaurant Licence to Nicola's Ristorante, 62-64 Victoria Street, Bunbury.

AT THE COUNCIL MEETING

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

Council Decision 51/08

The City of Bunbury to advise the Department of Racing, Gaming and Liquor that it has no objection to the issue of a Restaurant Licence to Nicola's Ristorante, 62-64 Victoria Street, Bunbury.

CARRIED

12 Votes "For" / Nil Votes "Against"

11.6 PROPOSED TOWN PLANNING SCHEME AMENDMENT NO. 21 - REZONING VARIOUS PORTIONS OF LAND FROM "PARKS" AND "RECREATION RESERVE" TO "RESIDENTIAL" (WAS LISTED AS ITEM 11.1 IN THE MEETING AGENDA)

File Ref:	A02843
Applicant/Proponent:	Internal Report
Author:	Paul Davies, Planning Consultant
Executive:	Geoff Klem, Executive Manager City Development

Summary

The proposal is to rezone the following lots or portions of land for future residential development including:

- portion of Part Lot 200 Charterhouse Close from reserved for “Parks and Recreation” to “Residential R30” and portion “Residential R15”, and;
- Lot 8 Tuart Street from reserved for “Parks and Recreation” to “Residential R40”.

The subject portions of land are considered by Council's Land Rationalisation Working Group as generally surplus to requirements for the current reserve purposes and it is proposed to rezone the respective sites so that the land can be disposed of as necessary.

The amendment was advertised for public comment for a period of 42 days and a total of 13 submissions were received. Details of the submissions are discussed in the report and the Schedule of Submissions **attached** at Appendix 24.

It is recommended that Council resolve to finally adopt the amendment subject to the following modification as discussed in the report and forward the amendment to the Hon Minister for Planning and Infrastructure for final approval: *“The zoning boundary for portion Part Lot 200 Charterhouse Close being modified to rezone only a 3 metre wide strip to facilitate rear access to the existing adjoining residential lot”.*

Background

Council at its meeting on 7 August 2007, resolved to initiate appropriate amendments to the City's Town Planning Scheme No. 7 to rezone as follows:

1. Lot 33 Strickland Street, Lot 33 Denning Road and Reserve R41676 from Reserve for “Public Purpose- Drainage” to “Mixed Business”.
2. Portions of Lot 454 Richter Road, Davenport from “Industry” and Reserve for “Parks and Recreation” to “Industry”, “Local Distributor Road” and Reserve for “Parks and Recreation”.

3. Lot 28 Mangles Street from Reserve for “Public Purpose - Water Supply” to “Residential R 15”.
4. Reserve 31945 Harrison Place from Reserve for “Parks and Recreation” to “Residential R40”
5. Portion of Part Lot 200 Charterhouse Close from Reserve for “Parks and Recreation” to “Residential R30” and portion “Residential R15”.
6. Lot 8 Tuart Street from Reserve for “Parks and Recreation” to “Residential R40”.

Two separate Scheme Amendments were initiated for the subject sites being proposed Amendment No. 20 for sites 1 to 4 as outlined above and the current proposed Amendment No. 21 for sites 5 and 6 as outlined above.

A separate amendment was initiated for sites 5 and 6 in view of environmental issues to be addressed for the sites which are identified as containing a Resource Enhancement category EPP wetland and potential Acid Sulphate soils risk.

Amendment 20 (for sites 1 to 4 as outlined above) was previously considered by Council at its meeting on 18 March 2008. The currently proposed Amendment 21 has recently completed advertising for public comment for a period of 42 days and a total of 13 submissions were received.

5 submissions were received from Government and Service agencies and 8 submissions were received from the general public and nearby landowners. Details of the submissions are discussed in the report and the Schedule of Submissions.

The subject land is considered by the Land Rationalisation Working Group as generally surplus to requirements for the current reserve purposes and it is proposed to rezone the respective sites so that the land can be disposed of as necessary.

Proceeds from the disposal of Crown land vested for Parks and Recreation will be utilised for capital works on public open space in close proximity to the subject area which are yet to be determined.

The proceeds from disposal of Council owned freehold land will assist funding projects of regional significance as identified in Council’s Corporate Plan.

It is recommended that Council resolve to finally adopt Amendment No 21 to the City of Bunbury to rezone various portions of land subject to modification of the zoning boundary as discussed further in the report.

Portion of Part Lot 200 Charterhouse Close

The subject land has a total area of 3.76 hectares. It is proposed to excise an area of approx 3000m² portion of the site for Residential development and a 3 metre wide access for an existing adjoining residential property.

The land is owned in freehold by the City of Bunbury and is reserved for “Parks and Recreation” under Town Planning Scheme No 7. See location plan and aerial photograph **attached** at Appendix 25.

The subject land comprises generally undulating sandy soils and includes a small portion of remnant wetland with a creek linking to the EPP wetland. The site is partly cleared and partly heavily vegetated with a significant intrusion of kikuyu grass and introduced species of trees.

The subject land is also identified as being adjacent to land containing a Resource Enhancement category wetland and identified EPP wetland. Importantly, however the portion of the site proposed to be excised is located well away from the identified EPP wetland. A buffer of approximately 150 metres will be retained to the EPP wetland.

It is proposed to excise a lot of approximately 3000m² to be rezoned to Residential R30. This would then accommodate development of 10 grouped dwellings based on an average lot size of 300m² in accordance with the Residential Design Codes.

Also, an adjoining property owner has approached the City in regard to obtaining access to the rear of his property from Charterhouse Close. The subject lot is located on the corner of Picton Road and Robertson Drive. The property owner seeks the alternative access in view of concerns with traffic conflicts at the intersection.

It is proposed that a 3 metre wide access leg be created for access to the rear of an adjoining residential property. The adjoining landowner will need to acquire the land at current market rate.

The subject land is adjacent to land which contains a wetland protected under the Environmental Protection Act 1986 and Environmental Protection (Swan Coastal Plain Lakes Policy 1992. Appendix xx plan indicates the identified EPP wetlands.

It is proposed that all necessary rehabilitation and management plans including Drainage, Nutrient and Stormwater Management be prepared to for the site to address any possible impacts on the EPP wetland prior to any works being undertaken on the site.

A clearing permit will need to be obtained from the Department of Environment and Conservation. Prior to any dewatering works, a dewatering licence will need to be obtained from the Department of Water in accordance with the Rights in Water and Irrigation Act 1914.

The subject land is located in a High Acid Sulphate Soil risk area and is in very close proximity to a Conservation Category Wetland area associated with the Preston River; and is in a proclaimed groundwater area.

Prior to the commencement of any site works it is proposed that the following action is taken:

- a) Preliminary site investigation shall be undertaken to determine whether acid sulphate soils are present on the land and, if present, their extent and severity;
- b) If the site is found to contain acid sulphate soils, an acid sulphate soil management plan will be prepared and submitted for approval by the Department of Water; and
- c) All site works shall be carried out in accordance with the provisions of the approved management plan.

Submissions

One submission from the adjoining property owner at the intersection of Picton Road and Robertson Drive advises that they support the provision of a 3 metre strip for access to the rear of their property.

Six submissions object to the proposed rezoning of the subject portion of reserve and request that the land be retained as Parks and Recreation. The submissions outline that the vegetation on the site provides a visual screen and buffer from dust and pollution from adjacent Robertson Drive.

The submissions also consider that the area provides a valuable ecological link for natural drainage and street runoff and habitat for wildlife in the park. The submissions further indicate that the park is considered to be of significant recreation value for the local community.

A submission from the St Mark Park Development Committee outlines that they strongly object to the rezoning of the 3000m² portion of Park to Residential R30. They do not, however, object to provision of a 3 metre strip for access to the rear of the existing adjoining property.

One submission from a local resident objects to the rezoning as proposed increased residential density in the City will increase demand for open space, hence, open space areas should not be reduced. The submission outlines that the Council should retain existing parks and recreation areas.

The submission further suggests that Council's financial position is sound, hence, rezoning and sale of land is not necessary. The submission also discusses that the cost of maintaining reserved land sale and the necessity for the Council to retain land for parks and recreation purposes.

In view of the local community opposition to the rezoning it is recommended that the rezoning of the proposed 3000m² portion of the site be deleted. It is recommended that the amendment be modified to rezone only the 3 metre wide strip required to facilitate rear access to the existing adjoining residential lot.

Lot 8 Tuart Street

The subject land has an area of 4486m². The land is owned in freehold by the City of Bunbury and is reserved for "Parks and Recreation" under Town Planning Scheme No 7. The subject land is also zoned Regional Open Space under the Greater Bunbury Region Scheme (GBRS) - refer to the location plan and aerial photograph.

As the subject land is reserved for Regional Open Space under the Greater Bunbury Region Scheme an amendment to the GBRS is also required to rezone the land to Urban. It is recommended that Council resolve to request the Western Australian Planning Commission to initiate an amendment to the Greater Bunbury Region Scheme to Rezone Lot 8 Tuart Drive from Regional Open Space to Urban.

The subject land has been partially filled in the past and contains a remnant portion of wetland which is significantly degraded. The site is predominantly vegetated with Kikuyu grass and introduced weeds with small areas of reeds and several other natives (recently established) adjacent to the wetland area.

The subject land is identified as containing a Resource Enhancement category wetland and identified EPP wetland. The site contains a small portion of wetland as a remnant part of Big Swamp which was severed by construction of Tuart Street.

It is proposed that the subject land be rezoned to Residential R40. This would accommodate a grouped dwelling development of 20 dwellings based on an average area of 220m² per dwelling required under the Residential Design Codes.

Land adjoining to the rear of the property is currently zoned Special Use zone 15 under Town Planning Scheme No 7 which can accommodate a variety of commercial and civic uses including consulting rooms, motel, offices, restaurant, showrooms, recreation and other uses as well as Residential R40.

The subject land is considered well located for residential development in view of the proximity opposite Big Swamp for access to recreational facilities and zoning of adjoining land for future development.

The subject land contains a wetland protected under the Environmental Protection Act 1986 and Environmental Protection (Swan Coastal Plain Lakes Policy 1992). Appendix xxx plan indicates the identified EPP wetland.

It is proposed that all necessary management plans including Drainage, Nutrient and Stormwater Management be prepared for the site to address any possible impacts on the EPP wetland prior to any works being undertaken on the site.

The subject land is located in a High Acid Sulphate Soil risk area. Prior to the commencement of any site works:

- a) A preliminary site investigation shall be undertaken to determine whether acid sulphate soils are present on the land and, if present, their extent and severity;
- b) If the site is found to contain acid sulphate soils, an acid sulphate soil management plan will be prepared and submitted for approval by the Department of Water; and
- c) All site works shall be carried out in accordance with the provisions of the approved management plan.

Submissions

Submissions from the Water Corporation (WC) outline that the WC requires an approximate 1000m² portion of Lot 8 and a portion of adjoining Lot 256 to accommodate future provision of an underground storage tank and upgrading of waste water pump station. The Water Corporation advises that the required land will be purchased.

The Water Corporation also advises that there is an existing sewer main located on approximately 2 metre alignment from Tuart Street at a depth up to 5.5 metres. The Water Corporation requests that an easement up to 5 metres wide be provided to protect the existing sewer main.

Further, the Water Corporation advises that there is a nominal odour buffer requirement for the existing waste water pump station. The required buffer is, however, achieved within the approximate 1000m² portion of Lot 8 to be acquired by the Corporation.

Lot 256 is owned by the City and is currently reserved for Parks and Recreation under Town Planning Scheme No 7 and is reserved for Regional Open Space under the Greater Bunbury Region Scheme.

Location of the new pump station on Lot 256 would require further fill of the existing wetland area. The Water Corporation will need to obtain approval of the Department of Environment and Conservation and the Department for Planning and Infrastructure for future development of the new pump station on the area identified for Regional Open Space.

Lot 568 (Reserve 31988) Francis Street adjoining Lot 8 and Lot 256 to the east is Crown land under control of the Department for Planning and Infrastructure - Land Services. The land is part zoned Special Use zone 15 and part Parks and Recreation under the City of Bunbury Town Planning Scheme No 7.

Discussions with Water Corporation officers indicate that they will investigate the possible relocation of the future waste water treatment facilities to adjoining Lot 568. The relocation of the future waste water treatment facilities to Lot 568 would then reduce the need for further encroachment with fill on the EPP wetlands.

Also, this would remove any encroachment of the new waste water treatment facilities from City owned Lots 8 and 256. This would then enable the whole of Lot 8 be rezoned which to Residential R40 as currently proposed.

One submission from an adjacent property owner objects to the rezoning on the basis that that development of the site will reduce their visual amenity and quiet enjoyment of the area.

One submission from a local resident objects to the rezoning as proposed increased residential density in the City will increase demand for open space, hence, open space areas should not be reduced. The submission outlines that the Council should retain existing parks and recreation areas.

The submission further suggests that Council's financial position is sound, hence, rezoning and sale of land is not necessary. The submission also discusses the cost of maintaining and developing reserved land sale and the necessity for the Council to retain land for parks and recreation purposes.

It is considered that the site is well located for grouped dwelling development with close proximity to the Big Swamp area for recreation and close proximity to Shopping facilities. The subject land is also well located for medium density residential development with close proximity to the City Centre.

It is recommended that the Water Corporation be advised to relocate the proposed new water treatment facilities to adjoining lot 568 to avoid impacts on Lot 256 and Lot 8 Tuart Street. Also, it is recommended that a 5 metre easement be provided over the front portion of lot 8 along Tuart Street to protect the existing sewer main.

Strategic and Regional Outcomes

The City's 2007–2012 Strategic Plan states that “The City will ensure that it maintains a comprehensive and fully integrated planning system to meet community expectations.” In this case, the proposal has been considered in the context of its compliance with current Scheme and has been assessed against the relevant planning policies.

Community Consultation

The amendment was advertised for public comment for a period of 42 days and a total of 13 submissions were received. 5 submissions were received from Government agencies or Service Agencies and 8 submissions were received from the general public.

Submissions related to each of the proposed sites to be rezoned. Details of the submissions are discussed in the report and the Schedule of Submissions.

Councillor/Officer Consultation

An outline of the proposed rationalisation programme was presented at a briefing session held with Councillors on 15 May 2007. Discussions have been undertaken by officers within Development Services and the other City officers in regard to the proposed development requirements.

Analysis of Financial and Budget Implications

The subject land is proposed for disposal. Proceeds received from disposal of Crown land vested for public open space will be utilised for upgrading public open space areas generally in the locality. Proceeds from disposal of freehold land owned by the City will be available for allocation to City development projects.

Economic, Social, Environmental and Heritage Issues

The availability of quality residential and industrial land promotes employment opportunities through development of the land and increased economic infrastructure. There are no known social reasons in respect of the proposal.

There are no heritage issues that have come to light as a result of this proposal. Environmental issues with individual sites can be appropriately addressed through the rezoning process or at time of any required works or development being undertaken.

Council Policy Compliance

There are no related Council policies to consider.

Legislative Compliance

Rezoning of the sites is required to be undertaken in accordance with the requirements of the Planning and Development Act 2005.

Delegation of Authority

The Chief Executive Officer does not have delegated authority of Council to enact rezoning of land.

Relevant Precedents

Council has previously granted consent for rezoning surplus Council owned land prior to disposal including Lot 66 Ocean Drive (13 February 2007), Lot 610 Maiden Park Road (7 December 2004) and Lot 779 Lockwood Crescent (8 February 2005).

It should be noted that final approval rests with the Minister for Planning and Infrastructure.

Options

Option 1

Per the recommendation as printed in this report.

Option 2

Per the recommendation as printed in this report together with any amendments identified by Council members.

Option 3

"Council, under the Planning and Development Act 2005 (as amended), hereby resolves not to proceed with final approval of Amendment No 21 to the City of Bunbury Town Planning Scheme No. 7."

Conclusion

The subject land is considered by the Land Rationalisation Working Group as generally surplus to requirements for the current reserve purposes and it is proposed to rezone the respective sites so that the land can be disposed of as necessary.

Proceeds from the disposal of Crown land vested for Parks and Recreation will be utilised for capital works on public open space in close proximity to the subject area which are yet to be determined.

The proceeds from disposal of Council owned freehold land will assist funding projects of regional significance as identified in Council's Corporate Plan.

It is recommended that Council resolve to finally adopt Amendment No 21 to the City of Bunbury to rezone all or portions of the following properties subject to modification to the zoning boundary as follows: *"The zoning boundary for portion Part Lot 200 Charterhouse Close being modified to rezone only a 3 metre wide strip required to facilitate rear access to the existing adjoining residential lot to Residential R15."*

Also, it is recommended that Council resolve to request the Western Australian Planning Commission to initiate an amendment to the Greater Bunbury Region Scheme to Rezone Lot 8 Tuart Drive from Regional Open Space to Urban.

Recommendation

1. Council, under the Planning and Development Act 2005 (as amended), resolves to grant final approval in respect of Amendment No. 21 to the City of Bunbury Town Planning Scheme No. 7 subject to the following modification: *"Modification of the zoning boundary for Part Lot 200 Charterhouse Close to delete the proposed 3000 sq.m portion proposed to be rezoned from reserved for "Parks and Recreation" to "Residential R30" and; rezone only a 3 metre wide strip from reserved for "Parks and Recreation" to "Residential R15"."*
2. Forward the signed and sealed Scheme Amendment documents to the Minister for Planning and Infrastructure via the Western Australian Planning Commission, with a request for final approval.
3. Request the Western Australian Planning Commission to initiate an amendment to the Greater Bunbury Region Scheme to Rezone Lot 8 Tuart Drive from "Regional Open Space" to "Urban".

Outcome of the Council Committee Meeting - 1 April 2008

As the meeting ran out of time before this item could be discussed, Cr Dillon moved, Cr Slater seconded the following which was adopted *13 votes "for" to nil votes "against"* to become the Committee's decision.

Committee Decision

This item to be listed for discussion on the agenda for the Council Meeting on 8 April 2008.

AT THE COUNCIL MEETING

Council members were referred to a memorandum tabled by the Mayor (**attached** at Appendix 31) which indicates that proposed rezoning boundaries for Lot 8 Tuart Drive will require further modification due to the need for a buffer between the land and the adjoining sewerage infrastructure facilities. As further discussions with the Water Corporation are necessary, the memorandum states that: *"the item will be re-scheduled to a later Committee Meeting pending finalisation of Water Corporation requirements."*

At this point in proceedings, Cr Dillon moved, Cr Jones seconded the following alternative to the officer's recommendation:

"In accordance with its decision made on 7 August 2007, Council further resolves as follows:

1. *Council, under the Planning and Development Act 2005 (as amended), resolves to grant final approval in respect of Amendment No. 21 to the City of Bunbury Town Planning Scheme No. 7.*

2. *Forward the signed and sealed Scheme Amendment documents to the Minister for Planning and Infrastructure via the Western Australian Planning Commission, with a request for final approval.*
3. *Request the Western Australian Planning Commission to initiate an amendment to the Greater Bunbury Region Scheme to Rezone Lot 200 Charterhouse Close from 'Regional Open Space' to 'Urban'.*
4. *A decision on proposed rezoning of Lot 8 Tuart Drive to be deferred pending further discussion with the Water Corporation concerning requirements for a buffer between the land and adjoining sewerage infrastructure facilities. "*

In support of his motion, Cr Dillon stated that he had been involved in the past with a significant upgrade of that portion of Lot 200 Charterhouse Close known as "St Mark's Park" (and preservation of an adjacent BMX track). That project had been funded through the generosity of local businesses. Local residents and City staff support preservation of the parkland and the BMX track. However, the remaining portion of reserve (despite the best efforts of the City) is not attractive, is unsuitable for recreational activity in its present state and presents a considerable fire risk to surrounding properties in the summer months. Most residents that live in the immediate vicinity are in favour of developing this portion of land. The City could set criteria for development of the land but instead of developing it itself, it could call for expressions of interest from the private sector to re-route the waterway, reclaim the land, develop it and sell the land - this would involve little or no cost to Council and the City would instead, receive some income from sale of the land and ongoing income from land rates.

During discussion that followed:

- It was confirmed that the need for a right-of-way to facilitate rear access to the existing residential lot adjoining Part Lot 200 Charterhouse Close, will be addressed as part of the Subdivision Stage of the development proposal and does not need to be considered in the Rezoning Application.
- Cr Kelly foreshadowed that should the motion be defeated, he will move the original officer's recommendation (minus any reference to Lot 8 Tuart Drive in accordance with the Mayor's memorandum).

As some newer members of Council were unfamiliar with the piece of land in contention, the following procedural motion was moved by Cr Craddock, seconded by Cr Major:

"Refer final approval for Town Planning Scheme Amendment No. 21 back to Committee for further consideration."

In support of his motion, Cr Craddock indicated that it would give members time to re-consider the proposal during the upcoming tour of Council reserves and managed property scheduled to take place during the Council recess period in April 2008.

The Mayor put the procedural motion to the vote and it was adopted to become the Council's decision.

Council Decision 52/08

Refer final approval for Town Planning Scheme Amendment No. 21 back to Committee for further consideration.

CARRIED

10 Votes "For" / 2 Votes "Against"

Crs Rooney and Dillon requested that their votes "against" the Council's decision, be recorded.

11.7 AQWEST/BUNBURY WATER BOARD - PROPOSED MANAGEMENT ORDER OVER IRWIN STREET WATER TREATMENT PLANT SITE *(WAS LISTED AS ITEM 11.2 IN THE MEETING AGENDA)*

File Ref:	F00136
Applicant/Proponent:	Aqwest/Bunbury Water Board
Author:	John Beaton, Manager Administration & Property Services
Executive:	Ken Weary, Executive Manager Corporate Services

Summary

Aqwest/Bunbury Water Board (hereinafter referred to as "the Board") is seeking Council's consideration to relinquish its interest in portion of the Irwin Street Road Reserve and portion of adjoining Recreation Reserve No. 37730 (Lot 632) comprising the Irwin Street Water Treatment Plant Site of 2,155 sq.m.

Subject to Council's consent, the Board will seek approval from the Minister for Lands to hold the Management Order over the site for the purpose of "Water Supply". If the site is decommissioned, the land will be rehabilitated prior to being reverted back to the management and control of the City.

Background

The City of Bunbury holds Management Order 1184/981 over Reserve 37730 for the purpose of "Recreation" without the power to lease. The City also has responsibility for management, care and control of the Irwin Street road reserve under the Dedicated Land provisions in Section 55 of the Land Administration Act 1997.

At the Council Meeting on 27 May 2003, a similar application was considered and the following decision made: *"149/03 Council enter into negotiations with the Department of Land Administration to lease portion of Reserve 37730 to Aqwest/Bunbury Water Board at the Valuer General's market valuation."* The Board opposed Council's intention. A copy of the minutes is **attached** at Appendix 26 for reference purposes.

State Lands has no objection to granting the Board the Management Order only as the reservation provides the opportunity for protecting the longer term community interest in the use of the land subject to the following:

- provide for the return of the land to the public recreation reserve and road reserve when no longer required by the Board for its current purpose, and;
- require the Board to remove infrastructure and rehabilitate the site.

The Water Treatment Plant Site was commissioned in the mid-1970's during the period that the Bunbury Water Board was administered as part of the operation of the City of Bunbury. In the mid-1990's the shared administration arrangements between the City and the Board ceased and since that time, the Board has been involved in an ongoing process to secure tenure of all facility sites on which the Board's assets are located. This security of tenure has been obtained either through purchase, lease or management order with the exception of the Irwin Street site.

The site is currently zoned "Water Supply" in accordance with the City's Town Planning Scheme No. 7.

The City recently upgraded Irwin Street (from Picton Crescent) with financial assistance from Aqwest/Bunbury Water Board of \$27,500. The remainder of the road reserve (to Stockley Road) is unmade and is used as a public access way mainly by local residents to gain entry to the rear of their properties.

Subject to Council's consent, the proposal will require local and broader community consultation together with feedback from relevant statutory authorities. A copy of the Roadworks Drawings is **attached** at Appendix 27.

The Board will be responsible for meeting the full cost of administering the community consultation process and provision of associated documentation.

Strategic and/or Regional Outcomes

Assisting government agencies is considered with reference to the *City of Bunbury 2007-2012 Strategic Plan* and specifically, through Strategic Direction 2.4, as the City would be assisting Aqwest to provide a strategy that benefits the City's residents, businesses and community.

Community Consultation

If approved by Council, the City's intention to consent to relinquish portion of Reserve 37730 and the adjoining Irwin Street road reserve will be advertised for public information with a statutory submission period as set out in the *Guidelines for the Administration of Section 20A Public Recreation Reserves* and Section 58 (Road Closures) of the *Land Administration Act 1997*.

Any submissions will be referred to Council for consideration.

Councillor/Officer Consultation

Council officers have held discussions with Executives of the Bunbury Water Board and have mutually agreed on the terms and conditions of the proposal.

Analysis of Financial and Budget Implications

The Board is to meet the full cost of administering the public consultation process and preparation of any associated documentation.

Economic, Social, Environmental and Heritage Issues

Economic

The Board is responsible for the capital and operating infrastructure costs.

Social

The Management Order retains the land parcels as a community asset.

Environmental

The facility is licensed and complies with the requirements stipulated by the Department of Minerals and Energy.

Heritage

There are no known heritage issues associated with the proposal.

Council Policy Compliance

There is no Council policy for relinquishment of reserve land.

Legislative Compliance

As stated under the heading "Community Consultation" above, if approved by Council, the City's intention to consent to relinquish portion of Reserve 37730 and the adjoining Irwin Street road reserve will be advertised for public information with a statutory submission period as set out in the *Guidelines for the Administration of Section 20A Public Recreation Reserves* and Section 58 (Road Closures) of the *Land Administration Act 1997*.

Any submissions will be referred to Council for consideration.

Delegation of Authority

The Chief Executive Officer does not have the delegated authority of the Council to relinquish this land/road reserve.

Relevant Precedents

Council has previously considered relinquishing various tenancy agreements over reserve land under its control most recently at the Council Meeting on 18 December 2007, where it was agreed to grant Citygate Properties Pty Ltd a licence over portion of Blair Street Road Reserve (adjacent to Citygate's property at Lot 107 Strickland Street) for the purpose of providing an additional 52 public/shopper car parking bays at no cost to Council.

The Board's application differs in that the City is required to relinquish its Management Order over the land as the Council does not have the power to enter into a lease or licence agreement over the required portion of Reserve 37730.

Options

Option 1

Per the officer's recommendation printed in this report.

Option 2

Per the officer's recommendation printed in this report together with any amendments as suggested by members of the Council Committee or Council.

Option 3

The Chief Executive Officer of Aqwest/Bunbury Water Board to be advised that the Board's request for the City of Bunbury to relinquish its interest in portion of the Irwin Street Road Reserve and portion of adjoining Recreation Reserve No. 37730 (Lot 632) comprising the Irwin Street Water Treatment Plant Site; is refused.

Conclusion

The Water Treatment Plant Site was commissioned in the mid-1970's during the period that the Bunbury Water Board's operations were administered through the City of Bunbury.

Relinquishing the Management Order over the land will provide the Board with reservation only and would not preclude community interest in the use of the land in the longer term if the site were decommissioned.

Recommendation

Council agrees to relinquish its interest in portion of the Irwin Street Road Reserve and portion of adjoining Public Recreation Reserve No. R37730 (Lot 632) comprising the Aqwest/Bunbury Water Board's Water Treatment Plant Site, subject to the terms and conditions as stated in this report to the Council and the following:

1. The City's intention be brought to the notice of local residents and advertised for public information locally with a statutory submission period as set out in the *Guidelines for the Administration of Section 20A Public Recreation Reserves* and Section 58 (Road Closures) of the *Land Administration Act 1997* - this will include a notice in the City Update column of the Bunbury Mail Newspaper and notices placed on notice boards at the City's Administration Centre, both libraries and the City's internet website.
2. If no submissions are received from the public or other statutory authorities; the Chief Executive Officer is authorised to notify the Minister for Lands to proceed with the grant of the Management Order to Aqwest/Bunbury Water Board.
3. Aqwest/Bunbury Water Board is responsible for the full cost of administering the public consultation process and preparation of any associated documentation.

Outcome of the Council Committee Meeting - 1 April 2008

As the meeting ran out of time before this item could be discussed, Cr Dillon moved, Cr Slater seconded the following which was adopted *13 votes "for" to nil votes "against"* to become the Committee's decision.

Committee Decision

This item to be listed for discussion on the agenda for the Council Meeting on 8 April 2008.

AT THE COUNCIL MEETING

The officer's recommendation (as printed) was moved Cr Dillon, seconded Cr Slater to become the motion under discussion.

During discussion, Cr Rooney requested that the words "*and the Friends of Irwin Reserve*" be added after the words "local residents" in point 1. of the motion. The mover and seconder agreed.

The Mayor put the motion (now amended) to the vote and it was adopted to become the Council's decision.

Council Decision 53/08

Council agrees to relinquish its interest in portion of the Irwin Street Road Reserve and portion of adjoining Public Recreation Reserve No. R37730 (Lot 632) comprising the Aqwest/Bunbury Water Board's Water Treatment Plant Site, subject to the terms and conditions as stated in this report to the Council and the following:

- 1. The City's intention be brought to the notice of local residents and the "Friends of Irwin Reserve" and advertised for public information locally with a statutory submission period as set out in the Guidelines for the Administration of Section 20A Public Recreation Reserves and Section 58 (Road Closures) of the Land Administration Act 1997 - this will include a notice in the City Update column of the Bunbury Mail Newspaper and notices placed on notice boards at the City's Administration Centre, both libraries and the City's internet website.*
- 2. If no submissions are received from the public or other statutory authorities; the Chief Executive Officer is authorised to notify the Minister for Lands to proceed with the grant of the Management Order to Aqwest/Bunbury Water Board.*
- 3. Aqwest/Bunbury Water Board is responsible for the full cost of administering the public consultation process and preparation of any associated documentation.*

CARRIED

12 Votes "For" / Nil Votes "Against"

11.8 PROPOSED TOWN PLANNING AMENDMENT NO. 20 - REZONING LOT 28 MANGLES STREET FROM RESERVED FOR "PUBLIC PURPOSE - WATER SUPPLY" TO "RESIDENTIAL R15" (WAS LISTED AS ITEM 11.3 IN THE MEETING AGENDA)

File Ref:	A02834
Applicant/Proponent:	Internal Report
Author:	Paul Davies, Planning Consultant
Executive:	Geoff Klem, Executive Manager City Development

Summary

It is recommended that Council resolve to grant final approval to Amendment No. 20 to City of Bunbury Town Planning Scheme No. 7 incorporating rezoning of Lot 28 Mangles Street subject to the following modifications:

1. modification of the zoning area boundary of Lots 28 and 29 to reflect the proposed road reserve widening at the intersection of Mangles Street and Nevin Court.
2. modification of the zoning boundary to rezone a portion of Lot 29 and 30 from "Residential R15" to reserved for "Public Purpose - Water Supply"
3. modification of the zoning boundary to rezone Lot 30 and Lot 31 Mangles Street from "Residential R15" to reserved for "Parks and Recreation".

A subdivision plan has been prepared for the subject land including the following requirements:

- A 100mm wide "Spite" strip across the full boundary width of the blocks fronting Mangles Street to ensure that any access to Lots 28 and 29 can only be obtained from Nevin Court.
- Battle-axe access from Nevin Court to Lot 29.
- Re-alignment of block boundaries to fit with the existing Aqwest boundary fence line.

Background

Council at its meeting on 18 March 2008, resolved as follows:

1. Council, under and by virtue of the powers conferred upon it in that behalf of the Planning and Development Act 2005 (as amended), hereby resolves to grant final approval for Amendment No. 20 to Town Planning Scheme No. 7, to rezone :
 - 1.1 Lot 33 Strickland Street, Lot 33 Denning Road and Reserve R41676 from "Reserve for Public Purpose-Drainage" to "Mixed Business".

- 1.2 Portions of Lot 454 Richter Road in Davenport from “Industry” and “Reserve for Parks and Recreation” to “Industry”, “Local Distributor Road” and “Reserve for Parks and Recreation”.
- 1.3 Reserve 31945 Harrison Place from “Reserve for Parks and Recreation” to “Residential R40”.
2. Forward the signed and sealed Scheme Amendment documents to the Minister for Planning and Infrastructure via the Western Australian Planning Commission, with a request for final approval.
3. The decision to grant final approval for Amendment No. 20 to Town Planning Scheme No. 7 to rezone Lots 28 and 29 Mangles Street be deferred until the re-survey of the lots, including but not restricted to the following criteria being undertaken and completed:
 - a) application of revised boundaries as pegged/demonstrated and discussed with residents to the satisfaction of the Manager for Development Services;
 - b) a 100mm wide “Spite” strip be established across the full boundary width of the blocks fronting Mangles Street (this will ensure that any access to Lots 28 and 29 can only be obtained from Nevin Court);
 - c) a battleaxe access from Nevin Court to Lot 29 to be established;
 - d) re-alignment of block boundaries to fit with the existing Aqwest boundary fence line;
 - e) any other aspect that may be deemed necessary by the Manager of Development Services to ensure traffic safety in the area is maximised;and, additional conditions to be included in the final report/recommendation to Council to include:
 - f) permanent 'No Standing on Road/Verge' signs to be installed on Mangles Street frontages to Lots 28 and 29
 - g) verge treatments to preclude the planting of trees and shrubs
 - h) any other aspect that may be deemed necessary by the Manager of Development Services to ensure traffic safety in the area is maximised.
4. The final report and recommendation relating to Lots 28 and 29 to be presented to Council for final approval to rezone from “Reserve for Public Purpose Water Supply” to “Residential R15” at the earliest convenience.

5. The decision to grant final approval for Amendment No. 20 to Town Planning Scheme No. 7 to rezone Lots 30 and 31 Mangles Street, be deferred until the re-survey of Lots 28 and 29 as this may affect the boundaries of Lots 30 and 31.
6. The final report and recommendation relating to Lots 30 and 31 Mangles Street to be presented to Council for final approval to rezone from “Residential R15” to “Reserve for Parks and Recreation” per the recommendation printed in the agenda for the Council Committee Meeting on 11 March 2008.

It is recommended that Council resolve to grant final approval to Amendment No 20 to City of Bunbury, Town Planning Scheme No 7 incorporating rezoning for Lot 28 Mangles street subject to modifications as previously specified.

In accordance with the Council resolution for Lots 28 and 29 Mangles Street as outlined above a subdivision plan has been prepared for the subject land including the following requirements. **Attached** at Appendix 28 is a copy of the proposed subdivision plan indicating portions of the respective lots to be rezoned.

- a) a 100mm wide “Spite” strip be established across the full boundary width of the blocks fronting Mangles Street (this will ensure that any access to Lots 28 and 29 can only be obtained from Nevin Court);
- b) a battleaxe access from Nevin Court to Lot 29 to be established;
- c) re-alignment of block boundaries to fit with the existing Aqwest boundary fence line;

Other requirements as outlined below will be included when the subdivision is undertaken. A subdivision application will need to be lodged with the Western Australian Planning Commission to create the proposed new lots.

- d) permanent 'No Standing on Road/Verge' signs to be installed on Mangles Street frontages to Lots 28 and 29
- e) verge treatments to preclude the planting of trees and shrubs

Discussion

Lot 28 is currently reserved for Public Purpose - Water Supply and Lots 29, 30 and 31 are zoned Residential R15 under the City of Bunbury, Town Planning Scheme No 7. A location plan and aerial photograph of the subject land are **attached** at Appendix 29.

The amendment proposes to rezone Lot 28 to Residential R15. The amendment was advertised for a 42 day period and three submissions were received from nearby residents.

Two submissions outlined concerns with regard to sight lines for vehicles turning at the intersection of Nevin Court from Mangles Street. Concerns were raised in regard to future buildings or boundary fences and existing shrub vegetation on the verge area blocking sightlines from the intersection.

To address the sight line issue it is recommended that the road verge be increased as indicated on the proposed subdivision plan. It is recommended that the boundary of the rezoning area be modified to reflect the increased road reserve.

The third submission outlines concerns with possible loss of possum habitat in the locality. The submitter requests that lot 28 along with existing lots 29, 30 and 31 be rezoned as parkland/ reserve to ensure preservation of the natural vegetation and possible Western ringtail possum habitat.

The Western Ringtail possum is a protected species, hence approval of the Federal Department of Environment would be required prior to any clearing of land. Preliminary investigation of the site indicates that lot 28 is essentially cleared of significant vegetation and is unlikely to contain possum habitat.

Adjoining lot 29 is also largely cleared while Lot 30 and Lot 31 are generally well vegetated with significant stands of remnant Peppermint woodland. Prior to any clearing of the subject land a possum survey will be required to be undertaken.

It is recommended that the amendment be modified to rezone Lot 30 and Lot 31 from "Residential R15" to "Reserve for Parks and Recreation" and retain lot 29 in the "Residential R 15" zone together with the proposed rezoning of Lot 28 to "Residential R15".

Verbal comments received from Aqwest indicate that a portion of Lot 28 and adjacent lots 29 and 30 contain a batter slope and fence associated with a drainage sump/soakwell associated with the Water reservoir site.

It is recommended that the amendment boundary be modified to include the drainage sump portion of Lot 29 and 30 within the reserve for Public Purpose - Water Supply. The subject land with an area of 396m² can then be amalgamated with adjoining reserve recently acquired from the City by Aqwest.

Also, it is proposed to include a 5 metre wide setback/easement on lot 29 to ensure that an appropriate clearance/fire break is provided and maintained on the property.

Strategic Outcomes

The recommended rationalisation programme complies with Council's 2002 – 2007 Strategic Plan 2(a) ie, it provides support to the City's economy by developing the City's residential, tourism and commercial landholdings.

Community Consultation

In accordance with the council resolution Council officers have held an onsite meeting with local residents to discuss the subdivision proposals.

Also, the proposed rezoning of Lot 28 was advertised for a period of 42 days and three submissions were received.

Councillor/Officer Consultation

An outline of the proposed rationalisation programme was presented at a briefing session held with Councillors on 15 May 2007. Discussions have been undertaken by officers within Development Services and the other City officers in regard to the proposed development requirements.

Analysis of Financial and Budget Implications

The subject land is proposed for disposal. Proceeds received from disposal of Crown land vested for public open space will be utilised for upgrading public open space areas generally in the locality. Proceeds from disposal of freehold land owned by the City will be available for allocation to City development projects.

Economic, Social, Environmental and Heritage Issues

The availability of quality residential and industrial land promotes employment opportunities through development of the land and increased economic infrastructure. There are no known social reasons in respect of the proposal.

There are no heritage issues that have come to light as a result of this proposal. Environmental issues with individual sites can be appropriately addressed through the rezoning process or at time of any required works or development being undertaken.

Council Policy Compliance

There are no related Council policies to consider.

Legislative Compliance

Rezoning of the sites is required to be undertaken in accordance with the requirements of the Planning and Development Act 2005.

Delegation of Authority

The Chief Executive Officer does not have delegated authority of Council to enact rezoning of land.

Relevant Precedents

Council has previously granted consent for rezoning surplus Council owned land prior to disposal including Lot 66 Ocean Drive (13 February 2007), Lot 610 Maiden Park Road (7 December 2004) and Lot 779 Lockwood Crescent (8 February 2005).

Options

Option 1

Per the recommendation as printed in this report.

Option 2

Council may elect not to proceed with the rezoning of the land and or proposed subdivision as recommended.

Conclusion

It is recommended that Council resolve to grant final approval to Amendment No 20 to City of Bunbury, Town Planning Scheme No 7 incorporating rezoning for Lot 28 Mangles Street subject to modification of the amendment boundary as follows:

1. modification of the zoning area boundary of lots 28 and 29 to reflect the proposed road reserve widening at the intersection of Mangles Street and Nevin Court.
2. modification of the zoning boundary to rezone a portion of Lot 29 and portion Lot 30 from Residential R15 to Reserve for Public Purpose - Water Supply
3. modification of the zoning boundary to rezone Lot 30 and Lot 31 Mangles Street from "Residential R15" to "Reserve for Parks and Recreation".

Recommendation

1. Council, under and by virtue of the powers conferred upon it in that behalf of the Planning and Development Act 2005 (as amended), hereby resolves grant final approval Amendment No 20 to the City of Bunbury, Town Planning Scheme No 7 to rezone Lot 28 Mangles Street from Reserve for "Public Purpose -, Water Supply" to "Residential R 15" subject to;
 - 1.1 modification of the zoning area boundary of lots 28 and 29 to reflect the proposed road reserve widening at the intersection of Mangles Street and Nevin Court.
 - 1.2 modification of the zoning boundary to rezone a portion of Lot 29 and portion Lot 30 from Residential R15 to Reserve for Public Purpose - Water Supply

- 1.3 modification of the zoning boundary to rezone Lot 30 and Lot 31 Mangles Street from "Residential R15" to "Reserve for Parks and Recreation".
2. Forward the signed and sealed Scheme Amendment documents to the Minister for Planning and Infrastructure via the Western Australian Planning Commission, with a request for final approval.

Outcome of the Council Committee Meeting - 1 April 2008

As the meeting ran out of time before this item could be discussed, Cr Dillon moved, Cr Slater seconded the following which was adopted *13 votes "for" to nil votes "against"* to become the Committee's decision.

Committee Decision

This item to be listed for discussion on the agenda for the Council Meeting on 8 April 2008.

AT THE COUNCIL MEETING

Cr Worthington disclosed a proximity interest as Lot 28 Mangles Street (subject of the rezoning proposal) adjoins her residential property by way of a common boundary. She left the meeting at 6.40pm for the duration of discussion and the vote on this matter.

The officer's recommendation (as printed) was moved Cr Dillon, seconded Cr Major (pro forma).

During discussion, Cr Major moved, Cr Dillon seconded the following amendment:

"Add point 3. as follows:

3. *It is noted that for traffic safety reasons Lots 28 and 29 shall not be subdivided, sold and developed by the Council without the following conditions being included in the subdivision application to be lodged with the Western Australian Planning Commission to create new lots and subsequently endorsed and incorporated in the Western Australian Planning Commission approval to create the proposed new lots. These conditions are consistent with the resolution made by Council at its meeting on 18 March 2008:*

3.1 Per the drawing submitted to Council labelled "Appendix 28" which includes:

- i) The area of Lot 28 which is to be amalgamated with Lot 29 for the purpose of battle axe access from Nevin Court to Lot 29 (91 sq.m)*
- ii) 100mm wide parallel spite strip along Mangles Street frontage to the Nevin Court/Mangles Street intersection.*
- iii) Fire protection easement along side boundary of Lot 29*

- iv) *The area of Lot 29 which is to be amalgamated with Lot 28 (56 sq.m) increasing the block size of Lot 28.*
- 3.2 *Permanent 'No Standing on Road/Verge' signs to be installed on Mangles Street frontages to Lots 28 and 29.*
- 3.3 *Verge treatments to preclude the planting of trees or shrubs*
- 3.4 *Any other conditions deemed necessary by the Manager Development Services to ensure traffic safety is maximised."*

The amendment was put to the vote and adopted 10 votes "for" to 1 vote "against"

The Mayor put the motion (now amended) to the vote and it was adopted to become a Council Decision as follows:

Council Decision 54/08

1. ***Council, under the Planning and Development Act 2005 (as amended), resolves to grant final approval for Amendment No. 20 to the City of Bunbury Town Planning Scheme No. 7 to rezone Lot 28 Mangles Street from Reserve for "Public Purpose - Water Supply" to "Residential R 15" subject to:***
 - 1.1 *modification of the zoning area boundary of Lots 28 and 29 to reflect the proposed road reserve widening at the intersection of Mangles Street and Nevin Court.*
 - 1.2 *modification of the zoning boundary to rezone a portion of Lot 29 and portion Lot 30 from "Residential R15" to "Reserve for Public Purpose - Water Supply".*
 - 1.3 *modification of the zoning boundary to rezone Lot 30 and Lot 31 Mangles Street from "Residential R15" to "Reserve for Parks and Recreation".*
2. ***Forward the signed and sealed Scheme Amendment documents to the Minister for Planning and Infrastructure via the Western Australian Planning Commission with a request for final approval.***
3. ***It is noted that for traffic safety reasons Lots 28 and 29 shall not be subdivided, sold and developed by the Council without the following conditions being included in the subdivision application to be lodged with the Western Australian Planning Commission to create new lots and subsequently endorsed and incorporated in the Western Australian Planning Commission approval to create the proposed new lots. These conditions are consistent with the decision made by Council at its meeting on 18 March 2008:***

- 3.1** *As per the drawing submitted to Council labelled "Appendix 28" which includes:*
- i)** *The area of Lot 28 which is to be amalgamated with Lot 29 for the purpose of battle axe access from Nevin Court to Lot 29 (91 sq.m)*
 - ii)** *100mm wide parallel spite strip along Mangles Street frontage to the Nevin Court/Mangles Street intersection.*
 - iii)** *Fire protection easement along side boundary of Lot 29*
 - iv)** *The area of Lot 29 which is to be amalgamated with Lot 28 (56 sq.m) increasing the block size of Lot 28.*
- 3.2** *Permanent 'No Standing on Road/Verge' signs to be installed on Mangles Street frontages to Lots 28 and 29.*
- 3.3** *Verge treatments to preclude the planting of trees or shrubs*
- 3.4** *Any other conditions deemed necessary by the Manager Development Services to ensure traffic safety is maximised."*

CARRIED

10 Votes "For" / 1 Vote "Against"

Cr Slater requested that his vote "against" the Council's decision, be recorded.

Cr Worthington returned to the meeting at 7.00pm.

11.9 MARCH 2008 BUDGET REVIEW *(WAS LISTED AS ITEM 11.4 IN THE MEETING AGENDA)*

File Ref:	A00284
Applicant/Proponent:	Internal Report
Author:	David Harrison, Assistant Accountant
Executive:	Ken Weary, Executive Manager Corporate Services

Summary

The City of Bunbury reviews its annual budget in December and March each year. The reviews are comprehensive and identify additional expenditures (where unavoidable) and additional income and/or expenditure savings to offset funding requirements.

This budget review maintains the 2007/2008 budget in a balanced position.

Background

The March Budget Review identifies \$456,726 of expenditures for general works, variations, new projects which includes an amount brought forward of \$61,537 from the December 2007 Budget Review. Funding of \$456,726 inclusive from savings, adjustment of grant funding, additional revenue and reserve funding, has been identified in this review to maintain a balanced budget.

A copy of the March 2008 Budget Review is **attached** at Appendix 30.

Strategic and/or Regional Outcomes

The proposal complies with the City's Strategic Plan, providing efficient financial management and accounting services to all Strategic Directions for the City of Bunbury.

Community Consultation

Not applicable.

Councillor/Officer Consultation

Executives, Managers and Officers with budget responsibility are consulted in the preparation of the Budget Review.

Analysis of Financial and Budget Implications

Budget reviews assist in and form part of the financial management processes within the City of Bunbury. The scope of financial management is to ensure a sufficient cash supply is available to meet expenditure demand. Council's Executive together with Corporate Services staff monitor Council's monthly revenue and expenditure activities and as required referring to council any variances requiring remedial action.

Approved budget amendments are recorded in the financial statements to reflect Council's current budget and financial position at all times.

Economic, Social, Environmental and Heritage Issues

This budget review maintains the 2007/2008 budget in a balanced position.

Council Policy Compliance

The proposal does not contravene any Council Policies or Work Procedures.

Legislative Compliance

The Executive Recommendation complies with Section 6.8 of the Local Government Act 1995. An Absolute Majority Vote by Council will be required.

Delegation of Authority

The Chief Executive Officer does not have the delegated authority of the Council to adopt Budget Reviews.

Relevant Precedents

Council reviews its Budget in December and March each year.

Options

Option 1

Adopt the March 2008 Budget Review for the City of Bunbury.

Option 2

Adopt the March 2008 Budget Review for the City of Bunbury with amendments

Recommendation

Council adopt the March 2008 Budget Review.

(An Absolute Majority Vote by Council is required)

Outcome of the Council Committee Meeting - 1 April 2008

As the meeting ran out of time before this item could be discussed, Cr Dillon moved, Cr Slater seconded the following which was adopted *13 votes "for" to nil votes "against"* to become the Committee's decision.

Committee Decision

This item to be listed for discussion on the agenda for the Council Meeting on 8 April 2008.

AT THE COUNCIL MEETING

The officer's recommendation (as printed) was moved Cr Jones, seconded Cr Dillon. The Mayor put the motion to the vote and it was adopted to become a Council Decision.

Council Decision 55/08

Council adopt the March 2008 Budget Review.

CARRIED

12 Votes "For" / Nil Votes "Against"

Absolute Majority Vote Attained

11.10 BUNBURY CENTRAL BUSINESS DISTRICT ("CBD") PARKING STRATEGY AND POLICY *(WAS LISTED AS ITEM 11.5 IN THE MEETING AGENDA)*

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

Summary/Background

In March 2001, Council awarded a contract to GHD Pty Ltd to prepare the Bunbury Transport Vision 2030. During 2002/03 a draft Integrated Land Use and Transport Vision 2030 was debated by Council and advertised for public comment. Council subsequently endorsed the 2030 document after incorporating amendments that arose from public submissions.

The adopted Strategy incorporated a "Vision for Parking". The Vision and associated strategies were directed at reducing car dependency by facilitating alternative modes such as public transport, cycling, walking and car sharing; and improving management systems.

In 2006 Council commissioned AARB Consulting to investigate, report and recommend a detailed program to undertake works over a 10 year period. The report was to review and provide details of the implementation of the 17 strategies and actions proposed in the GHD Integrated Land Use and Transport Strategy 2030.

Council received the AARB report in mid 2006 and subsequently resolved to advertise the document for a period of 42 days. The advertising period attracted 5 submissions and these submissions were assessed and reviewed by Council at its meeting on 28 August 2007.

In March 2007, Council was briefed on the methodology to produce a Parking Strategy which essentially reviewed the AARB report in the light of the City Vision outcomes and issues that had emerged as the CBD progressively developed. The feedback from Council was essential input into the production of a full report to Council for the April 2007 round of meetings but at the ensuing Council Committee Meeting on 24 April, a memorandum from the Bunbury Chamber of Commerce was tabled that requested deferment of the item. Advice was subsequently received from the Chamber in July 2007 and its submission was reviewed, along with others received, at the Council Meeting on 28 August 2007, where it was resolved to adopt the Parking Strategy (Decision 181/07). **Attachment 1** of the report circulated to members under separate cover, is a copy of the Council Decision. Item 2.3 of the decision states:

"2.3 Prepare a new CBD Local Planning Policy (for consideration at the last committee and council meetings in October 2007) for Parking and Town Planning Scheme No. 7 changes that include (but are not limited to) the following matters:

- (a) *The cash-in-lieu amount per parking bay and the circumstances under which cash-in-lieu is applied.*
- (b) *The discretionary threshold of 2,000m² GLA for the provision of parking.*
- (c) *The appropriateness of the current Specified Area Rate that covers parking and traffic management.*
- (d) *Concessions for heritage buildings and existing floor space as part of a redevelopment site.*
- (e) *The adequacy of provisions to support residential development in the Bunbury CBD.*
- (f) *Conditions under which reciprocal rights apply (e.g. after working hours).*
- (g) *The parking requirements for different land uses. "*

In accordance with the above resolution, a draft Central Business District Parking Policy was presented to a briefing of Council on 12 February 2008. Several issues were raised at the briefing (e.g. more clarity with the 500m² concession clause, cost increases for cash-in lieu, parking machines in preference to meters.). The issues were responded to at a further briefing on 4 March 2008 (see memo at **Attachment 3** of the report circulated to members under separate cover).

Items (e) and (g) above will be addressed in the Review of TPS No7.

Proposal

The proposal is to rescind Policy 4 Bunbury CBD Parking Strategy in Schedule 8 of Town Planning Scheme number 7, endorse the Local Planning Policy – Central Business District Parking (at **Attachment 2**) and substitute that policy in Schedule 8 for the current operative policy. Prior to the Policy at Attachment 2 being finally endorsed, it is to be advertised for public comment pursuant to the provisions of Town Planning Scheme No 7 for a period of 28 days.

In addition to the inclusion of the above policy in TPS No 7, it is proposed that the Central Business Parking Strategy endorsed in August 2007, be advertised concurrently with the Parking Policy. In accordance with the August 2007 decision, a schedule of works and costings along with a schedule of Fees and Charges has been prepared and recently reviewed by Council. These schedules have been included as part of the Parking Strategy, but are yet to be endorsed as part of the Strategy. (See **Attachment 1b**)

A key consideration for Council in its review of the adoption of the Fee Schedule is the timing of the introduction of kerbside charges. This must be linked to an incentive to park in off street parking areas (e.g first 2 hours free) and the ability of the new fee arrangements to establish a revenue stream capable of supporting a capital works and management program (e.g. decked parking).

In addition, the requirement for the terms of reference of the CBD Project Control Group to be expanded to include monitoring of the implementation of the new parking strategy, has now been met through a proposal canvassed at the 4 March 2008 Council Briefing to establish a Project Control Group ("PCG") with a terms of reference specific to the implementation of the Parking Strategy and Policy.

Strategic and/or Regional Outcomes

The Bunbury Central Business District Parking Strategy and the Local Planning Policy: Central Business District Parking will make a substantial contribution to the development of the City as an attractive, vibrant and accessible regional city. As the commercial heart of the South West region the City has a major impact and influence on adjoining regional areas.

Community Consultation

The GHD Transport Vision 2030 which contains a "Vision for Parking" was advertised for public comment and debated by Council in the period 2002/03. The subsequent AARB report was advertised in mid 2006 for public comment and submissions from that process have been analysed and debated by Council.

It is proposed that the Parking Strategy and Policy be advertised for public comment pursuant to the provisions of TPS No 7 prior to final endorsement of the Parking Policy.

Councillor/Officer Consultation

Extensive consultation has occurred internally particularly in the areas of Strategic Planning, Community Law and Safety, Corporate Services and City Services. Councillors have received several briefings on the Strategy and Policy.

Analysis of Financial and Budget Implications

The Parking Policy identifies the Specified Area Rate for the Central Traffic Area, fees and fines, cash-in-lieu of parking and General Rate Revenue as the sources of funding to support the implementation of the Strategy and Policy. Proceeds from land sales could also be considered where large costs (e.g. decked parking) are involved.

Currently the Cash-in-lieu of physical parking per bay has been set at \$25,000 per bay. This is substantially less than current estimates for decked parking which have been assessed as between \$38-\$43,000 per bay (see business case for the Library decked parking). Council has resolved to review this figure on an annual basis as part of its budget deliberations.

In the case of fees, the proposal is to introduce kerbside paid parking and to provide a concession for off street parking. The timing of the introduction of the new fees (not only in terms of the “decision” but also the amount of time it will take to roll-out the machines) is an important consideration as is the cost of the new machines which has been estimated at \$1.2 million. The schedules to the Strategy show the capital cost of the new ticket machines and the introduction of kerbside fees in 2009/10 which is consistent with the commitment by Council to the business community.

In the case of the Specified Area Rate, the Policy states that the adequacy of the Rate to support the Strategy and Policy needs to be reviewed annually and Council may consider increasing the Rate above any increase associated with the General Rate. The Policy also states that the percentage of revenue from the Rate is to increase to a dedicated 50% per annum over the short term period of 5 years.

Economic, Social, Environmental and Heritage Issues

Economic Issues

The viability of the CBD relies in part on public and commercial activities being accessible in a safe, convenient and efficient manner. The Parking Strategy and Policy aims to increase economic activity through improvements to the provision and management of the current parking and access arrangements.

Social Issues

Although difficult to quantify, there is an important social dimension to the Parking Strategy and Policy. Key services and shopping areas must be accessible to all members of the community (e.g. people with disabilities, the elderly, parents with young children) and this requires adequate provision of disabled bays, safe and convenient pedestrian connections, shelter and strict policing of strategically important parking locations. The balance between driver convenience and the overall amenity of the CBD is a key issue area.

Environmental Issues

A key objective of the Parking Strategy and Policy is to facilitate alternative transport modes such as public transport, walking, cycling and car sharing. The effect of this structural shift is a reduction in noise, dust and carbon emissions as well as congestion.

Heritage Issues

The Parking Policy makes provision for a concession where a heritage building is part of a development, redevelopment or change of use provided that the heritage values of the building are conserved to the satisfaction of the Council.

Council Policy Compliance

Council has adopted the “Parking Strategy” contained in the GHD Transport Vision 2030 and agreed to review the 17 strategies and actions through the AARB report. The City Vision Strategy provides the policy framework that informs the assessment of the AARB report recommendations along with the Strategic Plan.

Of particular relevance is the reference to the Central Business District as part of the “Vision Focus Area”. The Environmental, Social and Economic objectives and strategies aim to achieve: “ The Central Business District is the regional location of choice for the provision of the widest range of Government services, business activities, entertainment facilities, tourist facilities, specialist retail, office accommodation, educational facilities and inner city living.”

Legislative Compliance

There is no legislative requirement to produce a Parking Strategy and Policy. However, the provisions of TPS No 7 are applicable in relation to the procedure necessary to establish a Parking Policy.

Delegation of Authority

The Chief Executive Officer does not have delegated authority to adopt a Parking Strategy and Policy.

Relevant Precedents

Council has endorsed numerous policies to guide decision-making.

Options

Option 1

Per the recommendation as listed in this report.

Option 2

Per the recommendation as listed in this report together with any amendments proposed by members of Council.

Option 3

Council resolves not to proceed with the Central Business District Parking Strategy and Policy.

Conclusion

The Greater Bunbury Urban Area is now one of the fastest growing in Australia. Whilst population growth is most evident in the dormitory outer urban areas of Australind, Eaton and Dalyellup, the major servicing function of the region is found in Bunbury's Strategic Regional Centre and the Central Business District particularly. This is supported by the high percentage of parking patrons from outside of the City.

Growth is reflected in the size and complexity of new developments such as the Bunbury Waterfront Project, the redevelopment of the Reef Hotel, the expansion of the Forum, the redevelopment of St John of God Hospital, the Stirlings redevelopment, the new City offices and library and the Ommanney office development. This substantial growth and rate of change brings with it new demands for road planning, traffic management, civic design, landscaping and parking management.

The Parking Strategy and Policy has been extensively canvassed over the past 12 months from both within Council and in the wider community through direct contact with groups such as the Bunbury Chamber of Commerce and Industry, developer and consultant enquiry, debate on high profile development applications and media reports on the implications of parking requirements. A further opportunity for public comment will be provided through the advertising of the Local Planning Policy and associated Parking Strategy.

Significant changes to current parking arrangements are included in the Parking Policy and Strategy and these will need to be carefully managed to ensure that adequate provision is made to meet future parking demand without compromising the character and amenity of the Central Business District. Careful management includes a financial analysis of the revenue streams that can support a capital works program. To assist in the development of appropriate management responses, it is proposed that a Project Control Group be established to oversee the implementation of the Strategy and Policy and for it to make recommendations to Council.

Recommendation

1. Council pursuant to the Planning and Development Act 2005, hereby resolves to advertise the draft Local Planning Policy titled "Central Business District Parking" and the associated Central Business District Parking Strategy for public comment for a period of 28 days in accordance with Clause 2.3 of the City of Bunbury Town Planning Scheme No 7.

Council further resolves to:

2. Endorse the Works and Fee Schedules as part of the Central Business Parking Strategy.
3. Review the cash-in-lieu of physical parking bays amount per bay as part of its 2008/09 Annual Budget considerations.

4. Establish a Project Control Group with terms of reference specific to the implementation of the Parking Strategy and Policy.

Outcome of the Council Committee Meeting - 1 April 2008

As the meeting ran out of time before this item could be discussed, Cr Dillon moved, Cr Slater seconded the following which was adopted *13 votes "for" to nil votes "against"* to become the Committee's decision.

Committee Decision

This item to be listed for discussion on the agenda for the Council Meeting on 8 April 2008.

AT THE COUNCIL MEETING

Cr Craddock disclosed an interest-in-common as he is the owner of a business located in the Bunbury CBD. He had been given permission to remain in the meeting room to take part in the discussion and the vote on this matter by the Council earlier during the meeting (refer to item 7. of these minutes for details).

The following alternative to the officer's recommendation was moved Cr Craddock, seconded Cr Dillon to become the motion under discussion:

- "1. *Council, pursuant to the Planning and Development Act 2005, resolves to advertise the draft Local Planning Policy titled "Central Business District Parking" and the associated Central Business District Parking Strategy (as shown in Attachments 1 and 2 of the report circulated under separate cover by the Executive Manager City Development) for public comment for a period of 28 days in accordance with Clause 2.3 of the City of Bunbury Town Planning Scheme No 7.*
2.
 - 2.1 *Advertise the proposed Schedule of Fees and Works as part of the CBD Parking Strategy with the exception of the proposed 3-level car park at the rear of the library.*
 - 2.2 *Include the remaining schedule for consideration as part of the 5-Year Finance Plan and budget deliberations.*
3. *Review the cash-in-lieu of physical parking bays amount per bay as part of its 2008/09 Annual Budget considerations.*
4. *Establish a Project Control Group with terms of reference specific to the implementation of the CBD Parking Strategy and Policy. The members of the CBD Parking Strategy Project Control Group to include (but not be restricted to) the following:*

His Worship the Mayor - Mr D Smith
Deputy Mayor - Councillor S Craddock
One (1) councillor
Executive Manager City Services
Executive Manager City Development
City's Parking Coordinator
Bunbury Chamber of Commerce Representative
Hospitality Industry Representative"

Discussion of the motion commenced.

Cr Rooney moved, Cr Major seconded the following amendment:

"Delete the BCCI representative from the membership list of the proposed Project Control Group."

In summary, the explanation given for the amendment was that appointment of a representative from the Bunbury Chamber of Commerce to another Council committee eventually proved problematic in that the Chamber effectively undermined that committee's attempts at community consultation. It was also noted that the Deputy Mayor is a long-standing member of the BCCI.

The amendment was put to the vote but defeated 3 votes "for" to 9 votes "against". The votes were recorded as follows:

For: Crs Rooney, Major and Punch

Against: Mayor D Smith; Crs Craddock, Jones, Dillon, Worthington, Kelly, Whittle, Slater and Steck

Discussion of the motion continued. The Mayor put the motion to the vote and it was adopted to become the Council's decision on this matter:

Council Decision 56/08

1. *Council, pursuant to the Planning and Development Act 2005, resolves to advertise the draft Local Planning Policy titled "Central Business District Parking" and the associated Central Business District Parking Strategy (as shown in Attachments 1 and 2 of the report circulated under separate cover by the Executive Manager City Development) for public comment for a period of 28 days in accordance with Clause 2.3 of the City of Bunbury Town Planning Scheme No 7.*
2. *2.1 Advertise the proposed Schedule of Fees and Works as part of the CBD Parking Strategy with the exception of the proposed 3-level car park at the rear of the library.*

- 2.2 Include the remaining schedule for consideration as part of the 5-Year Finance Plan and budget deliberations.*
- 3. Review the cash-in-lieu of physical parking bays amount per bay as part of its 2008/09 Annual Budget considerations.*
- 4. Establish a Project Control Group with terms of reference specific to the implementation of the CBD Parking Strategy and Policy. The members of the CBD Parking Strategy Project Control Group to include (but not be restricted to) the following:*
- His Worship the Mayor - Mr D Smith*
Deputy Mayor - Councillor S Craddock
One (1) councillor
Executive Manager City Services
Executive Manager City Development
City's Parking Coordinator
Bunbury Chamber of Commerce Representative
Hospitality Industry Representative"

CARRIED

12 Votes "For" / Nil Votes "Against"
Absolute Majority Vote Attained

The Mayor called for nominations to fill the vacancy for one councillor on the CBD Parking Strategy Project Control Group. The following councillors accepted nomination:

Councillor Slater
Councillor Punch
Councillor Whittle

An election was conducted and following the count later during the meeting, Cr Slater was declared appointed.

11.11 ITEM TO BE NOTED - NO DISCUSSION (*WAS LISTED AS ITEM 11.6 IN THE MEETING AGENDA*)

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 item listed in the report circulated under separate cover, be noted for information only:

1. Title: Minutes - Heritage Advisory Committee (20/02/2008)
Author: Leigh Barrett, Planning Officer
File: A03335

Outcome of the Council Committee Meeting - 1 April 2008

As the meeting ran out of time before this item could be considered, Cr Dillon moved, Cr Slater seconded the following which was adopted *13 votes "for" to nil votes "against"* to become the Committee's decision.

Committee Decision

This item to be listed for discussion on the agenda for the Council Meeting on 8 April 2008.

AT THE COUNCIL MEETING

The officer's recommendation (as printed) was moved Cr Dillon, seconded Cr Slater. The Mayor put the motion to the vote and it was adopted to become a Council Decision.

Council Decision 57/08

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

1. Title: Minutes - Heritage Advisory Committee (20/02/2008)
Author: Leigh Barrett, Planning Officer
File: A03335

CARRIED

12 Votes "For" / Nil Votes "Against"

**11.12 BUNBURY ROWING CLUB - PROPOSED REDEVELOPMENT OF LOT 759
COBBLESTONE STREET, BUNBURY** *(WAS LISTED AS ITEM 11.11 IN THE MEETING
AGENDA)*

File Ref:	P01819
Applicant/Proponent:	Bunbury Rowing Club
Author:	Sam McNeilly, Senior Planner - Statutory
Executive:	Geoff Klem, Executive Manager City Development

Summary

Council is in receipt of a development proposal from the Bunbury Rowing Club (BRC) requesting approval for the redevelopment (for the retention of the Rowing Club, and the provision of a function centre/ community purpose facility, a restaurant/kiosk, a gymnasium, and a sports medicine facility and as detailed below) of the Rowing Club site at Lot 759 Cobblestone Street (a location plan is **attached** at Appendix 15) Bunbury. The Rowing Club has provided an overview of the rationale on which their request for approval is based, and seeks an approval in principle from Council.

In summary, the applicant states that it is the goal of the Rowing Club to rebuild the Railway Institute community facility, and to simultaneously construct a building complex which has the potential to generate sufficient funds to provide an income stream to support the development of the sport of rowing and in particular to provide funds for the Junior Development Program. The applicant advises that the Junior Development Program requires professional coaching and competitive rowing equipment to enable young athletes to continue to compete at State, National, and International levels. The social and community benefit of the Rowing Club cannot be underestimated, and in terms particularly of youth development.

The land is currently designated as Local Scheme Reserve - "Parks and Recreation" in the current Town Planning Scheme (TPS 7). In accordance with the current Town Planning Scheme (TPS 7) a person, must not use a Local Reserve or commence development in such Reserve without first having obtained planning approval from the local government. In making a determination as to whether to grant planning approval, Council must principally have due regard to the ultimate purpose intended for the Reserve (Clause 3.4.2 of the Scheme).

On broad balance it is considered that the development proposal has merit and deserves support in terms of taking it to the next stage of consideration in the form of a detailed technical analysis, and public advertising.

Background

The applicant (Bunbury Rowing Club, Inc.) has written to Council as follows:

"The Bunbury Rowing Club (BRC) would like to make a formal application to the Bunbury City Council for the above development. The objective for our application is to obtain Council approval in principle for the re-development.

The key objective of the proposed development is to provide the Bunbury Rowing Club with an income stream to support the development of Rowing and in particular provide funds for our Junior Development Program. The Junior Development Program requires professional coaching and competitive rowing equipment to enable our young athletes to continue to compete at State, National and International levels. Our existing program was funded by commercial rental generated by the old Railway Institute section of the Rowing Club. This building was destroyed by fire approximately 2 years ago.

It is our wish to replace the fire damaged Railway Institute section of our building with a commercial building capable of generating sufficient funding to support the above programs and to enable the sport of rowing to continue to grow into the future.

To achieve our objective we understand the need to comply with the Conditional freehold (Crown Grant in Trust) DPI and the City of Bunbury Town Planning Scheme.

Based on the zoning requirements of the City of Bunbury and the DPI conditional freehold title we are proposing a commercial development that would include ancillary commercial tenancies that meet both requirements.

While achieving this is essential we maintain the rowing theme through the proposed building design and ancillary tenancies. The Bunbury Rowing Club has been an integral part of the Bunbury's history for a century and the clubs executive body is passionate about maintaining its historical identity.

Ancillary Uses

It is proposed that the development will include the following combined and ancillary use tenancies.

- 1. Kiosk/Restaurant*
- 2. Public Function /Community purpose*
- 3. Gymnasium*
- 4. Sports Medicine*

1 Kiosk / Restaurant

It is our belief that this proposed ancillary use would comply and indeed encourage general public usage of the facility and the use of the foreshore region adjoining the existing Rowing Club facility. We also believe this facility would be utilised by Rowing Club members and their families hopefully promoting future membership appeal for participants, parents, and supporters.

2 Public Function Centre/ Community Purpose

We are proposing to develop the first floor as a public use function centre or a community purpose facility as used for prior to the fire. We believe this option would encourage public use of the facility and would align favourably with a proposed rowing theme.

3 *Gymnasium*

The proposed gymnasium has 2 objectives long term and short term. The long-term objective is for the Rowing Club to relocate its existing gymnasium (presently situate in the boatshed) to the new facility. This will enable more boat storage facilities and a suitable sized rowing gymnasium. The short-term objective is to source a tenant to run a public gymnasium that could also be utilised by public gym members and rowing club members.

4 *Sports Medicine*

The proposed sports medicine facility is based on attracting sports medicine practitioners (eg physiotherapists). We would like to attract tenants that saw the benefits in being located in a sporting complex that could be utilised by rowing members as required. These practitioners would not rely solely on rowing membership for business but supplement their business marketing appeal by being located in a sporting facility that had associated ancillary sporting services.

The proposed ancillary use options are already utilised in other similar Bunbury facilities that have the same zoning restrictions (i.e. Bunbury Recreation Centre).

Land Title (DPI)

The Bunbury Rowing Club land title is held under a conditional freehold title (former Crown Grant in Trust). Because of this the BRC must obtain the approval of the Department of Planning and Infrastructure (DPI) for any development and any proposed ancillary use on that title. The DPI and the BRC have been through a review process regarding the re-development. The outcome of this review has resulted in the Department of Planning and Infrastructure granting its support to the proposed re-development under the terms and conditions of the title.

Funding

The Bunbury Rowing Club would like to apply to the City of Bunbury for a waiver of any future fees associated with re-development. The club has already incurred the cost of a planning approval fee of \$2,950.00. The Club has also incurred considerable lost time due to the fire damage and the delays associated with obtaining re-development approvals. The BRC receives no local government funding. One of the clubs key objectives for this development and its future operations is to continue to provide this great community service without relying on local and State Government funding.

I would like to thank you for your interest in this matter could you please notify me of the date our application will be considered by the Council. If you require any further information please don't hesitate to contact me."

In that the land is subject of a Crown Grant in Trust, the applicant has written to the State Land Services (SLS) section of the Dept. for Planning and Infrastructure (DPI). The SLS advised the BRC (letter **attached** at Appendix 16) that it supports the proposed re-development subject to:

- in relation to the proposed sports medicine the receipt of further details on what is envisaged with this type of operation. For example, is it envisaged that a tenant would be required to establish a working relationship with the Rowing Club? Is it a possibility that this portion of the development will be open to other “recreational” type operations if a sports medicine facility is not able to be accommodated or attracted;
- the support of the City to the proposals. At this stage in principle support to the proposals will be sufficient for this office to provide final support in the terms of the terms of conditional title.

The applicant then replied to the SLS, and the SLS then sent a final letter of support (**attached** at Appendix 16) to the BRC and has given its in-principle support for the proposed development, but to advise that the matter would be supported subject to the final approval of the Minister responsible, and subject to the BRC receiving the support of the Bunbury City Council.

Proposal

The proposal is best described by reference to the two submitted plans marked 10/8/2007) and 25/8/06) which provide indicative elevations and plan layouts - **attached** at Appendix 17). The plans indicate the partial redevelopment of the existing BRC and the construction of a new additional wing to house a new Kiosk/ Restaurant, a Gymnasium and Sports Medicine facility, and a new Function Centre/ Community Purpose Facility.

The applicant’s architect indicates that the site area is 1985 sq.m. It is also noted on the plans submitted that the existing building area is 1214 sq.m and that the proposed new building area is 768 sq.m in area. It is considered that the plans are indicative in terms of demonstrating how it is proposed to develop the land.

The following criteria are considered relevant in terms of properly considering the matter.

Land-use

The land is currently designated as a Local Scheme Reserve (“Parks and Recreation”) in the current Town Planning Scheme (TPS 7).

Council, it is considered, has the power to determine the matter pursuant to the provisions of Clause 3.4 of the current Town Planning Scheme.

Clause 3.4.2 states as follows:

“In determining an application for planning approval the local government is to have due regard to –

- a) The matters set out in Clause 10.2;*
- b) The ultimate purpose intended for the Reserve;*
- c) In the case of land not owned by or vested in a public authority, the likely date of the acquisition of the affected land;*
- d) The reasonable beneficial use which may be made of the land pending its acquisition by the public authority concerned; and,*
- e) The representations and/or recommendations made by the affected authorities or other parties consulted.”*

The matter of actual land-use relative to the provisions of the current Town Planning Scheme (and subject to the provisions of the GBRS) is considered to be in order in broad principle in terms specifically of the ability of the applicant to make application to Council, and in respect of Council’s ability to actually consider the matter, and its ability to issue a grant of planning approval.

The land is indicated as Regional Open Space in the Greater Bunbury Region Scheme (GBRS). The implication of this fact is that any development application should be referred to the DPI (in terms of broad land-use considerations as opposed to the approval of any sub-uses relative to the existence of the Crown Grant in Trust) for overview and determination in terms of any GBRS impact as far as the DPI is concerned.

The following information is provided in terms of the specific provisions of the Greater Bunbury Region Scheme. “Reserved Land” in terms of the provisions of the GBRS means: “land reserved under the Scheme for public purposes”.

Under Part 3 Clause 10 (Purpose of Reserves) of the GBRS the following provision would also apply in respect of the matter at hand. Clause 10 provides that “land is reserved under the Scheme for the following public purposes: (a) Regional Open Space – to protect the natural environment, provide recreational opportunities, safeguard important landscapes and provide for public access;”

City Vision

The principles of City Vision are broadly relevant in respect of consideration of the matter. One reference in City Vision addresses development proposals on the Leschenault Inlet. Such Recommendation in the City Vision Strategy document is as follows:

The Inlet (City End – the “Plug” to Bunbury Yacht Club)

CBD39 “That major and extensive built development is not supported on the Inlet foreshore excepting a project area at the western end of the Inlet that provides an attraction or magnet to the water. The type of development consistent with community values for this area is a restaurant, tearooms and /or tavern combined with bike and boat hire, facilities for barbeques, child/ youth play area and live entertainment facilities. This development should align closely with the key pedestrian and visual connector with the City Centre, being Symmons Street. Other development opportunities may be considered following the release and community feedback on the Bunbury Waterfront Project prepared by Landcorp.”

The proposal by the applicant is broadly in line with the general intent of City Vision, and particularly in that the proposed framework for re-development is essentially within an existing facility, and in that the proposed new facility is not, it is considered, extensive relative to the existing structure, and in terms of the extent of the reserve. Importantly, the matter can be further analysed in terms of broader and specific public comment after the suggested community-advertising period.

General efficacy of the proposed development

Six key uses have been proposed by the applicant, viz.: a Kiosk/ Restaurant; a Public Function Centre; a Public Sporting Administration Centre; a Public Gymnasium; and a Sports Medicine facility along with the re-establishment of the existing Bunbury Rowing Club and the provision of sufficient access (in the form of stairs and a lift) to the first floor level of the development to satisfy requirements of the Building Code of Australia.

A Kiosk and Restaurant facility should, it is considered, fit, so to speak within a range of uses which one would expect to find on land which has the geographical position which it has and in terms of the zoning of the land concerned, and in light also of the fact that the land is subject of a Crown Grant in Trust. The precise operation of the Kiosk may ideally have to be defined in terms of actual uses at a later date to Council’s satisfaction; it is presumed that the Kiosk would in fact be a food kiosk which would say be orientated to the supply of snacks etc. to users of the park area. This would essentially reflect for example what one finds on the Swan riverbank opposite the academic campus of the University of Western Australia in Perth.

The proposed Public Function Centre, which is shown to be at first floor level, is essentially a re-building of a facility which was previously known as the Railway Institute Building. It is considered that the re-construction of this facility would provide significant social and community benefit, and ideally the naming of the new facility should carry through when construction is complete in terms of historical connection.

The Public Sporting Administration facility would, it is considered, be targeted at say a provider of State or other sports administration services. Essentially, such a facility would be regular offices and it could be argued that such a facility would be more appropriately located within the central CBD area. Notwithstanding, the logic of the proposal by the applicant can be easily appreciated, and understood, in that, any such office facility, and which would have

a link to the underlying land use (as a Parks and Recreation Reserve), would have a direct land-use link with the other proposed sub-uses of the proposed building complex. Furthermore, the location is relatively close to the CBD and would, arguably, add to some extent to the re-vitalization of the central parts of the City. On broad balance however it could be argued that the location of such use would be better placed somewhere actually within the central parts of the City. Notwithstanding the applicant points out that the Bunbury Rowing Club is endeavouring to properly fund the future centre with a view to getting sufficient rental returns to first, justify the re-construction of the facility and secondly for its on-going maintenance and in terms of supporting the sport of rowing, and particularly for the youth of the City. In terms of a final determination one needs to, essentially, balance the various factors which would tend to influence ones thinking on the matter.

The applicant has advised that the long-term objective in regard to establishing a Public Gymnasium as part of the future complex is to amalgamate the current Rowing Club Gymnasium with a new facility and to develop an income stream from a tenant who would run the facility to provide a service for both the public gym members and the Rowing Club members. The applicant also advises that this new facility would provide a better and larger gym for the Rowing Club members and also result in the provision of more storage facilities for boats in an expanded Rowing Club facility. There appears to be a level of logic to the proposal by the applicant in terms of logistics of the operation of a new facility and in terms of providing better and a more up-to-date Rowing Club facility.

The applicant refers, as part of his justification, to the fact that the City's Hay Park Sports facility was previously operated on a commercial basis, and that this should establish a standard so to speak regarding the applicant's current proposal. This argument is reasonable, but is not entirely accepted; however arguably one could accept that there is a relatively strong link in terms of land-use between parks and recreation reserve and a gymnasium in terms purely of land-use. The only issue that could reasonably result in this regard is the actual operation of the facility. Should it be operated by a private sector provider or by a public provider? Or should it be operated by the public sector for community benefit. In terms of the Hay Park Sports Centre, this was certainly operated by a private sector provider for some time, and in fact until just recently. However, notwithstanding that this is the case, the end beneficiary arguably was the community in that the actual ownership of the Hay Park facility is that of the City of Bunbury. In the case at hand, the operation of the business would be by a private sector tenant, and the actual ownership and control of the facility would essentially be within private sector control. The commercial dynamics of the proposed development, whilst similar, would be slightly different than those relating to the Hay Park facility.

Notwithstanding a rationale can be mounted for supporting the merging of the Gymnasium currently operated by the BRC with any new facility. Economies of scale would exist and it seems reasonable that monies resulting from the operation of new Gymnasium could be used for greater community benefit in the form of re-building the current facility.

The applicant has advised that the idea behind the Sports medicine facility is to attract sports medicine practitioners (eg physiotherapists etc.). It appears that currently the BRC uses the services of sports medicine practitioners for its members (some 100 in terms of advice given by the BRC). The BRC also advises "these practitioners would not rely solely on rowing club

membership for business but supplement their business marketing appeal by being located in a sporting facility that had associated ancillary sporting services.”

Arguably, a sports medicine facility would reasonably easily co-relate with the underlying land-use designation (Parks and Recreation) in the current Town Planning Scheme (TPS 7), and with any future gymnasium in the form as proposed by the applicant. The same commercial criteria would, it is considered, apply to the proposed establishment of a sports medicine facility as a gymnasium run by a private sector entity.

The matter of commercial equity in the market place is also relevant, and in terms of the considered relevance of the principles espoused in the Hilmer Report. However, on broad balance it is considered that whilst there would be some level of benefit to the private sector in terms of being able to operate, with possibly lower overheads, at the proposed facility, in actuality, the community benefit which would result (in the form an income base etc.) it is considered would justify such a proposition by the applicant.

Any consideration of commercial equity must it is considered be viewed in light of a general commitment that has been given it would seem by the State Government (SLS) at the time of the transfer of the land to the BRC. A letter written by the SLS to the BRC (12 July 2007 – copy **attached** at Appendix 16) states “*it was accepted at the time of the transfer of the land to the Club that there would be a component of commercial uses on the site that would support the operations of the Club.*” Importantly, it is also stated in such letter that “the current title requires the land to be used for Rowing Club Premises and provided that is the primary use of the land, other ancillary or beneficial uses can be supported.”

Therefore, with the exception of the proposed sports administration facility (essentially an office), it is considered that the private sector/ community operational template as proposed would be broadly acceptable.

Bulk and location requirements

The current Town Planning Scheme (TPS 7) does not list any specific bulk and location requirements in respect of developments on land that is designated as “Parks and Recreation”. It is considered therefore that the matter of determining set-backs and the bulk of the building becomes a value judgement relative to parameters such as say car-parking provision, and height for example relative to the existing height, and general design.

Car parking and Access

The City’s Engineering Dept. has advised in the following terms:

“It is important to note that Councils proposed long-term use of the Cobblestone car park will have great effect on the parking and access requirements for this development. These issues will need to be addressed in more detail if in-principle support is given”.

The applicant has not provided any formal overview of car parking provision pursuant to the provisions of the current Town Planning Scheme. It is assumed therefore that the applicant will consider this side of the equation after Council has considered the matter from an in-principle position. It is considered therefore that the matter of car parking should become part of any further detailed planning by the applicant's architect should Council determine to grant its in-principle support for the proposed development. This way the applicant will not be forced to waste unnecessary time planning for car parking for development which may not proceed, or which may proceed in an amended form.

Notwithstanding, the applicant has advised in recent discussions that the Club is willing to work with the City with a view to resolving the matter of car parking.

State Land Services (DPI) position on Crown Grant in Trust

The position of the State Land Services section of the Dept. for Planning and Infrastructure is relatively important in terms the formalisation of a position on the matter. The BRC holds a Crown Grant in Trust over the land concerned. This is essentially the next best form of ownership after freehold.

Importantly, reference is made to a letter from the SLS, which states, inter alia, "*as indicated in my comments on 15 June 2007 it was accepted at the time of the transfer of the land to the Club that there would be a component of commercial use on the site that would support the operations of the Club. As previously stated any development proposals will also need to meet planning and other approval processes that may apply*".

State Land Services has advised that it is comfortable so to speak with the proposed development, and as indicated in its letter to the City dated 18 October 2007 (attached at Appendix 16). Importantly, the SLS/DPI has noted that its final support for the proposed development will rely on the Club obtaining the support of the City of Bunbury.

The applicant has raised the matter of fees. The applicant has advised as follows:

"The Bunbury Rowing Club would like to apply to the City of Bunbury for a waiver of any future fees associated with re-development. The club has already incurred the cost of a planning approval fee of \$2,950.00. The Club has also incurred considerable lost time due to the fire damage and the delays associated with obtaining re-development approvals. The BRC receives no local government funding. One of the clubs key objectives for this development and its future operations is to continue to provide this great community service without relying on local and State Government funding."

The applicant has already paid \$2950 (two thousand, nine-hundred and fifty dollars) as a fee for an initial application. The City formally refused (6 September 2007) to issue a grant of planning approval in respect of such application for the reason that the applicant had not at that time supplied sufficient information in order to justify the Rowing Club's development proposals. Development Services took (6 September 2007) this position (to make a determination on the matter of the first application) in that officially the City is given 60 days to determine a development application and that after this point in time the applicant has a right of appeal to the SAT. The new application has not changed significantly from the last

application, except that the applicant has provided a detailed justification of the proposed development.

It is noted that the waiving of fees in respect of development applications is not within the ambit of officer discretion. The principle of precedent is also relevant in that the recent development application in respect of the proposed new Roman Catholic cathedral triggered a fee.

Another key point, regarding the matter of fees, is that the current “application” is essentially made to determine Council’s general position on the matter so that the applicant can proceed with a level of confidence in respect of further detailing and financial planning. The applicant is therefore now seeking Council’s determination as to whether it will waive the fee requirements should another official application be made to Council.

In summary it is considered that the proposal by the applicant is capable of being supported in broad terms. It is suggested that the matter be advertised to allow a higher level of transparency in terms of due process. The most appropriate course of action now would be for Council to determine its position on the matter, and should Council determine to support the proposed development in principle, that such support be made subject to a), the matter being advertised in accordance with Scheme requirements, and b), Council advising the applicant that its support in principle will be subject to the applicant being aware that Council reserves the right to amend its position after advertising should it determine that such action would be in order, having regard to any issues which may arise after further detailed technical analysis and advertising.

Strategic and Regional Outcomes

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

Community Consultation

Community consultation is recommended should Council determine to support the proposed development.

Applicant Consultation

In order to progress the matter, discussions have been undertaken with the applicant on a number of occasions.

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. The City’s Environmental Health Section has advised that the matter of the upgrading of the facility may require concomitant upgrading of the sewerage system. This matter would be addressed at a later date at the time of the issuance of a grant of planning approval.

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 significant economic benefits to the City as it proceeds to take up its second-city status in the State.

Social

It is considered that there would not be any adverse social impact(s) should the development proceed. In fact it is considered that the social benefits to the City should the development proceed in its suggested form would be significant. The part played by the Bunbury Rowing Club in youth support and development cannot be underestimated.

Environmental

Council's Environmental Officer has advised as follows:

“This development is situated adjacent to the Leschenault Inlet, which is recognised as an important conservation area by the State Government. It is therefore recommended that the City of Bunbury investigate the potential for the development to result in deleterious impacts upon the Inlet during the statutory approvals process and consider the application of environmental conditions as appropriate.

Specific issues which may need to be considered include:

- Acid sulphate soils
- Contaminated sites
- Clean site protocols (ensuring that waste generated during the construction phase does not impact upon the Inlet); and
- Aboriginal heritage.”

Heritage

Nil impact.

Council Policy Compliance

It is considered that the proposed development generally complies with relevant Policies.

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. It should be noted additionally that the proposed activity will be required to comply with the requirements of the Health Act 1911 and the City of Bunbury Health Local Laws 2001.

Delegation of Authority

Delegation of authority is not applicable in this case.

Relevant Precedents

There are no known precisely relevant precedents.

Options

Option 1

Per the recommendation as printed in this report.

Option 2

Should Council determine not to resolve to grant its in-principle support in respect of the proposed development a suggested format for such action is as follows:

"Council, under the Planning and Development Act 2005, resolves to refuse to grant its in-principle support in respect of the proposed re-development of the Bunbury Rowing Club and the Railway Institute Building including a gymnasium (to be amalgamated with the current Bunbury Rowing Club gymnasium), a new Sports Medicine Facility, a new Function Centre/Community Facility, and a Restaurant/Kiosk but excluding any office development except offices which would be incidental to any predominant development) at Lot 759 Cobblestone Street, Bunbury; for the following reasons:

(Reasons to be determined by the Council as part of its deliberations on the matter)"

Conclusion

It is considered that the proposal by the applicant is capable of being supported in broad terms. Pure land-use considerations are seen to be broadly in order. One key operational issue relates to the specific proposal by the proponent that private sector operators be permitted to lease (from the BRC) and operate what would be, to an extent, commercial operations. On balance the anticipated benefits to the City (should the development proceed as planned), which would accrue, in terms of community and social considerations, would tip the balance in favour of the proposed development whereby private sector operators would be

permitted to play a part in the operation of the facility in line with the provisions of the Crown Grant in Trust.

It is suggested therefore that the matter be advertised to allow a higher level of transparency in terms of due process. Should Council determine to support the proposed development in principle, such support should ideally, it is suggested, be made subject to a), the matter being advertised in accordance with Scheme requirements, and b), Council advising the applicant that its support in principle will be subject to the applicant being aware that Council reserves the right to amend its position after advertising should it determine that such action would be in order, having regard to any issues which may arise after further detailed technical analysis and advertising.

Recommendation

Council, under the Planning and Development Act 2005, resolves as follows concerning an application from the Bunbury Rowing Club to redevelop its premises at Lot 759 Cobblestone Drive, Bunbury:

1. To grant in-principle support in respect of the proposed re-development of the Bunbury Rowing Club and the Railway Institute Building including a gymnasium (to be amalgamated with the current gymnasium on-site), a new Sports Medicine Facility, a new Function Centre/ Community Facility, and a Restaurant/ Kiosk (but excluding any office development except offices which would be incidental to any predominant development), subject the following parameters:
 - 1.1 The applicant submitting to the City a formal Development Application for further detailed assessment and determination.
 - 1.2 The applicant submitting a planning application in accordance with the Greater Bunbury Region Scheme requirements - in this case the applicant will be required to submit a Form 1 application with 2 further copies of the development plans upon receipt of which, the City will forward an application to the Department for Planning and Infrastructure for consideration.
 - 1.3 The matter be publicly advertised in accordance with the provisions of the current Town Planning Scheme after the submission of the necessary satisfied that the submission of any further data in this regard by the applicant is in order.
 - 1.4 The applicant addressing the matter of car parking relative to the provisions of the current Town Planning Scheme for further consideration by Council.
 - 1.5 The applicant being aware that Council reserves the right to amend its position on the matter after public advertising and further detailed technical analysis of the matter.

2. A development application fee be applied consistent with Council's Schedule of Fees and Charges, at the time of any future development application by the applicant.

Outcome of the Council Committee Meeting - 1 April 2008

Representatives from the Bunbury Rowing Club Inc. (Mr Mike Hogan and Senior Coach, Mr Jamie Jones) were invited to address the Committee and respond to questions. The following points were raised:

- The Club is a non-profit organisation. It holds the land under Trust and the State Government (through its Department of Planning and Infrastructure) has agreed in principle, to support the proposed re-development at the site provided the Club complies with all local planning provisions.
- The Club does not (and never has) received funding from the Council. The facility subject of the re-development proposal is already utilised for a diverse range of sporting, social and community events that assist the Club to raise funds.
- The Club is relying on this re-development going ahead as its ability to provide exceptional facilities is a major strategy for raising sufficient funds to meet the future needs of the Club's projected growth.
- Up to 20 additional parking bays will be provided as part of the proposed development and 75 public parking bays are located nearby
- The Senior Coach, Mr Jamie Jones, cited examples of the type of training the Club is providing to children and young people in the region. The Club's achievements to date are outstanding with an increasing number of young people taking an interest in the sport. One of his students is going to Sydney soon to take part in a championship event. Mr Jones indicated that rowing is a costly sport both in terms of the cost of equipment and the staging of events. Most training at the Club is provided on an unpaid voluntary basis.

The recommendation (as printed) was moved Cr Slater, seconded Cr Dillon to become the motion under discussion, with an amendment to point 2. to change the words to read: *"2. The development application fee consistent with Council's Schedule of Fees and Charges, be waived."*

During discussion, objections to the motion mainly concerned parking requirements and the proposal to waive the scheduled fee. The Executive Manager City Development indicated that parking issues would be addressed in response to point 1.4 of the motion and that payment of fees as recommended in the City's Schedule of Fees, relates to the cost of researching, consultation and administration associated with processing of planning applications.

As a result of the discussion, the Presiding Member elected to put the motion to the vote in separate parts, with the following result:

Points 1 to 1.5: *12 votes "for" to 1 vote "against"*

Point 2: *12 votes "for" to 1 vote "against"*

The Committee's recommendation is as follows:

Committee Recommendation

Council, under the Planning and Development Act 2005, resolves as follows concerning an application from the Bunbury Rowing Club to redevelop its premises at Lot 759 Cobblestone Drive, Bunbury:

1. To grant in-principle support in respect of the proposed re-development of the Bunbury Rowing Club and the Railway Institute Building including a gymnasium (to be amalgamated with the current gymnasium on-site), a new Sports Medicine Facility, a new Function Centre/ Community Facility, and a Restaurant/ Kiosk (but excluding any office development except offices which would be incidental to any predominant development), subject the following parameters:
 - 1.1 The applicant submitting to the City a formal Development Application for further detailed assessment and determination.
 - 1.2 The applicant submitting a planning application in accordance with the Greater Bunbury Region Scheme requirements - in this case the applicant will be required to submit a Form 1 application with 2 further copies of the development plans upon receipt of which, the City will forward an application to the Department for Planning and Infrastructure for consideration.
 - 1.3 The matter be publicly advertised in accordance with the provisions of the current Town Planning Scheme after the submission of the necessary satisfied that the submission of any further data in this regard by the applicant is in order.
 - 1.4 The applicant addressing the matter of car parking relative to the provisions of the current Town Planning Scheme for further consideration by Council.
 - 1.5 The applicant being aware that Council reserves the right to amend its position on the matter after public advertising and further detailed technical analysis of the matter.
2. The development application fee consistent with Council's Schedule of Fees and Charges, be waived.

AT THE COUNCIL MEETING

The Committee's recommendation was moved Cr Dillon, seconded Cr Craddock. After some discussion, the Mayor put the motion to the vote and it was adopted to become a Council Decision.

Council Decision 58/08

Council, under the Planning and Development Act 2005, resolves as follows concerning an application from the Bunbury Rowing Club to redevelop its premises at Lot 759 Cobblestone Drive, Bunbury:

- 1. To grant in-principle support in respect of the proposed re-development of the Bunbury Rowing Club and the Railway Institute Building including a gymnasium (to be amalgamated with the current gymnasium on-site), a new Sports Medicine Facility, a new Function Centre/ Community Facility, and a Restaurant/ Kiosk (but excluding any office development except offices which would be incidental to any predominant development), subject the following parameters:*
 - 1.1 The applicant submitting to the City a formal Development Application for further detailed assessment and determination.*
 - 1.2 The applicant submitting a planning application in accordance with the Greater Bunbury Region Scheme requirements - in this case the applicant will be required to submit a Form 1 application with 2 further copies of the development plans upon receipt of which, the City will forward an application to the Department for Planning and Infrastructure for consideration.*
 - 1.3 The matter be publicly advertised in accordance with the provisions of the current Town Planning Scheme after the submission of the necessary satisfied that the submission of any further data in this regard by the applicant is in order.*
 - 1.4 The applicant addressing the matter of car parking relative to the provisions of the current Town Planning Scheme for further consideration by Council.*
 - 1.5 The applicant being aware that Council reserves the right to amend its position on the matter after public advertising and further detailed technical analysis of the matter.*
- 2. The development application fee consistent with Council's Schedule of Fees and Charges, be waived.*

CARRIED

11 Votes "For" / 1 Vote "Against"

Cr Major requested that his vote "against" the Council's decision, be recorded.

11.13 RETROSPECTIVE PLANNING APPROVAL - PROPOSED LANDFILL ON LOT 218 AND LOT 219 ELIZABETH CRESCENT, SOUTH BUNBURY *(WAS LISTED AS ITEM 11.12 IN THE MEETING AGENDA)*

File Ref:	P02803
Applicant/Proponent:	Peter Neville Farnell
Author:	Paul Davies, Planning Consultant
Executive:	Geoff Klem, Executive Manager City Development

Summary

Council at its meeting on 16 October 2007 (Decision No. 211/07) considered an application from Mr P N Farnell for retrospective planning approval for unauthorized landfill on Lots 218 and 219 Elizabeth Crescent and resolved:

- "1. A subdivision plan be prepared for Lots 218 and 219 Elisabeth Crescent, Bunbury and referred back to Council within three (3) months.*
- 2. In the event that a subdivision plan is not available for referral to Council within three (3) months, the matter be immediately returned to Council."*

In accordance with the Council's decision, the applicants have submitted plans for proposed subdivision of the property to create four lots. The plans also include details of proposed retaining walls around the site including a wall generally between 4.29 and 5.93 along the eastern side of the site. The plans also indicate terracing of the proposed lots with retaining walls of 1.5 metres between the proposed lots and a batter slope to the rear retaining wall.

The proposed subdivision lots sizes of between 603m² to 1,153 m² are consistent with lots size requirements for the current R15 residential code for the subject land. Subdivision applications are, however, under the jurisdiction of the Western Australian Planning Commission, hence, Council only provides advice in regard to required conditions.

The proposal was advertised for public comment and adjoining neighbour comment and 7 submissions were received. The submissions generally object to the height of the proposed retaining walls and the level of fill on the site with subsequent detrimental impacts on adjoining properties.

The proposed retaining walls around the boundary of the site are consistent with requirements of the Residential Design Codes, hence, Council could approve the proposed plan as a Development application. The proposed rear retaining wall is proposed to be setback 2.3 metres from the rear boundary in accordance with Residential Design Codes requirements.

It is recommended that Council approve the application with modifications to the proposed retaining walls and a caveat to limit future development to a single storey dwelling with a maximum wall height of 3 metres and a maximum roof pitch of 30 degrees from the proposed finished ground levels. Also, the proponent is required to provide a Geotechnical report and compaction certificate for the level of fill with appropriate stabilisation of the site to avoid sand drift.

Background

The subject site originally rose very steeply from the lowest corner approximately 5 metres rising to approximately 21 metres at the highest point. The plan **attached** at Appendix 20 indicates the original ground levels over the subject site.

The subject land has been significantly filled (without City of Bunbury approval) over a number of years so that the current fill level is up to approximately 7 - 8 metres above the original ground level over the lowest part of the site. The plan **attached** at Appendix 21 includes the current levels of the site including the unauthorised fill.

The existing fill level generally reaches a height of approximately 14 metres AHD with some mounds of earth up to approximately 15 metres AHD over the lowest part of the site. Also, some large concrete blocks and other scattered building material have also been left on the site generally at the base of the fill embankment.

The top of the existing fill level is between 12 and 22 metres from the rear boundary of the site. The current fill level does not, however, provide an adequate area for building on the site, hence, additional earthworks and retaining walls are required to facilitate future development of the site.

The proponent advises that all filling works ceased long ago and that they have been diligent to ensure no further fill is placed on the site.

An application has been received from Mr P N Farnell for retrospective Planning Approval for land fill on lots 218 and 219 Elizabeth Crescent. In accordance with Council's previous resolution the applicant has submitted plans indicating a possible subdivision of the land to create 4 lots with details of proposed retaining walls and fill levels on the site.

The plans **attached** at Appendix 22 indicate the proposed subdivision layout and retaining wall elevations.

The proposed subdivision plan indicates lots sizes of between 603m² to 1,153 m² are consistent with lots size requirements for the current R15 residential code for the subject land. Subdivision applications are, however, under the jurisdiction of the Western Australian Planning Commission (WAPC) and the City only provides recommendations in regard to required conditions.

At this stage a formal subdivision application has not been lodged with the WAPC for the site, hence the subdivision plan can only be considered as indicative of the development of the site. The City can, however, approve the proposed development of the site including landfill and retaining walls as a Development application.

The proposed development plan includes details of proposed retaining walls around the site including a wall generally between 4.29 and 5.93 with a 2.3 metre setback to the property boundary along the eastern side of the site. The proposed plans also indicate a retaining wall up to 4.29 metres along the north boundary of the site adjoining the public open space reserve.

The plans also indicate terracing of the proposed lots with retaining walls of 1.5 metres between the proposed lots and a batter slope to the rear retaining wall. Proposed lot A has a finished level of RL 12metres, lot B has RL of 13.5 metres, lot C has RL of 15 metres.

The proposal was advertised for public comment and adjoining neighbour comment and 7 submissions were received. The submissions generally object to the height of the proposed retaining walls and the level of fill on the site with subsequent detrimental impacts on adjoining properties.

A number of submissions received indicate that adjoining owners are concerned with the significant extent of land fill which has been undertaken on the site without approval. The submissions advise of concern with loss of amenity and reduced property values for adjoining properties.

Concern is also expressed that a former Council employee lived in the locality while the works were being undertaken and Council had not taken action in regard to verbal complaints in regard to the unauthorised fill operations over previous years.

The submissions request that the Council uphold the process of orderly and proper planning and refuse the application. The submissions request that all fill be removed from the site before any application is dealt with. The submissions advise that Council should enforce the bylaws for the illegal violation of building and development codes.

Other submissions outline concerns with the quality of fill material used on the site and the type of dwellings that could be built on the site. One submission outlines concerns with maintenance of the rear setback area between the retaining wall and the adjoining property boundaries.

One submission outlines concerns with impact on the adjacent open space area and requests that Council ensure any damage to the park is rectified by the Council or the developer. Also it requests that Council ensure no trees are removed and a development plan will be implemented for the park to allow the park to remain user friendly.

Other submissions request that proposed buildings be shown for the subject land for residents to fully consider the proposal. One submission outlines concerns that their property will lose existing views by development of the subject land.

Discussion

The proposed retaining wall heights of 4.29 metres up to 5.9 metres are very significant and are likely to have a visual impact in the locality. The subdivision plan is only indicative at this stage as a formal application for subdivision has not been lodged with the Western Australian Planning Commission.

In view of the steep topography of the site it is considered that any future development of the site will require significant earthworks to achieve suitable building levels. Also, future development is likely to include potential for overlooking of adjoining properties at the rear of the site.

It is important to note that the potential for overlooking would have occurred at some point in time (assuming the land was developed for housing) irrespective of whether the land was filled or not.

The proposed retaining walls do not, however, create overshadowing concerns for the adjoining properties to the east. In accordance with the Residential Design Codes overshadowing is measured at midday on 21 June with a northern orientation, hence shadowing is cast to the south side.

The proposed retaining walls around the boundaries of the site are consistent with the requirements of the Residential Design Codes. The proposed retaining wall along the eastern side is proposed to be setback 2.3 metres from the rear boundary in accordance with Residential Design Codes requirements.

To reduce the visual impact of the retaining walls along the eastern side the wall could be modified into a two tier design. This would then accommodate a landscaped area along the rear section to break up the overall visual appearance of the wall.

To allow access to tiered area for maintenance of landscaped area it is recommended that the retaining wall design include provision for access from the proposed lot to the tiered level and the rear setback area.

There is an existing sewer main located along the eastern rear of the property which does not have an easement and there is an existing sewer within the public open space area adjacent to the north of the site. The Water Corporation advises that retaining walls can be no closer than 1.5 metres to the centreline of the sewer access chambers and 800 mm to the centreline of the pipe.

To achieve the required clearance from the centre line of the sewer the proposed retaining wall may need to be located further from the rear boundary at up to approximately 3 metres. Also, the retaining wall along the north boundary may need to be located inside the property boundary to achieve required clearance from the sewer located on the adjoining public open space area.

Currently Clause 5.9.1.2 of Town Planning Scheme No 7 generally requires a maximum building height of 9 metres for residential dwellings from existing ground level. Development proposals in excess of 9 metres are generally required to be advertised for neighbour and community comment.

With the proposed finished levels of 12, 13.5 and 15 metres on proposed lots A, B and C the lots may be difficult to develop within a 9 metre height requirement in view of the original ground levels of down to 5 metres in the lowest section.

To address this issue it is considered that building on proposed lots A, B and C should be limited to a single storey dwelling with a maximum wall height of 3 metres and a maximum roof pitch of 30 degrees from the proposed finished ground levels.

It is recommended that a caveat be placed on the title of the subject land indicating that future development of proposed lots A, B and C be limited to a single storey dwelling with a maximum wall height of 3 metres and a maximum roof pitch of 30 degrees from the proposed finished ground levels.

Future applications for development of the lots would then need to be considered on their merits in accordance with R Codes requirements and height limit as outlined above. In general building setbacks are determined through the Residential Design Codes (R Codes).

Under the Residential R15 code a minimum rear setback of 6 metres is required for single residential dwellings. Further minimum setbacks for balconies are 7.5 metres with windows to habitable rooms 6 metres and bedroom windows 4.5 metres.

Strategic and/or Regional Outcomes

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

Community Consultation

The proposal was advertised for public comment and adjoining owners were requested to provide comment with the submission period closing on 1 June 2007 and 7 submissions were received. Details of the submissions are outlined in the Schedule of Submissions **attached** at Appendix 23. The principal issues raised in the submissions include;

Neighbours adjoining to the rear of the property are concerned with the height of the fill and impacts of overlooking and privacy from future development of the site. Concerns are raised in regard mess on the site with building materials being thrown onto the properties and dust and dirt being blown onto adjoining properties.

Further issues raised include fill material used on the site including vegetation material covered by sand, soil encroaching onto adjoining properties and the adjacent public open space and complaints with unauthorised fill being undertaken on the site. Other comments suggest that the land should be returned to the original levels.

Councillor/Officer Consultation

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

Analysis of Financial and Budget Implications

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

Economic, Social, Environmental and Heritage Issues

There are no significant economic, social, environmental or heritage impacts of the development.

Council Policy Compliance

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

Legislative Compliance

The proposed retrospective planning application can be considered in accordance with the provisions of the Planning and Development Act 2005.

Delegation of Authority

Delegation of decision-making is not an option in this instance.

Relevant Precedents

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

Options

Option 1

Per the recommendation as printed in this report.

Option 2

"Council, under the Planning and Development Act 2005, resolves not to grant retrospective approval to Mr P N Farnell for landfill on lots 218 and 219 Elizabeth Crescent and requires the proponent to remove all unauthorised fill material and building rubble from the site and to reinstate the site to its original ground level."

Conclusion

The current unauthorized level of fill is not considered appropriate for the site. The proposed retaining walls of 4.29 metres up to 5.9 metres around the boundary of the site are very significant and likely to have an adverse visual impact in the locality.

In view of the steep topography of the site it is considered that any future development of the site will require significant earthworks to achieve suitable building levels. Also, future development is likely to include potential for overlooking of adjoining properties at the rear of the site.

At this stage a formal subdivision application has not been lodged with the WAPC for the site, hence the subdivision plan can only be considered as indicative of the development of the site. The City can, however, approve the proposed development of the site including landfill and retaining walls as a Development application.

The proposed retaining walls around the boundary of the site are consistent with requirements of the Residential Design Codes. The proposed retaining wall along the eastern side is setback 2.3 metres from the rear boundary in accordance with Residential Design Codes requirements.

The proposed subdivision lot sizes of between 603m² to 1,153 m² are consistent with lot size requirements for the current R15 residential code for the subject land. Subdivision applications are, however, under the jurisdiction of the Western Australian Planning Commission, hence, Council only provides advise in regard to required conditions.

The proposal was advertised for public comment and adjoining neighbour comment and 6 submissions were received. The submissions generally object the height of the proposed retaining walls and the level of fill on the site with subsequent detrimental impacts on adjoining properties.

It is recommended that Council approve the application with modifications to the proposed retaining walls and a caveat to limit future development to a single storey dwelling with a maximum wall height of 3 metres and a maximum roof pitch of 30 degrees from the proposed finished ground levels.

Also, the proponent is required to provide a Geotechnical report and compaction certificate for the level of fill with appropriate stabilisation of the site to avoid sand drift. Future applications for development of the site will need to be assessed on their merits in accordance with the Residential Design Codes and the required maximum height limit.

Recommendation

Council, under the Planning and Development Act 2005, resolves to grant retrospective planning approval to Mr P N Farnell for landfill including retaining walls on lots 218 and 219 Elizabeth Crescent, South Bunbury, subject to the following conditions:

1. All development shall be in accordance with the approved development plans that form part of this Planning Approval including all modifications required as conditions of this approval.
2. This approval shall expire unless the works authorised have been commenced within six months and completed within nine months of the date of issue, or within any extended period for which Council has granted written consent. Any application for such consent shall be received within one month prior to the expiration of the Planning Approval.
3. Plans submitted with the Building Licence to indicate the following modifications to the satisfaction of the Manager Development Services and the City Engineer:
 - 3.1 The retaining wall along the eastern boundary to be modified to a two-tier wall with a landscape strip between the tier levels and with provision for access to the tiered level and rear setback area.
 - 3.2 The proposed retaining walls to achieve required setbacks to the existing sewer mains within the subject land and the adjoining public open space area as required by the Water Corporation.
 - 3.3 Provision of a suitable boundary fence along the top of the proposed retaining walls and tiered level along the north and eastern boundaries of the site.
4. The proponent to remove all rubbish and building material from the site to the satisfaction of the City Engineer.
5. The proponent to undertake stabilisation works on the finished level of the site to avoid sand drift and any potential dust nuisance to the satisfaction of the City Engineer.
6. The proponent to provide a geo-technical report and compaction certificate for the finished fill level of the site to the satisfaction of the City Engineer.
7. The proponent to reinstate any area of the adjoining public open space area which may be disturbed to the satisfaction of the Manager Development Services.

8. The proponent to include a Restrictive Covenant on the title of the subject land to the satisfaction of the Manager Development Services, to advise potential purchasers of the property that the maximum height for building development is a single storey dwelling with a maximum wall height of 3 metres and a maximum roof pitch of 30 degrees from the proposed finished ground levels on proposed lots A, B and C being 12, 13.5 and 15 metres respectively as indicated on the approved development plan.

Notes

1. *This is not a Building Licence. This development is subject to a building licence approval – an application shall be made with Council's Building Services prior to commencement of works on-site.*
2. *The Water Corporation advises that retaining walls are required generally to be no closer than 1.5 metres to the centreline of the sewer access chambers and 800 mm to the centreline of the pipe. If future plans are proposed for retaining walls special foundations may be required dependent on the height of the wall and distance to the centre of the sewer. The proponent is advised to liaise with the Water Corporation in regard to future development proposals for the subject land.*
3. *The applicant being aware that Council approval of the proposed development is not necessarily indicative that the Western Australian Planning Commission will subsequently issue a grant of Subdivision approval.*

Outcome of the Council Committee Meeting - 1 April 2008

The following public speakers were invited to address the committee:

Applicants - Peter and Christine Farnell, 6 Louise Close, Bunbury

Mr and Mrs Farnell addressed members generally favour of the recommendation (as printed) but requested that point 3.1 be changed from a 2-tier retaining wall to a 1-step wall, and; point 8 be changed to allow them to build a 2-storey or split level home on the property.

Mr Farnell indicated that he and his wife have held the land for 20 years and are happy to comply with the City's requirements. However, they dispute that the fill is illegal (as has been reported) as in the late 1980's, Mr Farnell claims he received verbal advice from the City that he could fill the property on the condition that the retaining wall that would eventually be needed, is properly authorised and built to specifications. Mr Farnell stated that most of the fill came from the re-developed Police Station and to his knowledge, no fill has been added since the year 2000.

Mr and Mrs Farnell responded to numerous questions from committee members.

Ms Kerry Fraser, Lot 67 (No. 21) Elizabeth Crescent, Bunbury

- Ms Fraser indicated that in addition to the clean-fill that Mr Farnell has placed on the property, other people have been illegally dumping fill on the site for years.

- Local residents preferably want the fill removed and the land returned to its original level. If the approval must proceed however, residents of homes in Hoylake Avenue would like to see all buildings on the land restricted to one storey and would like Block D of the proposed subdivision restricted in a similar manner to Lots A, B and C as, until Blocks A, B and C were elevated, there was no need to raise the level of Block D.
- Ms Fraser requested that a Dilapidation/Compaction Survey be undertaken of all homes in roads surrounding the subject site.
- Ms Fraser responded to questions from committee members concerning levels of surrounding land; outlooks and privacy concerns.

Mr Damian Farnell (Applicant's son)

Responding to a question by a committee member as to whether the different parties have attempted to negotiate to resolve their differences - Mr Farnell indicated that some time ago he met with Mr Swanson and Mr Smith on-site and spoke with them for over 1 hour. He provided them with his contact telephone number at the time and asked them to hand it out to any other concerned neighbours as he would be happy to discuss the matter with them.

At the conclusion of the Public Speaker session, the recommendation (as printed) was moved Cr Dillon, seconded Cr Steck to become the motion under discussion but with the removal of points 3.1 and 8 (i.e., requirement for a tiered retaining wall and restriction of building height).

During discussion of the motion:

- A number of members expressed concern that the professional advice of the City's Engineers was to be ignored through the deletion of point 3.1 and that the submissions received from residents concerning the height of buildings to be built in the land warrants serious consideration.
- The residents' request for a dilapidation/compaction survey was discussed. The Presiding Member requested that point 6. of the motion be amended to read: *"The proponent to provide a geo-technical report and compaction certificate for the finished fill level of the site to the satisfaction of the City Engineer, and; the City Engineer be granted authority to decide whether a dilapidation survey is required."* The mover and seconder agreed to this.

Amendment - moved Cr Worthington, seconded Cr Kelly:

Reinstate the following clauses of the original officer's recommendation:

"3.1 The retaining wall along the eastern boundary to be modified to a two-tier wall with a landscape strip between the tier levels and with provision for access to the tiered level and rear setback area.

8. The proponent to include a Restrictive Covenant on the title of the subject land to the satisfaction of the Manager Development Services, to restrict the maximum height of building development on the lots to single storey development with a maximum wall height of 3 metres and a maximum roof pitch of 30 degrees from the proposed finished ground levels on proposed lots A, B and C being 12, 13.5 and 15 metres respectively as indicated on the approved development plan."

During discussion of the amendment, the City's Planning Consultant, Executive Manager City Development and Executive Manager City Services responded to questions concerning retaining wall specifications, planning and building requirements.

The Presiding Member put the two parts of the amendment to the vote separately, with the following result:

Reinstate Point 3.1: *Carried - 8 votes "for" to 5 votes "against"*

Votes were recorded as follows:

For: Mayor D Smith; Crs Craddock, Major, Rooney, Leigh, Worthington, Kelly and Whittle
Against: Crs Dillon, Steck, Punch, Slater and Jones

Reinstate Point 8: *Defeated - 5 votes "for" to 8 votes "against"*

Votes were recorded as follows:

For: Crs Craddock, Leigh, Worthington, Kelly and Whittle
Against: Mayor D Smith; Crs Slater, Major, Rooney, Jones, Dillon, Steck and Punch

Discussion continued on the motion now amended to incorporate point 3.1 which requires a two-tier retaining wall.

The Presiding Member put the motion to the vote and it was adopted *9 votes "for" to 4 votes "against"* to become the Committee's recommendation on this issue.

Committee Recommendation

Council, under the Planning and Development Act 2005, resolves to grant retrospective planning approval to Mr P N Farnell for landfill including retaining walls on lots 218 and 219 Elizabeth Crescent, South Bunbury, subject to the following conditions:

1. All development shall be in accordance with the approved development plans that form part of this Planning Approval including all modifications required as conditions of this approval.
2. This approval shall expire unless the works authorised have been commenced within six months and completed within nine months of the date of issue, or within any extended period for which Council has granted written consent. Any application for such consent shall be received within one month prior to the expiration of the Planning Approval.
3. Plans submitted with the Building Licence to indicate the following modifications to the satisfaction of the Manager Development Services and the City Engineer:
 - 3.1 The retaining wall along the eastern boundary to be modified to a two-tier wall with a landscape strip between the tier levels and with provision for access to the tiered level and rear setback area
 - 3.2 The proposed retaining walls to achieve required setbacks to the existing sewer mains within the subject land and the adjoining public open space area as required by the Water Corporation.
 - 3.3 Provision of a suitable boundary fence along the top of the proposed retaining walls and tiered level along the north and eastern boundaries of the site.
4. The proponent to remove all rubbish and building material from the site to the satisfaction of the City Engineer.
5. The proponent to undertake stabilisation works on the finished level of the site to avoid sand drift and any potential dust nuisance to the satisfaction of the City Engineer.
6. The proponent to provide a geo-technical report and compaction certificate for the finished fill level of the site to the satisfaction of the City Engineer, and; the City Engineer be granted authority to decide whether a dilapidation survey is required.
7. The proponent to reinstate any area of the adjoining public open space area which may be disturbed to the satisfaction of the Manager Development Services.

AT THE COUNCIL MEETING

The Committee's recommendation (as printed) was moved Cr Slater, seconded Cr Dillon.

During discussion:

- Cr Dillon tabled letters received from Gnomes Services Pty Ltd (dated 7 April 2008) and Mr and Mrs Fraser (received 4 April 2008). Copies of the letters are **attached** at Appendices 32 and 33 respectively. Essentially, the letters indicate the following:
 1. Gnomes Services Pty Ltd confirms that the supposed "asbestos" found in some of the fill on-site, has been examined and is in fact, fibro-cement.
 2. Mr and Mrs Fraser (who initially objected to the proposal) are prepared to withdraw their submission if setback requirements can be amended, vegetation replanted following fill of the park to a higher level and dilapidation reports supplied for all homes affected in Hoylake Avenue and Elizabeth Crescent prior to any earthworks taking place.
- Cr Dillon also passed around photographs giving an example of the type of retaining wall to be constructed at the site (he retained these at the end of the meeting).
- The Acting Executive Manager City Development confirmed that relaxation of the setback requirements can be achieved but only after consultation with nearby residents and landowners to ensure there are no impacts on these properties.

Cr Craddock moved, Cr Dillon seconded the following amendment:

"Add point 8. which states: Subject to assessment and approval by the Manager Development Services, a dispensation in the normal setback requirements be endorsed."

The Mayor put the amendment to the vote and it was adopted *12 votes "for" to nil votes "against"*.

Discussion on the motion (now amended) continued.

Cr Dillon moved, Cr Steck seconded the following further amendment:

"Add point 9. which states: If any of the existing vegetation is removed from the site; new vegetation of a similar type and size be planted by the applicants and all vegetation watered by them until it becomes suitably established."

The Mayor put the amendment to the vote and it was adopted *11 votes "for" to 1 vote "against"*. Cr Slater requested that his vote "against" the amendment, be recorded.

The Mayor put the motion (as amended) to the vote and it was adopted to become the Council's decision on this matter.

Council Decision 59/08

Council, under the Planning and Development Act 2005, resolves to grant retrospective planning approval to Mr P N Farnell for landfill including retaining walls on lots 218 and 219 Elizabeth Crescent, South Bunbury, subject to the following conditions:

- 1. All development shall be in accordance with the approved development plans that form part of this Planning Approval including all modifications required as conditions of this approval.*
- 2. This approval shall expire unless the works authorised have been commenced within six months and completed within nine months of the date of issue, or within any extended period for which Council has granted written consent. Any application for such consent shall be received within one month prior to the expiration of the Planning Approval.*
- 3. Plans submitted with the Building Licence to indicate the following modifications to the satisfaction of the Manager Development Services and the City Engineer:*
 - 3.1 The retaining wall along the eastern boundary to be modified to a two-tier wall with a landscape strip between the tier levels and with provision for access to the tiered level and rear setback area*
 - 3.2 The proposed retaining walls to achieve required setbacks to the existing sewer mains within the subject land and the adjoining public open space area as required by the Water Corporation.*
 - 3.3 Provision of a suitable boundary fence along the top of the proposed retaining walls and tiered level along the north and eastern boundaries of the site.*
- 4. The proponent to remove all rubbish and building material from the site to the satisfaction of the City Engineer.*
- 5. The proponent to undertake stabilisation works on the finished level of the site to avoid sand drift and any potential dust nuisance to the satisfaction of the City Engineer.*
- 6. The proponent to provide a geo-technical report and compaction certificate for the finished fill level of the site to the satisfaction of the City Engineer, and; the City Engineer be granted authority to decide whether a dilapidation survey is required.*
- 7. The proponent to reinstate any area of the adjoining public open space area which may be disturbed to the satisfaction of the Manager Development Services.*

8. *Subject to assessment and approval by the Manager Development Services, a dispensation in the normal setback requirements be endorsed.*
9. *If any of the existing vegetation is removed from the site; new vegetation of a similar type and size be planted by the applicants and all vegetation watered by them until it becomes suitably established.*

Notes

1. *This is not a Building Licence. This development is subject to a building licence approval – an application shall be made with Council's Building Services prior to commencement of works on-site.*
2. *The Water Corporation advises that retaining walls are required generally to be no closer than 1.5 metres to the centreline of the sewer access chambers and 800 mm to the centreline of the pipe. If future plans are proposed for retaining walls special foundations may be required dependent on the height of the wall and distance to the centre of the sewer. The proponent is advised to liaise with the Water Corporation in regard to future development proposals for the subject land.*
3. *The applicant being aware that Council approval of the proposed development is not necessarily indicative that the Western Australian Planning Commission will subsequently issue a grant of Subdivision approval.*

CARRIED

12 Votes "For" / Nil Votes "Against"

11.14 LESCHENAULT HOMESTEAD PLANNING COMMITTEE REPORT - PUBLIC SUBMISSIONS *(WAS LISTED AS ITEM 11.13 IN THE MEETING AGENDA)*

File Ref:	A00537
Applicant/Proponent:	Leschenault Homestead Planning Committee (External Body)
Author:	Leigh Barrett, Strategic Planning Officer
Executive:	Geoff Klem, Executive Manager City Development

Summary

The Bunbury Port Inner Harbour Structure Plan will see expansion of the Bunbury Port to the south and east with a significant impact on the historic Leschenault Homestead and its associated structures and curtilage. The Leschenault Homestead Planning Committee was established to investigate and report on triggers and options for relocation of the Leschenault Homestead. A final report has been prepared and was circulated to members for consideration at the Council Meeting on 5 February 2008.

As previously advised, the report makes a number of recommendations and for ease of reference, these are set out on Appendix 18 **attached**. The report covers the following subjects:

1. Stabilisation and Maintenance:
2. Methodology for relocation (indicating the range of issues to be considered and further developed prior to relocation):
3. Triggers for Relocation:
4. Site for Relocation
5. Future Use and Future Management and Maintenance
6. Implementation

At Council's request (following consideration of the report at its meeting of 5 January 2008), the report was advertised for public comment for a period of 42 days with a closing date of 21 March 2008. Five submissions have been received.

Background

Following receipt by Council of the Final Report of the Leschenault Homestead Planning Committee on 5 February 2008, the following decision was made:

Council Decision 9/08

- "1. The Leschenault Homestead Planning Committee Final Report (December 2007) be noted.*
- 2. The Leschenault Homestead Planning Committee Final Report (December 2007) be available for public inspection and comment for a period of 42 days before being brought back to Council for further consideration."*

A total of five submissions have been received - refer to Schedule of Submissions **attached** at Appendix 19. Two submissions supported retaining the Leschenault Homestead and associated outbuildings in its original setting which includes remnants of the riverine environment (the Preston River has since been diverted) and original plantings. A further two considered that demolition of the buildings was acceptable after full photographic and survey records had been made as the buildings in their current location will impede the Port's development and successful relocation was unlikely. One of these submissions encouraged the construction of a replica homestead. A further submission made comment on the report itself noting that it referred only to aspects of protection and relocation of the Homestead and buildings and did not endorse relocation.

Strategic and/or Regional Outcomes

The City of Bunbury Strategic Plan 2007-2012 states that *"the City of Bunbury will strive to protect Bunbury's unique natural environment and cultural and built heritage for the benefit of current and future generations."* Further, the proposal meets Strategy 5.1 *"Protect Bunbury's Natural, Cultural and Built Heritage"* of Strategic Objective No. 5 which is to *"Promote Ecological Sustainable Development of the City's Built and Natural Environment"*.

The recommendation seeks to ensure, as much as possible, the retention of the cultural heritage values of the Leschenault Homestead for current and future generations

Community Consultation

A Special Electors' Meeting was called pursuant to Section 5.28 of the Local Government Act on 11 April 2001. A motion was carried by a substantial majority of electors present to the effect that the Leschenault Homestead should be retained and conserved in its current location.

The Final Report of the Leschenault Homestead Planning Committee was advertised for a period of 42 days and the submissions received are the subject of this report.

Councillor/Officer Consultation

The issue has been discussed at officer level and was considered by the City of Bunbury Heritage Committee (attended by two Councillors) in April 2006. The Committee considered that, while retention and conservation of the Leschenault Homestead in its existing location was the preferred option, this was not practical given the Port Authority's intentions for the site. It was also agreed that the decision regarding the fate of the Homestead was largely out of Council's control.

The Final Report of the Leschenault Homestead Planning Committee has not been considered by the current Heritage Committee as it had been dissolved prior to the October 2007 Local Government elections and was not reconstituted until after the report was received and presented to Council. It should be noted however, that all members of the Committee have seen the report either in their capacity as members of the Committee, Councillors or interested members of the public.

Analysis of Financial and Budget Implications

There are no financial or budget implications for the City of Bunbury.

Economic, Social, Environmental and Heritage Issues

Economic, Social and Environmental Issues

The economic importance of the Port of Bunbury to the City and the Region is considerable and the future expansion of the Port as proposed by the Bunbury Port Inner Harbour Structure Plan is likely to have significant positive economic and social implications.

There are not considered to be significant economic, social or environmental implications related specifically to the relocation of the Leschenault Homestead.

Heritage Issues

The Leschenault Homestead is included on the City of Bunbury Municipal Inventory 2001 (Ref B046) and on the Heritage List pursuant to Town Planning Scheme No 7.

The Homestead also has interim listing on the State Register of Heritage Places (Place No 00344). The Heritage of Western Australia Act 1990 provides equal protection for places with interim and permanent listing.

Under the provisions of the Heritage of Western Australia Act 1990 the City of Bunbury is required to seek the advice of the Heritage Council of Western Australia with respect to the proposed development (including demolition/relocation) of a place on the Register of Heritage Places. Subsequent development of the place shall comply with the advice of the Heritage Council of Western Australia.

Council Policy Compliance

The Local Planning Policy "Heritage Conservation and Development Policy for Heritage Places" refers to the Burra Charter principles which include the following statement "the cultural significance of a place is embodied in its physical material (fabric), its setting and its contents; in its use; in the associated documents; and in its meaning to people through their use and associations with the place".

Under the provisions of the Local Planning Policy, demolition of a place would not usually be supported. However, it is considered that the heritage values of the Leschenault Homestead are likely to be significantly diminished by the encroaching port activity and by the significant increase in ground levels surrounding the Homestead. Further, public access to the Homestead will be virtually non-existent due to the security measures required by federal legislation which will require perimeter fencing of the Port (the Homestead's current location is within the perimeter fence). The proposed closure of Estuary Drive will result in the Homestead no longer being visible from the public domain.

As noted above, with respect to the development of places on the Register of Heritage Places, the City of Bunbury is required to refer proposals to the Heritage Council of Western Australia for assessment and advice and is further required to comply with the advice provided by the Heritage Council.

Legislative Compliance

All legislative requirements have been complied with.

Delegation of Authority

There is no delegated authority.

Relevant Precedents

Council's previous decisions with regard to the Leschenault Homestead are detailed above. There are no other relevant precedents.

Options

Option 1

Per the officer's recommendation listed in this report.

Option 2

"Council to advise the Leschenault Homestead Planning Committee, the Bunbury Port Authority and the Heritage Council of Western Australia that it does not support relocation of the Leschenault Homestead, its outbuildings and gardens, and; that it would encourage the Bunbury Port Authority to maintain, protect and conserve the Homestead in its current location."

Option 3

Council reiterate Council Decision 202/01 made on 15 May 2001, which states that:

Decision 202/01

- "a) Advise the Bunbury Port Authority and the Heritage Council for WA of its position in relation to the Leschenault Homestead as defined in Resolutions made at the Special Meeting of Electors on the 11 April 2001:
- i) The Bunbury City Council appeal to the Bunbury Port Authority to upgrade the Leschenault Homestead to its original condition and retain the building on its present site.

- ii) *The Bunbury City Council request the National Trust of Australia to assume ownership and responsibility for the ongoing maintenance of the Leschenault Homestead, cottages and grounds. "Should the National Trust of Australia not accept responsibility for the building and grounds of the Leschenault Homestead, then the Bunbury City Council request the Bunbury Port Authority to establish a Trust Fund to provide funding to maintain the building in perpetuity."*
- iii) *The Bunbury City Council lobby the Bunbury Port Authority and the Minister for Planning and Infrastructure, to undertake the preservation works (as requested) on the Leschenault Homestead.*
- b) *Acknowledge and endorse the following:-*

 - i) *The Bunbury Port Authority's option of relocation of Leschenault Homestead is unacceptable in terms of the City of Bunbury's Heritage Planning Policies.*
 - ii) *The Heritage of Western Australia Act should be complied with by the State Government in that it sets an example by which once a property is on the State Heritage List, it receives the force of the Act to protect it in its existing location."*

Conclusion

The heritage significance of the Leschenault Homestead (relating to the main house, cottages/outbuildings, water collection and storage structures and gardens) is widely acknowledged. The significance resides in the individual elements and more importantly, in the collection of elements. The Homestead's broader setting (including the surrounding farmland, bushland and riverine aspects) has also been identified as being an integral part of the cultural significance of the place.

The Bunbury Port Authority's Draft Bunbury Port Inner Harbour Structure Plan proposes extensive expansion of the port and its activities which will impact significantly on the Homestead and its curtilage. If the Leschenault Homestead is retained in its current location, its heritage values will be effectively lost to the public as it will necessarily be located within the perimeter security fence and will be at a level 3 to 4 metres lower than the proposed ground level. Any remaining views to the Homestead from the public domain will be lost with the closure of Estuary Drive and further losses to the farmland, bushland and riverine setting of the Homestead will occur due to encroaching port activity and development.

That a heritage place is best retained in its original location is acknowledged and the decision by the Leschenault Homestead Planning Committee to support the possible relocation of the Homestead was not taken easily or without serious consideration of potential alternatives and all possible options whilst, at the same time, seeking to balance the future needs of the Bunbury Port with the necessity of preserving the cultural heritage significance of the Homestead for future generations.

Support for relocation is subject to the Bunbury Port Authority's Draft Bunbury Port Inner Harbour Structure Plan being implemented to the extent that loss of heritage values associated with the Leschenault Homestead is inevitable.

The Heritage Council of Western Australia which, in 1992, included the Leschenault Homestead and its 1.2 hectare curtilage on its Register of Heritage Places, also supports the proposed relocation, subject to conditions, as did the City of Bunbury Heritage Committee in April 2006.

The preferred Glen Iris site will allow for a re-creation of the Homestead's original setting with farmland, bushland and riverine aspects (following re-alignment of the Preston River as indicated in the Draft Bunbury Port Inner Harbour Structure Plan). It will also be located on the main access way into Bunbury allowing for a high level of public exposure.

It is therefore considered that relocation of the Homestead and, wherever possible and feasible, its associated outbuildings, structures and garden to a location where the features of the original setting can be effectively re-established is the most appropriate means of achieving that balance between the future needs of the port and preserving the cultural heritage significance of the Leschenault Homestead.

Recommendation

Council to advise the Leschenault Homestead Planning Committee, the Bunbury Port Authority and the Heritage Council of Western Australia that:

1. The City of Bunbury endorses the Leschenault Homestead Planning Committee Final Report (December 2007).
2. The City of Bunbury supports the relocation of the Leschenault Homestead, its outbuildings, associated structures and gardens, subject to:
 - 2.1 The conditions required by the Heritage Council of Western Australia being complied with.
 - 2.2 The recommendations of the Leschenault Homestead Planning Committee;
 - 2.3 City of Bunbury planning issues associated with the proposed relocation site being resolved to the satisfaction of the City's Chief Executive Officer.

Outcome of the Council Committee Meeting - 1 April 2008

The Presiding Member invited the following public speakers to address the committee:

Mr Bernhard Bischoff, 15 Forster Street, Bunbury

Mr Bischoff expressed concern that the recommendation (as printed in the report) does not adequately relay to the Bunbury Port Authority that the City of Bunbury and the Bunbury community disagree with the Authority's proposal to relocate the Leschenault Homestead. Mr Bischoff stressed that some buildings cannot be relocated either due to their construction-type or original setting as they lose their integrity and essentially, become a poor example of the original. Mr Bischoff claims that early Australian structures that are intact are rare yet the Bunbury Port Authority has done nothing over the years to maintain or protect the homestead instead, the BPA set up a committee to liaise with the community with a specific goal to have the homestead relocated. Mr Bischoff requested that as the Bunbury Port Authority has only recently released its draft Inner Harbour Structure Plan for public comment, there is still time for the Council to request the BPA to set up a Co-location Committee to investigate whether there are any options for the homestead and the Port to co-exist.

Ms Judy Johnston, Bunbury Built Heritage Group

Ms Johnston urged members to value Bunbury's heritage. She stated that the Leschenault Homestead was in a good state of repair before the Bunbury Port Authority became responsible for the building and she has the photographic evidence to support this. Ms Johnston claims that the building (built in the 1840's) has suffered attack by termites in the past but this was controlled and has continued to be controlled to date. The Bunbury Port Authority appears to have done very little to preserve the building e.g., external timbers have not been painted, etc.. Wattle-and-daub is a very old building construction method and Ms Johnston warned that the various components of the building will simply break-apart if an attempt is made to remove them making it extremely difficult to relocate it. Ms Johnston claims that the Heritage Council of WA is going against its own charter by supporting relocation of the building and believes that if the building were situated on anything other than Port Authority land, the City (and the State) would be actively engaged in enforcing laws to conserve it.

An alternative to the printed recommendation was moved Cr Craddock, seconded Cr Dillon to become the motion under discussion as follows:

- "1. Council's decision on the Leschenault Homestead be deferred until advertising of the Bunbury Port Structure Plan has been completed and delivered to Council.*
- 2. The Bunbury Port Authority be requested to give a briefing to Council on the Bunbury Port Authority's reaction to any public submissions relating to the Leschenault Homestead received in relation to the Structure Plan."*

Following extensive discussion of this subject including an address by the Presiding Member (who is also a member of the Bunbury Port Authority Board), the Presiding Member put the motion to the vote and it was adopted *11 votes "for" to 2 votes "against"* to become the Committee's recommendation on this issue.

Committee Recommendation

1. Council's decision on the Leschenault Homestead be deferred until advertising of the Bunbury Port Structure Plan has been completed and delivered to Council.
2. The Bunbury Port Authority be requested to give a briefing to Council on the Bunbury Port Authority's reaction to any public submissions relating to the Leschenault Homestead received in relation to the Structure Plan.

AT THE COUNCIL MEETING

The Committee's recommendation was moved Cr Major, seconded Cr Craddock to become the motion under discussion.

During discussion, Cr Rooney moved, Cr Craddock seconded the following amendment:

- "3. *The Bunbury Port Authority be requested to:*
 - 3.1 *Provide to Council a copy of the Management Plan of the Leschenault Homestead commissioned by them and prepared by Kent Lyon earlier this year.*
 - 3.2 *Within one month provide to Council a proposed Schedule of Stabilisation and Maintenance Works on the Leschenault Homestead based on the Management Plan in agreement with the Heritage Council of WA, with the proposed schedule to include commencement and completion dates."*

The amendment was put to the vote and adopted *12 votes "for" to nil votes "against"*.

The motion (now amended) was put to the vote and adopted to become the Council's decision on this matter:

<p>Council Decision 60/08</p> <ol style="list-style-type: none">1. <i>Council's decision on the Leschenault Homestead be deferred until advertising of the Bunbury Port Structure Plan has been completed and delivered to Council.</i>2. <i>The Bunbury Port Authority be requested to give a briefing to Council on the Bunbury Port Authority's reaction to any public submissions relating to the Leschenault Homestead received in relation to the Structure Plan.</i>

3. *The Bunbury Port Authority be requested to:*

3.1 *Provide to Council a copy of the Management Plan of the Leschenault Homestead commissioned by them and prepared by Kent Lyon earlier this year.*

3.2 *Within one month provide to Council a proposed Schedule of Stabilisation and Maintenance Works on the Leschenault Homestead based on the Management Plan in agreement with the Heritage Council of WA, with the proposed schedule to include commencement and completion dates.*

CARRIED

12 Votes "For" / nil Votes "Against"

11.15 BUNBURY AIRPORT SITE NO. 22 - ASSIGNMENT OF LEASE NO. 114 FROM CRAIG GILL TO COLIN MULLIGAN

File Ref:	F00156
Applicant/Proponent:	Craig Gill and Colin Mulligan
Author:	John Beaton, Manager Administration & Property Services
Executive:	Ken Weary, Executive Manager Corporate Services

Summary

An application has been received from Mr Craig Gill (“the Lessee”) seeking Council’s consideration to assign the lease over Bunbury Airport Site No. 22 to Mr Colin Mulligan (“the Assignee”). The lease is due to expire on 30 June 2011.

It is the Assignee's intention to continue to use the site for the storage of aircraft. A site plan is **attached** for information at Appendix 1.

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 Fol. 583) for the purpose of an “Aerodrome” with the power to lease for a term of up to twenty-one (21) years.

The term of the existing lease over Bunbury Airport Site No. 22 was determined in accordance with the *Bunbury Airport Strategic Plan Directions 2000–2010* which require all leases at the airport to have corresponding expiry dates, terms and conditions.

Current Lease Details

Details in relation to the status of the property and the current lease are as follows:

Current Lease Commenced:	1 July 2001
Current Lessee:	Craig Gill
Term of Current Lease:	Five (5) years with a further five (5) year option
Expiry Date:	30 June 2011
Annual Rental:	\$322.46 per annum GST inclusive
Administration Fee:	\$35.78 per annum GST inclusive
Rent Review:	Lease fees adopted at the Council Meeting on 14 August 2007 are increased annually in line with the City's <i>Commercial and Industrial Rate</i> throughout the term of the lease. The administration fee is adjusted annually in accordance with the consumer price index.
Permitted Use:	Storage of aircraft
Lease Area:	12 metres by 11.6 metres (139.2 sq.m)

8 April 2008
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Outgoings:	To be the responsibility of the Lessee
Insurance Requirements:	The Lessee to maintain a Public Risk and General Insurance Policy over the land and buildings at Site No. 22, Bunbury Airport. The Public Risk component to be set at \$10(M).
Document Preparation:	The Lessee is responsible for the full costs of documentation registration and advertising

The City's Executive, the Assignor and Assignee have mutually agreed on the terms and conditions of assignment for the unexpired term of 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

The proposal provides opportunities to interested persons from the Greater Bunbury Region to use the Bunbury Airport.

Community Consultation

The proposal to grant the assignment 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 Assignor and Assignee and have mutually agreed on the terms and conditions of assignment of the unexpired term of the existing lease.

Analysis of Financial and Budget Implications

Lease fees were adopted at the Council Meeting held 14 August 2007 and are increased annually in line with Council's *Commercial and Industrial Rate* throughout the term.

Economic, Social, Environmental and Heritage Issues

Economic Issues

The use of aircraft provides economic benefits to suppliers.

Social Issues

The activity provides an avenue for like-minded enthusiasts to participate.

Environmental Issues

The application does 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 lease assignments.

Legislative Compliance

The intention to assign the 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.

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 assignment of lease document.

Relevant Precedents

Council currently leases thirty-two (32) hangar sites at the Bunbury Airport and regularly considers requests for new and assigned leases due to the growing demand for aircraft hangars.

Options

Option 1

Per the recommendation printed in this report.

Option 2

Council may elect not to support Mr Craig Gill's application to assign his lease for Bunbury Airport Site No. 22 (Reserve 27686, Lot 455 South Western Highway) to Mr Colin Mulligan.

Conclusion

The proposal for the Airport Site No. 22 lease to be assigned from Mr Craig Gill (the current lessee) to Mr Colin Mulligan, meets the following objectives.

- The City will meet its responsibilities for the management, care and control of Reserve 27686, Lot 455 South Western Highway, Bunbury for the benefit of an "Airport".
- The terms and conditions of the assignment have been mutually agreed to by the City's Executive, the Assignor and Assignee.

Recommendation

Council agrees to grant an Assignment of Lease over Bunbury Airport Site No. 22 (portion of Reserve 27686, Lot 455 South Western Highway) from the current lessee Mr Craig Gill to Mr Colin Mulligan subject to the terms and conditions (as specified in the report to Council) and the following:

1. The term of the assigned lease to be for the unexpired portion of the term of the lease to 30 June 2011.
2. Public notice of the intention to assign the 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. Approval for the assignment of lease to be received from the Minister for Lands.
4. Upon receipt of consent from the Minister for Lands (and subject to no objecting submissions having been received as a result of public advertising) the Chief Executive Officer is authorised to proceed with assignment of the Deed of Lease over Airport Site No. 22 from Mr Craig Gill to Mr Colin Mulligan.
5. All costs associated with the proposal to be the responsibility of the applicants.

Outcome of the Council Committee Meeting - 1 April 2008

Crs Worthington and Steck left the meeting briefly and were absent for the vote on this matter.

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

Committee Recommendation

Council agrees to grant an Assignment of Lease over Bunbury Airport Site No. 22 (portion of Reserve 27686, Lot 455 South Western Highway) from the current lessee Mr Craig Gill to Mr Colin Mulligan subject to the terms and conditions (as specified in the report to Council) and the following:

1. The term of the assigned lease to be for the unexpired portion of the term of the lease to 30 June 2011.
2. Public notice of the intention to assign the 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. Approval for the assignment of lease to be received from the Minister for Lands.
4. Upon receipt of consent from the Minister for Lands (and subject to no objecting submissions having been received as a result of public advertising) the Chief Executive Officer is authorised to proceed with assignment of the Deed of Lease over Airport Site No. 22 from Mr Craig Gill to Mr Colin Mulligan.
5. All costs associated with the proposal to be the responsibility of the applicants.

AT THE COUNCIL MEETING

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

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

Council Decision 61/08

Council agrees to grant an Assignment of Lease over Bunbury Airport Site No. 22 (portion of Reserve 27686, Lot 455 South Western Highway) from the current lessee Mr Craig Gill to Mr Colin Mulligan subject to the terms and conditions (as specified in the report to Council) and the following:

- 1. The term of the assigned lease to be for the unexpired portion of the term of the lease to 30 June 2011.*
- 2. Public notice of the intention to assign the 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. Approval for the assignment of lease to be received from the Minister for Lands.*
- 4. Upon receipt of consent from the Minister for Lands (and subject to no objecting submissions having been received as a result of public advertising) the Chief Executive Officer is authorised to proceed with assignment of the Deed of Lease over Airport Site No. 22 from Mr Craig Gill to Mr Colin Mulligan.*
- 5. All costs associated with the proposal to be the responsibility of the applicants.*

CARRIED

12 Votes "For" / Nil Votes "Against"

11.16 PROPOSED UNDERGROUND POWER PROJECT - WITHERS

File Ref:	R00567
Applicant/Proponent:	Internal Report
Author:	Myles Bovell, Senior Engineering Technical Officer; Ken Weary, Executive Manager Corporate Services & John Beaton, Manager Administration & Property Services
Executive:	Michael Scott, Executive Manager City Services

Summary

At the Council Meeting of 5 February 2008 a motion was adopted for;

Council Decision 13/08

1. *Council to prepare and issue a Community Survey to ratepayers in Withers seeking their support to have underground power installed in the precinct on the basis that each property owner pays one upfront payment for connection to the new underground grid:*
 - 1.1 *If the project is supported by the majority of ratepayers in Withers then it is proposed the details of the Community Survey be referred to Council for consideration and a final decision.*
 - 1.2 *If the project is not supported by the majority of ratepayers then Council Officers are to seek the Office of Energy's commitment to allocation of the \$10(M) funding source that has been set aside for the Withers project on a "street-by-street" basis so that those streets in Withers that are a high priority for replacement are attended to only at no cost to the City or its ratepayers.*
2. *The Office of Energy to be requested to provide written confirmation that it will provide project funding of \$10(M) toward the Withers Underground Power Project should the project receive majority support from ratepayers in Withers.*
3. *The results of the Community Survey to be referred to Council for further consideration.*

Background

During the week of Monday 25 February 2008, survey forms and an information brochure were posted to the 1,622 property owners within the catchment area of the Withers Underground Power Project proposal. Of this figure, 210 properties are owned by the Department for Housing and Works. Additional correspondence was posted to properties owners who held properties with a Gross Rental Value (GRV) greater than the figures stated in the brochure, to indicate a cost tailored to their individual situation. There were approximately 80 property owners whom fell into this category.

The property owners were given over two weeks to return their survey forms with a closing date of Friday 14 March 2008.

A copy of the Community Survey Information that was circulated to the property owners forms **Attachment 1** to the report circulated to members under separate cover. Western Power have advised that in order for Western Power to progress with the project, a positive response of 60% or more is required.

Strategic and/or Regional Outcomes

Replacement of the overhead power system in Withers with an underground power grid is not a component of the City Vision Strategy nor is there a specific strategic objective in the Strategic Plan 2007-2012.

The Withers Underground Power Project is not included in the Annual Budget for 2007/2008 or the Council's Five-Year Finance Plan to 2011/2012.

Community Consultation

As a result of Council Decision 13/08 a community survey was distributed to the 1,622 property owners within this project boundary. 600 surveys (including 210 from the Department of Housing and Works), were received by the advertised closing date which represents a 37% return from property owners (24% return from property owners excluding Department of Housing and Works). A summary of responses forms **Attachment 2** to the report circulated to members under separate cover.

Of the 37% response received, 63.7% voted Yes and 36.3% voted No. Excluding the Department of Housing and Works block vote, 43.5% of other residents voted Yes and 56.5% voted No.

The community survey forms were distributed during the week of Monday 25 February 2008, and the survey closing date was Friday 14 March 2008.

Notification from the Department of Housing and Works (DHW) that "the Department supports the underground power proposal for the suburb of Withers in principle, however any formal agreement will be subject to Government funding" was received on 13 March 2008. Further to this, the response from DHW states that, "for the Department of Housing and Works to contribute to the cost of the project, funding will be required from the government. At this point, the Department has not secured that funding. The Department will be making a submission as part of the budget process and we will advise you of the outcome in due course".

DHW have 210 properties within the Underground Power Project area (comprising 13% of the properties). The estimated up-front cost for DHW on these properties if the proposal was to proceed would be \$1,007,157.51. Discussions with Western Power have indicated that the “agreement in principle” received from DHW should be considered as a “YES” vote for the project. Council should understand that if the project proceeded and DHW failed to secure funding for their contribution the shortfall would be the City’s responsibility rather than Western Power’s or DHW’s. A copy of the agreement from DHW forms **Attachment 3** to the report circulated to members under separate cover.

A letter was received from Mr Geoff Prosser on behalf of Citigate Properties who own the Minnipup Forum Shopping Centre. This commercial property represents the largest property with the greatest GRV in the Withers catchment area. The anticipated upfront cost for this property is in the order of \$250,000 and correspondence received from the Citigate Properties Director on 14 March 2008 states their intention to strongly reject this claim. See **Attachment 4** to the report circulated to members under separate cover. Further consultation with Citigate Properties will be necessary if this proposal is to be approved.

Councillor/Officer Consultation

Executive Management has been consulted concerning this proposal. Council have also been consulted on this proposal at a Council Briefing on 4 December 2007, and the public consultation stage of this proposal was also tabled at the Council Meeting of 5 February 2008.

Analysis of Financial and Budget Implications

The Executive Manager Corporate Services has provided the following report:

Firstly, it is noted that, although the Department of Housing and Works had voted yes, should the State Government Treasury not provide their funding of \$1(M), this would become the City’s responsibility. This is not acceptable.

Within the Context of Council’s Five-Year Finance Plan

The Withers Underground Power Project (“WUPP”) is not included in the Annual Budget for 2007/2008 or Council’s Five-Year Finance Plan 2007/2008 to 2011/2012 and how this will affect Council’s future projects should be carefully weighed against the capacity for ratepayers to make underground power contribution repayments.

An analysis of the Council’s proposed \$5.6 million contribution to the WUPP could be construed as a cost-shifting exercise by the State Government whereby it seeks Local Government funds to pay for the upgrade of State Government infrastructure. The City’s Asset Coordinator has confirmed that the City of Bunbury has a shortfall on asset renewal requirements of \$1.7 million per annum. In fact, the \$1.7 million per annum additional asset renewal requirement will be listed for discussion when Council reviews its Five-Year Finance Plan in March 2008. It is therefore appropriate that the \$5.6 million contribution requested by the Office of Energy also be included in Council’s Five-Year Finance Plan and not be considered in isolation.

A financial contribution to the State Government's Office of Energy would compete with Council's funding of existing infrastructure requirements. In addition to Council's existing \$1.7 million shortfall per annum in respect to asset renewal, municipal funding in Withers for underground power needs to be compared against the other municipal infrastructure needs in the district including active/passive recreation facilities, improvements to playgrounds, parks and reserves, provision of playground equipment, cycleways and security lighting, etc.

An extract of Council's Five-Year Finance Plan is provided as **Attachment 5** in the report under separate cover. Although it identifies \$16.9 million of capital works expenditure in 2008/09 it does not fund the known \$1.7 million per annum shortfall in asset renewal. Council's funding sources are fully committed in achieving this works program. Further, other projects yet to be considered and which are not included in the Five-Year Finance Plan are provision of decked car parking in the CBD (\$8 million); implementation of Council's Recreation Plan for a multi-functional pavilion at Hay Park (\$1.5 million) and other projects to be determined following calling of submissions from Council and the Executive in the compilation of the Five-Year Finance Plan. Hence, any draw on Council revenues to fund the Office of Energy's infrastructure in Withers by way of providing underground power will compete with Council's previously determined Capital Works Programs.

Council's Capital Works Program for this year and the next 5 years totals \$72.8(M). The anticipated 2008/09 budget requirement includes:

Plant and Equipment	\$ 1,176,000
Drainage	\$ 525,000
Koombana Bay Jetty Contribution	\$ 3,500,000
Recreation	\$ 1,036,000
Library	\$ 3,800,000
Transport	\$ 4,024,000
New Depot	\$ 3,000,000
Total:	\$17,061,000

In addition, other items being considered by Council but not yet included in the Five-Year Finance Plan totalling \$31(M), are as follows:

Decked Car Parking	\$ 8,000,000
Recreation Plan	\$13,000,000
Withers Underground Power	\$ 5,600,000
Data Centre	\$ 400,000
Kerbside Parking Meters	\$ 1,500,000
Asset Management Plan (asset renewal per/annum)	\$ 1,700,000
Total:	\$30,200,000

Effect on Council's Debt Program and Contributing Property Owners

The WUPP would affect the City's Debt Management Program should Council elect to utilise borrowed funds for payment of its contribution to the project. The project will also require property owners within the project area to pay either a one-off payment of approximately \$3,000 or a \$250-\$290 annual payment over a 20-year period. This would equate to a 27% increase for an average Withers residential property over the repayment period.

If property owners were to make repayments over 20 years, Council's loan borrowing as at 30 June 2008 would increase from \$13.7(M) to \$19.3(M) and increase the Debt Service Ratio from 8.6% to 9.9%. Note: Council's target range in the Corporate Financial Plan is between 8-10%. Borrowing \$5.6(M) would move the Debt Service Ratio to the top of Council's target range and would limit the future borrowing capacity of Council.

Based on the above scenario, should Council wish to proceed with the Project, it is recommended that the Office of Energy provide Council's \$5.6(M) and Council only be responsible for making the annual contribution to reduce their debt over 20 years.

Ratepayer Repayment Options

Ratepayer Repayment Options	Cost to Average Residential Property *	Affect on Council
1) One-off Payment	\$2,952	No effect (Payment by Property Owner)
2) Repayment over a 20-year period	(a) \$287 per annum per residential property which equates to a 27% increase in Rates over the project area. (b) If charged over the whole of Bunbury: \$24 per residential property or 2% City Rate increase.	Council to borrow \$5.6(M) and recoup the cost of repayments through a Specified Area Rate over 20 years.

(* Note: The cost will vary according to the Gross Rental Valuation of the property as determined by Landgate Valuation Services. The range of property values and the amount payable is shown at Attachment 5 in the report under separate cover.)

Preferred Funding Option

The preferred funding option is that each property is invoiced upfront for the cost to install underground power within the Withers precinct. The average cost to the residential property being \$2,952 and additional substantial higher costs for commercial, retail or high density residential investment complexes in the precinct. Each individual property is costed as shown in **Attachment 6** to the report circulated to members under separate cover.

This is the preferred option, however, this is clearly not supported by the majority of Withers ratepayers.

Economic, Social, Environmental and Heritage Issues

Economic

Underground power is an attractive feature to home-buyers as it results in less black-outs (due to faults/tree branches) and increases the visual appeal of an area. Accordingly, it would not be unreasonable to anticipate that properties in Withers could increase in value should the project proceed.

Replacement of overhead power grids with underground systems broadly reduces the level of maintenance, repairs and fault-rectification associated with overhead power systems but it is unknown whether this will have any flow-on effect on employment in the region.

Social and Environmental Issues

Underground power is safer, improves security of the power supply and reduces the need for tree pruning. Other benefits include improved visual appeal and a reduction in the death of some native animals known to climb on power poles and electrical wires. Although these benefits would be appealing to many in Withers, property owners will be required to pay for connection to the new underground power grid at a substantial cost and as this precinct contains many lower income households and pensioners, it is likely this cost (whether paid direct by home-owners or absorbed through imposition of rental increases on tenants) could result in undue financial stress on those that can least afford it.

Heritage Issues

There are no known heritage issues to consider.

Council Policy Compliance

Council Policy CEO-6 "Infrastructure Asset Management" applies to the street-lighting upgrade component of the project only - a copy of the policy forms **Attachment 7** to the report circulated to members under separate cover.

Legislative Compliance

Section 6.37 of the Local Government Act 1995 permits a Council to impose a specified area rate on rateable land within portion of its district for the purpose of meeting the cost of the provision of services to those who will benefit from the supply of underground power.

Delegation of Authority

The Chief Executive Officer does not have the delegated authority to make a decision on this matter.

Relevant Precedents

Tree Street Underground Power Project

At its meeting on 1 August 2000, the Bunbury City Council decided to discontinue the Underground Power Project proposed for the Tree Street Precinct due to insufficient support for the project from residents. At that time, the precinct contained 2,050 rateable properties. The project was first proposed in 1995 when the total project cost would have been \$8.7(M). Of the total number surveyed only 37% returned the survey form and of these only 16% were in favour of the project.

Spencer Street Underground Power Project

At its meeting on 20 September 2005, the City decided to support a proposal for undergrounding of power on the western side of Blair Street (between Teede and Stirling Streets) and both sides of Spencer Street (between Stirling Street and Beach Road) provided sufficient ratepayer support was obtained.

The project was the subject of an Office of Energy Local Enhancement Project ("LEP") Level 4 application and the City of Bunbury was successful in obtaining Office of Energy support for the Spencer Street portion of the project on the basis that the State Government contributes \$250,000 of the estimated \$1(M) project cost. The balance of \$750,000 is to be provided out of City of Bunbury revenue sources either as a part contribution by the City and ratepayers or as a full-cost recovery cost to affected ratepayers. A preliminary survey of ratepayers proved inconclusive but a detailed survey is still required once options for financial implications and analysis have been prepared.

Options

Option 1

Per the recommendation printed in this report.

Option 2

Based on a Community response (excluding Government Department of Housing and Works) of 24% of which 56.5% rejected the proposal, Council proceed with the Underground Power Project at Withers with a combination of upfront payments for those who wish to pay upfront and the balance being charged by way of annual instalments over 20 years.

Option 3

Based on a Community response (excluding Government Department of Housing and Works) of 24% of which 56.5% rejected the proposal, Council proceed with the Underground Power Project at Withers and seek up-front payment.

Option 4

Based on a Community response (excluding Government Department of Housing and Works) of 24% of which 56.5% rejected the proposal, Council proceed with the Underground Power Project at Withers and seek payments from ratepayers via 20 years of instalments.

Conclusion

As a result of Council Decision 13/08 a community survey was distributed to the 1,622 property owners within this project boundary. 600 surveys (including 210 from the Department of Housing and Works), were received by the advertised closing date which represents a 37% return from property owners (24% return from property owners excluding Department of Housing and Works).

Of the 37% response received, 63.7% voted Yes and 36.3% voted No. Excluding the Department of Housing and Works block vote, 43.5% of other residents voted Yes and 56.5% voted No.

Although the Department of Housing and Works had voted yes, should the State Government Treasury not provide their funding of \$1(M), this would become the City's responsibility. This is not acceptable.

The Withers Underground Power Project ("WUPP") is not included in the Annual Budget for 2007/2008 or Council's Five-Year Finance Plan 2007/2008 to 2011/2012 and how this will affect Council's future projects should be carefully weighed against the capacity for ratepayers to make underground power contribution repayments.

The WUPP would affect the City's Debt Management Program should Council elect to utilise borrowed funds for payment of its contribution to the project. The project will also require property owners within the project area to pay either a one-off payment of approximately \$3,000 or a \$250-\$290 annual payment over a 20-year period. This would equate to a 27% increase for an average Withers residential property over the repayment period.

Recommendation

1. Based on a Community response (excluding Government Department of Housing and Works) of 24% of which 56.5% rejected the proposal, Council not proceed with the Underground Power Project at Withers.
2. The Office of Energy be requested to commit the funding allocation of \$10(M) that has been set aside for the Withers Project on a "street-by-street" basis so that those streets in Withers that are a high priority for replacement, are attended to only at no cost to the City or its ratepayers.

Outcome of the Council Committee Meeting - 1 April 2008

The Presiding Member indicated that the following representatives from Western Power were in attendance at the meeting to address committee members and respond to questions:

- Mr Tony Moore, Public Liaison Officer (Underground Power Program)
- Mr Justin Marshall, Acting Manager (Underground Power Program)
- Mr Vince Harding, Project Manager (Withers Power Project)

Mr Marshall indicated Western Power's surprise at the officer's recommendation (as printed) not to proceed with the underground power project in Withers. He stated that other local governments in the State are "lining up" for assistance with undergrounding power in their municipalities before pointing out that it was the City that had initially approached Western Power on this subject and out of 89 applications received for assistance with undergrounding of power; the Withers Project is one of only 7 that Western Power has decided to support. Mr Marshall stressed that if the Council ultimately decides not to proceed with the project, the significant amount of government funding that would have been made available for the project will be lost to Bunbury as Western Power will be forced to re-allocate it to one of the other local authorities that has made application. Mr Marshall urged members to re-consider this issue carefully especially in light of support received for the project from one of the major landholders in the Withers district being the Department for Housing and Works.

An alternative to the printed recommendation was moved Cr Dillon, seconded Cr Major as follows: *"This item be deferred to give Western Power and the City of Bunbury Executive time to discuss the matter and put together a formal proposal for consideration by Council."*

Following some discussion, the Presiding Member put the motion to the vote and it was adopted *11 votes "for" to 2 votes "against"* to become the Committee's recommendation on this issue.

Committee Recommendation

A decision on the Withers Underground Power Project be deferred to give Western Power and the City of Bunbury Executive time to discuss the matter and put together a formal proposal for consideration by Council.

AT THE COUNCIL MEETING

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

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

Council Decision 62/08

A decision on the Withers Underground Power Project be deferred to give Western Power and the City of Bunbury Executive time to discuss the matter and put together a formal proposal for consideration by Council.

CARRIED

12 Votes "For" / Nil Votes "Against"

**11.17 REPORT FROM RETAIL TRADING IMPLEMENTATION COMMITTEE -
OPTIONS FOR DEREGULATION OF RETAIL TRADING HOURS IN BUNBURY**

File Ref:	A03058
Applicant/Proponent:	Council's Retail Trading Implementation Committee
Author:	Trevor Ayers, Economic Development Officer
Executive:	Domenic Marzano, Executive Manager City Life

Summary

At Council's meeting of the 1 May 2007 it resolved to support deregulation of retail trading hours within the City of Bunbury to allow additional 7-day trading and created the Retail Trading Implementation Committee to work towards this on Council's behalf.

The Council's Retail Trading Implementation Committee has fulfilled the objectives of its terms of reference with the exception of the development of an *Implementation and Marketing Framework*. The implementation/marketing framework component may be actioned if a decision regarding the form of any amendment to trading hours is finalised and approved.

Options for deregulation of retail trading hours to support seven day trading in Bunbury were explored by the committee and these options were included in a Community and Business Survey to participants, as follows:

- Option A: Open on Sundays and public Holidays 52 weeks of the year (excluding Christmas Day, Easter Sunday and ANZAC Day).
- Option B: Open on Sundays during school holidays and long weekends (excluding Christmas Day, Easter Sunday and ANZAC Day).
- Option C: Open on Sundays during the summer season (December 1 to February 28) and school holidays (excluding Christmas Day).
- Option D: Open from the 1st day of December through to the Sunday before Easter each year.
- Option E: Open on one Sunday each quarter (once every 3 months).

In addition, in order to ensure the surveys were as objective as possible the following option was also included:

- Option F: No change to Bunbury's current retail trading hours.

The results from the survey are as follows (full survey reports were issued to councillors during the previous week):

	Community	All Business	Retail Business	Service Business
Option A	45.8%	33.9%	16.9%	47.5%
Option B	7.7%	5.4%	3.3%	7.7%
Option C	8.3%	7.1%	7.1%	8.3%
Option D	6.3%	2.5%	1.6%	4.4%
Option E	3.3%	3.2%	5.5%	2.8%
Option F	21.9%	38.6%	65.6%	29.3%
Question Unanswered	6.6%	9.3%	0%	0%

The results of the question “*What is your level of support for no change to Bunbury’s current retail trading hours?*” are tabled below:

	Community		All Businesses		Retail Businesses		Service Businesses	
Strongly Support	19.6%	27.2%	35.7%	46.6%	59.6%	68.1%	25.4%	33.5%
Support	7.6%		10.9%		8.5%		8.1%	
Unsure	6.4%		5.4%		4.3%		7.6%	
Not Support	15.8%	51.2%	13.4%	43.2%	6.9%	27.6%	18.4%	58.9%
Strongly Oppose	35.4%		29.8%		20.7%		40.5%	

Background

The potential deregulation of retail trading hours has been a recurring issue within the City of Bunbury. In 2004 Council requested that a study be undertaken into the trends and patterns affecting the City from an economic perspective (The Bunbury Urban Area: Retail Dynamics 2005, undertaken by SGS Economics). This information was supplemented by previous community and business attitudinal surveys undertaken by Council.

The issue of retail trading hours deregulation was considered again by Council following receipt of the SGS Economics report, however concern regarding the age of the previous community surveys (especially the “Shoppers Survey” which was completed in October 2000 resulted in the following decisions being made at the Council Meeting of 1 May 2007:

Council Decision 78/07

"Council supports deregulation of retail trading hours within the City of Bunbury to allow additional 7-day trading."

Council Decision 79/07

"A 7-day Retail Trading Implementation Committee be formed to oversee implementation of amendments to trading regulations within the City of Bunbury."

1. *Terms of reference for the committee are:*
 - 1.1 *Review options available;*
 - 1.2 *Develop an implementation and marketing framework;*
 - 1.3 *Consult with the Bunbury community and with all business groups and all retailers within Bunbury to determine the most appropriate regulatory framework for 7-day retail trading, by way of conducting:*
 - (a) *a statistically robust survey of targeted populations; and*
 - (b) *community engagement through randomly selected focus groups.*
 - 1.4 *Present options and outcomes to Council within 6 months.*
 - 1.5 *Ensure the requirements of the Act and DOCEP are met."*

Council Decision 80/07

"The following be appointed to the Retail Trading Implementation Committee:

1. *His Worship the Mayor, Mr David Smith, to be appointed as Chairman - this appointment to be verified at the first meeting of the committee in accordance with S.5.12(1) of the Local Government Act 1995 and the City's Standing Order 20.6.*
2. *Crs Dillon, Craddock and Rooney to be appointed as members."*

At the Council Meeting on 7 August 2007, the following community members were added to the committee:

"Membership of Council's Seven-Day Retail Trading Hours Implementation Committee be expanded to include the following community members:

*Allan Birrell
Vern Merchant
John Ventris
Mark Adams
Andrew Cooke
Mike Smith
Sean O'Connor"*

Community and business surveys were conducted in November 2007, and the survey reports were presented to the committee in February for their consideration.

Following the Council elections in the second half of 2007 the following councillors were appointed to the committee at the Council Meeting of 27 November 2007.

Mayor - Mr David Smith
Deputy Mayor - Councillor Stephen Craddock
Councillor Tom Dillon
Councillor Helen Punch
Councillor Shane Rooney

At the Council Meeting on 5 February 2008, the following community members were re-appointed to the committee:

Robert Allan Birrell - CEO of Bunbury Chamber of Commerce & Industries
Vernon Merchant - Asset Manager - Bunbury Forum Shopping Centre
John Ventris – Proprietor – Café Bean

This report is the culmination of this committee's work.

Strategic and/or Regional Outcomes

This item assists in meeting Strategy 6.2 in the *City of Bunbury Strategic Plan 2007-2012* as follows: *"Everyone in the community has the opportunity to actively participate in the public affairs and planning for the city"*.

Community Consultation

The committee has consisted of a number of community members as detailed above.

The Department of Consumer and Employment Protection has issued a guide to Non Metropolitan Local Government Extended Trading Hours Submissions (previously issued under memorandum dated 20 March 2008). This details the different sectors of the community that the department expects Council to have consulted with prior to lodging an application for an extension to retail trading hours.

In order to meet this, surveys of the general community and business sectors of Bunbury have also been undertaken. Local parliamentary representatives and business organisations have also been invited to make submissions regarding this issue (submissions received were previously circulated to Council Members under memorandum dated 20 March 2008).

It is important to note that the application requires that a list of organisations, groups or associations consulted along with summaries of any local trader and consumer surveys are included as part of the application.

Councillor/Officer Consultation

There are currently five Councillors (His Worship the Mayor and Crs Cradock, Rooney, Dillon and Punch) and the Executive Manager City Life on the committee, with the Executive Officer being Council's Economic Development Officer. In addition Michael Fraser undertook the survey work and attended several committee meetings in his research capacity.

Analysis of Financial and Budget Implications

There is no anticipated effect on Council's Annual Budget from this item.

Economic, Social, Environmental and Heritage Issues

There are no anticipated environmental and heritage issues arising from a change in retail trading hours.

Economic and Social issues are very much at the forefront of any decision made on this issue. The Bunbury Urban Area: Retail Dynamics report estimates that approximately \$18 million is likely to flow into the Bunbury-Wellington region from a change to include Sunday trading within the City of Bunbury. It also estimates that supermarkets and department stores alone are likely to benefit to the tune of \$25 million (when cash inflows from other areas within the region such as Eaton are taken into account).

Social issues are very much more difficult to model but many of the comments within each of the survey reports outline some of the related issues.

Council Policy Compliance

This item follows Council's policies regarding recommendations being made by Council Committee's.

Legislative Compliance

The *Retail Trading Hours Act 1987* and the *Guide to Making Permanent/Long Term Adjustments of Retail Trading Hours for Non-Metropolitan Local Government Authorities* have both been taken into account.

Delegation of Authority

The Chief Executive Officer does not have the delegated authority to act upon Council committee recommendations.

Relevant Precedents

Council has debated the issue of Sunday trading several times in recent years. Council also extends trading hours over the Christmas period each year as well as considering one-off applications from individual traders for special occasions.

Options

Option 1

Per the recommendation as printed in this report.

Option 2

Council supports the recommendation from its Retail Trading Implementation Committee, which states:

- "1. Council resolves that the City of Bunbury apply to the Department of Consumer and Employment Protection for Sunday trading 52 weeks of the year (between 10am and 4pm) to be approved within the boundaries of the City.*
- 2. The Council acknowledges that requirements in relation to retailers and parliamentary members have not been met but that the application be made none-the-less."*

Option 3

Council supports one of the other options (as listed in this report) for extending retail trading hours in Bunbury and forwards an application to the Minister for Employment Protection requesting this.

Option 4

The Bunbury City Council resolves not to proceed with the process of deregulating/extending retail trading hours in Bunbury.

Conclusion

The Bunbury community survey indicates a preference for trading on Sundays throughout the year with a majority preference for 10am opening and 4pm closing times. The business community is virtually split on the issue of whether to trade on Sunday's or not, however the business community also has a preference for 10am to 4pm trading times if Sunday trading was to be implemented.

When the two business segments that provided the majority of responses (retail and services) are taken in isolation the retail sector is strongly against any change while the service sector is strongly in favour of Sunday trading throughout the year. In the case of opening times both sectors also agreed on the 10am opening time, however while the service sector was in favour of the 4pm Sunday closing time the retail sector was marginally more in favour of an 'anytime' closing time, with the 4pm closing time a very close second.

It is important to understand that virtually any small local retail business is already able to open up to 24 hours a day 7 days a week. The only retail businesses that are restricted in their opening times are businesses that exceed one of the following criteria:

- More than 6 owners.
- More than 3 retail outlets.
- More than 10 people working at any one time.

It is also important to note that while Council can facilitate the process of extending retail trading hours, this only increases the hours at which shops are allowed to open if they wish to. Council's decision does not automatically mean all retail shops must open within the City of Bunbury on an extended basis. Anecdotal evidence suggests that it takes anywhere up to two years for a significant change within a retail environment to occur once an extension to trading hours is made.

Recommendation

1. An application be made to the Department of Consumer and Employment Protection for an extension of retail trading hours within the City of Bunbury to include trading on Sunday's from 10am to 4pm, 52 weeks a year (excluding Christmas Day, Easter Sunday and ANZAC Day).
2. A Sunday Trading *Implementation and Marketing Framework* be developed provided that the Department of Consumer and Employment Protection approves the application for extended trading hours.

Outcome of the Council Committee Meeting - 1 April 2008

Cr Craddock disclosed a financial/proximity interest as he is the owner of a business located in the Bunbury CBD. He was permitted to remain in the meeting room to take part in the discussion and the vote on this matter by the Committee.

Mr Allan Birrell, Bunbury Chamber of Commerce and Industry ("BCCI"), was invited to address the committee. Mr Birrell indicated that if the City proceeds with its proposal to apply for 7-day trading in Bunbury, the BCCI will have no option but to write a letter of objection to the Department of Consumer and Employment Protection which potentially, could prohibit any further applications being made for extended trading in Bunbury for a 12-month period.

Mr Birrell pointed out that the cost of opening a store on a Sunday for a small to medium-size business usually outweighs any financial gain and that the 7-day trading proposal will only benefit large out-of-town operators such as Woolworths and Coles allowing them to increase their market share in Bunbury even further at the cost of locally owned small business.

Option 4 (as printed) was moved Cr Slater and seconded Cr Craddock to become the motion under discussion, as follows:

"The Bunbury City Council resolves NOT to proceed with the process of deregulating/extending retail trading hours in Bunbury."

During the lengthy debate that followed some of the points raised were:

For the Motion

- People don't have to travel to Eaton/Busselton for a supermarket on a Sunday as the IGA store in Carey Park operates 7-days per week and there was an independent store operating 7-days per week at the Minninup Forum until a few years ago when it was bought-out by Woolworths and Woolworths closed it down on a Sunday.
- Large scale 7-day trading will detract from the social scene and community structure of Bunbury as the majority of people owning, working in or providing support to smaller size retail stores in Bunbury; will be unable to take part in local sporting events, family gatherings or community activities that are normally held on this day of the week.
- The BCCI claims that the majority of small to medium-sized business owners in Bunbury do not want 7-day trading in Bunbury.
- Under existing legislation, those small retail businesses that can reap a benefit from opening on a Sunday such as cafes, gift stores, delicatessens and smaller independent supermarkets, already have the opportunity to open on Sundays if they so wish.
- Shoppers only have a certain amount of money to spend each week so income to shops will not necessarily increase. However, a result may be that shops are forced to increase their prices to cover the additional costs of opening Sundays adding to the cost of living for Bunbury residents.

Against the Motion

- Not allowing 7-day trading in Bunbury will see a continuing migration of smaller businesses to shires surrounding Bunbury which do offer it, allowing those commercial centres to grow at the expense of Bunbury.
- The majority of respondents surveyed by the City of Bunbury support 7-day trading in Bunbury.
- 7-day trading adds vibrancy to a town which in turn, attracts tourists and visitors.

- What would we do without 24 hour petrol stations - can anyone remember what it was like having to find a roster on weekends and after hours? The introduction of 7-day trading will be the same - initially there will be teething problems and opposition but this will reduce over time.

Following debate, the Presiding Member put the motion to the vote and it was adopted 7 votes "for" to 6 votes "against" to become the Committee's recommendation on this issue.

Votes were recorded as follows:

For: Crs Whittle, Craddock, Leigh, Kelly, Jones, Worthington and Slater

Against: Mayor D Smith; Crs Major, Rooney, Dillon, Steck and Punch

Committee Recommendation

The Bunbury City Council resolves NOT to proceed with the process of deregulating/extending retail trading hours in Bunbury.

AT THE COUNCIL MEETING

Cr Craddock disclosed an interest-in-common as he is the owner of a business located in the Bunbury CBD. He had been given permission to remain in the meeting room to take part in the discussion and the vote on this matter by the Council earlier during the meeting (refer to item 7. of these minutes for details).

As the first point of discussion, it was noted that there may be a discrepancy should the Council adopt the Committee's recommendation not to proceed with deregulation of trading hours when Council's decision of 1 May 2007 (No. 78/07) clearly states that the Council does support deregulation. During discussion of this matter, a procedural motion was moved by Cr Worthington, seconded Cr Slater to have the matter "*referred back to Committee*" in order to allow the City's Executive more time to consider the best process to be followed should the Council elect to revoke Decision no. 78/07. The procedural motion was put to the vote but defeated 5 votes "for" to 7 votes "against".

An alternative to the Committee's recommendation was moved Cr Dillon, seconded Cr Steck. Following lengthy discussion concerning the methodology applied to the community survey results to determine that the majority of residents support 7-day trading in Bunbury; the motion was put to the vote and adopted to become the Council's decision on this matter:

Council Decision 63/08

Council resolves to:

1. *Make an application to the Department of Consumer and Employment Protection for an extension of retail trading hours within the City of Bunbury to include trading on Sunday's and public holidays from 10.00am to 4.00pm, 52 weeks a year (excluding Christmas Day, Good Friday, Easter Sunday and ANZAC Day).*
2. *Provided that the Department of Consumer and Employment Protection approves Council's application for extended trading hours, the new trading regulation to commence from 4 January 2009, for the purpose of:*
 - 2.1 *Providing retail traders sufficient time to implement strategies and management plans prior to the introduction of the new trading regulations.*
 - 2.2 *Enabling Council not to disband its Retail Trading Implementation Committee.*
 - 2.3 *Enabling a Sunday Trading Implementation and Marketing Framework to be developed by Council and associated expenditure (to be an amount no less than \$50,000) for the planning and implementation of this activity, to be referred to the Council's 2008/09 Financial Year Budget for consideration.*
 - 2.4 *Enabling comprehensive engagement with the community to ensure the role of Bunbury as the primary commercial, governance and entertainment centre for the South West Region.*

CARRIED

7 Votes "For" / 5 Votes "Against"

The votes were recorded as follows:

For: Mayor D Smith; Crs Major, Rooney, Steck, Punch, Dillon and Whittle

Against: Crs Slater, Worthington, Jones, Kelly and Craddock

12. MOTIONS (OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN)

12.1 MOTION ON NOTICE - PROPOSAL TO CLOSE ACCESS TO BRITTAIN ROAD FROM ECCLESTONE STREET AND BARR ROAD, CAREY PARK

File Ref:	A02051
Applicant/Proponent:	Councillor Judy Jones
Author:	Councillor Judy Jones
Executive:	<i>If adopted refer to:</i> Michael Scott, Executive Manager City Services

Cr Jones has submitted the following motion:

- "1. The Bunbury City Council to investigate (and provide a feasibility report) on a proposal to close Ecclestone Street and Barr Road at Brittain Road.*
- 2. The report be made available no later than 30 June 2008."*

Comments - Cr Jones

In support of her motion, Cr Jones states that:

- The current situation for residents of the Horse Stable Complex bounded by Ecclestone Street, Barr Road and Brittain Road is increasingly untenable and the potential for conflict between vehicles and horses remains high.
- The proposal for "blisters" to be constructed in Ecclestone Street/Barr Road will not guarantee reduced numbers of vehicles using these roads.
- The extension of Brittain Road through to Robertson Drive will have the potential to increase traffic using Ecclestone Street and Barr Road.

Executive Comments

The suggestion of closing Ecclestone Street at Brittain Road was considered in the original Traffic Study. The study concluded that this would not be supported from a traffic engineering perspective as it would result in the traffic volumes (then recorded at 3,500 vehicles per day) being re-distributed onto other local roads. Ecclestone Street is a major north-south road through Carey Park and closure of this road would force vehicles onto more minor roads within Carey Park such as Hands Avenue. It is unlikely that this would be welcome by other parts of the Carey Park community. Ecclestone Street is identified in the *City of Bunbury 2030 Transport Vision* as a Local Distributor Road hence, it is important that through-traffic movement is maintained along Ecclestone Street. The current road width along Ecclestone Street is adequate as a Local Distributor Road.

The suggestion of closing Barr Road at one end was not discussed in the original traffic study but it would effectively result in more traffic being shifted onto Ecclestone Street. The closure of Barr Road would be less of an issue in terms of the effect on the overall road network in Carey Park but Engineering Services believes there may be some opposition to the closure of Barr Road amongst Barr Road residents.

The use of blister islands as is recommended in the traffic study, is designed to lower vehicle speeds to the range of 30-40km/h. This is achieved by the design radius that are utilised in the proposed blister islands. Engineering believe that this proposed measure would adequately reduce the speed of vehicles along both Barr Road and Ecclestone Street. Engineering Services Officers would monitor the speeds along these roads once the blister islands were installed and if there was still a concern with high traffic speeds then additional measures such as speed cushions on the approach and departure side of the blister islands would further ensure that vehicles had to slow down to negotiate these traffic calming measures. Engineering Officers believe that the blister islands proposed in the traffic study would be effective and that closure of Barr Road or Ecclestone Street is unwarranted.

The purpose of the Brittain Road Traffic Calming Project is to deter through-traffic from using Brittain Road in lieu of Robertson Drive. Engineering Officers have put a request to Main Roads WA for a section of Brittain Road to be reduced to a 50km/h limit and if this request is successful, the speed reduction coupled with the traffic calming measures should ensure that the traffic volumes along Brittain Road do not increase substantially above the standard predicted traffic growth.

AT THE COUNCIL MEETING

The motion on notice was moved Cr Jones, seconded Cr Dillon with a change to add the words "*to Council*" after the words "*made available*" in point 2. of the motion.

After some discussion, the Mayor put the motion (as amended) to the vote and it was adopted to become a Council Decision.

Council Decision 64/08

- 1. *The Bunbury City Council to investigate (and provide a feasibility report) on a proposal to close Ecclestone Street and Barr Road at Brittain Road.***
- 2. *The report be made available to Council no later than 30 June 2008.***

CARRIED

12 Votes "For" / Nil Votes "Against"

12.2 MOTION ON NOTICE - PROPOSAL FOR DEPUTY MAYOR TO PRESIDE AT MEETINGS OF THE COUNCIL (STANDING) COMMITTEE

File Ref:	A00410
Applicant/Proponent:	Councillor Michelle Steck
Author:	Councillor Michelle Steck
Executive:	<i>If adopted refer to:</i> Greg Trevaskis, Chief Executive Officer

Cr Steck has given written notice that she intends to the move the following Motion:

"Council endorses the Deputy Mayor to preside at meetings of the Council (Standing) Committee."

In support of her motion, Cr Steck makes the following comment:

"This will streamline the meeting process and alleviate some of the workload currently being borne by His Worship the Mayor as well as provide an opportunity for the Deputy Mayor to further develop his skills."

Executive Comment

Nil.

AT THE COUNCIL MEETING

It was noted that pursuant to Section 5.12 of the Local Government Act 1995, the Council does not have jurisdiction to appoint the Presiding Member of one of its committees.

An alternative to the motion-on-notice was moved Cr Steck, seconded Cr Dillon. The Mayor put the motion to the vote and it was adopted to become a Council Decision.

Council Decision 65/08

The proposal for the Deputy Mayor to preside at meetings of the Council Committee be referred to Council's Meeting Review Working Group for consideration and a report.

CARRIED

12 Votes "For" / Nil Votes "Against"

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

Nil.

14. ITEMS TO BE NOTED (NO DISCUSSION)

There were no new items for noting.

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

The following procedural motion was moved by Cr Dillon, seconded by Cr Craddock and adopted by the Council, following which members of the public, press and staff in attendance were asked to leave the meeting so that item 15.1 on the meeting agenda could be discussed in private.

Council Decision 66/08

The Council Meeting exclude members of the public to permit Confidential Business (as defined by the Local Government Act 1995) to be discussed.

CARRIED

12 Votes "For" / Nil Votes "Against"

15.1 2006/07 ANNUAL PERFORMANCE APPRAISAL - CHIEF EXECUTIVE OFFICER

File Ref:	A01984
Applicant/Proponent:	CEO Annual Performance Review Panel
Author:	His Worship the Mayor - Mr David Smith
Executive:	Greg Trevaskis, Chief Executive Officer

Background

Following its meeting on 14 March 2008, the CEO Annual Performance Review Panel finalised the Annual Performance Appraisal for the CEO for the 2006/07 year. The Panel's report has been circulated to members as a Confidential Report.

Recommendation *(from the CEO Performance Review Panel)*

1. The report from the CEO Performance Review Panel 2006/07, be received and the recommendations contained therein approved.
2. A CEO Performance Review Panel 2007/08 be appointed with the Mayor, Deputy Mayor, Cr _____ and Cr _____ appointed as members.

AT THE COUNCIL MEETING

An alternative to the CEO Performance Review Panel's recommendation was moved Cr Dillon, seconded Cr Craddock and adopted to become the Council's decision.

Council Decision 67/08

1. *The report from the CEO Performance Review Panel 2006/07, be noted and received.*
2. *Council approves the implied recommendations (as contained in the CEO Performance Review Panel 2006/07 report) including those matters relating to salary adjustment and performance criteria for 2007/08.*
3. *The 2007/08 CEO Performance Review be undertaken no later than 1 August 2008 and conclude prior to 1 October 2008.*
4. *The CEO Performance Review Panel for 2007/08 consist of His Worship the Mayor - Mr D Smith; the Deputy Mayor - Cr S Craddock, and; Crs L Worthington and M Steck.*

CARRIED

11 Votes "For" / 1 Vote "Against"
Absolute Majority Vote Attained

The following procedural motion was moved by Cr Dillon, seconded by Cr Craddock and adopted by the Council.

Council Decision 68/08

Members of the public, press and staff members be invited to rejoin the Council Meeting.

CARRIED

12 Votes "For" / Nil Votes "Against"

16. CLOSE OF MEETING

The Mayor declared the meeting closed at 10.45pm.

CONFIRMED this day 13 May 2008 to be a true and correct record of proceedings of the Bunbury City Council Meeting held 8 April 2008.

MR DAVID SMITH
MAYOR