



— City of —
Melville

MINUTES

OF THE

ORDINARY MEETING OF THE COUNCIL

HELD ON

17 MARCH 2009

AT 6.30 PM IN THE COUNCIL CHAMBERS

MELVILLE CIVIC CENTRE

10 ALMONDBURY ROAD, BOORAGOON

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— City of —
Melville

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MINUTES OF THE ORDINARY MEETING OF THE COUNCIL HELD IN THE COUNCIL CHAMBERS, MELVILLE CIVIC CENTRE, 10 ALMONDBURY ROAD, BOORAGOON, COMMENCING AT 6.30PM ON TUESDAY 17 MARCH 2009.

1. OFFICIAL OPENING

The Presiding Member welcomed those in attendance to the meeting and declared the meeting open at 6:30 pm. Mr J Clark the Governance and Compliance Program Manager read aloud the Disclaimer and the His Worship the Mayor, Russell Aubrey, read aloud the Affirmation of Civic Duty and Responsibility.

Affirmation of Civic Duty and Responsibility

I make this Affirmation in good faith on behalf of Elected Members and Officers of the City of Melville. We collectively declare that we will duly, faithfully, honestly, and with integrity fulfil the duties of our respective office and positions for all the people in the district according to the best of our judgement and ability. We will observe the City's Code of Conduct and Standing Orders to ensure the efficient, effective and orderly decision making within this forum.

2. PRESENT

His Worship the Mayor, Russell Aubrey

COUNCILLORS

Cr P M Phelan (Deputy Mayor)
Cr H Everett, Cr N Pazolli
Cr D Macphail, Cr T Ceniviva
Cr R Subramaniam, Cr C W Robartson
Cr C M Halton (From 6.35pm)
Cr J M Barton, Cr G Wieland
Cr L M Reynolds, Cr J Bennett

WARD

Palmyra/Melville/Willagee
Applecross/Mount Pleasant
City
Bull Creek/Leeming
Palmyra/Melville/Willagee
Bicton/Attadale
University Ward

3. IN ATTENDANCE

POSITION TITLE

Dr S Silcox	Chief Executive Officer
Mr M Tieleman	Director Corporate Services
Ms K Johnson	Acting Director Urban Planning
Mr J Christie	Director Technical Services
Ms C Young	Director Strategic Community Development
Mr D Vinicombe	Manager Planning & Development Services
Mr B Taylor	Manager Information, Technology & Support
Mr J Clark	Governance & Compliance Program Manager
Ms C Rourke	Minute Secretary

At the commencement of the Meeting there were 10 members of the public in the public Gallery and 2 members of the Press in the Press Gallery.

**4. ANNOUNCEMENTS BY THE PRESIDING MEMBER (WITHOUT DISCUSSION)
AND DECLARATIONS BY MEMBER**

**4.1 DECLARATIONS BY MEMBERS WHO HAVE NOT READ AND GIVEN
DUE CONSIDERATION TO ALL MATTERS CONTAINED IN THE
BUSINESS PAPERS PRESENTED BEFORE THE MEETING.**

Nil

**4.2 DECLARATIONS BY MEMBERS WHO HAVE RECEIVED AND NOT READ
THE ELECTED MEMBERS BULLETIN.**

Nil

5. APOLOGIES AND APPROVED LEAVE OF ABSENCE

5.1 APPROVED LEAVE OF ABSENCE

Nil

5.2 APOLOGIES

Nil

6. QUESTION TIME

6.1 Ms M Clarke, Leeming

His Worship the Mayor advised that the 4 questions relating to the operations of the South Metropolitan Regional Council Regional Resource Recovery Centre. As Ms Clarke was not in attendance at the meeting the questions submitted would be taken on notice and a written response would be sent to Ms Clarke. The questions and answers would also be included in the April 2009 Ordinary Meeting agenda and minutes

6.2 Mr A McLeod, Leeming

Mr McLeod's questions included preamble and comment on previous answers given to questions which were submitted at the February 2009 Ordinary Meeting of Council relating to the future of the Leeming Recreation Centre.

His Worship the Mayor responded to Mr McLeod's questions.

Question 1

"In the light of the above (preamble) will the Mayor reconsider his answer?"

Extensive consultation did occur throughout the development of the options. This happened prior to the review of the options which occurred after initial proposed costings of the redevelopment had escalated significantly.

Question 2

"What sections of the 73 page "Options" document were so commercially or otherwise sensitive that it was made confidential until the Dec 2008 Council meeting?"

Work had commenced on the early design work for the redevelopment when cost escalations were revealed. Officers worked quickly to review the original options that were initially presented for consideration over two years ago. It was believed that adequate consultation had occurred during this process. It was a draft report until presented to Council for endorsement and this followed common Council practices.

Question 3

"On what date was the "Options" document, used as the basis for consideration of the future of the LRC at the December 2008 meeting, issued to Councillors?"

Due to costing forecasts that showed a dramatic increase in redevelopment costs Officers were requested to review the options that had initially been developed for the Centre. The "Options" review was presented to Councillors in accordance with the usual time lines for a Council meeting.

6. QUESTION TIME CONTINUED.

Question 4

“What is the correct subsidy per head for MAFC and MRC and does Council intend to correct the minutes if these figures are incorrect?”

The subsidy amounts quoted are based on operating costs and do not include Building depreciation. The figures that were quoted at the February Council meeting are correct as they are based on actual end of year figures. Those quoted by Mr McLeod are estimates taken from the budget paper prior to years end.

The estimated actual figure of \$412,960 quoted from the 2008/2009 budget paper includes building depreciation estimate of \$321,126. If you were to use these estimated figures with the average yearly attendances of around 550,000 the subsidy per attendance is \$0.18 excluding building depreciation and \$0.75 per attendance including building depreciation.

For comparison the 2008/2009 budget paper actual estimate for Leeming Recreation Centre is \$1,096,547 results in an estimate subsidy per attendance of \$4.55 (including building depreciation).

Please note though that the 2008/2009 budget paper quoted contained only actual estimates and were not the actual year end financial position, which were used in the response to question 5 at the February 2009 Council meeting.

Question 5

“Is Council now prepared to reinstate the LRC Advisory in accordance with the Agreement with the Education and Training Dept to advise on the rundown of the LRC and will Council consult with residents either through the LRC Advisory Committee or in some other inclusive way, prior to seeking expressions of interest by private operators for the LRC?”

As previously noted the Leeming Recreation Centre Advisory committee was instigated to manage the agreement between the Department of Education and Training (DET) and the Council. During the history of the Advisory Committee nominations were difficult to recruit from the community.

Other Advisory Committees do have wider memberships dictated by their purpose. Due to the purpose of this Committee the membership was not as wide ranging. The Committee was primarily involved in operational issues concerning the shared joint use agreement with the DET - hence the importance of staff having involvement concerning operational matters with the DET.

Council is currently considering consultative processes regarding a possible tendering process once the expression of interest phase has been completed.

6. QUESTION TIME CONTINUED.

6.3 Mr & Mrs Darren Williams, Bicton

Question 1

“Is Council aware that our current neighbours to our right and left and opposite have written and signed declarations stating they do not have an issue with our home business and parking of our vehicles?”

The Mayor advised that Elected Members were aware of this.

Question 2

“Is council aware Mr & Mrs Reader no longer live in First Street and have not done so for two months?”

The Mayor answered by advising again that if Council were not aware of this they are now aware.

Question 3

“With reference to my utility vehicles parked over my boundary line, but still being contained within my driveway, whatever decision is made tonight – I trust it will be in unison with boat owners, caravan owners and other domestic and commercial vehicles owners in the City of Melville getting the same treatment that I received from Council this evening.”

The Mayor advised that the above statement made by Mr D Williams was noted.

7. AWARDS AND PRESENTATIONS

His Worship the Mayor presented the Customer Service Institute of Australia Accreditation certificate to Mr M Tieleman, Director Corporate Services. Mr M Tieleman acknowledged Mr P Lenghaus, Customer Service Coordinator, for his efforts in achieving the award. His Worship the Mayor also acknowledged all staff at the City of Melville for their efforts which contributed to the City receiving the award.

8. CONFIRMATION OF MINUTES

8.1 ORDINARY MEETING OF COUNCIL – 10 FEBRUARY 2009
[Min 10Feb 2009.pdf](#)

OFFICER RECOMMENDATION & COUNCIL RESOLUTION

At 6.51pm Cr Macphail moved, seconded Cr Halton -

THAT THE MINUTES OF THE ORDINARY MEETING OF COUNCIL HELD ON TUESDAY, 10 FEBRUARY 2009, BE CONFIRMED AS A TRUE AND ACCURATE RECORD.

At 6.51pm the Mayor submitted the motion, which was declared

CARRIED (13/0)

8.2 NOTES OF AGENDA BRIEFING FORUM – 3 MARCH 2009
[Notes 3Mar 2009.pdf](#)

OFFICER RECOMMENDATION & COUNCIL RESOLUTION

At 6.51pm Cr Macphail moved, seconded Cr Pazolli -

THAT THE NOTES OF AGENDA BRIEFING FORUM HELD ON TUESDAY, 3 MARCH 2009, BE RECEIVED.

At 6.51pm the Mayor submitted the motion, which was declared

CARRIED (13/0)

8.3 FINANCIAL MANAGEMENT, AUDIT, RISK & COMPLIANCE COMMITTEE MEETING – 24 FEBRUARY 2009

OFFICER RECOMMENDATION & COUNCIL RESOLUTION

At 6.51pm Cr Ceniviva moved, seconded Cr Robartson -

THAT THE MINUTES OF THE FINANCIAL MANAGEMENT, AUDIT, RISK & COMPLIANCE COMMITTEE MEETING HELD ON 24 FEBRUARY 2009 BE NOTED.

NB: MINUTES TO BE CONFIRMED AT NEXT MEETING OF THE FINANCIAL MANAGEMENT, AUDIT, RISK & COMPLIANCE COMMITTEE.

At 6.51pm the Mayor submitted the motion, which was declared

CARRIED (13/0)

9. DECLARATIONS OF INTEREST

- P09/3064 His Worship the Mayor – R Aubrey
- P09/3064 Deputy Mayor - Cr P Phelan

10. APPLICATIONS FOR NEW LEAVE OF ABSENCE

Nil

11. IDENTIFICATION OF MATTERS FOR WHICH MEETING MAY BE CLOSED

Nil

12. IDENTIFICATION OF MATTERS FOR WHICH MEETING MAY BE CLOSED

Nil

13. PETITIONS

Nil

14. REPORTS OF COMMITTEES

14.1 FINANCIAL MANAGEMENT, AUDIT, RISK & COMPLIANCE COMMITTEE MEETING – 24 FEBRUARY 2009.

14.1.1 ITEMS FOR NOTING

C09/5048 – Insurance Claims Management Report

**OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION (5051)
NOTED**

At 6.51pm Cr Barton moved, seconded Cr Phelan –

THAT ITEM C09/5048 BE NOTED.

At 6.51pm the Mayor submitted the motion, which was declared

CARRIED (13/0)

14.1.2 ITEM REQUIRING COUNCIL RESOLUTION

C09/5051 – Compliance Audit Return 2008

**OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION (5051)
APPROVAL**

At 6.52pm Cr Ceniviva moved, seconded Cr Robartson -

**THAT THE COMPLIANCE AUDIT RETURN FOR THE PERIOD 1 JANUARY
2008 TO 31 DECEMBER 2008 BE ADOPTED AND FORWARDED TO THE
DEPARTMENT OF LOCAL GOVERNMENT AND REGIONAL
DEVELOPMENT FOLLOWING CERTIFICATION BY HIS WORSHIP THE
MAYOR AND THE CHIEF EXECUTIVE OFFICER.**

At 6.52pm the Mayor submitted the motion, which was declared

CARRIED (13/0)

C09/6019 – Mid Year Budget Review

**OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION (6005)
ABSOLUTE MAJORITY**

At 6.53pm Cr Ceniviva moved, seconded Cr Subramaniam -

- 1. THAT BY ABSOLUTE MAJORITY DECISION THE BUDGET REVIEW
BASED ON THE SEVEN MONTHS ENDED 31 JANUARY 2009, AS
DETAILED IN ATTACHMENTS [6019A FEB 09](#) BE ADOPTED.**

14.1.2 ITEM REQUIRING COUNCIL RESOLUTION CONTINUED.

- 2. THAT BY ABSOLUTE MAJORITY DECISION AN AMOUNT OF \$1.5M OF THE FORECAST POSITIVE VARIANCE BE USED TO REDUCE THE AMOUNT REQUIRED TO BE RAISED FROM RATES IN THE 2009/2010 BUDGET.**
- 3. THAT BY ABSOLUTE MAJORITY DECISION THE BUDGET AMENDMENTS DETAILED ON [6019A FEB 09](#) BE ADOPTED.**
- 4. THAT BY ABSOLUTE MAJORITY DECISION ANY REMAINING POSITIVE VARIANCES TO BUDGET AT YEAR END BE TRANSFERRED TO THE RISK MANAGEMENT RESERVE TO MITIGATE AGAINST ANY POTENTIAL LOSSES FROM INVESTMENTS.**

At 6.53pm the Mayor submitted the motion, which was declared

CARRIED BY ABSOLUTE MAJORITY (13/0)

C09/6020 – Review of Accounting Policy

**OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION (6020)
APPROVAL**

At 6.53pm Cr Ceniviva moved, seconded Cr Macphail -

THAT THE ATTACHED REVISED ACCOUNTING POLICY 13-PL-007 WHICH PROVIDES THAT LAND UNDER ROADS ACQUIRED PRIOR TO 1 JULY 2008 NOT BE RECOGNISED AS AN ASSET OF COUNCIL, REDUCES THE ASSET CAPITALISATION THRESHOLD FROM \$2,000 TO \$1,000 AND ADDS SOME FURTHER ASSET CATEGORIES/CLASSES BE ADOPTED.

At 6.53pm the Mayor submitted the motion, which was declared

CARRIED (13/0)

C09/6021 – Short Term Borrowing Facility

**OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION (6021)
APPROVAL**

At 6.54pm Cr Ceniviva moved, seconded Cr Macphail -

THAT A PROPOSAL TO IMPLEMENT A SHORT TERM BORROWING FACILITY OF UP TO 5 MILLION DOLLARS BE INCLUDED IN THE 2009/2010 AND FUTURE YEAR'S BUDGETS.

At 6.54pm the Mayor submitted the motion, which was declared

CARRIED (13/0)

15. REPORTS OF THE CHIEF EXECUTIVE OFFICER

The Presiding Member advised Elected Members that when dealing with the following Reports they act in their Quasi-Judicial capacity which means that they are performing functions which involve the exercise of discretion and require a part of the decision making process be conducted in a Judicial Manner. The judicial character arises from the obligation to abide by the principles of natural justice. This on it's part requires the application of the relevant facts to the appropriate statutory regime.

P09/3058 - TWO STOREY SINGLE HOUSE ON LOT 60 (7B) BRAUNTON STREET, BICTON (SMREC) (ATTACHMENT)

Ward : Bicton/Attadale Ward
 Category : Operational
 Application Number : DA-2008-1433
 Property : 7B Braunton Street, BICTON
 Proposal : Two Storey Rear Dwelling
 Applicant : Mr B D Stevenson
 Owner : Mr B D Stevenson and Mrs K A Stevenson
 Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.
 Responsible Officer : Mr David Vinicombe
 Manager Planning and Development Services
 Previous Items : Nil

AUTHORITY / DISCRETION

DEFINITION

<input type="checkbox"/>	Advocacy	<i>when Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input type="checkbox"/>	Executive	<i>the substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
<input type="checkbox"/>	Legislative	<i>includes adopting local laws, town planning schemes & policies.</i>
<input type="checkbox"/>	Review	<i>when Council review decisions made by Officers.</i>
<input checked="" type="checkbox"/>	Quasi-Judicial	<i>when Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>

**P09/3058 - TWO STOREY SINGLE HOUSE ON LOT 60 (7B) BRAUNTON STREET,
BICTON (SMREC) (ATTACHMENT)****KEY ISSUES / SUMMARY**

- The application is for a two storey single house.
- The lot is located within the CPS No 5 Bicton 4 Precinct which contains additional provisions for development on battleaxe lots.
- The application generally complies with the Residential Design Codes.
- The application does not comply with the Bicton 4 Precinct battleaxe lot development provisions and requires a Special Majority decision of the Council to allow the variations.
- The application is recommended for approval.

BACKGROUND

Council resolved on 17 July 2007 to approve a similar development in Kitchener Road Melville which also involved variations to the battleaxe lot development requirements. In addition to approving the development, Council resolved to request that officers of the Council prepare a draft policy to relax the battleaxe requirements of CPS No 5 where proposed development is consistent with the requirements of the R-Codes. This decision was reached as any concerns relating to the development of battleaxe lots were considered to be adequately addressed by the provisions of the R Codes. Furthermore the battleaxe lot requirements of CPS No 5 do not apply to the development of rear strata lots where grouped dwellings (as opposed to single dwellings), are proposed. This anomaly means that the impact of the battleaxe lot requirements of CPS No 5 in regulating and guiding the development of rear blocks is reduced, inequitable and inconsistent.

The issue was presented to Council at an Elected Members Workshop October 2008 where the preparation of the Policy was discussed. It was considered that given the low number of applications received which sought a variation to the battleaxe lot requirements, that Council would continue to determine them based on their merits as and when applications are received. With this in mind the following property is before Council for consideration.

Scheme Provisions

MRS Zoning	: Urban
CPS 5 Zoning	: Living Area Precinct – BC4
R-Code	: R12.5/17.5
Use Type	: Residential
Use Class	: Permitted

Site Details

Lot Area	: 557 sqm
Retention of Existing Vegetation	: N/A – vacant site
Street Tree(s)	: Not affected – Using existing driveway
Street Furniture (drainage pits etc)	: Not affected – Using existing driveway
Site Details	: 3058 Property Map.pdf

[3058 February 2009.pdf](#) - A copy of the plans forms part of the Attachments to the Agenda, which were distributed to Members of the Council on Friday 27 February 2009

**P09/3058 - TWO STOREY SINGLE HOUSE ON LOT 60 (7B) BRAUNTON STREET,
BICTON (SMREC) (ATTACHMENT)**

DETAIL

Development Requirements

Development Requirement	Required/ Allowed	Proposed	Comments	Delegation to approve variation	Plan Notation
Open Space	50% (278.5sqm)	65.7% (366sqm)	Complies		
Building Height	8m to eaves 10.5m max.	6m to eaves 9m max.	Complies		
Carparking	2 bays (1 covered)	2 bays (2 covered)	Complies		
Retaining Walls and Fill	0.6m in accordance with CPS5	Up to 1m on southern boundary	Does not comply	MPDS	
Overlooking from Upper Floor dining room looking north	6m setback or privacy screening	One obscure glazed opening window, one window screened via vegetative screening	Condition obscure glazed window to comply with the R-Codes. Condition vegetation to comply with R-Codes.		
Overlooking from balcony looking north	7.5m setback or privacy screening	Privacy screening (Vegetative)	Condition compliance with R-Codes		
Overlooking from balcony looking west	7.5m setback or privacy screening	7.5m setback	Complies		
Overlooking from balcony looking south	7.5m setback or privacy screening	Privacy screening (Vegetative)	Condition compliance with R-Codes		
Overlooking from Upper Floor study looking south	4.5m setback or privacy screening	Obscure glazed opening window	Condition obscure glazed window to comply with the R-Codes.		

(Note: Non compliance is emphasised in bold)

Setbacks

Wall	Required	Proposed	Comments	Delegation to approve Variation	Plan Notation
Side (north)	4m	2m	Does not comply	Council	
Side (south)	4m	1.5m	Does not comply	Council	
Side (east)	4m	2.9m	Does not comply	Council	
Rear (west)	4m	7.5m	Complies		

Note: Setbacks comply with Residential Design Codes. The setback requirements shown above are the requirements provided in Part 4 of CPS5 for the second storey.

**P09/3058 - TWO STOREY SINGLE HOUSE ON LOT 60 (7B) BRAUNTON STREET,
BICTON (SMREC) (ATTACHMENT)**

PUBLIC CONSULTATION/COMMUNICATION

Advertising Required: Yes – 5 surrounding neighbour’s consulted
 Neighbour’s Comment Supplied: Yes - 1 comment supplied
 Reason: Variation to CPS5 Part 4 provisions
 Support/Object: 1 x object

Submission Number	Summary of Submission	Support/Objection	Officer’s Comment	Action (Condition/ Uphold/ Not uphold)
1.	Concerns relating to overlooking from raised ground level and overlooking generally.	Object	<p>Since initial submission the plans associated with this development have been amended to address the concerns raised with respect to privacy and overlooking. The proposed development (with respect to the fill proposed towards the western side of the lot and the setback to the upper floor balcony), is now compliant with the requirements of the R- Codes (refer to main comment section below).</p> <p>In addition, the setback to the balcony of 7.509m is compliant with the R-Code requirements. In order to bolster the levels of privacy further, a condition is proposed to be applied to require the fence height to be increased to 1.8m above retaining wall height as provided in the City of Melville Local Law relating to Fencing.</p> <p>It is noted that the area overlooked on the subject adjoining property is also open to view from the street (Barker Place) and is presently undevelopable due to the presence of a restrictive covenant placed on that property.</p>	Not Uphold

**P09/3058 - TWO STOREY SINGLE HOUSE ON LOT 60 (7B) BRAUNTON STREET,
BICTON (SMREC) (ATTACHMENT)****REFERRALS TO GOVERNMENT AGENCIES**

Not required

STATUTORY AND LEGAL IMPLICATIONS

Should the Council refuse the application for planning approval, the applicant will have the right to have the decision reviewed in accordance with Part 14 of the Planning and Development Act 2005.

FINANCIAL IMPLICATIONS

There are no anticipated financial implications.

STRATEGIC AND RISK MANAGEMENT IMPLICATIONS

There are no anticipated strategic or risk implications.

POLICY IMPLICATIONS

Not applicable

ALTERNATE OPTIONS & THEIR IMPLICATIONS

The application could be refused or approved with a condition which requires the provision of additional privacy screening to the west to address neighbour's concerns. These alternatives are not considered appropriate as the application complies with the State requirements for privacy and therefore neighbour amenity as provided for in the Residential Design Codes.

COMMENTSFill and Retaining

The proposed development is compliant with the requirements of the R-Codes with the exception of the provision of up to 1.0m of fill to the southern boundary (approx. 12 sqm – appears to be due primarily to extraction of soil by neighbours for their development), in lieu of 0.5m as dictated by the Codes and 0.6m as required by CPS No 5 (for submission of an application for Planning Approval).

**P09/3058 - TWO STOREY SINGLE HOUSE ON LOT 60 (7B) BRAUNTON STREET,
BICTON (SMREC) (ATTACHMENT)**

The variation sought to both the Scheme and R-Code requirements need to be assessed against the relevant Performance Criteria contained within the R-Codes (Cl. 6.6.1 P1) which states that where development “*retains the visual impression of the natural level of a site, as seen from the street or other public place, or from an adjoining property*”, and (Cl. 6.3.3 P3) where resultant retaining walls are “*designed or setback to minimise the impact on adjoining properties*”, the development may be viewed as acceptable.

It is considered that the development will maintain the visual impression of the natural level of a site and have minimal impact on adjoining properties for the following reasons:

- a) The applicant has provided the original survey of the land (prior to subdivision) which shows how the site was previously developed prior to its more recent subdivision and redevelopment. These details demonstrate that the original residence on this lot was constructed with a finished floor level (FFL) of 28.8m AHD. This FFL is consistent with that now proposed, and it may be concluded therefore that its impact will be no greater than the original dwelling;
- b) The dwelling will not be visible from Braunton Street (to the south) but may be visible from Barker Place (to the west). The retaining walls on the western boundary (towards Barker Place) comply with the Residential Design Codes. Given the sharp fall of approximately 5m from the subject lots western boundary down to Barker Place (through the adjoining Lot 50), the overall visual impression of increasing levels is maintained;
- c) The main portion of over height retaining walls is adjacent to the neighbour’s ground floor northern wall. This wall contains one major opening setback 1.512m from the boundary which is overshadowed by the overall development, which is compliant with the overshadowing requirements of the Codes (maximum 25% - 24.85% proposed). In this regard, it is not the retaining element of the development which creates an overshadowing impact on the window, but rather, the development as a whole. In this context the impact of the retaining wall in isolation on the neighbour’s sunlight access would be negligible.
- d) The bulk of the retaining wall stops approximately 7m from the western boundary. This ensures that the height of the retaining wall in relation to the southern neighbour’s outdoor living area remains compliant with the R-Codes and reduces the impact to this area.

It is considered that the provision of 1.0m of fill and the resultant construction of an overheight retaining wall may be satisfactorily accommodated without prejudice to the intent of the R-Codes and CPS No 5 requirements. The variations sought are considered acceptable on that basis.

**P09/3058 - TWO STOREY SINGLE HOUSE ON LOT 60 (7B) BRAUNTON STREET,
BICTON (SMREC) (ATTACHMENT)**

Battle Axe Lot Development Requirements

Whilst the proposed development complies with the setback provisions of the R-Codes, the more onerous battle axe setback requirements of CPS No 5 are not satisfied. These requirements are detailed below:

1. *Side and rear setbacks to the second storey shall be a minimum of 4 metres.*
2. *The rear ground floor setback of for all two storey development shall be a minimum of or 3.0m with an average of 6 metres.*
3. *Side for rear setback exchange shall not be granted unless the approval of the Council is sought having regard to Council Policy.*

In the first instance, determination is required on which boundary is to be determined as the rear setback in accordance with 3 above. In this regard, the traditional rear of the property (northern boundary) is not considered to be the relevant rear boundary as the proportions of the lot favour a rear setback being calculated to the west (traditional side boundary), the adjacent properties to the north have common side boundaries with the subject property, and the adjoining property to the south (also a battle axe lot) has its side boundary along the common boundary with the subject lot and rear boundary to the western side of the property. Accordingly, the western side boundary is considered to be the appropriate boundary in which to apply the ground floor rear setback requirements relative to 2 above.

With regard to the side and rear setbacks for the second floor as required by 1 above, it is noted that power to vary the setback requirements under the Precinct requirements is provided under Cl. 4.3 of CPS No 5 (subject to Special Approval). The Scheme does not specify any applicable variation standards to assess to determine the appropriateness of the variations other than in consideration of matters raised in Cl. 7.8. In this regard, applications for development are to take into account such matters as the objectives of the Scheme, orderly and proper planning, existing and likely future amenity, the nature of development relative to adjoining land, the size, shape and character of the lot and it's influence on the new building, the design and external appearance of the building and the influence it may have on the area, any relevant submission, and any other relevant planning considerations.

In essence the above considerations relate to amenity considerations. In support of the proposal it is noted that the subject setbacks comply with the R-Code requirements. The applicant has provided justification for the variations which concludes that, notwithstanding the reduced setbacks, the development will maintain adequate direct sun (and ventilation) to the proposed residence, its neighbours and the open spaces in and around it, assist with the protection of access to direct sun for adjoining properties, assist in ameliorating the impacts of building bulk on adjoining properties, and assist in protecting privacy between adjoining properties.

**P09/3058 - TWO STOREY SINGLE HOUSE ON LOT 60 (7B) BRAUNTON STREET,
BICTON (SMREC) (ATTACHMENT)**

Further, if the subject site was a strata lot with common property, the subject battle axe lot development requirements would not apply as the lot would not be classed as a battle axe lot. Development of the same building as proposed on a strata lot would be supported on the basis of compliance with the R-Code requirements. It is not considered appropriate to prejudice against this development on the basis of its type of land title. Given that the Codes apply through the State to provide for consistent development standards and acceptable levels of amenity, the proposed development is not considered to detrimentally impact on the amenity of abutting residential properties.

As the setbacks proposed are in accordance with the requirements laid down in the R-Codes, and in view of the anomalies that exist in the delivery of the CPS No 5 objectives with regard to rear battle axe lot development as previously referred to in this report, it is recommended that Council exercise its power as laid down by Part 4.3 of CPS No 5 to set aside the setback standards for the development of rear battle axe lots and endorse the development as proposed. In doing so the issues of residential amenity for the occupiers of neighbouring properties is safeguarded as the development meets the amenity objectives and performance/acceptable development criteria of the R-Codes.

Privacy

Although the proposal satisfies the objectives of the R-Codes with respect to privacy and overlooking considerations, the applicant has proposed screening to the upper floor balcony and dining room in the form of mature vegetation to further minimise overlooking towards the northern and southern lots.

The difficulty associated with vegetative screening relates to its long term retention and maintenance, particularly in this case as the ground conditions may present a hostile environment for the establishment of any type of vegetation due to the higher than normal levels of limestone found in this specific location. A suitably worded condition can be applied on the approval requiring the planting, maintenance and long term retention of vegetation to provide the screening benefits envisaged by the applicant. The condition can be worded to require the applicant to provide an alternative to the vegetative screen in the event that the vegetative screening fails to establish.

In addition to this the applicant has proposed large windows to the upper floor study and dining room. The applicant has proposed obscure glazing to these windows in order to comply with the Privacy requirements of the R-Codes. However the elevation plans indicate that these windows can be opened which defeats the purpose of the obscure glazing. The initial DAU report indicated that these windows should be fixed to a height of 1.65m above the floor level. Subsequent discussions with the applicant indicate his preference is to provide an awning window to the dining room and a casement window to the study which will allow improved ventilation to the rooms whilst maintaining the neighbour's privacy. The awning and casement windows have been assessed and it has been identified that the dining room awning windows can open a maximum of 0.35m to prevent any overlooking into the neighbouring lot and the study's casement window can open from the left hand side a maximum of 0.3m. Conditions will be applied to this effect.

**P09/3058 - TWO STOREY SINGLE HOUSE ON LOT 60 (7B) BRAUNTON STREET,
BICTON (SMREC) (ATTACHMENT)**

CONCLUSION

It is considered that the application suitably addresses the provisions and requirements of CPS No 5 and the Residential Design Codes. Notwithstanding the non-compliance with the precinct requirements for battleaxe development, the proposal is considered reasonable to support consistent with previous determination on similar proposals within the City. Accordingly, it is appropriate for Council to conditionally approve the proposed development by Special Majority in accordance with Cl. 4.3 of CPS No 5.

OFFICER RECOMMENDATION (3058)

SPECIAL MAJORITY APPROVAL

- A) THAT THE APPLICATION FOR A TWO STOREY SINGLE HOUSE ON LOT 60 (7B) BRAUNTON STREET, BICTON BE APPROVED BY SPECIAL MAJORITY PURSUANT TO CLAUSE 4.3 OF COMMUNITY PLANNING SCHEME NO 5 SUBJECT TO THE FOLLOWING:**

SPECIAL CONDITIONS:

- 1. PRIOR TO INITIAL OCCUPATION OF THE RESIDENCE HEREBY APPROVED VEGETATIVE PRIVACY SCREENS ARE TO BE PROVIDED ALONG THE NORTHERN AND SOUTHERN BOUNDARIES TO ENSURE ADDITIONAL PRIVACY SCREENING AND SAFEGUARD RESIDENTIAL AMENITY FOR OCCUPIERS OF DWELLINGS TO THE NORTH AND SOUTH. THE PRIVACY SCREEN SHALL:**
 - A) BE PLANTED AT A HEIGHT PROVIDING PRIVACY SCREENING IN ACCORDANCE WITH THE RESIDENTIAL DESIGN CODES PRIOR TO THE OCCUPANCY OF THE DWELLING;**
 - B) BE INSPECTED AND APPROVED BY THE CITY OF MELVILLE PLANNING SERVICES PRIOR TO INITIAL OCCUPANCY; AND**
 - C) BE MAINTAINED AND RETAINED IN PERPETUITY TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES.**

**P09/3058 - TWO STOREY SINGLE HOUSE ON LOT 60 (7B) BRAUNTON STREET,
BICTON (REC) (ATTACHMENT)**

SHOULD THE VEGETATIVE SCREEN FAIL TO SUITABLY ESTABLISH OR BE UNSATISFACTORILY MAINTAINED TO THE SATISFACTION OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES, THE COUNCIL RESERVES THE RIGHT TO REQUEST THE PROVISION OF ALTERNATIVE SCREENING IN ACCORDANCE WITH THE PROVISIONS OF CLAUSE 6.8.1 A1 OF THE RESIDENTIAL DESIGN CODES 2008. SUCH SCREENING SHALL BE APPROVED AND INSTALLED TO THE SATISFACTION OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES.

2. THAT THE OBSCURE GLAZED WINDOW TO THE UPPER FLOOR DINING ROOM BEING MADE AN OBSCURE GLAZED AWNING WINDOW WHICH CAN OPEN A MAXIMUM OF 0.35M FROM THE BOTTOM TO COMPLY WITH THE RESIDENTIAL DESIGN CODES.
3. THAT THE OBSCURE GLAZED WINDOW TO THE UPPER FLOOR STUDY BEING MADE AN OBSCURE GLAZED CASEMENT WINDOW WHICH CAN OPEN A MAXIMUM OF 0.3M FROM THE NORTH EAST SIDE TO COMPLY WITH THE RESIDENTIAL DESIGN CODES.

STANDARD CONDITIONS:

4. ALL STORMWATER AND DRAINAGE RUN OFF TO BE CONTAINED ON SITE. AN ONSITE STORMWATER DRAINAGE SYSTEM WITH A CAPACITY TO CONTAIN A 1:100 YEAR STORM OF A TWENTY-FOUR (24) HOUR DURATION IS TO BE PROVIDED PRIOR TO THE DEVELOPMENT FIRST BEING OCCUPIED AND THEREAFTER MAINTAINED TO THE SATISFACTION OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES. ALL DOWNPIPES TO BE CONNECTED TO SOAKWELLS. THE PROPOSED STORMWATER DRAINAGE SYSTEM IS REQUIRED TO BE SHOWN ON THE BUILDING LICENCE SUBMISSION FOR APPROVAL PRIOR TO THE COMMENCEMENT OF CONSTRUCTION.
5. THE DEVELOPMENT COMPLYING WITH ANY AMENDMENTS AND NOTATIONS MARKED IN 'RED' AS SHOWN ON THE APPROVED PLANS.
6. THE EXTERNAL FACE OF THE PARAPET WALL TO BE FINISHED TO THE SATISFACTION OF THE ADJOINING NEIGHBOUR OR, IN THE EVENT OF A DISPUTE TO BE FINISHED TO THE SATISFACTION OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES.

P09/3058 - TWO STOREY SINGLE HOUSE ON LOT 60 (7B) BRAUNTON STREET, BICTON (REC) (ATTACHMENT)

7. ROOFING MATERIALS BEING OF A NON-REFLECTIVE MATERIAL (ZINC OR WHITE COLOUR METAL ROOFING MAY ONLY BE PERMITTED THROUGH SPECIAL PLANNING CONSENT).
 8. PRIOR TO THE COMMENCEMENT OF ANY CONSTRUCTION THE COUNCIL REQUIRES THE PROVISION OF A SUITABLE RECEPTACLE FOR THE CONTAINMENT OF WINDBLOWN RUBBISH. THE RECEPTACLE (GENERALLY A WIRE MESH CAGE) SHOULD HAVE MAXIMUM OPENINGS OF 100MM; HAVE A BASE OF 4M² AND A HEIGHT OF 1M AND A HINGED LID. THE RECEPTACLE SHOULD NOT BE ALLOWED TO OVERFILL.
 9. A 1.8 METRE HIGH FENCE TO BE PROVIDED FROM THE HIGHEST RETAINED GROUND LEVEL. ALL FENCING TO BE PROVIDED IN ACCORDANCE WITH THE DIVIDING FENCES ACT AND BE CONSTRUCTED AS A MINIMUM STANDARD OF FIBRE CEMENT.
 10. THE CONSTRUCTION OF RETAINING WALLS NOT TO EXCEED THE HEIGHTS SPECIFIED ON THE APPROVED PLANS UNLESS OTHERWISE APPROVED BY COUNCIL. DETAILS, SIGNED BY A PRACTICING STRUCTURAL ENGINEER MUST BE SUBMITTED FOR APPROVAL AT THE TIME OF SUBMITTING A BUILDING LICENCE APPLICATION.
 11. THE DEVELOPMENT IS TO BE CONNECTED TO THE WATER CORPORATION'S RETICULATED SEWERAGE SYSTEM.
 12. GROUND LEVELS MAY NOT BE CHANGED OTHER THAN APPROVED AS PART OF THIS APPROVAL.
- B) THE APPLICANT AND ADJOINING PROPERTY OWNER WHO OBJECTED TO THE DEVELOPMENT BE ADVISED IN WRITING OF A) ABOVE.**

At 6.56pm Cr Barton moved, seconded Cr Wieland -

THAT THE OFFICER RECOMMENDATION BE REJECTED AND THE ITEM BE RE-COMMITTED TO THE NEXT MEETING OF COUNCIL SO THAT THE REVISED PLANS CAN BE SHOWN TO AFFECTED NEIGHBOURS.

At 6.57 the Mayor submitted the motion, which was declared

LOST (4/9)

P09/3058 - TWO STOREY SINGLE HOUSE ON LOT 60 (7B) BRAUNTON STREET, BICTON (REC) (ATTACHMENT)

At 6.58 Cr Bennett moved, seconded Cr Macphail -

- A) THAT THE APPLICATION FOR A TWO STOREY SINGLE HOUSE ON LOT 60 (7B) BRAUNTON STREET, BICTON BE APPROVED BY SPECIAL MAJORITY PURSUANT TO CLAUSE 4.3 OF COMMUNITY PLANNING SCHEME NO 5 SUBJECT TO THE FOLLOWING:**

SPECIAL CONDITIONS:

- 1. PRIOR TO INITIAL OCCUPATION OF THE RESIDENCE HEREBY APPROVED VEGETATIVE PRIVACY SCREENS ARE TO BE PROVIDED ALONG THE NORTHERN AND SOUTHERN BOUNDARIES TO ENSURE ADDITIONAL PRIVACY SCREENING AND SAFEGUARD RESIDENTIAL AMENITY FOR OCCUPIERS OF DWELLINGS TO THE NORTH AND SOUTH. THE PRIVACY SCREEN SHALL:
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 - C) BE MAINTAINED AND RETAINED IN PERPETUITY TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES.****

SHOULD THE VEGETATIVE SCREEN FAIL TO SUITABLY ESTABLISH OR BE UNSATISFACTORILY MAINTAINED TO THE SATISFACTION OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES, THE COUNCIL RESERVES THE RIGHT TO REQUEST THE PROVISION OF ALTERNATIVE SCREENING IN ACCORDANCE WITH THE PROVISIONS OF CLAUSE 6.8.1 A1 OF THE RESIDENTIAL DESIGN CODES 2008. SUCH SCREENING SHALL BE APPROVED AND INSTALLED TO THE SATISFACTION OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES.

- 2. THAT THE OBSCURE GLAZED WINDOW TO THE UPPER FLOOR DINING ROOM BEING MADE AN OBSCURE GLAZED AWNING WINDOW WHICH CAN OPEN A MAXIMUM OF 0.35M FROM THE BOTTOM TO COMPLY WITH THE RESIDENTIAL DESIGN CODES.**
- 3. THAT THE OBSCURE GLAZED WINDOW TO THE UPPER FLOOR STUDY BEING MADE AN OBSCURE GLAZED CASEMENT WINDOW WHICH CAN OPEN A MAXIMUM OF 0.3M FROM THE NORTH EAST SIDE TO COMPLY WITH THE RESIDENTIAL DESIGN CODES.**

P09/3058 - TWO STOREY SINGLE HOUSE ON LOT 60 (7B) BRAUNTON STREET, BICTON (REC) (ATTACHMENT)

STANDARD CONDITIONS:

- 4. ALL STORMWATER AND DRAINAGE RUN OFF TO BE CONTAINED ON SITE. AN ONSITE STORMWATER DRAINAGE SYSTEM WITH A CAPACITY TO CONTAIN A 1:100 YEAR STORM OF A TWENTY-FOUR (24) HOUR DURATION IS TO BE PROVIDED PRIOR TO THE DEVELOPMENT FIRST BEING OCCUPIED AND THEREAFTER MAINTAINED TO THE SATISFACTION OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES. ALL DOWNPIPES TO BE CONNECTED TO SOAKWELLS. THE PROPOSED STORMWATER DRAINAGE SYSTEM IS REQUIRED TO BE SHOWN ON THE BUILDING LICENCE SUBMISSION FOR APPROVAL PRIOR TO THE COMMENCEMENT OF CONSTRUCTION.**
- 5. THE DEVELOPMENT COMPLYING WITH ANY AMENDMENTS AND NOTATIONS MARKED IN 'RED' AS SHOWN ON THE APPROVED PLANS.**
- 6 THE EXTERNAL FACE OF THE PARAPET WALL TO BE FINISHED TO THE SATISFACTION OF THE ADJOINING NEIGHBOUR OR, IN THE EVENT OF A DISPUTE TO BE FINISHED TO THE SATISFACTION OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES.**
- 7. ROOFING MATERIALS BEING OF A NON-REFLECTIVE MATERIAL (ZINC OR WHITE COLOUR METAL ROOFING MAY ONLY BE PERMITTED THROUGH SPECIAL PLANNING CONSENT).**
- 8. PRIOR TO THE COMMENCEMENT OF ANY CONSTRUCTION THE COUNCIL REQUIRES THE PROVISION OF A SUITABLE RECEPTACLE FOR THE CONTAINMENT OF WINDBLOWN RUBBISH. THE RECEPTACLE (GENERALLY A WIRE MESH CAGE) SHOULD HAVE MAXIMUM OPENINGS OF 100MM; HAVE A BASE OF 4M² AND A HEIGHT OF 1M AND A HINGED LID. THE RECEPTACLE SHOULD NOT BE ALLOWED TO OVERFILL.**
- 9. A 1.8 METRE HIGH FENCE TO BE PROVIDED FROM THE HIGHEST RETAINED GROUND LEVEL. ALL FENCING TO BE PROVIDED IN ACCORDANCE WITH THE DIVIDING FENCES ACT AND BE CONSTRUCTED AS A MINIMUM STANDARD OF FIBRE CEMENT.**
- 10. THE CONSTRUCTION OF RETAINING WALLS NOT TO EXCEED THE HEIGHTS SPECIFIED ON THE APPROVED PLANS UNLESS OTHERWISE APPROVED BY COUNCIL. DETAILS, SIGNED BY A PRACTICING STRUCTURAL ENGINEER MUST BE SUBMITTED FOR APPROVAL AT THE TIME OF SUBMITTING A BUILDING LICENCE APPLICATION.**
- 11. THE DEVELOPMENT IS TO BE CONNECTED TO THE WATER CORPORATION'S RETICULATED SEWERAGE SYSTEM.**

P09/3058 - TWO STOREY SINGLE HOUSE ON LOT 60 (7B) BRAUNTON STREET, BICTON (REC) (ATTACHMENT)

12. GROUND LEVELS MAY NOT BE CHANGED OTHER THAN APPROVED AS PART OF THIS APPROVAL.

B) THE APPLICANT AND ADJOINING PROPERTY OWNER WHO OBJECTED TO THE DEVELOPMENT BE ADVISED IN WRITING OF A) ABOVE.

At 6.59pm the Mayor submitted the motion, which was declared lost due to the item requiring a special resolution of Council, the number of Elected Members voting for the item not meeting the required number of 10.

LOST DUE TO SPECIAL MAJORITY NOT BEING REACHED (9/4)

The Presiding Member clarified to the meeting that the effect of the resolution being lost was that the application was now deemed to be refused. It being evident to the Presiding Member that what was being decided was unclear, therefore –

At 7.08pm Cr Pazolli moved, seconded Cr Everett -

THAT IN ACCORDANCE WITH CLAUSE 17.1 OF THE STANDING ORDERS LOCAL LAW 2003, STANDING ORDERS BE SUSPENDED TO ALLOW OPEN DEBATE ON THIS ITEM.

At 7.08pm the Mayor submitted the motion, which was declared

CARRIED (13/0)

General discussion took place regarding this item and Officer Recommendation.

At 7.12pm Cr Macphail moved, seconded Cr Robartson -

THAT STANDING ORDERS BE RESUMED.

At 7.12pm the Mayor submitted the motion, which was declared

CARRIED (13/0)

The Mayor advised that in his view the decision was unclear and in accordance with Clause 13.2: Question - Decision Unclear – of the Standing Orders 2003 Local Law ruled that the Officer Recommendation be re-presented and voted on. Having so ruled he requested a mover and seconder of the original Officer Recommendation.

**OFFICER RECOMMENDATION & COUNCIL RESOLUTION(3058)
SPECIAL MAJORITY APPROVAL**

At 7.17pm Cr Ceniviva moved, seconded Cr Macphail -

A) THAT THE APPLICATION FOR A TWO STOREY SINGLE HOUSE ON LOT 60 (7B) BRAUNTON STREET, BICTON BE APPROVED BY SPECIAL MAJORITY PURSUANT TO CLAUSE 4.3 OF COMMUNITY PLANNING SCHEME NO 5 SUBJECT TO THE FOLLOWING:

**P09/3058 - TWO STOREY SINGLE HOUSE ON LOT 60 (7B) BRAUNTON STREET,
BICTON (REC) (ATTACHMENT)**

SPECIAL CONDITIONS:

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**P09/3058 - TWO STOREY SINGLE HOUSE ON LOT 60 (7B) BRAUNTON STREET,
BICTON (REC) (ATTACHMENT)**

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**P09/3058 - TWO STOREY SINGLE HOUSE ON LOT 60 (7B) BRAUNTON STREET,
BICTON (REC) (ATTACHMENT)**

- 12. GROUND LEVELS MAY NOT BE CHANGED OTHER THAN APPROVED
AS PART OF THIS APPROVAL.**
- B) THE APPLICANT AND ADJOINING PROPERTY OWNER WHO OBJECTED TO
THE DEVELOPMENT BE ADVISED IN WRITING OF A) ABOVE.**

At 7.19pm the Mayor submitted the motion, which was declared

CARRIED BY SPECIAL MAJORITY (12/1)

P09/3059 – HOME OCCUPATION OF LAWN MOWING ON LOT 91 (2A) FIRST STREET BICTON (REC) (ATTACHMENT)

Ward : Bicton-Attadale
 Category : Operational
 Application Number : HO-241
 Property : Lot 91 (2A) First Street, BICTON
 Proposal : Lawn mowing business Home Occupation
 Applicant : Darren Paul Williams
 Owner : Mrs Deborah Anne Williams and Mr Darren Paul Williams
 Disclosure of any Interest : No officer involved in the preparation of this report has a declarable interest in this matter.
 Responsible Officer : David Vinicombe, Manager Planning & Development Services
 Previous Items : Not applicable

AUTHORITY / DISCRETION

DEFINITION

<input type="checkbox"/>	Advocacy	<i>when Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input type="checkbox"/>	Executive	<i>the substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
<input type="checkbox"/>	Legislative	<i>includes adopting local laws, town planning schemes & policies.</i>
<input type="checkbox"/>	Review	<i>when Council review decisions made by Officers.</i>
<input checked="" type="checkbox"/>	Quasi-Judicial	<i>when Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>

**P09/3059 – HOME OCCUPATION OF LAWN MOWING ON LOT 91 (2A) FIRST STREET
BICTON (REC) (ATTACHMENT)****KEY ISSUES / SUMMARY**

- Application is for an home occupation for the provision of lawn mowing services.
- The lawn mowing does not occur on the subject lot, however the activity occasionally includes the one (1) employee who is not related to the occupying family, which requires special approval of Council.
- The home occupation involves the use of two (2) trailers and two (2) utilities. In addition, the domestic car parking requirements of the property need to be accommodated which in this case includes one family vehicle, taking the total number of vehicles at the subject premises to five (5).
- The subject lot has sufficient hard stand car parking to accommodate four (4) vehicles, however two (2) additional bays exist between the front of the property and the footpath on the verge area which presently can accommodate all vehicles plus another visitor vehicle.
- Comment has been sought from eight (8) potentially affected properties and two (2) objections were received and two (2) letters stating no objection.
- It was recommended by the Development Advisory Unit (DAU) on 3 February 2009 that the application be approved, on the condition that the applicant is advised that the employee must, when visiting the subject property, park their vehicle on the vehicle hard standing area off the street. To that end the activities associated with this home occupation will be monitored to ensure that there is no parking of vehicles associated with it within the First Street road carriageway.
- Following reporting of the DAU item to Elected Members on 6 February 2009, the matter has been “called-up” for Council determination by Cr Barton.

BACKGROUND

A letter of complaint was received by the City on 11 July 2008 from a property adjoining the subject property. The letter related to the parking of two (2) commercial utilities and two (2) trailers on the subject property, and alleged that morning and afternoon vehicle movements were causing a disturbance to residential amenity, and that the vehicles were being parked in the street causing a traffic hazard and damaging the footpath. Further to investigation by the City’s Compliance Officer a request was made to the property owner to submit an application for Home Occupation approval on the basis that the business operations from the site did not satisfy the Home Occupation permit exemption provisions of Clause 5.6(f) of CPS No 5 relative to staff travelling to the premises and (the then) prejudicial affect on the amenity of the neighbourhood. The application was subsequently received on 12 August 2008. Considerable negotiation has taken place with the applicant to reduce the impact of the proposal on the neighbourhood, particularly with regard to the provision of parking facilities for vehicles associated with the business.

P09/3059 – HOME OCCUPATION OF LAWN MOWING ON LOT 91 (2A) FIRST STREET BICTON (REC) (ATTACHMENT)

Scheme Provisions

MRS Zoning : Urban
 CPS 5 Zoning : Living Area – BC1
 R-Code : R17.5
 Use Type : Home Occupation
 Use Class : D

Site Details

Lot Area : 611 sqm
 Retention of Existing Vegetation : Yes
 Street Tree(s) : No
 Street Furniture (drainage pits etc) : No
 Site Details : [3059 Property Map.pdf](#)

[3059 February 2009.pdf](#) - A copy of the plans forms part of the Attachments to the Agenda, which were distributed to Members of the Council on Friday 6 February 2009

DETAIL

Development Requirements

Development Requirement	Required/ Allowed	Proposed	Comments	Delegation to approve variation	Plan Notation
Car parking	2 bays for residential purposes, plus provision of on site parking for client/customer vehicles, provided so as not to disrupt access of domestic vehicles. The application provides for four (4) business vehicles (including 2 trailers) and one private vehicle. Total -5 bays.	4 bays within the lot boundary, and an additional 2 bays on the verge crossover between the lot boundary and the footpath.	Complies (See details in comments below)		

**P09/3059 – HOME OCCUPATION OF LAWN MOWING ON LOT 91 (2A) FIRST STREET
BICTON (REC) (ATTACHMENT)**

Setbacks

Not applicable

POLICY IMPLICATIONS

There is no relevant Council Policy.

PUBLIC CONSULTATION/COMMUNICATION

Advertising Required: Yes – 8 letters sent
 Neighbour's Comment Supplied: Yes - 4 responses received
 Reason: Home occupation is a discretionary use under the provisions of CPS5
 Support/Object: 2 support, 2 object

Note: One of the objecting parties has subsequently sold their property and moved to another location during the assessment period of this application. They are no longer an affected party, however their comments have been included in the table below (3). They have also been advised of the outcome of the DAU meeting in a letter dated 3 February 2009, along with the applicant and the other 3 respondents.

Affected Property	Summary of Submission	Support/ Objection	Officer's Comment	Action (Condition/ Uphold/ Not Uphold)
1.	No objection.	Support.	No comment.	Uphold.
2.	No objection - also states they have no previous complaints or concerns.	Support.	No comment.	Uphold.
3.	States that one utility and trailer is driven by the applicant and an employee, and the second utility and trailer is driven by another two employees, thereby taking the number of employees to three.	Objection.	One employee only is proposed in addition to members of the occupying family. Comments made to the contrary by the complainant have been addressed with the applicant, and the City is satisfied that there will be only one employee.	Not Uphold.

**P09/3059 – HOME OCCUPATION OF LAWN MOWING ON LOT 91 (2A) FIRST STREET
BICTON (REC) (ATTACHMENT)**

	<p>Advises that there are a total of 5 vehicles being parked on the property – 2 trailers, 2 utilities, and 1 Landcruiser, and not 2 trailers and 2 utilities as stated on the letter requesting comment on the proposal.</p>		<p>There are a total of five vehicles, four associated with the home occupation and one which is used for the domestic requirements of the applicant and his family.. The applicant has indicated that one trailer contains business equipment and the other is used to collect materials and plants. The second utility is used as a spare vehicle for the business.</p>	<p>Not Uphold.</p>
	<p>Disputes the number of employees stated in the proposal and the statement that they will be collected on route and only occasionally come to the property in a work capacity. States that there is a minimum of 2, but generally 3, employees who arrive each day for work in personal vehicles, which they allegedly park in the street.</p>		<p>The City is satisfied that the home occupation activity will involve one employee only, in addition to members of the occupying family. The applicant has commented that measures will be put in place to ensure visits by the employee to the host residence are minimised,. This will be achieved by picking the employee up from his place of residence on route to work.</p>	<p>Not Uphold.</p>
	<p>States that there are regular deliveries of pallets of plants to the property.</p>		<p>The applicant has advised that the deliveries referred to were not related to the home occupation activity but to the domestic needs of the subject lot, which has recently been extended and renovated.</p>	<p>Not Uphold.</p>

**P09/3059 – HOME OCCUPATION OF LAWN MOWING ON LOT 91 (2A) FIRST STREET
BICTON (REC) (ATTACHMENT)**

4.	Reiterates the concern expressed by their neighbour regarding the number of vehicles involved (see above).	Objection	There are five vehicles in use at the property (see above).	Not Uphold.
	States that two vehicles are used daily (with two drivers), and does not believe that the proposed employee will be collected on route.		The home occupation licence seeks approval for the use of one non resident employee. If approved, that employee would be free to attend the subject property to collect and deliver the work vehicle. Despite this, the applicant has stated that he will endeavour to minimise disruption to residents via the collection of the employee on route to work. Provided all vehicles associated with the home occupation, including the applicant's personal vehicle, are accommodated on site (or at least off the street and foot path), then the operation of the activity should not give rise to any residential amenity issues.	Not Uphold.
	Reiterates the concern expressed by the neighbour regarding the delivery of plants and fertilisers.		See above.	Not Uphold.

**P09/3059 – HOME OCCUPATION OF LAWN MOWING ON LOT 91 (2A) FIRST STREET
BICTON (REC) (ATTACHMENT)**

	States that commercial vehicles are being parked on the street and causing traffic issues.		This has been the case as the five vehicles associated with the property cannot be accommodated on site. See comments on parking below.	Not Uphold.
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REFERRALS TO GOVERNMENT AGENCIES

Not applicable.

STATUTORY AND LEGAL IMPLICATIONS

Should the Council refuse the application for planning approval, the applicant may have the right to have the decision reviewed in accordance with Part XIV of the Planning and Development Act 2005.

FINANCIAL IMPLICATIONS

Not applicable

STRATEGIC AND RISK MANAGEMENT IMPLICATIONS

Not applicable.

ALTERNATIVE RECOMMENDATION

Elected Members may consider that an alternative recommendation is appropriate and choose to refuse this application (or apply alternative conditions) based on the impact of the business vehicles in the street. In this regard, consideration may be given to the appropriateness of parking on the crossover hard standing area behind the foot path and either refuse the application or require the provision of alternative off site parking.

**P09/3059 – HOME OCCUPATION OF LAWN MOWING ON LOT 91 (2A) FIRST STREET
BICTON (REC) (ATTACHMENT)**

COMMENT

Consent is sought for a home occupation licence relating to a lawnmowing service. The operation of this service will include the following:

- Two (2) occupiers of the property will run the home occupation, along with an occasional (during peak periods) additional employee who is not a member of the occupying family.
- The proposed employee will, when practicable, be collected and dropped off on route to and from work
- The use of two utilities and two trailers for the business activities associated with the home occupation, in addition to a vehicle for the applicant's domestic use, requiring the provision of five (5) hard stand car parking bays.
- In general, one of the trailers and one of the utility vehicles are to be used at any one time.
- No clients, customers, or deliveries to the subject property in relation to the home occupation.
- Less than 38 sqm of the property is proposed to be used in relation to the home occupation – approximately 2 sqm of a room in the house for office based activities, and approximately 34 sqm to accommodate the four vehicles related to the home occupation, totally 36 sqm.
- Hours of operation are 7.15 am to 4.00 pm; however the home occupation business of lawn mowing is not conducted on the subject property. The times given are the times when the applicant leaves for, and returns from, work.
- No signage is proposed.

Lawn mowing activities will not be undertaken at the subject property. As such there will be no direct impact for occupiers of adjoining properties from the core activities associated with this home occupation, nor from the associated paperwork element of the business which will occur in an area of approximately 2 sqm in one of the rooms towards the rear of the subject dwelling. The applicant uses one utility and one trailer on a daily basis, the impact of which will be no more onerous for occupiers of adjoining properties than would be the case with the general comings and goings of people leaving for, and coming home from, work each day. The second utility is primarily used when machinery requiring repair needs to be transported or if something needs to be delivered to the applicant on site at a lawn mowing job, in which case the applicant's wife drives the vehicle. The second trailer is only used occasionally, in lieu of the first trailer, mainly for collection of materials and plants (the main trailer contains equipment associated with the business).

The home occupation complies with the provisions of CPS No 5 with the exception that the proposed employee does not reside on the premises. It also requires the use of an existing vehicle hard standing located within the Council owned verge to the front of the residence. The use of this area of hard standing does not prejudice the use of the recently constructed pedestrian footway located to the front of the residence.

**P09/3059 – HOME OCCUPATION OF LAWN MOWING ON LOT 91 (2A) FIRST STREET
BICTON (REC) (ATTACHMENT)**Additional Employee

In relation to the employment of a non resident person, CPS No 5 states that this may be permissible subject to the grant of special approval. It is noted that the term “special approval” is not defined by the Scheme. Other forms of approval provided by the Scheme, such as “Special Majority” and “Absolute Majority” specifically require referral to Council for determination. In this case special approval is similar to an “S” use under the Use Class Table, which if applied in the same manner, means that approval may be issued by the Development Advisory Unit following advertising.

In deciding whether this exception may be endorsed in this case, it is considered that the activities associated with the arrival and departure of one non resident employee may be satisfactorily accommodated without prejudice to the general amenity of the area. The lawn mowing activities with which the employee is engaged will be undertaken away from the subject residence. Any real impact is therefore restricted to the employee’s arrival and departure, and the parking of a vehicle. Provided there is adequate provision for the parking of the employee’s vehicle on a vehicle hard standing area, then no objection is raised to their inclusion within this home occupation licence. The fact that the services of the employee will not be required on a permanent basis minimises the impact further.

Parking

The Home Occupation parking provisions of CPS No 5 are directed towards the provision of sufficient parking to accommodate client and customer vehicles together with domestic vehicles. It is unclear whether domestic vehicles include those vehicles directly associated with the business operations (i.e. 2 utilities and 2 trailers). In the absence of a categorical statement in this regard, it cannot be concluded that the parking of the business vehicles must be contained on site, however such is implied. Given that this can only be assumed, some discretion in interpretation of the parking requirements may be given.

Initial discussions with the applicant were directed to containing domestic and business vehicles on site. As five (5) vehicles are involved and only four (4) bays are available, the discussion was directed towards finding alternative accommodation for one of the vehicles off site. This was considered the most desirable outcome to reduce the impact of the home occupation on the neighbourhood. Notwithstanding, the applicant has been unable to secure alternative parking facilities and in the context of the above, consideration can be given to parking on the crossover hard standing area (behind the foot path) without prejudicially impacting on neighbourhood amenity.

**P09/3059 – HOME OCCUPATION OF LAWN MOWING ON LOT 91 (2A) FIRST STREET
BICTON (REC) (ATTACHMENT)**

In relation to the reliance on the area of crossover hard standing located to the front of the property driveway within the Council owned verge, it is considered that this should be supported. In common with the majority of residential properties in the vicinity of the subject residence, there is space for the off street parking of four vehicles, two under cover within the garage, and two on the driveway. In practice, the parking of vehicles on driveways located within the Council owned verge or on the verge itself is common, and the pragmatic view taken is that provided vehicles parked in that manner are non commercial by nature, their impact on the streetscene is negligible.

In this case whilst the two trailers used are classed as commercial vehicles in (accordance with the definition of commercial vehicles contained within CPS No 5), their length at less than 6m means that they can be parked within view of the streetscene provided they are wholly contained within the subject lot boundaries. As there are four spaces for the parking of vehicles within the lot boundary, there is adequate space to satisfy this requirement. The non commercial vehicles, the utility vehicles (utility vehicles are not defined as “commercial vehicles” under CPS No 5) and the applicant’s domestic vehicle can be accommodated on the driveway, either within or outside the actual lot boundary (behind the footpath) without detriment to the character of the streetscene and without detriment to residential amenity or traffic and pedestrian movement in the street.

It is noted that the applicant could have created provision for the parking of a fifth vehicle within his lot boundary via the construction of an extended area of hard standing on the front lawn area. This could have taken place without the need for planning permission and would have solved the issue associated with the need to accommodate off street car parking for 5 vehicles. It is considered from a pragmatic stance that the option of utilising the existing hard standing area of the crossover behind the foot path is preferable in the context of visual impact, and that option should be supported on that basis.

CONCLUSION

It is concluded that the home occupation may operate from this residence in accordance with the Council’s requirements and without detriment to visual or residential amenity, or impact on vehicular and pedestrian traffic movement. It is prudent that the employee’s vehicle is parked off the street within the existing vehicle hard standing area, and to that end it is recommended that the applicant be advised that officers of the City will monitor the activities associated with the Home Occupation Licence. It is noted that in the event that the applicant does not comply with these requirements, Clause 5.6(d) of CPS No 5, provides for the Council to revoke its approval where a home occupation causes nuisance or annoyance to owners and occupiers of land in the neighbourhood.

P09/3059 – HOME OCCUPATION OF LAWN MOWING ON LOT 91 (2A) FIRST STREET BICTON (REC) (ATTACHMENT)

OFFICER RECOMMENDATION (3059)

APPROVAL

At 7.19pm Cr Ceniviva moved, seconded Cr Phelan -

- A) THAT THE APPLICATION FOR THE HOME OCCUPATION OF LAWN MOWING ON LOT 91 (2A) FIRST STREET, BICTON, BE APPROVED AND SUBJECT TO THE FOLLOWING:

SPECIAL CONDITIONS:

1. ALL VEHICLES ASSOCIATED WITH THE HOME OCCUPATION TO BE ACCOMMODATED WITHIN THE HARD STAND DRIVEWAY AND GARAGE AREA ONLY, INCLUSIVE OF THE CROSSOVER (BEHIND THE FOOT PATH). TRAILERS WHICH ARE CLASSIFIED AS COMMERCIAL VEHICLES UNDER COMMUNITY PLANNING SCHEME NO 5 ARE ONLY PERMITTED TO BE PARKED ON THE PROPERTY. ON-STREET PARKING OF VEHICLES ASSOCIATED WITH THE BUSINESS IS NOT PERMITTED.
2. NO MORE THAN ONE EMPLOYEE, OTHER THAN MEMBERS OF THE OCCUPYING FAMILY, TO BE ON THE SITE AT ANY ONE TIME AND PARKING FOR THAT EMPLOYEE'S VEHICLE IS TO BE CONTAINED EITHER ON SITE OR ON THE VERGE, BEHIND THE FOOT PATH.

STANDARD CONDITIONS:

3. THIS LICENCE IS VALID FOR A PERIOD OF TWELVE (12) MONTHS FROM THE DATE OF APPROVAL. IF THE HOME OCCUPATION ACTIVITY IS TO CONTINUE BEYOND THIS TWELVE (12) MONTH PERIOD, AN APPLICATION FOR ITS RENEWAL IS REQUIRED.
4. COMPLIANCE WITH THE CITY OF MELVILLE COMMUNITY PLANNING SCHEME NO 5.
5. COMPLIANCE WITH ALL BUILDING AND HEALTH LOCAL LAWS AND REGULATIONS WITHIN THIS CITY.
6. THE APPLICANT MUST PERMANENTLY LIVE ON THE PREMISES.
7. IT DOES NOT ENTAIL MORE THAN ONE CUSTOMER OR CLIENT AT ANY ONE TIME OTHER THAN THOSE MEMBERS OF THE IMMEDIATE FAMILY TO TRAVEL TO AND FROM THE PREMISES IN RELATION TO THE BUSINESS.
8. NO MORE THAN 38 SQUARE METRES OF THE DWELLING BEING USED FOR THE HOME OCCUPATION.

P09/3059 – HOME OCCUPATION OF LAWN MOWING ON LOT 91 (2A) FIRST STREET BICTON (REC) (ATTACHMENT)

9. NOT MORE THAN ONE SIGN, BEARING THE NAME OF THE BUSINESS ONLY AND NOT EXCEEDING AN AREA OF 0.2 SQUARE METRES, SHALL BE ERECTED ON THE PROPERTY WITH REGARD TO THE HOME OCCUPATION.
 10. IF IN THE OPINION OF THE COUNCIL, THE HOME OCCUPATION IS CAUSING A NUISANCE OR ANNOYANCE TO OWNERS OR OCCUPIERS OF LAND IN THE NEIGHBOURHOOD THE COUNCIL MAY REVOKE ITS APPROVAL.
 11. THIS APPROVAL MAY NOT BE TRANSFERRED TO ANY OTHER PERSON OR PROPERTY.
 12. THE HOME OCCUPATION SHALL NOT REQUIRE THE PROVISION OF ANY ESSENTIAL SERVICE OF A GREATER CAPACITY THAN NORMALLY REQUIRED FOR THE PERMITTED USE OF THE LOT.
 13. THE HOME OCCUPATION SHALL NOT CREATE INJURY TO OR PREJUDICIALLY AFFECT THE AMENITY OF THE NEIGHBOURHOOD INCLUDING (BUT WITHOUT LIMITING THE GENERALITY OF THE FORGOING) INJURY OR PREJUDICIAL AFFECTION DUE TO THE EMISSION OF NOISE, VIBRATION, SMELL, FUMES, SMOKE, VAPOUR, STEAM, SOOT, ASH, DUST, GRIT, OIL, WASTE WATER OR WASTE PRODUCTS.
- B) THE APPLICANT AND RESPONDENTS BE ADVISED OF A) ABOVE AND THAT THE CITY WILL MONITOR THE ACTIVITIES OF THE HOME OCCUPATION AT REGULAR INTERVALS TO MONITOR COMPLIANCE AND ENSURE THE HOME OCCUPATION DOES NOT CAUSE NUISANCE OR ANNOYANCE TO THE NEIGHBOURHOOD. SHOULD CONCERNS BE RAISED IN THIS REGARD, CONSIDERATION WILL BE GIVEN TO REVOCATION OF THE HOME OCCUPATION PERMIT PURSUANT TO CLAUSE 5.6(D) OF COMMUNITY PLANNING SCHEME NO 5. SHOULD THIS APPROVAL BE REVOKED, THE HOME OCCUPATION WILL BE REQUIRED TO CEASE OPERATION IMMEDIATELY.

Amendment

At 7.20pm Cr Pazolli moved, seconded Cr Barton –

THAT SPECIALCONDITION NO. 1 BE REPLACED WITH THE FOLLOWING:

1. ***ALL DOMESTIC AND BUSINESS RELATED VEHICLES ASSOCIATED WITH THE HOME OCCUPATION TO BE ACCOMMODATED ON THE PROPERTY IN ACCORDANCE WITH CLAUSE 5.6 (E) (VIII) OF COMMUNITY PLANNING SCHEME NO 5. PARKING OF COMMERCIAL VEHICLES IS NOT PERMITTED TO PREVENT ACCESS TO THE DOMESTIC VEHICLE PARKING BAYS. PARKING OF COMMERCIAL AND DOMESTIC VEHICLES ON THE ROAD CARRIAGEWAY AND VERGE ASSOCIATED WITH THE BUSINESS IS NOT PERMITTED.***

P09/3059 – HOME OCCUPATION OF LAWN MOWING ON LOT 91 (2A) FIRST STREET BICTON (REC) (ATTACHMENT)

At 7.36pm in accordance with Clause 10.16 - Withdrawal of Motion and Amendments – of the Standing Orders Local Law 2003 the amendment was withdrawn at the request of the mover and with agreement of the seconder.

OFFICERS RECOMMENDATION & COUNCIL RESOLUTION (3059) APPROVAL

At 7.37pm Cr Ceniviva moved, seconded Cr Phelan –

- A) THAT THE APPLICATION FOR THE HOME OCCUPATION OF LAWN MOWING ON LOT 91 (2A) FIRST STREET, BICTON, BE APPROVED AND SUBJECT TO THE FOLLOWING:**

SPECIAL CONDITIONS:

- 1. ALL VEHICLES ASSOCIATED WITH THE HOME OCCUPATION TO BE ACCOMMODATED WITHIN THE HARD STAND DRIVEWAY AND GARAGE AREA ONLY, INCLUSIVE OF THE CROSSOVER (BEHIND THE FOOT PATH). TRAILERS WHICH ARE CLASSIFIED AS COMMERCIAL VEHICLES UNDER COMMUNITY PLANNING SCHEME NO 5 ARE ONLY PERMITTED TO BE PARKED ON THE PROPERTY. ON-STREET PARKING OF VEHICLES ASSOCIATED WITH THE BUSINESS IS NOT PERMITTED.**
- 2. NO MORE THAN ONE EMPLOYEE, OTHER THAN MEMBERS OF THE OCCUPYING FAMILY, TO BE ON THE SITE AT ANY ONE TIME AND PARKING FOR THAT EMPLOYEE'S VEHICLE IS TO BE CONTAINED EITHER ON SITE OR ON THE VERGE, BEHIND THE FOOT PATH.**

STANDARD CONDITIONS:

- 3. THIS LICENCE IS VALID FOR A PERIOD OF TWELVE (12) MONTHS FROM THE DATE OF APPROVAL. IF THE HOME OCCUPATION ACTIVITY IS TO CONTINUE BEYOND THIS TWELVE (12) MONTH PERIOD, AN APPLICATION FOR ITS RENEWAL IS REQUIRED.**
- 4. COMPLIANCE WITH THE CITY OF MELVILLE COMMUNITY PLANNING SCHEME NO 5.**
- 5. COMPLIANCE WITH ALL BUILDING AND HEALTH LOCAL LAWS AND REGULATIONS WITHIN THIS CITY.**
- 6. THE APPLICANT MUST PERMANENTLY LIVE ON THE PREMISES.**
- 7. IT DOES NOT ENTAIL MORE THAN ONE CUSTOMER OR CLIENT AT ANY ONE TIME OTHER THAN THOSE MEMBERS OF THE IMMEDIATE FAMILY TO TRAVEL TO AND FROM THE PREMISES IN RELATION TO THE BUSINESS.**

P09/3059 – HOME OCCUPATION OF LAWN MOWING ON LOT 91 (2A) FIRST STREET BICTON (REC) (ATTACHMENT)

- 8. NO MORE THAN 38 SQUARE METRES OF THE DWELLING BEING USED FOR THE HOME OCCUPATION.**
 - 9. NOT MORE THAN ONE SIGN, BEARING THE NAME OF THE BUSINESS ONLY AND NOT EXCEEDING AN AREA OF 0.2 SQUARE METRES, SHALL BE ERECTED ON THE PROPERTY WITH REGARD TO THE HOME OCCUPATION.**
 - 10. IF IN THE OPINION OF THE COUNCIL, THE HOME OCCUPATION IS CAUSING A NUISANCE OR ANNOYANCE TO OWNERS OR OCCUPIERS OF LAND IN THE NEIGHBOURHOOD THE COUNCIL MAY REVOKE ITS APPROVAL.**
 - 11. THIS APPROVAL MAY NOT BE TRANSFERRED TO ANY OTHER PERSON OR PROPERTY.**
 - 12. THE HOME OCCUPATION SHALL NOT REQUIRE THE PROVISION OF ANY ESSENTIAL SERVICE OF A GREATER CAPACITY THAN NORMALLY REQUIRED FOR THE PERMITTED USE OF THE LOT.**
 - 13. THE HOME OCCUPATION SHALL NOT CREATE INJURY TO OR PREJUDICIALLY AFFECT THE AMENITY OF THE NEIGHBOURHOOD INCLUDING (BUT WITHOUT LIMITING THE GENERALITY OF THE FORGOING) INJURY OR PREJUDICIAL AFFECTION DUE TO THE EMISSION OF NOISE, VIBRATION, SMELL, FUMES, SMOKE, VAPOUR, STEAM, SOOT, ASH, DUST, GRIT, OIL, WASTE WATER OR WASTE PRODUCTS.**
- B) THE APPLICANT AND RESPONDENTS BE ADVISED OF A) ABOVE AND THAT THE CITY WILL MONITOR THE ACTIVITIES OF THE HOME OCCUPATION AT REGULAR INTERVALS TO MONITOR COMPLIANCE AND ENSURE THE HOME OCCUPATION DOES NOT CAUSE NUISANCE OR ANNOYANCE TO THE NEIGHBOURHOOD. SHOULD CONCERNS BE RAISED IN THIS REGARD, CONSIDERATION WILL BE GIVEN TO REVOCATION OF THE HOME OCCUPATION PERMIT PURSUANT TO CLAUSE 5.6(D) OF COMMUNITY PLANNING SCHEME NO 5. SHOULD THIS APPROVAL BE REVOKED, THE HOME OCCUPATION WILL BE REQUIRED TO CEASE OPERATION IMMEDIATELY.**

At 8.14pm the Mayor submitted the motion, which was declared

CARRIED (10/3)

The Presiding Member advised Elected Members that the Meeting has now moved out of the Quasi-Judicial phase.

At 8.15pm Cr Wieland, Cr Everett and Cr Ceniviva left the meeting.

At 8.17pm Cr Pazolli left the meeting.

At 8.17pm Cr Wieland, Cr Everett and Cr Ceniviva returned to the meeting.

At 8.20pm Cr Pazolli returned to the meeting.

P09/3060 - FINAL APPROVAL FOR AMENDMENT NO. 55 TO COMMUNITY PLANNING SCHEME NO. 5 – HOME OCCUPATION PROVISIONS AND DEFINITION OF NUISANCE (REC)

Ward : All
 Category : Strategic
 Application Number : CPS 5-55
 Property : All Living Areas in City
 Proposal : Amend Clause 5.6 of CPS No. 5 for the prevention of home based Sexual Service business under Home Occupation provisions relative to Sexual Service business
 Applicant : City of Melville
 Owner : Not Applicable
 Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.
 Responsible Officer : David Vinicombe
 Manager Planning and Development Services
 Previous Items : Not Applicable

AUTHORITY / DISCRETION

DEFINITION

<input type="checkbox"/>	Advocacy	<i>when Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input type="checkbox"/>	Executive	<i>the substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
<input checked="" type="checkbox"/>	Legislative	<i>includes adopting local laws, town planning schemes & policies.</i>
<input type="checkbox"/>	Review	<i>when Council review decisions made by Officers.</i>
<input type="checkbox"/>	Quasi-Judicial	<i>when Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>

P09/3060 - FINAL APPROVAL FOR AMENDMENT NO. 55 TO COMMUNITY PLANNING SCHEME NO. 5 – HOME OCCUPATION PROVISIONS AND DEFINITION OF NUISANCE (REC)

KEY ISSUES / SUMMARY

- The Prostitution Amendment Act 2008 was assented to on 14 April 2008 and in June 2008 was awaiting proclamation.
- The new State Government has indicated that the Act is not to be proclaimed and the legislation is to be reviewed.
- Notwithstanding the new State Government's statement with regard to proclamation, of the Amendment Act, Sexual Service businesses continue to legally operate through the State in accordance with a number of existing controls.
- The proposals contained in the Amendment Act have highlighted deficiencies under the current Scheme to control the extent of Sexual Services from residential properties.
- Community Planning Scheme No. 5 provides for commercially based Sexual Service businesses to operate as "Restricted Premises" from the Industrial Precinct (Discretionary approval required). Within residential areas, a Home Occupation for a low order business of this nature could be considered subject to consideration of impacts on neighbourhood amenity (annual approval required).
- Whilst the provisions of Community Planning Scheme No. 5 provide some measure of control, it is desirable to tighten the requirements relating to Home Occupations to prevent these activities from establishing within the City's Living Area Precincts and define "nuisance" under the definitions of the Scheme.
- Amendment No 55 to CPS No. 5 proposes to introduce Scheme provisions to prevent Sexual Service businesses from operating within residential Living Area Precincts of the City.
- It is also proposed to define "nuisance" and limit the extent of visitor hours to for Home Occupations in order to provide greater safeguards to residential areas relative to the operation of Home Occupations.
- The Amendment was advertised for 42 days and no submissions were received.
- Recommended For Final Approval

BACKGROUND

The Council at its Ordinary Meeting on 17 June 2008 resolved:

"1. THAT PURSUANT TO PART 5 OF THE PLANNING AND DEVELOPMENT ACT 2005, COUNCIL RESOLVE TO INITIATE AMENDMENT NO. 55 TO COMMUNITY PLANNING SCHEME NO. 5 AS FOLLOWS:

A) AMEND PARAGRAPH 5.6(E)(I) TO INCLUDE REFERENCE TO "WITH EXCEPTION OF A SEXUAL SERVICE BUSINESS" AS FOLLOWS:

P09/3060 - FINAL APPROVAL FOR AMENDMENT NO. 55 TO COMMUNITY PLANNING SCHEME NO. 5 – HOME OCCUPATION PROVISIONS AND DEFINITION OF NUISANCE (REC)

- (I) THAT OCCUPATION CONSISTS OF THE ESTABLISHMENT AND CONDUCT OF A BUSINESS/OFFICE OR CONSULTING ROOM WITH EXCEPTION OF A SEXUAL SERVICE BUSINESS, PROVIDED THAT THE COUNCIL SHALL NOT GRANT APPROVAL TO ANY USES OF RETAIL SALE, HIRING OR DISPLAY OF GOODS OF ANY NATURE, MANUFACTURING OR PRODUCTION OF GOODS, WHERE ADVERSE AMENITY IMPACTS ARE LIKELY TO OCCUR;

- B) AMEND CLAUSE 5.6(E) BY ADDING THE FOLLOWING PARAGRAPHS (IX) AND (X):
 - (ix) VISITOR AND CUSTOMERS OF THE HOME OCCUPATION ARE RESTRICTED DURING THE WEEK TO BETWEEN THE HOURS OF 8.00 AM AND 6.00 PM AND 9.00 AM AND 12.00 NOON ON SATURDAYS.

 - (x) IT WILL NOT IN THE OPINION OF THE COUNCIL CREATE A NUISANCE OR ANNOYANCE TO OWNERS AND OCCUPIERS OF LAND IN THE NEIGHBOURHOOD.

- C) AMEND SCHEDULE 1: INTERPRETATIONS TO INCLUDE A DEFINITION OF “NUISANCE” AS FOLLOWS:

‘NUISANCE’ MEANS UNREASONABLE, UNWARRANTED, EXCESSIVE OR UNLAWFUL USE OF ONE’S PROPERTY TO THE EXTENT OF UNREASONABLE ANNOYANCE OR INCONVENIENCE TO A NEIGHBOUR OR TO THE PUBLIC.

- 2. THAT HIS WORSHIP THE MAYOR AND THE CHIEF EXECUTIVE OFFICER BE AUTHORISED TO ENDORSE THE AMENDMENT DOCUMENT.

- 3. THAT THE CITY OF MELVILLE FORWARD A COPY OF THE AMENDMENT DOCUMENTATION TO:
 - A) THE ENVIRONMENTAL PROTECTION AUTHORITY IN ACCORDANCE WITH SECTION 81 OF THE PLANNING AND DEVELOPMENT ACT 2005.

 - B) THE WESTERN AUSTRALIAN PLANNING COMMISSION FOR INFORMATION.

P09/3060 - FINAL APPROVAL FOR AMENDMENT NO. 55 TO COMMUNITY PLANNING SCHEME NO. 5 – HOME OCCUPATION PROVISIONS AND DEFINITION OF NUISANCE (REC)

4. THAT ON RECEIPT OF ADVICE FROM THE ENVIRONMENTAL PROTECTION AUTHORITY UNDER SECTION 48A OF THE ENVIRONMENTAL PROTECTION ACT INDICATING THAT THE AMENDMENT NEED NOT BE SUBJECT TO AN ENVIRONMENTAL ASSESSMENT, THE AMENDMENT BE ADVERTISED IN ACCORDANCE WITH THE TOWN PLANNING REGULATIONS FOR NOT LESS THAN FORTY-TWO (42) DAYS.

5. PURSUANT TO CLAUSE 9.6 OF COMMUNITY PLANNING SCHEME NO. 5, THE DRAFT HOME OCCUPATION RELATIVE TO SEXUAL SERVICE BUSINESS POLICY 06-PL-037 DATED 13 JUNE 2008 BE ADOPTED FOR PUBLIC CONSULTATION AND REFERRAL TO THE WESTERN AUSTRALIAN PLANNING COMMISSION FOR INFORMATION.”

It is noted that the Draft Policy referred to at 5 above was formally adopted by Council at its meeting held 19 August 2008 (P08/3044).

Scheme Provisions

MRS Zoning	:	Urban
CPS 5 Zoning	:	All Living Area Precincts
R-Code	:	Various
Use Type	:	N/A
Use Class	:	N/A

Site Details

Lot Area	:	N/A
Retention of Existing Vegetation	:	N/A
Street Tree(s)	:	N/A
Street Furniture (drainage pits etc)	:	N/A
Site Details	:	N/A

P09/3060 - FINAL APPROVAL FOR AMENDMENT NO. 55 TO COMMUNITY PLANNING SCHEME NO. 5 – HOME OCCUPATION PROVISIONS AND DEFINITION OF NUISANCE (REC)

DETAIL

Sexual Service businesses may establish as a Restricted Premises or a Home Occupation under the provisions of Community Planning Scheme No. 5.

“Restricted Premises”, as a land use category, was given careful consideration in the preparation of Community Planning Scheme No. 5 and is defined as follows:

Restricted Premises means – any premises, part or parts thereof used or designed to be used primarily for a service, the sale by retail or wholesale or the offer for hire, loan or exchange of the exhibition, display or delivery of:

- a) publications that are classified as restricted publications pursuant to the Indecent Publications and Articles Act 1902 (as amended); or*
- b) service, materials, compounds, preparations or articles which are used or intended to be used primarily in or in connection with any form of sexual behaviour or activity.*

The “Restricted Use” definition was essentially designed to bring together most aspects of the ‘sexual behaviour’ trade (other than home occupations) into one use-class which is “Discretionary” in the Industrial Precincts and not permitted in any other precinct / zone of the City. This land use classification adequately deals with commercial ‘brothel’ operations which are not home based.

Notwithstanding, one or two sex workers residing at a property could legitimately apply for a permit to run a business from a residential dwelling as a Home Occupation. The Use Class Table of Community Planning Scheme No. 5 does not include “Home Occupation”. The use is classified as “Residential” (defined “as a building or use for human habitation or ancillary thereto”) which is a permitted use in the residential Living Area Precincts of the Scheme.

Clause 5.6 controls the extent and operation of Home Occupations as follows:

“5.6 HOME OCCUPATIONS

To preserve the amenity of residential precincts:

- (a) no home occupation may be commenced, established, advertised or undertaken from a residential lot or address unless such use has been approved by the Council;*
- (b) any home occupation shall be a use carried out by an occupier of land and shall not be transferable to any subsequent owner of the land;*

P09/3060 - FINAL APPROVAL FOR AMENDMENT NO. 55 TO COMMUNITY PLANNING SCHEME NO. 5 – HOME OCCUPATION PROVISIONS AND DEFINITION OF NUISANCE (REC)

- (c) *approval for the establishment of a home occupation shall be for a maximum period of twelve (12) months only and the applicant is to seek renewals thereafter to effect the continuance of the home occupation;*
- (d) *if in the opinion of the Council, a home occupation is causing a nuisance or annoyance to owners or occupiers of land in the neighbourhood the Council may revoke its approval;*
- (e) *the Council may only grant approval for a home occupation where:*
 - (i) *that occupation consists of the establishment and conduct of a business/office or consulting room, provided that the Council shall not grant approval to any uses of retail sale, hiring or display of goods of any nature, manufacturing or production of goods, where adverse amenity impacts are likely to occur;*
 - (ii) *it does not entail more than one (1) customer or client at any one time other than those members of the immediate family to travel to and from the premises in relation to the business. The Council may grant approval for a home occupation where it does not entail more than three (3) customers. The Council may permit greater than three (3) customers under an absolute majority decision provided that it is satisfied the increase will have not detrimental effect on the locality.*
 - (iii) *it does not create injury to or prejudicially affect the amenity of the neighbourhood including (but without limiting the generality of the foregoing) injury or prejudicial affection due to the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, grit, oil, waste water or waste products;*
 - (iv) *it does not entail the employment of any person not a member of the occupier family, unless the Council grants special approval;*
 - (v) *it does not occupy an area greater than thirty eight (38) square metres;*
 - (vi) *it does not require the provision of any essential service of a greater capacity than normally required for the permitted use of the lot;*
 - (vii) *it is restricted in advertisement to signs in accordance with Clause 5.10; and*
 - (viii) *it requires the provision of one on-site parking bay for the client/customer in addition to the domestic requirements on site, such parking bay to be accommodated to the satisfaction of the Council and not disrupting the access of domestic vehicles.*

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- (f) *Notwithstanding any other provisions of this clause 5.6, approval is not required from the Council where:*
- (i) *the home occupation comprises a business office no greater than 38 square metres;*
 - (ii) *no clients, customers or staff other than the occupier family travel to the premises;*
 - (iii) *there is no advertising sign on site larger than 0.2 square metres; and*
 - (iv) *the home occupation does not prejudicially affect the amenity of the neighbourhood.”*

These provisions provide some degree of control over applications for Sexual Service businesses within the residential Living Area Precincts of the City, however any application which is refused could be subject to review at the State Administrative Tribunal. Concern is raised relative to the extent of control over potential nuisance aspects of these activities and whether the amenity considerations would be adequate to address these concerns, which would most likely be raised in the event of an application being received. These concerns gave rise to the initiation of the proposed Amendment to CPS No. 5.

PUBLIC CONSULTATION/COMMUNICATION

The Amendment was advertised between 18 November 2008 and 30 December 2008 in the Melville Times.

At the end of the advertising period no submissions were received.

It should be noted that the Environmental Protection Authority has no objection to the amendment to proceed.

STATUTORY AND LEGAL IMPLICATIONS

Notwithstanding that the original Amendment was based on the Prostitution Amendment Act 2008 (which the current State Government has indicated will not be promulgated), the Amendment Act raised the issue and highlighted the potential for home based sexual services to operate from living areas as Home Occupations. Accordingly, to safeguard the residential amenity of the City and its residents, the adopted interim Policy and Amendment remain relevant and in this regard, it is appropriate to request final approval of the Amendment.

P09/3060 - FINAL APPROVAL FOR AMENDMENT NO. 55 TO COMMUNITY PLANNING SCHEME NO. 5 – HOME OCCUPATION PROVISIONS AND DEFINITION OF NUISANCE (REC)**FINANCIAL IMPLICATIONS**

Nil

STRATEGIC AND RISK MANAGEMENT IMPLICATIONS

Nil

POLICY IMPLICATIONS

Policy No. 06-PL-037 - Home Occupation Relative to Sexual Services Business, was adopted by Council on 19 August 2008.

ALTERNATE OPTIONS & THEIR IMPLICATIONS

Council could elect to request the Minister for Planning to not finalise the Amendment on the basis that the State Government has indicated it will not be proclaiming the Prostitution Amendment Act 2008, however, in the context of the issues raised by the Amendment Act and the potential amenity impacts of home based sexual service businesses operating as Home Occupations, it is desirable to seek finalisation of the Amendment.

COMMENTS

The Community Planning Scheme can legitimately deal with environmental amenity and land use planning criteria in the assessment of proposals for Sexual Service businesses. The Scheme has no moral or ethical criteria on which to judge the suitability of a proposed land or business use.

A number of concerns over the Prostitution Amendment Act 2008 were raised within the community with regard to the implications of the Act on planning controls within the City. It is clear from correspondence received that the establishment of these activities within residential areas is undesirable relative to its potential amenity and nuisance aspects. Accordingly, it is desirable to review the existing provisions of the Scheme to determine any necessary amendment to improve the capacity of the Scheme to appropriately deal with a home based Sexual Service business.

Whilst it is considered that the existing controls under Community Planning Scheme No. 5 with regard to Restricted Premises are sufficient to control larger business operations, the present Home Occupation provisions could be tightened to prevent Sexual Service businesses operating from residential Living Area Precincts of the City.

P09/3060 - FINAL APPROVAL FOR AMENDMENT NO. 55 TO COMMUNITY PLANNING SCHEME NO. 5 – HOME OCCUPATION PROVISIONS AND DEFINITION OF NUISANCE (REC)**CONCLUSION**

It is considered that Community Planning Scheme No. 5 provides adequate control over commercial Sexual Service business operations within the City. Notwithstanding, the Home Occupation provisions of the Scheme may not provide adequate controls over smaller scale owner-operated businesses in that these will be discretionary within the residential Living Area Precinct of the City and any refusal of such applications may be subject to review at the State Administrative Tribunal.

In order to improve local control over these matters it is desirable to finalise Amendment No. 55 to CPS No. 5 by amending the Home Occupation provisions of the Scheme to prevent the establishment of these businesses in Living Area Precincts, provide for greater control over visitor and customer hours and give further guidance with regard to the consideration of nuisance factors at the time of considering Home Occupation applications.

Therefore it is recommended that the Council forwards the Amendment No. 55 to the Honourable Minister for Planning for final approval.

OFFICER RECOMMENDATION & COUNCIL RESOLUTION (3060) FINAL APPROVAL

- 1. THAT COUNCIL RESOLVE, PURSUANT TO TOWN PLANNING REGULATION 17(2) THAT AMENDMENT NO. 55 TO COMMUNITY PLANNING SCHEME NO. 5 – HOME OCCUPATION PROVISIONS AND DEFINITION OF NUISANCE, BE ADOPTED FOR FINAL APPROVAL WITHOUT MODIFICATION.**
- 2. THAT THE SCHEME AMENDMENT DOCUMENTS BE EXECUTED BY THE MAYOR AND CHIEF EXECUTIVE OFFICER AND HAVE THE COMMON SEAL AFFIXED.**
- 3. AMENDMENT NO. 55 DOCUMENTS BE FORWARDED TO THE HONOURABLE MINISTER FOR PLANNING FOR FINAL APPROVAL WITH ADVICE THAT NO SUBMISSIONS WERE RECEIVED DURING THE STATUTORY ADVERTISING PERIOD AND THAT THE ENVIRONMENTAL PROTECTION AUTHORITY HAS NO OBJECTION TO THE AMENDMENT.**

At 8.17pm the Mayor submitted the motion, which was declared

**CARRIED EN BLOC
WITHOUT DISSENT (13/0)**

P09/3062 - PROPOSED ADVERTISING OF POTENTIAL PEDESTRIAN ACCESSWAY (PAW) CLOSURE BETWEEN AUGUST COURT AND LOCHEE WAY, BULL CREEK (REC) (ATTACHMENT)

Ward : Bull Creek/Leeming Ward
 Category : Operational
 Application Number : DA-2009-1
 Property : Pedestrian Accessway (PAW) between August Court and Lochee Way, Bull Creek.
 Proposal : To consider a request from the residents of 8 properties of Lochee Way and August Court, Bull Creek seeking the closure of a Pedestrian Accessway (PAW) located between Lochee Way and August Court, Bull Creek.
 Applicant : Mr P Zappia and other ratepayers of Lochee Way and August Court.
 Owner : Crown Land (Dept for Planning and Infrastructure-Land Asset Management Services)
 Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.
 Responsible Officer : Mr David Vinicombe
 Manager Planning and Development Services
 Previous Items : Not Applicable

AUTHORITY / DISCRETION

DEFINITION

<input checked="" type="checkbox"/>	Advocacy	<i>when Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input type="checkbox"/>	Executive	<i>the substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
<input type="checkbox"/>	Legislative	<i>includes adopting local laws, town planning schemes & policies.</i>
<input type="checkbox"/>	Review	<i>when Council review decisions made by Officers.</i>
<input type="checkbox"/>	Quasi-Judicial	<i>when Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>

P09/3062 - PROPOSED ADVERTISING OF POTENTIAL PEDESTRIAN ACCESSWAY (PAW) CLOSURE BETWEEN AUGUST COURT AND LOCHEE WAY, BULL CREEK (REC) (ATTACHMENT)**KEY ISSUES / SUMMARY**

- A request has been received from a number of residents of Lochee Way and August Court, Bull Creek to initiate proceedings for the closure of a Pedestrian Accessway (PAW) located between those two streets.
- The letter cites incidences of anti-social behaviour deemed to be of detriment to the levels of residential amenity enjoyed by those residents.
- Approval of the Council is sought for the matter of the closure to be advertised.
- The issue of PAW closure is governed by the WAPC Planning Bulletin No. 57 "Closure of Pedestrian Access Ways - Planning Considerations" which recommends to Local Governments how the matter of PAW closure should be dealt with.
- A preliminary assessment of the proposal indicates that closure is unlikely to have significant impacts on pedestrian movement in the locality as alternative routes are available.
- It is recommended that the closure of this PAW be progressed to advertising following which, a comprehensive report is to be referred to Council addressing the merits (or otherwise) of the proposal and views of the affected community.

BACKGROUND

The Council received initial correspondence from a number of the residents of Lochee Way and August Court dated 15th August 2008 seeking the endorsement of the Council in the closure of an existing Pedestrian Access Way (PAW) located between Lochee Way and August Court, Bull Creek. The letter of request refers to a previous application for closure which was advertised and did not proceed due to concern raised by other residents of August Court (details of this application have not been provided and cannot be determined from Council's records).

The initial request was not accompanied by the requisite application fee, and as such the matter was not actioned until the fees were paid in early February 2009. Details of the submissions made by the resident's in regard to this closure are attached to this report [3062 InitialSubmission Feb09.pdf](#).

Scheme Provisions

MRS Zoning	:	Urban
CPS 5 Zoning	:	Living Area Precinct - Bull Creek (BLK1)
R-Code	:	R20
Use Type	:	Not applicable
Use Class	:	Not applicable

Site Details

Lot Area	:	6,148.80 sqm
Retention of Existing Vegetation	:	Not applicable
Street Tree(s)	:	Not applicable
Street Furniture (drainage pits etc)	:	Concrete path in 3m wide x 58m length PAW
Site Details	:	3062 Aerial View.pdf

P09/3062 - PROPOSED ADVERTISING OF POTENTIAL PEDESTRIAN ACCESSWAY (PAW) CLOSURE BETWEEN AUGUST COURT AND LOCHEE WAY, BULL CREEK (REC) (ATTACHMENT)**Development Requirements**

None apply in this circumstance.

Setbacks

Not applicable

PUBLIC CONSULTATION/COMMUNICATION

Advertising Required: Will be required to seek further public opinion on proposal.

Reason: Statutory requirement of Land Administration Act 1997.

Support/Object: Not applicable at this stage.

REFERRALS TO GOVERNMENT AGENCIES

Required: Not required at this stage. Should the proposal proceed to formal advertising a number of referrals to external government agencies will be required.

Reason: Statutory requirement of the Land Administration Act 1997.

Support/Object: Consultation not undertaken at this stage.

STATUTORY AND LEGAL IMPLICATIONS

The precise manner by which applications to close PAW's should be made and progressed is detailed within Planning Bulletin No. 57- "Closure of Pedestrian Access Ways - Planning Considerations". [3062 Planning Bulletin Attachment.pdf](#)

Provided the matters associated with PAW closure are administered in accordance with these requirements, there are no adverse statutory or legal implications for the Council. Council would however need to be mindful of assessing and dealing with these issues in a strategic manner so as to avert an influx of these types of applications.

FINANCIAL IMPLICATIONS

Not applicable

STRATEGIC AND RISK MANAGEMENT IMPLICATIONS

The determination of this request to close the PAW may have an impact on the community. Determination of this impact is however evaluated via a programme of comprehensive consultation with members of the local community in accordance with the requirements of Planning Bulletin No. 57.

P09/3062 - PROPOSED ADVERTISING OF POTENTIAL PEDESTRIAN ACCESSWAY (PAW) CLOSURE BETWEEN AUGUST COURT AND LOCHEE WAY, BULL CREEK (REC) (ATTACHMENT)

ALTERNATIVE RECOMMENDATION

Elected Members may consider that it is premature to advertise this proposal for public comment without considering a strategic approach to public accessway closures within the City. Other Council's address this matter by conducting a comprehensive review of PAW's in their locality. These studies typically identify strategically important pedestrian and cyclist links and measures for their long term retention without unnecessarily creating a detrimental impact on residents. It is noted however that a preliminary assessment of these matters has already been undertaken for this proposal in the context of this report.

POLICY IMPLICATIONS

There is no longer a specific Council Policy that relates to the closure of PAW's. The requirements of Planning Bulletin No. 57 suitably replace the former Council Policy requirements in setting out procedures and expectations with regard to these matters.

COMMENT

Planning Bulletin No. 57 states the following in relation to the closure of PAW's.

"PAW's have in the past been created as part of the subdivision of land under S. 20A of the Town Planning and Development Act 1928 (TPD Act) as an alternative means of access between gazetted streets and for servicing. Many of those created in the past are narrow and have poor surveillance. PAW's are a part of subdivision design that is now considered incompatible with best practice and Liveable Neighbourhoods.

There are ongoing requests for the closure of PAW's on security and amenity grounds. However PAW's provide access to essential services; and provide pedestrian and cycle access both within neighbourhoods and to local and district facilities including public transport, schools, shops, parks and community facilities. In considering closure requests, a balance needs to be found between resident access to facilities and pedestrian transport, and concerns regarding security and amenity".

To that end Planning Bulletin No. 57 sets out the procedures to be followed by Local Government in considering the proposed closure of PAW's. Local Governments have the initial responsibility to determine whether an application to close a PAW should be progressed by undertaking an assessment which should address the following:

- (i) The impact of closure of the PAW on local pedestrian/cycle connectivity, that is, the additional distance required to be travelled to get from origin to destination after closure, as well as the impact on traffic and activity on remaining PAW's.

P09/3062 - PROPOSED ADVERTISING OF POTENTIAL PEDESTRIAN ACCESSWAY (PAW) CLOSURE BETWEEN AUGUST COURT AND LOCHEE WAY, BULL CREEK (REC) (ATTACHMENT)

- (ii) The impact of closure of the PAW on safe access to neighbourhood and district facilities, including schools and other educational facilities, shopping, parks and recreation facilities, community facilities, employment, public transport services, including bus stops and train stations, aged person and disabled facilities.
- (iii) The length of alternative routes and their safety, surveillance, amenity, useability, gradient and convenience of use, especially for the young, disabled and elderly.
- (iv) The role of the PAW as part of the wider pedestrian/cycle network or continuous access routes, as reflected in any Local Access Plan or in any Local Planning Strategy.
- (v) The incidences of crime and social difficulties being experienced by the adjoining landowners.
- (vi) The views of the adjoining landowners in relation to the PAW closure and a general commitment to purchase (applications will not proceed unless the land can be sold or reserved).
- (vii) Alternatives to PAW closure including temporary closure, physical improvement and or re-modelling where possible.

At this stage the intent of this report is to consider in general terms whether to commence consideration of closure by undertaking consultation procedures in accordance with Planning Bulletin No. 57 requirements. If the proposed closure proceeds to advertising, a full report will be prepared and presented to the Western Australian Planning Commission (WAPC) as part of the Council's recommendation. This report will contain reference to the criteria listed above and any impacts which may result on the provision of any public utility services in the PAW. It is considered useful however at this pre-advertising stage to consider the criteria advocated by the WAPC in Planning Bulletin No. 57, as the outcome of this will accurately inform Council whether the closure procedures should be initiated to provide for progression to advertising or not.

From an initial assessment of the proposal, it is apparent that closure of the PAW that links Lochee Way to August Court will not impact on the provision of any public utility service and have limited impact on local pedestrian and cycle connectivity. That is because whilst the PAW provides access into a cul-de-sac (August Court from Lochee Way), there are a number of alternative routes into the cul-de-sac from Henry Bull Drive via Lochee Way/Dartford Street or Lochee Way/Henry Bull Drive itself. An aerial extract is attached [3062 Aerial View.pdf](#) to this report to highlight these routes, as is the plan of the area [3062 Area Map.pdf](#) which demonstrates the alternative routes and the additional distances involved in their use. This shows that there will remain ample opportunities for local residents to gain safe access to neighbourhood and district facilities should the PAW be closed as the alternative routes are very useable as they comprise traditional footways flanked by active residential land uses. The alternative routes ensure that pedestrians benefit from the passive and active surveillance that occurs naturally on those routes.

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In relation to the increase in distances that will result from the closure, please refer to Table 1 below. Table 1 highlights the existing and proposed relationship that exists between the cul-de-sac and bus stops on South Street and Benningfield Road, and that between the cul-de-sac and the Bull Creek Shopping Centre.

TABLE 1: ACCESSIBILITY ASSESSMENT

FROM / TO:	EXISTING DISTANCE WITH PAW	PROPOSED DISTANCE WITHOUT PAW
August Ct (adjacent to No 14) to nearest bus stop on South St heading east and west.	Approx 290m	Approx 400m
August Ct (adjacent to No 1) to nearest bus stop on South St heading east and west.	Approx 300m	Approx 300m
August Ct (adjacent to No 14) to nearest bus stop on Benningfield Rd heading north and south.	Approx 100m	Approx 400m
August Ct (adjacent to No 1) to nearest bus stop on Benningfield Street heading north and south.	Approx 200m	Approx 320m
August Ct (adjacent to No 14) to entrance to Bull Creek Shopping Centre.	Approx 250m	Approx 450m
August Ct (adjacent to No 1) to entrance to Bull Creek Shopping Centre.	Approx 350m	Approx 350m

The details shown demonstrate that in relation to distances travelled to bus stops located on South Street, the closure of the PAW will result in residents located within the August Ct cul-de-sac having to walk a further 110m (maximum) to the nearest bus stop on South Street. Residents at the Henry Bull Drive end of the cul-de-sac are not affected by the closure as the nearest bus stop on South Street is located nearest to that end of the cul-de-sac. Those residents would not use the PAW to access bus stops on South Street. The closure of the PAW in relation to bus stops located on Benningfield Road will result in a moderate increase to the distance travelled but this is within 400m; such distance may be considered to be a reasonably walkable distance away in the context of Planning Bulletin No. 57 as required under a "pedshed" analysis. In addition, the impact of the increased distance is likely to be mainly felt by those residents who support the proposal in August Ct. As such it is unlikely that this will be an issue for those residents.

In relation to the distances that will result to the entrance to the Bull Creek Shopping Centre, it is concluded that whilst this will increase from 250m to 450m for residents of the western end of the cul-de-sac (August Court), it will remain consistent for those residents of the eastern end. Again, those most likely affected are the residents of August Court who support of the proposal in principle. As such, objection is unlikely to be raised from those residents.

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It is important to note from a strategic perspective that the PAW does not form part of a continuous network or route in this locality as defined in any Local Planning Strategy as no such Strategy exists. In any event, the closure of the PAW is unlikely to prejudice connectivity for pedestrians or cyclists as the area is well served with a number of alternative routes that may be readily used by these groups.

As is referred to in the documentation submitted in support of this closure from local residents, there have been a number of incidents of anti-social behaviour that have had a detrimental impact on the levels of residential amenity enjoyed by residents of the locality. The concerns of local residents have been aired with officers of the Council on a number of occasions, recently for example in relation to the proposal to re-develop the Bull Creek Tavern. Submissions received in that process indicated a number of incidences of anti social behaviour including the stabbing of an adjoining owner's son, the pouring of oil over a car owned by an adjoining owner's son and damage to the property fences which flank the PAW caused by "rampaging youths" passing through the PAW. As such it is clear that there is a concern about the incidences of anti-social behaviour, and a view that the existence of the PAW exacerbates these problems further at the expense of residents of Lochee Way and August Court, particularly those whose properties flank the route of the PAW itself. Clearly there is a high level of support from local residents to have this PAW closed. The four owners of properties that abut the PAW are signatories to this initial application for closure, and they are aware of the need to ensure agreement in relation to land purchase should the closure proceed.

It is not considered necessary to consider alternatives to closure at this stage. Subject to the formal results of consultation (if supported by Council) it may be necessary to consider alternatives to closure inclusive of temporary closure (e.g. - at night), physical improvement (possible options to improve visibility through improved lighting and trimming of vegetation) or remodelling as provided for under Planning Bulletin No. 57.

CONCLUSION

It is concluded that based on the assessment criteria laid out by Planning Bulletin No. 57, the impact that the PAW closure in relation to the distances that result for local residents when accessing local community facilities, may be readily accommodated without detriment to residential amenity or accessibility. Subject to the results of formal consultation involving letters to all residents of August Court and part of Lochee Way, together with the erection of signage at either side of the PAW and at the entrance of August Court (at intersection with Henry Bull Drive), together with letters to servicing authorities, the proposal would be required to be referred back to Council for consideration of a comprehensive report into this matter.

P09/3062 - PROPOSED ADVERTISING OF POTENTIAL PEDESTRIAN ACCESSWAY (PAW) CLOSURE BETWEEN AUGUST COURT AND LOCHEE WAY, BULL CREEK (REC) (ATTACHMENT)

OFFICER RECOMMENDATION (3062)

APPROVAL IN PRINCIPLE

- A) THAT THE REQUEST FOR THE CLOSURE OF THE PEDESTRIAN ACCESSWAY BETWEEN LOCHEE WAY AND AUGUST COURT, BULL CREEK, BE ADVERTISED FOR PUBLIC COMMENT IN ACCORDANCE WITH THE REQUIREMENTS OF THE WESTERN AUSTRALIAN PLANNING COMMISSION PLANNING BULLETIN NO. 57 SUBJECT TO THE FOLLOWING CONDITIONS:
1. LANDOWNERS WHO ABUTT THE PEDESTRIAN ACCESSWAY TO CONFIRM IN WRITING THEIR AGREEMENT TO PURCHASE THE PEDESTRIAN ACCESSWAY LAND IF CLOSURE IS APPROVED.
 2. LANDOWNERS WHO ABUTT THE PEDESTRIAN ACCESSWAY TO CONFIRM IN WRITING THEIR AGREEMENT TO PAY ALL COSTS ASSOCIATED WITH THE RELOCATION OF SERVICES LOCATED WITHIN THE ROUTE OF THE PEDESTRIAN ACCESSWAY.
 3. THE SUBMISSION OF A FURTHER FEE TO THE COUNCIL TO COVER ASSOCIATED COSTS IN RELATION TO ADVERTISING.
- B) COUNCIL SEEK COMMENT AND CLEARANCES FROM ALL PUBLIC UTILITIES IN RELATION TO THE PROPOSED PEDESTRIAN ACCESSWAY CLOSURE.
- C) *THAT IN THE EVENT THE ABUTTING LANDOWNERS DO NOT AGREE TO THE REQUIREMENTS OF CONDITIONS 1 TO 3 ABOVE, THE REQUEST FOR THE PAW CLOSURE IS REFUSED.*
- D) THAT THE RESIDENTS WHO ARE SIGNATORIES TO THE APPLICATION BE ADVISED IN WRITING OF A) - C) ABOVE.

COUNCIL RESOLUTION (3062)

At 8.18pm Cr Robartson moved, seconded Cr Bennett -

THAT THE FOLLOWING ITEM C OF THE OFFICERS RECOMMENDATION BE DELETED AND ITEM D BECOME THE NEW ITEM C:

- C) THAT IN THE EVENT THE ABUTTING LANDOWNERS DO NOT AGREE TO THE REQUIREMENTS OF CONDITIONS 1 TO 3 ABOVE, THE REQUEST FOR THE PAW CLOSURE IS REFUSED.***

At 8.22pm the mayor submitted the amended motion, which was declared

CARRIED (12/1)

P09/3062 - PROPOSED ADVERTISING OF POTENTIAL PEDESTRIAN ACCESSWAY (PAW) CLOSURE BETWEEN AUGUST COURT AND LOCHEE WAY, BULL CREEK (REC) (ATTACHMENT)

COUNCIL RESOLUTION (3062)

APPROVAL IN PRINCIPLE

At 8.22pm Cr Subramaniam moved, seconded Cr Halton -

- A) THAT THE REQUEST FOR THE CLOSURE OF THE PEDESTRIAN ACCESSWAY BETWEEN LOCHEE WAY AND AUGUST COURT, BULL CREEK, BE ADVERTISED FOR PUBLIC COMMENT IN ACCORDANCE WITH THE REQUIREMENTS OF THE WESTERN AUSTRALIAN PLANNING COMMISSION PLANNING BULLETIN NO. 57 SUBJECT TO THE FOLLOWING CONDITIONS:**
- 1. LANDOWNERS WHO ABUTT THE PEDESTRIAN ACCESSWAY TO CONFIRM IN WRITING THEIR AGREEMENT TO PURCHASE THE PEDESTRIAN ACCESSWAY LAND IF CLOSURE IS APPROVED.**
 - 2. LANDOWNERS WHO ABUTT THE PEDESTRIAN ACCESSWAY TO CONFIRM IN WRITING THEIR AGREEMENT TO PAY ALL COSTS ASSOCIATED WITH THE RELOCATION OF SERVICES LOCATED WITHIN THE ROUTE OF THE PEDESTRIAN ACCESSWAY.**
 - 3. THE SUBMISSION OF A FURTHER FEE TO THE COUNCIL TO COVER ASSOCIATED COSTS IN RELATION TO ADVERTISING.**
- B) COUNCIL SEEK COMMENT AND CLEARANCES FROM ALL PUBLIC UTILITIES IN RELATION TO THE PROPOSED PEDESTRIAN ACCESSWAY CLOSURE.**
- C) THAT THE RESIDENTS WHO ARE SIGNATORIES TO THE APPLICATION BE ADVISED IN WRITING OF A) - B) ABOVE.**

At 8.23pm the Mayor submitted the substantive motion as amended, which was declared
CARRIED (13/0)

P09/3063 - PROPOSED CHANGES TO R20 TRANSITIONAL REQUIREMENTS FOR RESIDENTIAL GROUPED DWELLING DEVELOPMENT UNDER THE RESIDENTIAL DESIGN CODES (REC) (ATTACHMENT)

Ward : All
 Category : Strategic
 Application Number : NA
 Property : All R20 code properties which have not been developed or subdivided under current R-Code provisions
 Proposal : To modify the R20 transitional requirements under the Residential Design Codes to extend the applicability of transitional requirements for grouped dwelling development under the current Codes.
 Applicant : Western Australian Planning Commission
 Owner : Various
 Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.
 Responsible Officer : David Vinicombe
 Manager Planning and Development Services
 Previous Items : Nil

AUTHORITY / DISCRETION

DEFINITION

<input checked="" type="checkbox"/>	Advocacy	<i>when Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input type="checkbox"/>	Executive	<i>the substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
<input type="checkbox"/>	Legislative	<i>includes adopting local laws, town planning schemes & policies.</i>
<input type="checkbox"/>	Review	<i>when Council review decisions made by Officers.</i>
<input type="checkbox"/>	Quasi-Judicial	<i>when Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>

P09/3063 - PROPOSED CHANGES TO R20 TRANSITIONAL REQUIREMENTS FOR RESIDENTIAL GROUPED DWELLING DEVELOPMENT UNDER THE RESIDENTIAL DESIGN CODES (REC) (ATTACHMENT)

KEY ISSUES / SUMMARY

- The Western Australian Planning Commission has released Planning Bulletin 95 which seeks comment on a proposal to review the transitional development requirements relative to R20 development through the State under the Residential Design Codes.
- Table 1 of the Residential Design Codes provides for an average R20 lot size of 500 sqm and minimum lot size of 440 sqm.
- Clause 6.1.3 of the Codes provides transitional arrangements for grouped dwelling development (and subdivision) within areas coded R20 as at 4 October 2002 to have an average lot area of 450 sqm (no minimum) when applications (for development of subdivision) are made prior to and including 30 April 2009.
- These transitional requirements extend from the initial concessions provided for under the 2002 Codes where no restriction on the applicable time applied.
- The 2008 Residential Design Codes provided for a sunset clause on the application of the 2002 transitional requirements.
- The intent of the transitional requirement is to provide for development and subdivision at the R20 density and reflect the lot size requirements of the 1991 Residential Planning Codes.
- The application of the new lot size requirements of the Codes and the expiration of the transitional requirements has come under considerable criticism and the new Minister for Planning has proposed an amendment to the Codes to provide for an extension of the transitional requirements for an undisclosed period.
- An assessment of the existing R20 coded Living Precincts of the City of Melville has identified that the impact of the proposal is limited to 774 lots and is primarily concentrated in areas where the predominant lot size is between 900 and 1000 sqm.
- Living Area Precincts of Alfred Cove, Ardross, Bateman, Bateman South Booragoon, Brentwood (BT1 and BT3), Bull Creek (BLK1), Kardinya (K1 and K5), Kardinya East, Leeming, Melville, Mount Pleasant (MP1), Myaree, Palmyra and Willagee which are coded R20 as the sole or base coding are affected by the proposal.
- In addition, other commercial Precincts inclusive of the Farrington Frame, Mixed Business and Mixed Business Frame Precincts provide for R20 development and have the potential to be impacted by the proposal.
- It is noted that when Council adopted Community Planning Scheme No 5, it did so with the expectation that an average lot size of 450 sqm (as required by the 1991 Residential Planning Codes) would apply for all subdivision and development in these areas.

P09/3063 - PROPOSED CHANGES TO R20 TRANSITIONAL REQUIREMENTS FOR RESIDENTIAL GROUPED DWELLING DEVELOPMENT UNDER THE RESIDENTIAL DESIGN CODES (REC) (ATTACHMENT)

(Summary continued)

- The 2002 Code proposals to increase the area requirement to an average of 500 sqm has the potential to impact on the development yield expected in these Precincts and the realisation of long term investment expectations of landowners who purchased property in these locations prior to the 2002 Residential Design Codes.
- In view of the impact of the expected development yield under the 2008 Codes and the impact that will be transferred to property owners of land capable of subdivision or development under the present transitional requirements of the Codes, it is proposed that Council endorse the proposed amendments to the Codes to provided for the continued application of the 1991 Residential Planning Code requirements.
- In addition, it is recommended that the WAPC be requested to address anomalies within the proposed provision relative to green field subdivision which were coded R20 prior to 4 October 2002, but not subdivided until the gazettal date of the proposed amendment and address long term management issues to identify those areas were the concession will continue to apply.

BACKGROUND

The Residential Codes Design Codes provides for an R20 average lot size of 500 sqm and minimum lot size of 440 sqm under Table 1 – General site requirements. Clause 6.1.3 Variation to the minimum site area requirements A3 iv of the Residential Design Codes provides for grouped dwelling development (and subdivision) within areas coded R20 as at 4 October 2002 to have an average lot area of 450 sqm (no minimum) when applications (for development of subdivision) are made prior to and including 30 April 2009. These transitional requirements extend from the initial concessions provided for under the 2002 Codes where no restriction on the applicable time period applied. The intent of the transitional requirement is to provide for development and subdivision at the R20 density and reflect the lot size requirements of the 1991 Residential Planning Codes.

The change to the R20 requirements were prompted by a desire to remove the anomaly that previously existed under the 1991 Codes where the average lot size for grouped dwellings (450 sqm) was different to the average requirements for single houses (500 sqm). The 450 sqm average for grouped dwellings was also inconsistent with the original intent of the R20 code, which was to provide for 20 lots per hectare or 500 sqm per lot.

A number of stakeholders including industry groups and the general public have expressed concern at the phasing out of the concession and the new Minister for Planning has proposed that the Codes be modified to remove the expiry date. These issues have been raised in Planning Bulletin 95 [3063 Planning Bulletin 95.pdf](#) and associated draft amendments to the Residential Design Code provisions [3063 Proposed R Code Requirements.pdf](#) and Explanatory Guidelines [3063 R Code Explanatory Guidelines.pdf](#)

P09/3063 - PROPOSED CHANGES TO R20 TRANSITIONAL REQUIREMENTS FOR RESIDENTIAL GROUPED DWELLING DEVELOPMENT UNDER THE RESIDENTIAL DESIGN CODES (REC) (ATTACHMENT)**Scheme Provisions**

MRS Zoning	:	Urban
CPS 5 Zoning	:	Living Area Precincts with a primary or base Coding of R20
R-Code	:	Existing R20 coded Precincts
Use Type	:	NA
Use Class	:	NA

Site Details

Lot Area	:	NA
Retention of Existing Vegetation	:	NA
Street Tree(s)	:	NA
Street Furniture (drainage pits etc)	:	NA
Site Details	:	NA

DETAIL

The application of the new lot size requirements of the Codes and the expiration of the transitional requirements has come under considerable criticism and the new Minister for Planning has proposed an amendment to the Codes to provide for an extension of the transitional requirements for an undisclosed period.

Specifically, the amendment to the Codes is proposed as follows:

“iv. in the case of grouped dwellings in areas coded R20 as at 4 October 2002, and on lots created or approved prior to [gazettal date], the average site area will be 450 sq m.”

The Planning Bulletin explains the intent of the variation to the Codes in greater detail as follows:

“it is proposed to amend the 2008 codes to remove the expiry date. However, to ensure that this concession is not used as the basis for the creation of new lots with reduced average lot sizes, contrary to the original intent of the R20 provision, it will apply only to those R20 coded lots created or approved prior to the date of gazettal of this amendment.”

There are no current plans to provide for the lot size requirements to apply unilaterally to all R20 coded areas, which include areas which have been coded R20 since 4 October 2004 or to single house (green title) subdivision of development.

P09/3063 - PROPOSED CHANGES TO R20 TRANSITIONAL REQUIREMENTS FOR RESIDENTIAL GROUPED DWELLING DEVELOPMENT UNDER THE RESIDENTIAL DESIGN CODES (REC) (ATTACHMENT)**PUBLIC CONSULTATION/COMMUNICATION**

The proposal to review the R20 requirements is the subject of consultation by the Western Australian Planning Commission (WAPC) under Planning Bulletin 95. The Consultation period closes on 6 March which is before this report is to be considered by Council. The closure date for the submission period has been scheduled to provide for changes to the Codes to be effected prior to the expiration of the current transitional requirements in the Codes on 30 April 2009. Given the Christmas break, it was not possible to forward this report to Council in February. Accordingly, a draft copy of this report has been forwarded to the WAPC for confirmation should Council support the recommendation contained within.

REFERRALS TO GOVERNMENT AGENCIES

NA

STATUTORY AND LEGAL IMPLICATIONS

There may be statutory and legal implications without the referencing of new and old R20 coded areas under Town Planning Schemes. These will be addressed in detail in the body of this report.

FINANCIAL IMPLICATIONS

Not applicable

STRATEGIC AND RISK MANAGEMENT IMPLICATIONS

Not Applicable

POLICY IMPLICATIONS

Not Applicable

P09/3063 - PROPOSED CHANGES TO R20 TRANSITIONAL REQUIREMENTS FOR RESIDENTIAL GROUPED DWELLING DEVELOPMENT UNDER THE RESIDENTIAL DESIGN CODES (REC) (ATTACHMENT)

ALTERNATE OPTIONS & THEIR IMPLICATIONS

Council could choose not to support the proposed amendment to the Codes on the basis that the current R-Code transitional requirements will provide for an effective down coding of a number of Living Precincts within the City of Melville (to the equivalent of the former R17.5 requirements – 1 unit per 500 sqm – now 1 unit per 571 sqm).

COMMENTS

In order to address this proposal, this report will look at the impact the proposal will have on the existing R20 coded Precincts within the City and then provide comment on the details of the amendment itself.

Existing R20 Coded Precincts in the City of Melville

First of all it is significant to note that when Council adopted Community Planning Scheme No 5, it did so with the expectation that an average lot size of 450 sqm (as required by the 1991 Residential Planning Codes) would apply for all subdivision and development in these areas. The 2002 Codes had the potential to impact on these expected lot yields within the City's R20 Precincts, however the concessions provided for under the 2002 Codes ensured that development and subdivision potential in these areas would be unaffected. The 2008 Codes reduced the capacity for subdivision and development to occur under the 1991 standards by creating a time limitation. Effectively, the 2008 Codes and expiration of the transitional period on 30 April 2009 results in a down-coding of the existing R20 areas to equate to the old R17.5 requirements (1 unit per 500 sqm).

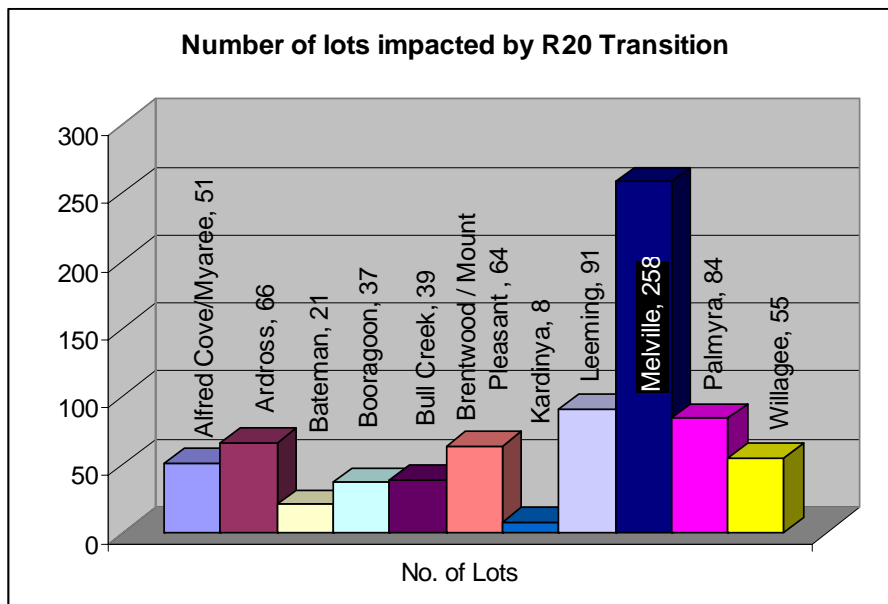
Strategic Urban Planning has provided the following analysis of the impact that the proposal would have on the City's existing R20 coded precincts. It is estimated that 774 lots will be affected, primarily concentrated in areas where the predominant lot size is between 900 and 999 sqm.

Living Area Precincts of Alfred Cove, Ardross, Bateman, Bateman South Booragoon, Brentwood (BT1 and BT3), Bull Creek (BLK1), Kardinya (K1 and K5), Kardinya East, Leeming, Melville, Mount Pleasant (MP1), Myaree, Palmyra and Willagee which are coded R20 as the sole or base coding are affected by the proposal.

Melville is the most impacted suburb with just over 12% of the lots being affected by this proposal. There is only a minor impact on all the other suburbs with Ardross being the next highest with 4.3%. In terms of numbers of actual lots impacted in each suburb, Melville is again most impacted (258 lots), followed by Leeming (91 lots) and Palmyra (84 lots).

P09/3063 - PROPOSED CHANGES TO R20 TRANSITIONAL REQUIREMENTS FOR RESIDENTIAL GROUPED DWELLING DEVELOPMENT UNDER THE RESIDENTIAL DESIGN CODES (REC) (ATTACHMENT)

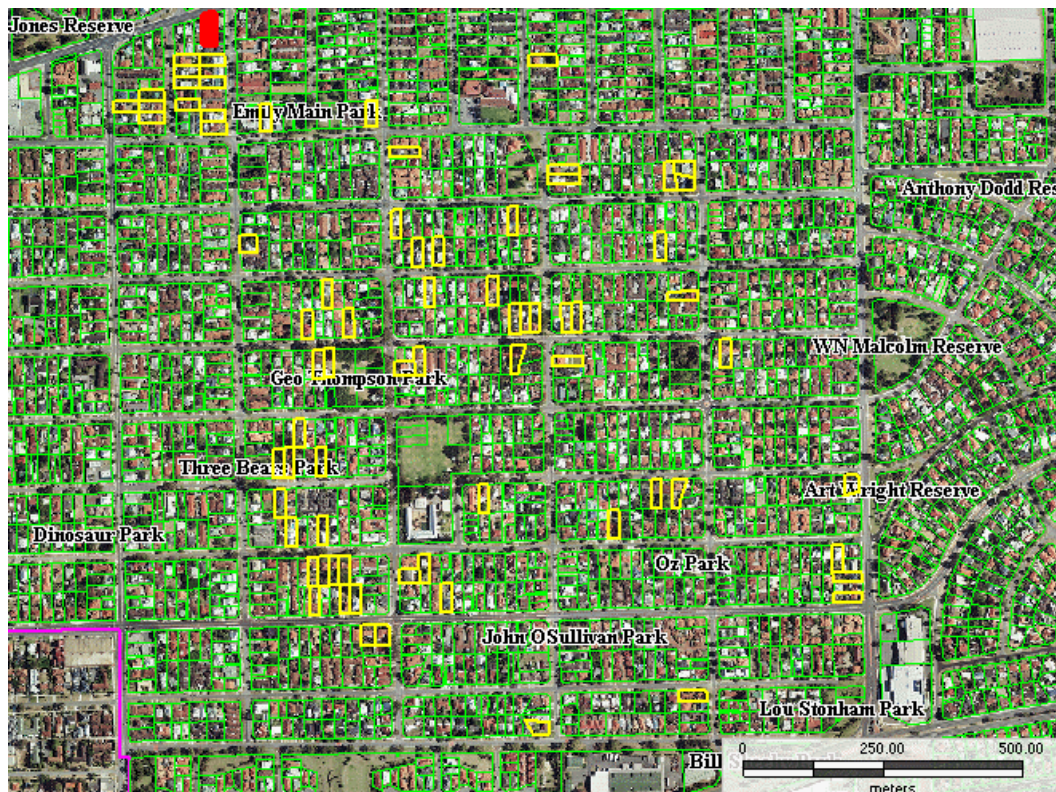
Suburb	No. of Lots	Total lots	% of lots
Alfred Cove/Myaree	51	2165	2.4
Ardross	66	1527	4.3
Bateman	21	1311	1.6
Booragoon	37	2241	1.6
Bull Creek	39	3105	1.2
Brentwood / Mount Pleasant	64	3781	1.7
Kardinya	8	3569	0.2
Leeming	91	3082	2.5
Melville	258	2111	12.2
Palmyra	84	3231	2.6
Willagee	55	2076	2.6
Total City of Melville	774	38474	2%



P09/3063 - PROPOSED CHANGES TO R20 TRANSITIONAL REQUIREMENTS FOR RESIDENTIAL GROUPED DWELLING DEVELOPMENT UNDER THE RESIDENTIAL DESIGN CODES (REC) (ATTACHMENT)

The distribution of the lots within the suburbs shows another side to the impact within suburbs. There are some streets that are impacted considerably because of the location of impacted sites resulting from the predominant lot sizes existing in these locations. For example, Palmyra has significant consolidated areas which are impacted as shown below:

Palmyra: Several clusters in close proximity



It may be argued that in such instances, the current provisions which provide for the expiration of the old R20 requirements will prevent subdivision and development of those properties detailed above and thereby maintain the present streetscape amenity in the areas impacted by the proposal. Notwithstanding, the Council did in preparing the 1999 CPS No 5 acknowledge that the applied R20 coding would provide for the development of these properties. Further, the transitional requirement only relates to average lot sizes for grouped dwelling development. No minimum lot size is required. This provides for the retention of existing dwellings which may be important to the streetscape and general amenity of an area which may not be otherwise available if an alternative density coding was applied to the area to maintain development rights.

P09/3063 - PROPOSED CHANGES TO R20 TRANSITIONAL REQUIREMENTS FOR RESIDENTIAL GROUPED DWELLING DEVELOPMENT UNDER THE RESIDENTIAL DESIGN CODES (REC) (ATTACHMENT)

It should be noted that a possible impact of not supporting the continuation of the transitional requirements may be significant in that affected property owners may apply pressure for Council to increase the density coding of these areas under the review of CPS No. 5 so as to maintain development rights and keep with the intent of the density codings applied under CPS No. 5 in 1999. Whereas changing an R17.5 area (previously an average area requirement of 500 sqm - now 571 sqm) to R20 (average of 500 sqm – no concession to apply to new coded R20 areas) would maintain existing development rights and the intent of CPS No. 5, the same does not apply to R20 coded areas. The next rise in density coding is R25 which provides for an average lot area of 350 sqm. The impact of increasing existing R20 coded areas to R25 has not been analysed, however it is envisaged to be significant given the predominance of lots over 700 sqm throughout the City's Living Precincts. Council may then be in a position of having to retain the existing R20 density codings and as a result disenfranchise existing property owners who have been unable to take advantage of the transitions lot area requirements and accept that these areas will not yield the expected housing stock envisaged under CPS 5, and thereby create greater pressure for increases in density in other locations in order to achieve required population growth requirements laid down by the State Government.

In regard to the above aspects, it is considered important to extend the transitional requirements for R20 development and subdivision.

Amendment Concerns

Notwithstanding the general support for the proposal to remove the expiration date for the transitional requirements, a couple of concerns with regards to the specifics of the wording of the Amendment to the Codes and future management implications are raised as follows:

1. The proposal is unclear in that it states that "*iv. in the case of grouped dwellings in areas coded R20 as at 4 October 2002, and on lots created or approved prior to [gazettal date], the average site area will be 450 sq m.*" This statement in itself is contradictory in that the intent to acknowledge areas coded R20 prior to 4 October 2002 relate to the gazettal date of the 2002 Codes, but the second part of the requirement provides for this to apply only to lots created in these areas prior to the gazettal date of the amendment. In other words, the intent cannot be achieved if a lot is not subdivided prior to gazettal of the amendment.

Discussions with the Department of Planning and Infrastructure indicate that the intent of the second part of the requirement relates to new green filed subdivision where an R20 coding may have existed prior to 4 October 2002, but the green field subdivision of the lots had not occurred. The requirement will allow for these subdivisions to have a limited extension of the transitional requirements, which is considered reasonable.

P09/3063 - PROPOSED CHANGES TO R20 TRANSITIONAL REQUIREMENTS FOR RESIDENTIAL GROUPED DWELLING DEVELOPMENT UNDER THE RESIDENTIAL DESIGN CODES (REC) (ATTACHMENT)

Accordingly, it is recommended that the provision be reworded to accurately reflect the intent relative to green field subdivisions and maintain the intent of the 1991 Residential Planning Codes with respect to strata subdivision and grouped dwelling development of existing green title lots in established R20 areas prior to 4 October 2002. Whilst the City of Melville is unlikely to be the subject of green field subdivisions, clarification in this regard ensures that there will be no confusion relative to the continuation of the concession in the City's R20 coded Precincts. In this regard, the following rewording is recommended:

“iv. in the case of grouped dwellings on lots in existence and in areas coded R20 as at 4 October 2002, or on green field subdivision lots coded R20 at 4 October 2002 and created or approved for subdivision prior to [gazettal date], the average site area will be 450 sqm.”

2. It is noted that there may be long term management issues without the referencing of the concessional R20 coded areas under Town Planning Schemes. Given the intent to provide for two distinct R20 average lot sizes for grouped dwelling subdivision and development, it may be appropriate to signify the concessional R20 coded areas (coded prior to 4 October 2002 or green field lots as detailed above) with a “C” (for concession). It is recommended that clarity across the board on this matter should be coordinated by the WAPC.

CONCLUSION

In accordance with the analysis and comments on the proposed amendment to the R20 average lot size requirements in the Residential Design Codes, it is recommended that the intent of the Amendment be supported and that the WAPC be requested to take into account the issues raised at points 1 and 2 above, as further detailed in the following recommendation.

OFFICER RECOMMENDATION & COUNCIL RESOLUTION (3063)

APPROVAL

At 8.24pm Cr Bennett moved, seconded Cr Macphail -

THAT COUNCIL ADVISE THE WESTERN AUSTRALIAN PLANNING COMMISSION THAT IT SUPPORTS THE PROPOSAL TO EXTEND THE TRANSITIONAL REQUIREMENTS WITH REGARD TO R20 SUBDIVISION AND DEVELOPMENT AND ALSO RECOMMEND THAT THE FOLLOWING MATTERS BE ADDRESSED AS PART OF THE AMENDMENT:

1. **CLAUSE 6.1.3 A3 IV OF THE RESIDENTIAL DESIGN CODES BE REWORDED TO ACCURATELY REFLECT THE INTENT RELATIVE TO GREEN FIELD SUBDIVISIONS AND MAINTAIN THE INTENT OF THE 1991 RESIDENTIAL PLANNING CODES WITH RESPECT TO STRATA SUBDIVISION AND GROUPED DWELLING DEVELOPMENT OF EXISTING GREEN TITLE LOTS IN ESTABLISHED R20 AREAS PRIOR TO 4 OCTOBER 2002. IN THIS REGARD, THE FOLLOWING REWORDING IS RECOMMENDED:**

P09/3063 - PROPOSED CHANGES TO R20 TRANSITIONAL REQUIREMENTS FOR RESIDENTIAL GROUPED DWELLING DEVELOPMENT UNDER THE RESIDENTIAL DESIGN CODES (REC) (ATTACHMENT)

- “IV. IN THE CASE OF GROUPED DWELLINGS ON LOTS IN EXISTENCE AND IN AREAS CODED R20 AS AT 4 OCTOBER 2002, OR ON GREEN FIELD SUBDIVISION LOTS CODED R20 AT 4 OCTOBER 2002 AND CREATED OR APPROVED FOR SUBDIVISION PRIOR TO [GAZETTAL DATE], THE AVERAGE SITE AREA WILL BE 450 SQM.”**
- 2. CLARIFICATION WILL BE REQUIRED UNDER LOCAL PLANNING SCHEMES TO IDENTIFY CONCESSIONAL R20 DENSITY CODED AREAS UNDER A LOCAL PLANNING SCHEME FOR AN INDEFINITE PERIOD. ACCORDINGLY, IT IS RECOMMENDED THAT THE WESTERN AUSTRALIAN PLANNING COMMISSION PROVIDE A STANDARD FOR APPLICATION ACROSS THE STATE WHICH SIGNIFIES THE CONCESSIONAL CODED AREAS WITH A “C” (FOR CONCESSIONAL) INSERTED AS A SUFFIX TO THE R20 CODING (I.E. R20C).**

At 8.25pm the Mayor submitted the motion, which was declared

CARRIED (11/2)

P09/3064 – CITY OF MELVILLE – LOCAL COMMERCIAL STRATEGY AND MELVILLE CITY CENTRE (REC)

Disclosure of Interest

Item No.	P09/3064
Councillor/Officer	His Worship the Mayor – R Aubrey
Type of Interest	Proximity interest in accordance with the Act (s 5.60B)
Nature of Interest	Owner of rental property across the road from Garden City Shopping Centre
Request	Leave
Decision of Council	Not Required

Disclosure of Interest

Item No.	P09/3064
Councillor/Officer	Deputy Mayor – Cr P Phelan
Type of Interest	Interest under Code of Conduct
Nature of Interest	Relative of Cr Phelan lives across the road (residence backs on to Davy Street)
Request	Leave
Decision of Council	Not Required

Ward	: All
Category	: Strategic
Application Number	: Nil
Subject Index	: Local Commercial Strategy
Customer Index	: City of Melville
Property	: Not applicable
Proposal	: Not applicable
Applicant	: Not applicable
Owner	: Not applicable
Disclosure of any Interest	: No Officer involved in the preparation of this report has a declarable interest in this matter.
Responsible Officer	: Kym Davis Manager Strategic Planning
Previous Items	: Not applicable

P09/3064 – CITY OF MELVILLE – LOCAL COMMERCIAL STRATEGY AND MELVILLE CITY CENTRE (REC)

AUTHORITY / DISCRETION

DEFINITION

<input checked="" type="checkbox"/>	Advocacy	<i>when Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input type="checkbox"/>	Executive	<i>the substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
<input type="checkbox"/>	Legislative	<i>includes adopting local laws, town planning schemes & policies.</i>
<input type="checkbox"/>	Review	<i>when Council review decisions made by Officers.</i>
<input type="checkbox"/>	Quasi-Judicial	<i>when Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>

KEY ISSUES / SUMMARY

- The Western Australian Planning Commission (WAPC) has responded to City of Melville Local Commercial Strategy, which reviewed all retail centres in the City of Melville, including provision for expansion to Garden City floor space.
- The comments from the WAPC have included that they do not support expansion of the floor space for Garden City.
- This limitation on floor space expansion compromises the ability to deliver the broader outcomes for the Melville City Centre.
- Recommendations in this item refer to further discussions and steps to continue the preferred option of expansion of floor space for Garden City.

BACKGROUND

The Western Australian Planning Commission (WAPC) has responded to the City of Melville Local Commercial Strategy lodged in 2007 and the Melville City Centre – Centres Plan.

The Local Commercial Strategy essentially reviewed all retail centres in the City of Melville setting acceptable floor space for the period 2006 and 2026 and the hierarchy of centres.

The Local Commercial Strategy was advertised and Council endorsed it and referred it to the WAPC in 2007. The Local Commercial Strategy provided for some expansion of local centres, district centres and the Melville City Centre (Garden City) to 74,100m² by 2006 and 77,400m² by 2026.

P09/3064 – CITY OF MELVILLE – LOCAL COMMERCIAL STRATEGY AND MELVILLE CITY CENTRE (REC)

DETAIL

The WAPC has responded to the City of Melville Local Commercial Strategy as follows:

- 1. WAPC is prepared to endorse Local Commercial Strategy subject to some modifications namely concerning updating of data, reference to policy numbers, deletion of 2 centres in Myaree, deletion of the Norma Road Main Street etc. With respect to these modifications, the consultants who prepared the Local Commercial Strategy can make the changes and the issues raised relating to Myaree be debated following the publication of the new State Metropolitan Centre Policy in mid 2009.*
- 2. WAPC does not support expansion of Melville City Centre above 65,000m² at this stage pending review of State Metropolitan Centres Policy (mid 2009).*
- 2. WAPC is prepared to endorse the Melville City Centre – Centres Plan (Garden City Master Plan).*

The WAPC advice can be viewed as:

1. Not supporting City of Melville Local Commercial Strategy at this point as it is outside the current State Metropolitan Centres Policy but will reconsider it when the new Metropolitan Centres Policy (MCP) is endorsed. Assuming release of the Metropolitan Centres Policy in mid 2009 the new policy may be endorsed in 12 months to 24 months. This is considered an unnecessary and unwarranted delay in the Garden City project.
2. Will endorse the City of Melville Local Commercial Strategy with modifications some of which can be easily made, however the question of 74,000m² for Garden City cannot be addressed until the new MCP is released. It is unreasonable and unnecessary in this instance for Garden City to be delayed by a pending policy which could take 12 to 24 months to finalise.
3. Endorsing the Centres Plan for Garden City which permits 75,000 to 85,000m² retail floor space. (no time frame).

The City of Melville has been working with AMP for 3 to 4 years in planning the redevelopment of the City Centre. Council's City Centre refurbishment is integrally connected to the AMP retail/commercial area and the Centre's Plan and supporting traffic, parking, social and other studies show how the City Centre can be developed with a 15,000 to 20,000m² retail and other floor space expansion of Garden City.

A number of public meetings/engagements and consultations programs have gained community support for the project. Council has discussed land exchanges and/or leases with AMP in order to create a true City Centre of entertainment, retailing, recreation, administration, residential and office development with a 'main street'.

AMP wishes to invest \$200m into an expansion of Garden City and the City of Melville considerable funds into a new town square, community facilities, parking and public area.

P09/3064 – CITY OF MELVILLE – LOCAL COMMERCIAL STRATEGY AND MELVILLE CITY CENTRE (REC)

The AMP development alone would provide

- \$200m construction over 2 – 3 years
- 800 – 1000 construction jobs
- 650 new retail jobs
- New integrated centre with new Discount Department Store (Woolworths), expansion of David Jones and numerous speciality shops.
- Improved traffic circulation
- Upgraded and improved cinemas
- Additional entertainment, food and beverage outlets
- New “main street” alfresco area

The City of Melville would be in a position as an adjoining land owner to

- Develop a new town square with public art
- Provide for new office and commercial floor space on its land
- Provide for and encourage medium and high density residential development in the town centre on its land
- Provide additional community facilities, upgraded library/multi purpose building
- Resolve current transport and traffic access issues
- Encourage AMP to provide a CAT bus network and improve public transport
- Design out some minor social problems arising in the City Centre
- Provide an active area of public space for markets, art exhibitions etc

PUBLIC CONSULTATION/COMMUNICATION

Not applicable to this item.

REFERRALS TO GOVERNMENT AGENCIES

Referred to the WAPC

STATUTORY AND LEGAL IMPLICATIONS

As detailed in the report.

FINANCIAL IMPLICATIONS

There are no direct financial implications to the City of Melville

P09/3064 – CITY OF MELVILLE – LOCAL COMMERCIAL STRATEGY AND MELVILLE CITY CENTRE (REC)

STRATEGIC AND RISK MANAGEMENT IMPLICATIONS

Risk Statement	Level of Risk*	Risk Mitigation Strategy
That the expansion of Garden City does not gain approval from WAPC.	High	As per recommendations of this report

POLICY IMPLICATIONS

There are implications for the Local Commercial Strategy as indicated in the report.

ALTERNATE OPTIONS & THEIR IMPLICATIONS

Not applicable.

CONCLUSION

The City of Melville needs to redevelop its City Centre in partnership with adjoining landowners. There are serious economic, social and environmental advantages to be gained from the expansion of Garden City within the confines of the approved City Centre Plan (Master Plan) immediately.

Further delay is not warranted or acceptable in view of the delays already experienced in Department for Planning and Infrastructure. (2007 to 2009). The need for such facilities exist and the advantages which would result economically, socially and environmentally are significant. AMP are committed and ready to commence detailed design work for the City Centre with the City of Melville in order to have a finished product by 2012/13. A one or two year delay is not warranted.

Economically the state, region and City will gain from a major construction project as proposed. Socially the community will be provided with much needed services, both of a retail and community nature. Environmentally, a number of traffic and transport issues can be resolved.

In view of the above, it is recommended that the City of Melville advise the WAPC and Minister for Planning that it:

1. Considers the expansion of floor space of Melville City Centre is necessary and integral to the City of Melville's Local Commercial Strategy.
2. Does not accept a deferral/delay in dealing with the Garden City proposal for 74,000m² in view of the economic, social and environmental advantages which will result from the implementation of the Centres Plan.
3. Will deal with the Myaree issue as part of the States new MCP and Network City Policy.

P09/3064 – CITY OF MELVILLE – LOCAL COMMERCIAL STRATEGY AND MELVILLE CITY CENTRE (REC)

At 8.25pm Cr Phelan and His Worship the Mayor, having declared an interest in this item, left to the meeting.

At 8.25pm Cr Everett took the Chair as the Presiding Member.

OFFICER RECOMMENDATION (3064)

APPROVAL

At 8.25pm Cr Bennett moved, seconded Cr Subramaniam -

1. THAT THE WESTERN AUSTRALIAN PLANNING COMMISSION BE ADVISED THAT THE EXPANSION OF FLOOR SPACE OF MELVILLE CITY CENTRE IS NECESSARY AND INTEGRAL TO THE CITY OF MELVILLE'S LOCAL COMMERCIAL STRATEGY.
2. THAT THE CITY OF MELVILLE RECOGNISES THE IMPORTANCE OF THE PROPOSED EXPANSION OF FLOOR SPACE TO 74,000M² FOR THE MELVILLE CITY CENTRE IN THAT IT WILL FACILITATE SIGNIFICANT ECONOMIC, SOCIAL AND ENVIRONMENTAL ADVANTAGES FOR THE STATE, REGION AND RESIDENTS OF THE CITY OF MELVILLE.
3. THAT WITH REGARD TO THE WESTERN AUSTRALIAN PLANNING COMMISSION RECOMMENDATIONS TO UPDATE DATA REGARDING MYAREE AND DELETING THE TWO CENTRES IN MYAREE AND THE MAIN STREET THE WESTERN AUSTRALIAN PLANNING COMMISSION BE ADVISED THAT THESE WILL BE CONSIDERED WHEN THE NEW METROPOLITAN CENTRES POLICY IS RELEASED LATER THIS YEAR.
4. THAT THE CITY OF MELVILLE REQUESTS A JOINT MEETING OF THE WESTERN AUSTRALIAN PLANNING COMMISSION CHAIRMAN AND MINISTER FOR PLANNING AND IF POSSIBLE THE PREMIER TO DISCUSS THE MATTER.

Amendment

At 8.26pm Cr Robartson moved, seconded Cr Reynolds -

THAT THE FOLLOWING ITEM 5 BE ADDED TO THE OFFICER RECOMMENDATION:

5. THAT THE CITY OF MELVILLE ADVISE THE WESTERN AUSTRALIAN LOCAL GOVERNMENT ASSOCIATION OF THE ISSUES RELEVANT TO THE STATUS OF THE CITY OF MELVILLE LOCAL COMMERCIAL STRATEGY AND MELVILLE CITY CENTRE PLAN AND TO KEEP THE ASSOCIATION INFORMED ON THE PROGRESSION OF OUTCOMES IN RELATION TO THESE STRATEGICALLY SIGNIFICANT DOCUMENTS.

At 8.26 the Presiding Member submitted the amendment, which was declared

CARRIED (11/0)

P09/3064 – CITY OF MELVILLE – LOCAL COMMERCIAL STRATEGY AND MELVILLE CITY CENTRE (REC)

COUNCIL RESOLUTION (3064)

APPROVAL

1. **THAT THE WESTERN AUSTRALIAN PLANNING COMMISSION BE ADVISED THAT THE EXPANSION OF FLOOR SPACE OF MELVILLE CITY CENTRE IS NECESSARY AND INTEGRAL TO THE CITY OF MELVILLE'S LOCAL COMMERCIAL STRATEGY.**
2. **THAT THE CITY OF MELVILLE RECOGNISES THE IMPORTANCE OF THE PROPOSED EXPANSION OF FLOOR SPACE TO 74,000M² FOR THE MELVILLE CITY CENTRE IN THAT IT WILL FACILITATE SIGNIFICANT ECONOMIC, SOCIAL AND ENVIRONMENTAL ADVANTAGES FOR THE STATE, REGION AND RESIDENTS OF THE CITY OF MELVILLE.**
3. **THAT WITH REGARD TO THE WESTERN AUSTRALIAN PLANNING COMMISSION RECOMMENDATIONS TO UPDATE DATA REGARDING MYAREE AND DELETING THE TWO CENTRES IN MYAREE AND THE MAIN STREET THE WESTERN AUSTRALIAN PLANNING COMMISSION BE ADVISED THAT THESE WILL BE CONSIDERED WHEN THE NEW METROPOLITAN CENTRES POLICY IS RELEASED LATER THIS YEAR.**
4. **THAT THE CITY OF MELVILLE REQUESTS A JOINT MEETING OF THE WESTERN AUSTRALIAN PLANNING COMMISSION CHAIRMAN AND MINISTER FOR PLANNING AND IF POSSIBLE THE PREMIER TO DISCUSS THE MATTER.**
5. **THAT THE CITY OF MELVILLE ADVISE THE WESTERN AUSTRALIAN LOCAL GOVERNMENT ASSOCIATION OF THE ISSUES RELEVANT TO THE STATUS OF THE CITY OF MELVILLE LOCAL COMMERCIAL STRATEGY AND MELVILLE CITY CENTRE PLAN AND TO KEEP THE ASSOCIATION INFORMED ON THE PROGRESSION OF OUTCOMES IN RELATION TO THESE STRATEGICALLY SIGNIFICANT DOCUMENTS.**

At 8.29pm the Presiding Member submitted the substantive motion as amended, which was declared

CARRIED (11/0)

At 8.30pm Cr Everett vacated the Chair as the Presiding Member.

At 8.30pm Cr Phelan and His Worship the Mayor returned to the meeting, His Worship the Mayor took the Chair.

C09/5000 – COMMON SEAL REGISTER (REC)

Ward	:	All
Category	:	Operational
Subject Index	:	Common Seal Register
Customer Index	:	City of Melville
Disclosure of any Interest	:	No Officer involved in the preparation of this report has a declarable interest in this matter.
Previous Items	:	Standard Item
Works Programme	:	Not applicable
Funding	:	Not applicable
Responsible Officer	:	Bruce Taylor Manager Information, Technology & Support

AUTHORITY / DISCRETION

DEFINITION

<input type="checkbox"/>	Advocacy	<i>when Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input checked="" type="checkbox"/>	Executive	<i>the substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
<input type="checkbox"/>	Legislative	<i>includes adopting local laws, town planning schemes & policies.</i>
<input type="checkbox"/>	Review	<i>when Council review decisions made by Officers.</i>
<input type="checkbox"/>	Quasi-Judicial	<i>when Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>

KEY ISSUES / SUMMARY

This report details the documents to which the City of Melville Common Seal has been applied and recommends that the information be noted.

C09/5000 – COMMON SEAL REGISTER (REC)

BACKGROUND

Section 2.5 of the Local Government Act 1995 states that a Local Government is a Body Corporate with perpetual succession and a common seal. A document is validly executed by a Body Corporate when the common seal of the Local Government is affixed to it by the Chief Executive Officer, and the Mayor and the Chief Executive Officer attest the affixing of the seal.

DETAIL

Register Reference*	Party	Description	File Reference
245	City of Melville	Legal Agreement Development Deed - Amalgamation of Lots and Others (23 Queens Road, Mt Pleasant)	1810613
247	City of Melville	Management Licence Document - Leeming Lights Community Hall	2005746
250	City of Melville	Legal Agreement - 42 Ogilvie Rd Mt Pleasant _ For satisfaction of subdivision	1862501
252	City of Melville & HACC	Sign off on contractual hours and funding allocation between HACC and COM	No DW Number
253	The Hollioake Group Pty Ltd & COM	Grant of Easement 23 Queens Road Mount Pleasant	2014961
255	City of Melville & Minister for Planning	Amending the Scheme Text to include Clause 4.4	1943131

* Documents relating to register numbers not appearing on the above table did not need to be signed under Common Seal.

PUBLIC CONSULTATION/COMMUNICATION

Not applicable.

CONSULTATION WITH OTHER AGENCIES / CONSULTANTS

Not applicable.

STATUTORY AND LEGAL IMPLICATIONS

Section 2.5 of the Local Government Act 1995.
(2) The local government is a body corporate with perpetual succession and a common seal.

C09/5000 – COMMON SEAL REGISTER (REC)

9.49. Documents, how authenticated

A document, is, unless this Act requires otherwise, sufficiently authenticated by a local government without its common seal if signed by the CEO or an employee of the local government who purports to be authorised by the CEO to so sign.

FINANCIAL IMPLICATIONS

Nil.

STRATEGIC AND RISK MANAGEMENT IMPLICATIONS

Not applicable.

POLICY IMPLICATIONS

Not applicable.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

Not applicable.

CONCLUSION

This is a standard report for Elected Members information.

OFFICER RECOMMENDATION & COUNCIL RESOLUTION (5000)

NOTED

THAT THE ACTION OF HIS WORSHIP THE MAYOR AND THE CHIEF EXECUTIVE OFFICER IN EXECUTING THE DOCUMENTS LISTED UNDER THE COMMON SEAL OF THE CITY OF MELVILLE, BE NOTED.

At 8.33pm the Mayor submitted the motion, which was declared

**CARRIED EN BLOC
WITHOUT DISSENT (13/0)**

C09/6000 - INVESTMENT STATEMENTS (REC) (ATTACHMENT)

Ward	: All
Category	: Operational
Subject Index	: Financial Investments and Statements
Customer Index	: Not applicable
Disclosure of any Interest	: No Officer involved in the preparation of this report has a declarable interest in this matter.
Previous Items	: Standard Item
Works Programme	: Not applicable
Funding	: Not applicable
Responsible Officer	: Dudley Smith Manager Financial Services

AUTHORITY / DISCRETION

DEFINITION

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<input checked="" type="checkbox"/>	Executive	<i>the substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
<input type="checkbox"/>	Legislative	<i>includes adopting local laws, town planning schemes & policies.</i>
<input type="checkbox"/>	Review	<i>when Council review decisions made by Officers.</i>
<input type="checkbox"/>	Quasi-Judicial	<i>when Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>

KEY ISSUES / SUMMARY

- This report presents the investment statements for the month of January 2009 and recommends that the information detailed in the attachments be noted.
- The report highlights significant reductions in the estimated market value of many of Councils' investments and discusses the actions being taken by Council Officers to ameliorate in so far as possible the risk of further losses in value.

C09/6000 - INVESTMENT STATEMENTS (REC) (ATTACHMENT)

BACKGROUND

The investment of cash holdings is undertaken in accordance with Council's investment policy, with the objective of maximising returns whilst maintaining low levels of credit risk exposure.

DETAIL

The investment of funds is undertaken in accordance with the City of Melville's Investment of Surplus Funds Policy 13-PL-003.

[6000A January 2009.pdf](#) and [6000B January 2009.pdf](#) contain specific details (including **estimated** market and officer valuations) of the investments held at 31 January 2009. Agenda attachment [6000C January 2009.pdf](#) is a graph showing the total of funds invested and their estimated market valuations at the end of each month over the past financial year.

Elected Members are well aware of the continuing uncertainty and extreme volatility in world financial markets and the negative impact that it is having on most classes of investments as well as individuals and corporations. This volatility, the subsequent lack of an active market for Collateralised Debt Obligations (CDO's) and a depressed market for the ADI sub-ordinated debt investments owned by Council, has created a situation whereby it continues to be extremely difficult to arrive at truly meaningful market valuations for the (CDO) element of the investment portfolio. The valuations for January have been arrived at by using a combination of CDO valuations obtained by Piper Alderman, our legal advisors in regards to the actions being pursued in respect to the advice given from rating agencies, Lehman Brothers, as well as valuations obtained from other sources in respect to the ADI investments.

It should be noted that these valuations do not imply that if it were possible for the Council to liquidate the CDO's in particular, the prices received would be in line with these valuations.

Whilst there have been no known credit events that have affected Council's CDOs, since October 2008 due to the increasingly difficult global economic conditions facing corporations it is expected that further credit defaults and ultimately defaults of CDO's themselves will occur in the near future.

The estimate based on officer's valuations and valuations provided as at 31 January 2009, is that if it had been possible to dispose of all investments at the end of December, a loss of \$16,990,411 (26.09%, December 23.48%) would have been realised. The market valuation of the CDO element of the investment portfolio at the end of December represented 23.69% (December 30.48%) of its cost figure, with individual valuations ranging between 3% and 70%.

C09/6000 - INVESTMENT STATEMENTS (REC) (ATTACHMENT)

Major credit rating agencies Standard and Poors, Moodys and Fitch have also reviewed their methodology for assessing the credit ratings of CDO's. This has resulted in many of the CDO's being downgraded to levels where they are not, and would never have been, considered appropriate for inclusion in the Council's portfolio of investments. It must be pointed out that some of the CDO's do however continue to retain AA credit ratings. The review by the credit rating agencies of their CDO credit rating models affirms what some commentators were saying many months ago ie: that the models used to rate CDO's were flawed in some respects. This has unfortunately led to inappropriate investment by many Councils and other bodies holding public monies on the mistaken belief that the ratings applied by these agencies were sound. This post event review by the credit rating agencies is therefore of little value to the present situation the Council finds itself in and the Council's focus must remain on recovering from the situation it finds itself in.

Loss mitigation and recovery strategies such as obtaining expert and independent advice and amending the investment policy have already been undertaken and Council officers will continue to pursue other avenues including investigating the possibility of legal action against the Council's former investment advisors and fund managers, Lehman Brothers.

Summary details of investments held at 31 January 2009 are shown in the table below.

**CITY OF MELVILLE
STATEMENT OF INVESTMENTS
FOR THE PERIOD ENDING 31 JANUARY 2009**

SUMMARY BY FUND	FACE VALUE	PURCHASE PRICE	ESTIMATED MARKET VALUE	BOOK PROFIT/(LOSS)	BOOK PROFIT/(LOSS)
	\$	\$	\$	\$	%
MUNICIPAL RESERVE	\$ 39,015,788	\$ 39,062,638	\$ 38,518,373	(\$ 544,266)	-1.39%
TRUST	\$ 784,485	\$ 784,485	\$ 784,485	\$ -	0.00%
CRF	\$ 157,329	\$ 157,329	\$ 157,329	\$ -	0.00%
	\$ 65,055,764	\$ 65,122,702	\$ 48,132,291	(\$ 16,990,411)	-26.09%

SUMMARY BY INVESTMENT TYPE	FACE VALUE	PURCHASE PRICE	ESTIMATED MARKET VALUE	BOOK PROFIT/(LOSS)	BOOK PROFIT/(LOSS)
	\$	\$	\$	\$	%
ADI	\$ 14,500,000	\$ 14,559,078	\$ 13,871,774	(\$ 687,304)	-4.72%
CDO	\$ 21,220,000	\$ 21,227,860	\$ 5,028,254	(\$ 16,199,607)	-76.31%
CAP GUARANTEED NOTE	\$ 1,150,000	\$ 1,150,000	\$ 1,046,500	(\$ 103,500)	-9.00%
TERM DEPOSIT	\$ 25,000,000	\$ 25,000,000	\$ 25,000,000	\$ -	0.00%
11AM	\$ 2,955,119	\$ 2,955,119	\$ 2,955,119	\$ -	0.00%
UNITS (Local Govt Hse)	\$ 230,645	\$ 230,645	\$ 230,645	\$ -	0.00%
	\$ 65,055,764	\$ 65,122,702	\$ 48,132,291	(\$ 16,990,411)	-26.09%

SUMMARY BY RATING	FACE VALUE	PURCHASE PRICE	ESTIMATED MARKET VALUE	BOOK PROFIT/(LOSS)	BOOK PROFIT/(LOSS)
	\$	\$	\$	\$	%
AA	\$ 2,012,275	\$ 2,028,985	\$ 792,275	(\$ 1,236,710)	-60.95%
AA-	\$ 21,592,844	\$ 21,593,654	\$ 21,420,420	(\$ 173,234)	-0.80%
A+	\$ 4,483,634	\$ 4,484,293	\$ 4,420,339	(\$ 63,955)	-1.43%
A	\$ 7,516,366	\$ 7,520,327	\$ 7,359,409	(\$ 160,917)	-2.14%
BBB+	\$ 5,500,000	\$ 5,536,105	\$ 5,410,961	(\$ 125,144)	-2.26%
BBB	\$ 4,500,000	\$ 4,517,543	\$ 4,249,988	(\$ 267,555)	-5.92%
BBB-	\$ 2,000,000	\$ 2,000,270	\$ 100,000	(\$ 1,900,270)	-95.00%
BB+	\$ 1,800,000	\$ 1,800,072	\$ 72,000	(\$ 1,728,072)	-96.00%
BB	\$ 1,050,000	\$ 1,049,965	\$ 31,500	(\$ 1,018,465)	-97.00%
BB-	\$ 385,000	\$ 385,000	\$ 48,164	(\$ 336,837)	-87.49%
B-	\$ 3,885,000	\$ 3,868,721	\$ 171,550	(\$ 3,697,171)	-95.57%
CCC+	\$ 4,800,000	\$ 4,807,122	\$ 227,250	(\$ 4,579,872)	-95.27%
C	\$ 5,300,000	\$ 5,300,000	\$ 3,597,790	(\$ 1,702,210)	-32.12%
UNITS (Local Govt Hse)	\$ 230,645	\$ 230,645	\$ 230,645	\$ -	0.00%
	\$ 65,055,764	\$ 65,122,702	\$ 48,132,291	(\$ 16,990,411)	-26.09%

C09/6000 - INVESTMENT STATEMENTS (REC) (ATTACHMENT)**Credit Ratings and Credit Events**

There were no credit rating changes in CDOs during January 2009.

Seven credit events impacting on CDOs held by the City have now been recorded. The Companies involved were the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), Lehman Brothers, WaMu, Glitnir, Kaupthing and Landsbanki. The impact on CDOs is shown below:

- Beryl Global Bank Note - Nil credit events. – remaining credit support for 1.0 credit event (Being terminated due to trustee taking control of underlying security).
- Blue Gum - Arranger HSBC Bank US – 7.0 credit events - Freddie Mac, Fannie Mae, Lehman's, WaMu, Glitnir, Kaupthing & Landsbanki – remaining credit support for 2.2 credit events.
- Esperance - Arranger Merrill Lynch International – 1.0 credit event - Lehman's – remaining credit support for 5.0 credit events.
- Glenelg - Arranger Nomura International – 2.0 credit events - Lehman's & Landsbanki – remaining credit support for 7.0 credit events.
- Green - Arranger J.P. Morgan Australia – 4.0 credit events - Lehman's, WaMu, Glitnir & Kaupthing – remaining credit support for 2.4 credit events.
- Henley A - Arranger BNP Paribas – 3.0 credit events – Freddie Mac, Fannie Mae & Lehman's – remaining credit support for 7.0 credit events.
- Kakadu - Arranger J.P. Morgan Australia – 5.0 credit events - Freddie Mac, Fannie Mae, Lehman's, WaMu & Kaupthing – remaining credit support for 6.7 defaults.
- Miami Arranger Lehman Brothers 3.0 credit events - Freddie Mac, Fannie Mae & WaMu – remaining credit support for 12.8 credit events. (Being terminated due to trustee taking control of underlying security)
- Merimbula A – Arranger Lehman Brothers 2.0 credit events - Freddie Mac & Fannie Mae – remaining credit support for 7.9 credit events. (Being terminated due to trustee taking control of underlying security)
- Parkes 1A - Arranger Morgan Stanley – 4.0 credit events - Freddie Mac, Fannie Mae, Lehman's & WaMu – remaining credit support for 5.0 credit events.
- Parkes 11A - Arranger Morgan Stanley – 4.0 credit events - Freddie Mac, Fannie Mae, Lehman's & WaMu – remaining credit support for 3.0 credit events.
- Scarborough - Arranger Merrill Lynch – 5.0 credit events - Freddie Mac, Fannie Mae, Lehman's, Kaupthing & Landsbanki – remaining credit support for 3.0 credit events.
- Torquay - Arranger J.P. Morgan – 4.0 credit events - Freddie Mac, Lehman, Glitnir & Kaupthing – remaining credit support for 4.2 credit events.

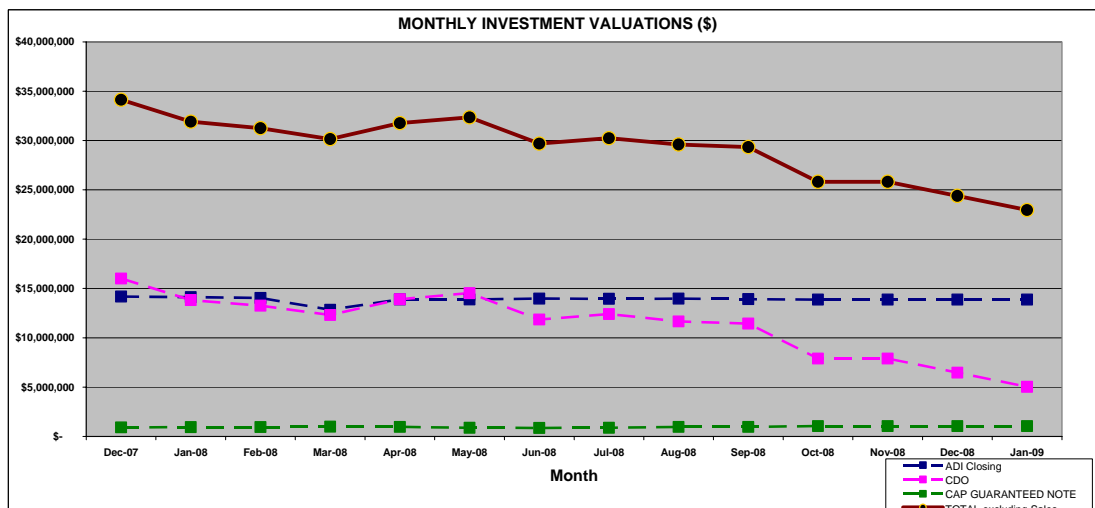
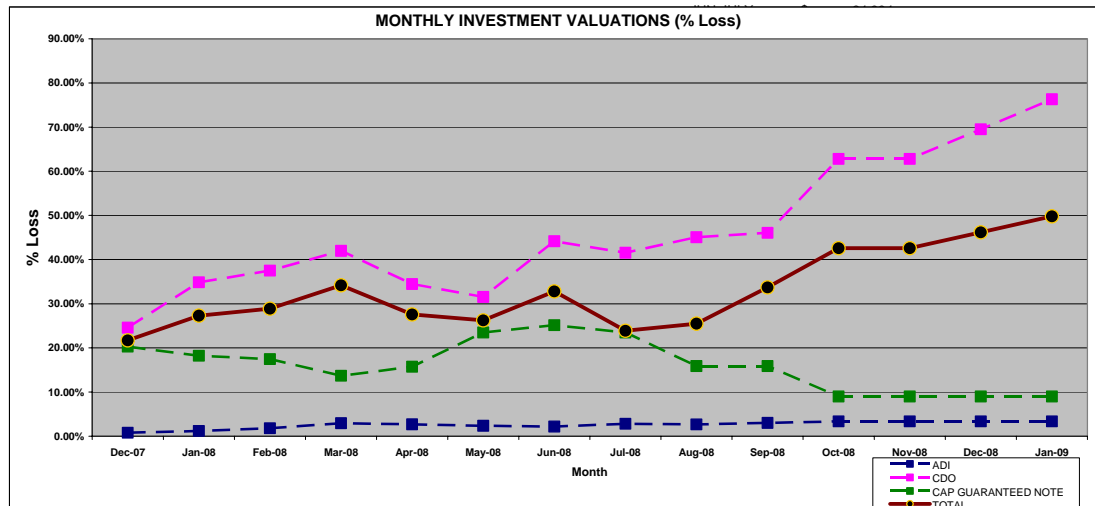
It should be noted that further investment in CDO's is specifically excluded under the current Investment Policy.

Statements 6000A, 6000B and the graph 6000C show the value of the investments based on cost, which is consistent with long standing practice.

Interest rates fell quite substantially in this period, with the rates for 90 day bank bills falling by 0.66% from 4.40% to 3.74%, while the 30 day rates fell by 0.33% from 4.49% to 4.16%.

C09/6000 - INVESTMENT STATEMENTS (REC) (ATTACHMENT)

The graphs below summarise movements in valuation since January 2009.



PUBLIC CONSULTATION/COMMUNICATION

This report is available to the public on the Council's web-site and hard copies of this agenda and attachments are available for viewing at the Council's 5 public libraries.

In addition the Council's bi-monthly newsletter, Mosaic, has contained several articles that highlight this issue. Numerous press articles have also been published on this topic.

C09/6000 - INVESTMENT STATEMENTS (REC) (ATTACHMENT)

CONSULTATION WITH OTHER AGENCIES / CONSULTANTS

In line with the decision of the Council at its February meeting, CPG (formerly Grove) Research and Advisory have been appointed as the City's investment adviser and have reviewed the current investment portfolio with a view to providing strategies to minimise any unnecessary risks.

In 2007 Price Waterhouse Coopers (PWC) was engaged to provide advice in regards to the appropriateness of the City's investment strategy in light of the recent volatility in the credit markets. Following the receipt of their report and further clarification, a revised investment policy was adopted.

The Department of Local Government and Regional Development issued Investment Policy Guidelines during February 2008, well after the global financial crisis, and Council's investment policy has been amended to give effect to the guidelines.

STATUTORY AND LEGAL IMPLICATIONS

The following legislation is relevant to this report:

- Local Government (Financial Management) Regulations 1996 Regulation 19 – Management of Investments.
- Trustee Act 1962 (Part 3)

FINANCIAL IMPLICATIONS

As at the end of January 2009, total interest excluding Reserve Fund interest earned was \$1,655,336, against a year to date budget of \$1,345,357. This represents a \$309,979 positive variance. The full year budget was revised down from \$2,550,000 to \$1,550,000, which is due to the above and more recent very significant reductions in interest rates. It is now clear that the revised budget will be exceeded and this matter will be addressed during the mid year budget review reported to the Financial Management, Audit, Risk & Compliance Committee in February 2009.

Reserve Fund interest earned was \$881,011 against a budget of \$900,000, a negative variance of \$18,989. The full year budget is \$1,400,000.

In accordance with the Council's revised Investment Policy any surplus investment returns derived as a result of investing in ADI's & CDO's when compared to Bank Bills or Term Deposits will be credited to the Risk Management Reserve.

The most material current financial implication in relation to the cash position of the Council relates to the book value of investments moving according to the very significant market volatility that has been experienced since July 2007, which has impacted negatively on the market price and saleability of our CDO and to a lesser extent our ADI investments.

C09/6000 - INVESTMENT STATEMENTS (REC) (ATTACHMENT)

STRATEGIC AND RISK MANAGEMENT IMPLICATIONS

The Council's investment policy was constructed to minimise credit risk through investing in highly rated securities and diversification.

Due to the continuing and increasing credit market concerns, the risks associated with the Council's investment portfolio have also increased to levels which are of concern. Whilst the Council continues to earn and be paid interest from its CDO investments, the reassessment by the major rating agencies of their credit risk models used to assess the credit ratings associated with CDO portfolios, has resulted in significant downgrading of CDO investments to credit rating levels that would not meet the Council's investment policy. However, due to the lack of an active or sensibly priced market for CDO's, these investments are being held.

In response to the current market conditions, surplus funds are currently being invested for short periods and only with highly credit rated major Australian banking institutions.

POLICY IMPLICATIONS

Corporate Policy 13-PL-003 – Investment of Surplus Funds.

As resolved at the 16 December 2008 Ordinary Meeting of Council, the policy has been amended to incorporate mechanisms that protect the Council's investments from undue volatility risk as well as the risk to reputation as a result of investments that may be perceived as unsuitable by the Community.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

Not applicable.

C09/6000 - INVESTMENT STATEMENTS (REC) (ATTACHMENT)**CONCLUSION**

The current position and outlook in regards to the Council's CDO investments is very poor. It should be noted that the CDO's are structured in such a manner so as to provide for a level of defaults of a number of the entities referenced by the CDO's before there is loss of value at maturity of the CDO's themselves. In light of the extreme downturn being experienced in many world economies the risk of defaults of corporations referenced by CDO's owned by the City has however increased significantly. The perceived view at the time of writing is that the economic situation, although appearing to have stabilised somewhat, will result in still further corporate failures some of which may be represented in CDO's owned by the City

It should also be noted however that the concerns with these investments will not impact on the Council's day to day operations or capital works programme as adequate funding is available to carry out the works identified in the Council's 2008/2009 Budget. Due to the long term nature of these investments, future impacts will be determined as the credit market situation becomes clearer.

OFFICER RECOMMENDATION & COUNCIL RESOLUTION (6000)**NOTING**

At 8.31pm Cr Robartson moved, seconded Cr Ceniciva -

THAT THE INVESTMENT STATEMENTS FOR THE MONTH OF JANUARY 2009, AS DETAILED IN THE FOLLOWING ATTACHMENTS BE NOTED:

[6000A January 2009.pdf](#)

[6000B January 2009.pdf](#)

[6000C January 2009.pdf](#)

At 8.33pm the Mayor submitted the motion, which was declared

CARRIED (13/0)

C09/6001 – SCHEDULE OF ACCOUNTS (REC) (ATTACHMENT)

Ward : All
 Category : Operational
 Subject Index : Financial Statement and Investments
 Customer Index : Not applicable
 Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.
 Previous Items : Standard Item
 Works Programme : Not Applicable
 Funding : 2008/2009 Budget
 Responsible Officer : Dudley Smith
 Manager Financial Services

AUTHORITY / DISCRETION

DEFINITION

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<input type="checkbox"/>	Quasi-Judicial	<i>when Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>

C09/6001 – SCHEDULE OF ACCOUNTS (REC) (ATTACHMENT)**KEY ISSUES / SUMMARY**

- This report presents details of the payments made to suppliers for the provision of goods and services for the month of January 2009 and recommends that the Schedule of Accounts be noted.

BACKGROUND

Delegated Authority 13-DA-015 has been granted to the Chief Executive Officer to make payments from the Municipal and Trust Funds. This authority has then been on-delegated to the Director Corporate Services. In accordance with Regulation 13.2 and 13.3 of the Local Government (Financial Administration) Regulations 1996 where this power has been delegated, a list of payments for each month is to be compiled and presented to Council. The list is to show each payment, payee name, amount and date of payment and sufficient information to identify the transaction.

DETAIL

The Schedule of Accounts for the period ending 31 January 2009, [6001 January 2009.pdf](#) including Payment Registers numbers 77 to 82 were distributed to the Members of Council on 17 March 2009.

Payments in excess of \$50,000 in the month were as follows:-

- City of Cockburn – E012882 & E013230 - Waste Tip Fees – \$89,092.22
- Dickies Tree Service – E012888, E013074 & E013235 – Tree Pruning Services - \$106,430.50
- Fire & Emergency Services Authority WA – E013174 & E013355 – Emergency Service Levy Collections - \$816,619.97
- Landfill Gas & Power – E013213 – Electricity Usage - \$52,245.45
- Southern Metro Regional Council – E012986 & E013337 – Recycling & Waste Collection - \$470,942.33
- Synergy – 032866, 033057 & 33175 - Electricity Usage - \$269,171.05
- Trees Need Tree Surgeons – E012976, E013216 & E013327 – Street Tree Pruning - \$51,780.30
- Western Power – 033056 & 033173 – Mt Pleasant Underground Power Project - \$865,989.00

C09/6001 – SCHEDULE OF ACCOUNTS (REC) (ATTACHMENT)

PUBLIC CONSULTATION/COMMUNICATION

Not applicable.

CONSULTATION WITH OTHER AGENCIES / CONSULTANTS

Not applicable.

STATUTORY AND LEGAL IMPLICATIONS

This report meets the requirements of the Local Government (Financial Management) Regulations 1996 Regulation 11 - Payment of Accounts, Regulation 12 - List of Creditors and Regulation 13 - Payments from the Trust Fund and the Municipal Fund.

FINANCIAL IMPLICATIONS

Expenditures were provided for in the 2008/2009 Budget.

STRATEGIC AND RISK MANAGEMENT IMPLICATIONS

Not applicable.

POLICY IMPLICATIONS

Management Procedure 1.8 - Certification of Accounts.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

Not applicable.

CONCLUSION

This is a regular monthly report for Elected Members information.

OFFICER RECOMMENDATION & COUNCIL RESOLUTION (6001)

NOTING

THAT THE SCHEDULE OF ACCOUNTS FOR THE PERIOD ENDED 31 JANUARY 2009, AS APPROVED BY THE DIRECTOR CORPORATE SERVICES IN ACCORDANCE WITH DELEGATED AUTHORITY 13-DA-015, AND DETAILED IN ATTACHMENT [6001 January 2009.pdf](#) BE NOTED.

At 8.33pm the Mayor submitted the motion, which was declared

**CARRIED EN BLOC
WITHOUT DISSENT (13/0)**

C09/6002 – FINANCIAL STATEMENTS FOR JANUARY 2009 (AMREC) (ATTACHMENT)

Ward : All
 Category : Operational
 Subject Index : Financial Statements and Investments
 Customer Index : Not applicable
 Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.
 Previous Items : Standard Item
 Works Programme : Not applicable
 Funding : Not applicable
 Responsible Officer : Dudley Smith
 Manager Financial Services

AUTHORITY / DISCRETION

DEFINITION

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<input type="checkbox"/>	Review	<i>when Council review decisions made by Officers.</i>
<input type="checkbox"/>	Quasi-Judicial	<i>when Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>

KEY ISSUES / SUMMARY

- This report presents the financial statements to the end of January 2009 and recommends that they be noted by the Council.

C09/6002 – FINANCIAL STATEMENTS FOR JANUARY 2009 (AMREC) (ATTACHMENT)

BACKGROUND

The Financial Statements for the end of the month of January 2009 have been prepared and tabled in accordance with the Local Government (Financial Management) Regulations 1996 as amended.

DETAIL

The attached reports have been prepared in compliance with the requirements of the legislation.

To the end of January, a net operating positive variance of \$4.84m was recorded. Net capital expenditure remains \$6.43m under expended.

The majority of these variances reflect the phasing of budgets, unexpended capital expenditure carry forwards to 2009/10 and an estimated \$2m planned surplus that was identified in the half yearly budget review. This will need to be further refined as Responsible Officers review their management reports at the end of the financial year.

This is in addition to other permanent variances that was the subject of a separate Budget Review report C08/6018 that was submitted on the 16th of December 2008 meeting. These permanent variances have been incorporated into the report.

Investments have been valued at the cost of acquisition for the purpose of these monthly reports.

Variances

An analysis of the significant variances are identified below.

	January Actual+Comm \$	YTD Budget \$	YTD Actual+Comm \$	Variance %	Annual Budget \$
Revenues					
Transport	236,513	3,118,851	2,770,318	-11%	5,411,750
Other Property and Services	151,206	961,543	520,571	-46%	494,075
	2,011,277	29,186,433	28,206,761	-3%	38,420,863
Expenses					
Law, Order, Public Safety	(408,759)	(3,019,483)	(2,580,079)	-15%	(5,182,214)
Health	(46,628)	(475,757)	(371,312)	-22%	(773,314)
Education & Welfare	(665,242)	(2,694,689)	(2,086,422)	-23%	(3,848,314)
Recreation and Culture	(2,127,741)	(14,769,650)	(12,811,141)	-13%	(25,163,325)
Other Property and Services	(568,275)	(1,010,492)	(1,549,056)	53%	(1,273,879)
	(8,262,844)	(49,192,636)	(45,323,495)	-8%	(79,587,739)

Revenue

- Transport – 11% under budget due mainly to grant income for road related projects. This is a result of projects not being undertaken and not yet completed.
- Other Property & Services – 46% under budget due mainly to phasing of proceeds from disposal of assets, which will be rectified in February.

C09/6002 – FINANCIAL STATEMENTS FOR JANUARY 2009 (AMREC) (ATTACHMENT)

Expenditure

- Law, Order & Public Safety – 15% under budget due mainly to Community Security and Swimming Pool Inspections lower employee costs.
- Health – 22% under budget due mainly to Inspections lower employee costs.
- Education & Welfare – 23% under budget due mainly to Community Services & Development lower employee costs and Meals on Wheels lower food catering costs.
- Recreation & Culture – 13% under budget due mainly to below budgeted expenditure at Point Walter Golf Course & Reserve, Piney Lakes, Vandalism & Graffiti and various other Reserves.
- Other Property & Services – 53% over budget due mainly to Fleet costs not being allocated out to plant items, which will be rectified in February.

The following attachments form part of the Attachments to the Agenda, which was distributed to the Members of the Council on Friday 31st January 2009.

DESCRIPTION	LINK
Statement of Financial Activity – January 2009	6002A January 2009.pdf
Operating Statements by Program for the period ended 31 January 2009	6002B January 2009.pdf
Representation of Working Capital as at January 2009	6002E January 2009.pdf
Reconciliation of Net Working Capital as at 31 January 2009	6002F January 2009.pdf
Notes on Operating Statements for January 2009 reporting on variances of 10% or greater	6002H January 2009.pdf
Details of Budget Amendments requested during the month of January 2009	6002J January 2009.pdf
Summary of Rates debtors as at 31 January 2009	6002L January 2009.pdf
Graph showing Rates collections as at 31 January 2009	6002M January 2009.pdf
Summary of general debtors aged 90 days old or greater as at 31 January 2009	6002N January 2009.pdf

C09/6002 – FINANCIAL STATEMENTS FOR JANUARY 2009 (AMREC) (ATTACHMENT)

PUBLIC CONSULTATION/COMMUNICATION

Not applicable.

CONSULTATION WITH OTHER AGENCIES / CONSULTANTS

Not applicable.

STATUTORY AND LEGAL IMPLICATIONS

Local Government Act 1995 Division 3 – Reporting on Activities and Finance Section 6.4 – Financial Report.

Local Government (Financial Regulations) 1996 Part 4 – Financial Reports
Regulation 34 of the Local Government (Financial Management) Regulations 1996 as amended in March 2005, requires that:

- (1) A local government is to prepare each month a statement of financial activity reporting on the sources and applications of funds, as set out in the annual budget under regulation 22(1)(d), for that month in the following detail -
 - (a) annual budget estimates, taking into account any expenditure incurred for an additional purpose under section 6.8(1)(b) or (c);
 - (b) budget estimates to the end of the month to which the statement relates;
 - (c) actual amounts of expenditure, revenue and income to the end of the month to which the statement relates;
 - (d) material variances between the comparable amounts referred to in paragraphs (b) and (c); and
 - (e) the net current assets at the end of the month to which the statement relates.
- (2) Each statement of financial activity is to be accompanied by documents containing-
 - (a) an explanation of the composition of the net current assets of the month to which the statement relates, less committed assets and restricted assets;
 - (b) an explanation of each of the material variances referred to in sub-regulation (1)(d); and
 - (c) such other supporting information as is considered relevant by the local government.
- (3) The information in a statement of financial activity may be shown-
 - (a) according to nature and type classification;
 - (b) by program; or
 - (c) by business unit.

C09/6002 – FINANCIAL STATEMENTS FOR JANUARY 2009 (AMREC) (ATTACHMENT)

- (4) A statement of financial activity, and the accompanying documents referred to in sub-regulation (2), are to be-
- (a) presented to the council-
 - (i) at the next ordinary meeting of the council following the end of the month to which the statement relates; or
 - (ii) if the statement is not prepared in time to present it to the meeting referred to in subparagraph (i), to the next ordinary meeting of the council after that meeting; and
 - (b) recorded in the minutes of the meeting at which it is presented.
- (5) Each financial year, a local government is to adopt a percentage or value, calculated in accordance with AAS 5, to be used in statements of financial activity for reporting material variances.

FINANCIAL IMPLICATIONS

Amendments to the 2008/2009 Budget have been included in the budget amendment reports.

Further amendments will be necessary in response to several significant variances that have or are expected to be realised over the course of the financial year.

STRATEGIC AND RISK MANAGEMENT IMPLICATIONS

Not applicable.

POLICY IMPLICATIONS

Not applicable.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

Not applicable.

CONCLUSION

The attached reports reflect the financial situation of the City of Melville as at 31st January 2009.

C09/6002 – FINANCIAL STATEMENTS FOR JANUARY 2009 (AMREC) (ATTACHMENT)

OFFICER RECOMMENDATION & COUNCIL RESOLUTION (6002)

ABSOLUTE MAJORITY

At 8.34pm Cr Halton moved, seconded Cr Robartson -

- 1. THAT THE STATEMENTS OF FINANCIAL ACTIVITY AND THE OPERATING STATEMENTS FOR THE PERIOD ENDING 31 JANUARY 2009 AS DETAILED IN THE FOLLOWING ATTACHMENTS BE ADOPTED:**

DESCRIPTION	LINK
STATEMENT OF FINANCIAL ACTIVITY – JANUARY 2009	<u>6002A January 2009.pdf</u>
OPERATING STATEMENTS BY PROGRAM FOR THE PERIOD ENDED 31 JANUARY 2009	<u>6002B January 2009.pdf</u>
REPRESENTATION OF WORKING CAPITAL AS AT JANUARY 2009	<u>6002E January 2009.pdf</u>
RECONCILIATION OF NET WORKING CAPITAL AS AT 31 JANUARY 2009	<u>6002F January 2009.pdf</u>
NOTES ON OPERATING STATEMENTS FOR JANUARY 2009 REPORTING ON VARIANCES OF 10% OR GREATER	<u>6002H January 2009.pdf</u>
SUMMARY OF RATES DEBTORS AS AT 31 JANUARY 2009	<u>6002L January 2009.pdf</u>
GRAPH SHOWING RATES COLLECTIONS AS AT 31 JANUARY 2009	<u>6002M January 2009.pdf</u>
SUMMARY OF GENERAL DEBTORS AGED 90 DAYS OLD OR GREATER AS AT 31 JANUARY 2009	<u>6002N January 2009.pdf</u>

- 2. THAT BY ABSOLUTE MAJORITY DECISION, THE BUDGET AMENDMENTS, AS LISTED IN THE BUDGET AMENDMENT REPORTS FOR JANUARY 2009, AS DETAILED IN ATTACHMENT [6002J January 2009.pdf](#) BE ADOPTED.**

At 8.35pm the Mayor submitted the motion, which was declared

CARRIED BY ABSOLUTE MAJORITY (13/0)

16. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil

17. MOTIONS WITHOUT NOTICE BY ABSOLUTE MAJORITY OF THE COUNCIL

Nil

18. EN BLOC ITEMS

At 8.36pm Cr Macphail moved, Seconded Cr Subramaniam—

**THAT THE RECOMMENDATIONS FOR ITEMS P09/3060, C09/5000, & C09/6001
BE CARRIED EN BLOC**

At 8.37pm the Mayor submitted the motion, which was declared

CARRIED (13/0)

19. CLOSURE

There being no further business to discuss the Mayor declared the meeting closed at 8.39pm.