

SHIRE OF CAPEL
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ORDINARY MEETING 14.02.07

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SHIRE OF CAPEL

MINUTES OF THE ORDINARY COUNCIL MEETING HELD IN THE COUNCIL CHAMBERS ON WEDNESDAY, 14 FEBRUARY 2007, COMMENCING AT 4.34PM.

PRESENT: President MT Scott
Councillors BW Bell
KD Gibson
NR Jones
RG Lamb
SC Manley
GJ Norton
BH Piesse
MM Smith
PF Sheedy
Chief Executive Officer AJ Ross
Manager Finance and Community Services C Burwood
A/Manager Planning and Development Services JD Wesley
Manager Operational Services CR Dent
Principal Environmental Health Officer LA Taylor
Minutes Secretary D Freeman
Governance Officer

APOLOGIES: Deputy President KV Caratti
Councillor JA Rees

**RESPONSE TO PREVIOUS PUBLIC QUESTIONS
TAKEN ON NOTICE** Nil

PUBLIC QUESTION TIME Nil

APPLICATIONS FOR LEAVE OF ABSENCE Nil

**NOTICE OF ITEMS TO BE DISCUSSED BEHIND
CLOSED DOORS**

The President advised Item 17.1 will be discussed behind closed doors.

OC0201 CONFIRMATION OF MINUTES – 24.01.07

OC0201 COUNCIL DECISION

Moved Cr Bell, Seconded Cr Manley

That the minutes of the Council meeting held on 24 January 2007, as printed, be confirmed.

Carried 9/0

VOTING REQUIREMENTS

Simple majority

PETITIONS/DEPUTATIONS/PRESENTATIONS Nil

**MOTIONS OF WHICH PREVIOUS NOTICE
HAS BEEN GIVEN** Nil

**QUESTIONS OF WHICH PREVIOUS NOTICE
HAS BEEN GIVEN** Nil

ENVIRONMENTAL HEALTH SERVICES REPORTS

ENVIRONMENTAL HEALTH

OC0202 (11.1.1) Regional Zero Waste Management Plans (C1.4)

REPORTING OFFICER

Colin Dent-Principal Environmental Health Officer Date: 30.01.07

DISCLOSURE OF INTEREST Nil

OWNER/APPLICANT

Shire of Capel

MATTER FOR CONSIDERATION

Approval is sought from Council to enter into discussions with Shires of Dardanup and Harvey and the City of Bunbury regarding the formation and adoption of a Regional Zero Waste Plan.

ATTACHMENTS Nil

APPLICANT’S SUBMISSION

The Waste Management Board is offering financial incentives for local governments to work together to form Regional Zero Waste Plans. The officers from the Shires of Capel, Dardanup, Harvey and the City of Bunbury have suggested that they combine to develop a Regional Zero Waste Plan for the area covered by the four municipalities and that the plan be adopted by the four local governments before being presented to the Waste Management Board.

BACKGROUND

The Waste Management Board was formed in 2002 with the aim of developing a sustainable framework for dealing with waste in Western Australia. As part of that development the Board has developed a “Towards Zero Waste” vision. As part of that vision the Board has put a proposal with regards to Zero Waste Plans for Local Governments. The purpose of a Zero Waste Plan is to ensure a “whole-of-organisation” commitment to the vision of Zero Waste to landfill by the year 2020. The vision reflects the importance of striving for a result that will benefit all Western Australians.

STATUTORY ENVIRONMENT

Local Government Act 1995
Environmental Protection Act 1986

POLICY IMPLICATIONS Nil

FINANCIAL IMPLICATIONS

In order to ensure the timely implementation of the Zero Waste Planning process, the Waste Management Board is proposing a one-off, 12-month funding scheme that will aid local governments in the preparation of their Zero Waste Plans. Where local governments form a collaborative partnership in order to develop a Zero Waste Plan, they will receive a greater proportion of the funds compared to Local Governments that choose to develop individual Zero Waste Plans.

The proposed funding arrangements are that non-metropolitan Local Governments that undertake the Zero Waste Planning process, without forming a regional group, will receive a total of \$12,000 each. Non-metropolitan Local Governments that regionalise will receive \$20,000 per Member Council paid to a nominated member Council. The regionalisation does not necessarily mean the formation of a Regional Council dealing with waste, rather it is Councils working together on a voluntary basis to develop Zero Waste Plans.

The plan will be drawn up using the information currently available from the four Councils and will be drawn up by Council officers. The only cost to the Councils is the officer's time, the officers feel that there is no need to employ a consultant to develop the plan.

STRATEGIC IMPLICATIONS

The proposal meets the strategy outlined in the Shire of Capel Strategic Plan 2003-2007 Core Business Area 3: Health & Environment, Strategy 1: Sustainably manage environmental health program, 1.3 Prepare a waste management strategy that considers regional waste management.

CONSULTATION Nil

COMMENT

The proposal for the officers of the four local governments to draw up a combined Zero Waste Plan which can be adopted by the Councils should be seen as a positive first step to developing a regional approach to waste management. The added bonus is that each Council will receive \$20,000 for the preparation of the plan. Of the four Councils, Capel (Minute OCO202/04) has a current waste management strategy which will form part of the regional plan.

The development of a Regional Zero Waste Plan should not be confused with the City of Bunbury's proposal regarding the formation of a Regional Council dealing with waste management. Whilst the two proposals have a common theme there are some major hurdles to be addressed before the formation of such a Regional Council. Both Bunbury and Harvey are involved with the Bunbury/Harvey Regional Council which runs the Stanley Road landfill site and it would seem that there is a potential for there to be two regional councils dealing with waste management. This, and other matters, will need to be discussed when the formal proposal is received from the City of Bunbury.

OC0202 STAFF RECOMMENDATION/COUNCIL DECISION

Moved Cr Gibson, Seconded Cr Smith

That Council authorise the Principal Environmental Health Officer to work with the relevant officers in the Shires of Dardanup, Harvey and the City of Bunbury to develop a Zero Waste Management Plan covering the four Councils. The Zero Waste Plan will be presented to Council for approval prior to it being presented as a Regional Zero Waste Plan to the Waste Management Board.

Carried 9/0

VOTING REQUIREMENTS

Simple majority

PLANNING AND DEVELOPMENT SERVICES REPORTS

BUILDING SERVICES

OC0203 (12.1.1) Building Encroachments Over Public Street –Lot 2971 Dalyellup Boulevard, Dalyellup (C5.1.D.29)

REPORTING OFFICER

C Burwood – Coordinator of Planning Services

Date: 08.02.07

DISCLOSURE OF INTEREST Nil

OWNER/APPLICANT

Satterley Property Group and Department of Housing & Works/Thompson McRobert Edgeloe.

MATTER FOR CONSIDERATION

Agreement to seek the Minister for Local Government’s approval for awnings overhanging the Gosse Way road reserve.

ATTACHMENTS

Building Encroachment Plan – Page 01

APPLICANTS SUBMISSION

A surveyors plan has been provided which shows that awnings attached to the western side of the Dalyellup shops encroach over the property boundary into the Gosse Way road reserve. The encroachments range from 0.22m to 1.81m. Council’s agreement to the encroachments is requested.

BACKGROUND

Minute OC1005 of 2001 refers. Council resolved to adopt the Dalyellup Beach School in Shops Outline Development Plan. The ODP was endorsed by the WAPC November 2002.

August 2004 –Planning Consent was granted to the Change of Use – Educational Establishment to Shops and Medical Centre on lot 703 to allow various retail uses, in place of the previous primary school use, subject to conditions.

April 2005 – application was received from the WAPC requesting comments and recommendations from the Shire in respect to a proposed strata subdivision of lot 2971.

March 2006 – Planning Consent was conditionally granted to the development of a Medical Centre on the lot.

May 2006 – The Shire advised the applicant that as no written explanation accompanied the strata subdivision application, an appropriate assessment was unable to be undertaken. The applicant was also advised that the August 2004 Planning Consent for the change of use specifically notes that further approval of Council is required prior to commencement of the Medical Centre. The shape of the proposed lot influences the ability of the land to comply with past and future development proposals for the land and that the shape of the lot differs from that originally indicated on the Local Centre Development Plan. A number of other development issues were raised and the Shire also requested the WAPC defer a decision on the proposal pending resolution of the abovementioned matters.

September 2006 – Following submission of a revised strata plan, the Shire advised the applicant that the strata envelope still raised issues particularly from possible changes to the final architectural design. The envelope had other anomalies whereby spaces could be developed as additional building and that a portion encroached onto the approved pedestrian path system. It was recommended that a building design still be finalised to form the basis of a strata plan.

November 2006 – the applicant revised the subdivision plan in order that the strata lot did not encroach onto the footpath.

December 2006 – Minutes OC1213 and OC1214 refers. Council conditionally agreed to support the strata title subdivision of the Dalyellup shops and proposed medical centre lot.

STATUTORY ENVIRONMENT

Strata Titles Act 1985

Section 23(1) (d) states that where part of a building or material attached thereto encroaches beyond the boundaries of the lot onto a public road, the local government is required to confirm that in its opinion the retention of the encroachment in its existing state will not endanger public safety or unreasonably interfere with the amenity of the neighbourhood, and with the approval of the Minister for Local Government, shall advise in issuing its certificate for the strata titling of a lot that it does not object to the encroachment.

Land Administration Act

Section 267(2)(b) of the Land Administration Act makes it an offence to erect any structure on or over Crown land without the permission of the Minister for Lands unless reasonable excuse can be provided for such action.

POLICY IMPLICATIONS Nil

FINANCIAL IMPLICATIONS Nil

STRATEGIC IMPLICATIONS

The Shire of Capel Land Use Strategy includes the subdivision area within Planning Unit BU6. The objective for the Unit is to provide for urban expansion whilst conserving significant areas of natural environmental value. The Dalyellup Beach Estate Local Structure Plan and the draft Greater Bunbury Region Scheme have addressed these strategic issues.

Strategic Plan 2003-2007

Core Business Area 2

The Shire of Capel’s objectives are, in part, to:

Ensure that development of the district is sustainable.

The Shire will pursue the objectives to achieve a number of outcomes, which include;

Safe neighbourhood communities.

COMMUNITY CONSULTATION Nil

COMMENT

At Council's meeting of 13 December 2006 (Minute OC1213 and OC1214), Council conditionally supported the strata titling of the existing nine (9) shops and the creation of a vacant strata lot for the future medical centre development.

It has now come to staff attention that the existing awnings attached to the western side of the shops (delicatessen and doctors surgery) encroach past the property boundary and partly overhang the Gosse Way Road Reserve. The encroachments range from a distance of 0.22 metres to 1.81 metres.

The encroachments do not interfere with amenity of the area and assist in providing sheltered walk areas for pedestrians. Structurally the awnings were designed to a specification provided by a structural engineer and fixing of the structures are required to meet the engineer's specifications however the Shire has no confirmation that the awnings comply with these specifications.

Whilst such instance are not uncommon, as also mentioned under the statutory environment section of this report there are several statutory requirements to undertake including the Council confirming its acceptance of the encroachment and seeking the approval of the Minister for Local Government.

A building licence has previously been issued accepting the encroachments and this is likely to be accepted as reasonable excuse for the purpose of satisfying the requirements of the Minister for Lands.

In order to facilitate timely resolution of this matter staff have conditionally recommended Council raise no objections to the encroachment. The conditions of acceptance to be resolved to the satisfaction of the Manager of Planning and Development Services.

OC0203 STAFF RECOMMENDATION/COUNCIL DECISION

Moved Cr Gibson, Seconded Cr Manley

That Council resolves that it does not object to the awning encroachments over the Gosse Way road reserve subject to following being undertaken to the satisfaction of the Manager of Planning and Development Services:

- 1 A structural engineers certificate being provided by the applicants to confirm that the awnings have been constructed and attached to the building in accordance with the approved engineering design and specifications;**
- 2 The applicant obtaining the permission of the Minister for Lands and/or the Department of Planning and Infrastructure to the encroachments; and**
- 3 The Minister for Local Government raising no objections to the encroachments.**

Carried 9/0

VOTING REQUIREMENTS

Simple majority

PLANNING SERVICES

OC0204 (12.2.1) Amendment No. 26 to Town Planning Scheme No. 7 (C5.37.026)

REPORTING OFFICER

A Dykstra – Planning Officer (Temporary) Date 29.01.07
C Burwood – Coordinator Planning Services Date 31.01.07

DISCLOSURE OF INTEREST Nil

OWNER/APPLICANT

T & S Carvalho (Lot 252), Beachstar Investment Pty Ltd)/Thompson McRobert Edgeloe (TME)

MATTER FOR CONSIDERATION

Acknowledgement of modification required by the Hon. Minister for Planning and Infrastructure where it has been required that the following additional provision be included into the Scheme Amendment:

“At the time of subdivision, consideration is to be given to the use of an onsite package treatment system for the disposal of effluent, for lots contained within the Subdivision and Development Guide Plan, in preference to individual lot based onsite effluent disposal systems.”

Authorisation of President and Chief Executive Officer to endorse the final scheme amendment documents for Amendment No. 26.

ATTACHMENTS

- Location Plan – Page 01
- Proposed Subdivision and Development Guide Plan for Lot 252 – Page 02
- Proposed Development Guide Plan of Modification for Lot 105 – Page 03
- Legal text of Amendment No 26 as modified by the Council and Minister – Pages 04 – 11.

APPLICANT’S SUBMISSION

Modifications required to be effected on the Scheme Amendment by the Minister for Planning and Infrastructure have been undertaken for the documents.

BACKGROUND

Minute No OC0907 of 2005 refers. Council resolved to initiate Amendment No. 26 to Town Planning Scheme No. 7 in order to:

- 1 Modify Appendix 4 – Special Use Zones of the Scheme Text to amend the permitted uses and development standards/conditions which apply to lot 105 (Peppermint Grove Beach Caravan Park) Peppermint Grove Road, Peppermint Grove Beach to include the additional permitted uses of ‘Convenience Store, Liquor Store, Post Office and Art and Craft Sales’, add a statement of objective and allow for the modification of the adopted Development Plan; and
- 2 Amending the Scheme maps by including Lot 252 corner of Peppermint Grove Road and Hayfield Drive, Peppermint Grove Beach into a Residential Precinct and rezoning the lot

from 'Special Use' zone to 'Residential R12.5' and 'Reserve for Recreation', to facilitate subdivision of the land. The Residential Precinct sets a range of special conditions for the subdivision and development of lots that address the constraints of the site.

Minute OC0707 of 2006 refers.

- 1 Council resolved in part, to adopt Amendment no.26 with the following modifications:
 - (a) Retain the Special Use Zone on a portion of Lot 252 consisting of proposed lots 20 to 22 Peppermint Grove Road and the western most triangular portion of proposed lot 15 (i.e. reduce lot 15 to approx. 750 m²) to be initially retained as one lot with permitted uses being those uses identified as permitted "P" uses in the Town Centre Zone of the Scheme. A Development Condition shall be added requiring a Development Plan to be prepared and adopted for the site having regard to parking and access management, service vehicle access, fire management access to the adjoining reserve and streetscape values. Further, subject to adequate controls relating to the co-ordination of development being incorporated into the Development Plan Council will consider support to the subdivision of the land into two lots. A statement of objective should be added being; "The objective of the zone is to provide for a range of opportunities for the provision of shopping and commercial facilities at Peppermint Grove Beach notwithstanding the provision for other or similar uses on other land within the locality." Further, the subdivision guide plan for lot 252 should be modified to achieve a minimum average lot size of 800m² whilst retaining the current balance proposed lot yield of 19 residential lots. Conditions set out in Precinct 4 which relate to the detail of the subdivision and development of former proposed residential lots 15 and 20-22 and the subdivision and subsequent development of the 19 residential lots, control of access and fire management access to the proposed reserve shall be modified to reflect the abovementioned changes.
 - (b) Modify the wording of Development Condition 1 on Lot 105 to refer to the new Development Plan numbered 04290P-03 which forms part of the Amendment Report and which will be endorsed by Council on a date coinciding with any future decision pursuant to Regulation 22(1).
 - (c) Add the word 'Minor' to the beginning of the new Condition 2 on Lot 105 consistent with the statement on page 9 of the amendment report.
 - (d) Add a new Condition 3 to Lot 105 which requires that the permitted use 'Convenience Store' forms part of the first stage of the further development of the lot in accordance with the adopted Development Plan.
 - (e) Add a further specific permitted use being Café/Restaurant to lot 105.
- 2 To forward the amendment to the WA Planning Commission for endorsement and subsequent forwarding to the Hon Minister for Planning and Infrastructure for final approval.
- 3 To consider the matter further after the Hon Minister for Planning and Infrastructure makes a decision in respect to the granting of final approval and decide whether pursuant to Regulation 22(1) of the Town Planning Regulations (1967 as amended) to authorise the President and Chief Executive Officer affix the Common Seal to the documents.

January 2007 – The WAPC advised the Shire of Capel that the Minister had decided to grant approval to the amendment subject to an additional provision being inserted into Appendix 15 (3) (i) of the Scheme as it applies to lot 252 peppermint Grove Road.

STATUTORY ENVIRONMENT

Town Planning Scheme No. 7

Shire of Capel Strategic Plan 2003-2007

In Core Business Area 2 - Land Use the Shire of Capel's objectives include to:

- Ensure that development of the district is sustainable
- Facilitate economic land use opportunities
- Protect the natural and built environment
- Maintain the special attributes/character of the district by continuing to provide a balance of rural and urban land development opportunities in a safe and attractive environment.

The Shire will pursue the above objectives to achieve the following outcomes:

- Land Use Planning which provides for a choice of urban living opportunities and safe neighbourhood communities
- Protection of the natural environment.

The intent of the amendment is consistent with the objectives and satisfactory subdivision and development resulting from this amendment will achieve the outcomes pursued by the Strategy.

CONSULTATION

As discussed in the July 2006 report to Council the amendment was advertised for public comment pursuant to the requirements of the Town Planning Regulations.

COMMENT

The Submissions received during the public consultation period were considered by Council at its 12 July 2006 meeting. It was resolved, amongst other things, to adopt the amendment in a modified form as set out under the Background section of this report.

Pursuant to the Town Planning Regulations (1967 as amended) the amendment was forwarded to the WAPC for endorsement and subsequent forwarding to the Minister for Planning and Infrastructure for final approval.

In its response, the WAPC advised that the Minister for Planning and Infrastructure decided to:

1. Uphold the submission(s) supporting the amendment;
2. Dismiss the submissions(s) opposing the amendment; and
3. grant approval to the amendment and endorse the documents subject to the following provision being inserted into Appendix 15 (3) (i) of Town Planning Scheme No.7, as it applies to Lot 252 Peppermint Grove Road:

“At the time of subdivision, consideration is to be given to the use of an onsite package treatment system for the disposal of effluent, for the lots contained within the Subdivision and Development Guide Plan, in preference to individual lot based on site effluent disposal systems.”

In order to facilitate the Minister's modification, Council will need to first acknowledge the modification and then adopt a resolution to execute the amendment with the Minister's modification.

OC0204 STAFF RECOMMENDATION/COUNCIL DECISION

Moved Cr Gibson, Seconded Cr Bell

That Council resolve to:

- 1 Note the following modification required to the proposed Amendment No. 26, by the Hon. Minister for Planning and Infrastructure pursuant to Regulation 21(1)I:**

The following additional provision being inserted into Appendix 15 (3) (i) of Town Planning Scheme No. 7, as it applies to Lot 252 Peppermint Grove Road:

“At the time of subdivision, consideration is to be given to the use of an onsite package treatment system for the disposal of effluent, for the lots contained within the Subdivision and Development Guide Plan, in preference to individual lot based on site effluent disposal systems.”

- 2 Pursuant to Regulation 22(1) authorise the President and Chief Executive Officer to execute the amendment documents (inclusive of the Lot 252 Subdivision and Development Guide Plan 04290P – 11 and Lot 105 Development Guide Plan – Plan of Modification No. 1 – Plan No.04290P-03), with the Hon. Ministers modification referred to under resolution 1 above, and the modifications adopted by Council under resolution 2 of Minute No. OC0707 2007 (refer attachment pages 02 to 11) by signing and affixing the Shire’s seal; and**
- 3 Forward the modified amendment documents to the Western Australian Planning Commission for the final endorsement of the Commission and Minister for Planning and Infrastructure.**

Carried 8/1

VOTING REQUIREMENTS

Simple majority

OC0205 (12.2.2) Change to Management Order – Reserve 24529 Range Road, Capel (R24529)

REPORTING OFFICER

A Dykstra – Planning Officer (Temporary)	Date 07.02.07
C Burwood – Coordinator Planning Services	Date 08.02.07

DISCLOSURE OF INTEREST Nil

OWNER/APPLICANT

Crown/ Shire of Capel

MATTER FOR CONSIDERATION

To consider changing the Management Order purpose of Reserve 24529 which is currently ‘Sanitary and Sand’ to reflect a change of land use which will incorporate the proposed waste transfer station, green waste storage area, recycling, vehicle and animal impounding facilities etc.

ATTACHMENTS Nil

APPLICANT’S SUBMISSION Nil

BACKGROUND

Reserve 24529 has been used as a refuse tip since the 1950’s and waste is currently being deposited on the site.

Minute OC0202/04 refers – As part of a regional approach to waste management for the Dardanup, Harvey, Bunbury and Capel Local Authorities, the Waste Management Strategy was endorsed by Council. Included in the Strategy was the recommendation that the tip site be phased out and replaced with a waste transfer station whereby waste is no longer deposited on the reserve.

STATUTORY ENVIRONMENT

Reserve 24529 is reserved for ‘Public Purpose’ pursuant to Town Planning Scheme No. 7.

The reserve comprises 50.975ha in area and is vested in Council for the purposes of ‘Sanitary and Sand’. The Management Order was imposed in May 1981 to reflect the current refuse disposal area and a now redundant sand extractive industry that was carried out on the site.

The Management Order will need to be amended to reflect the current and proposed land uses.

POLICY IMPLICATIONS Nil

FINANCIAL IMPLICATIONS

Council will need to consider the provision of animal impounding facilities on the reserve as part of its future budget considerations.

STRATEGIC IMPLICATIONS

The use and management of the reserve for the waste transfer station, vehicle and animal impounding area is consistent with the following objective and outcome of the Shire’s Strategic Plan – Core Business Area 1: Infrastructure:

Objective and Outcome – provide and improve sustainable infrastructure to service the changing needs of the community.

CONSULTATION

Nil

COMMENT

As previously considered by Council, the waste transfer station will eventually replace the waste disposal operations currently being undertaken on the reserve. In conjunction with this use, it will be strategically advantageous to relocate the animal and vehicle impounding areas to this reserve.

The main reasons given for relocating the current impounding facilities are to upgrade the facilities to service the anticipated growth in the need for a secure and appropriate standard of pound facility, but most importantly, it will provide a facility which is located further away from the residential areas where complaints have been received in regard to noise associated with impounded dogs. Storage of impounded vehicles outside the current depot lot would also be advantageous. The relocation of both of these impounding areas should also assist in reducing the incidence of break-ins into the depot yard area.

The change of vesting to reflect the waste transfer station and other waste activities and the vehicle/animal impounding areas is consistent with the reservation under the Town Planning Scheme for ‘Public Purposes’.

The intent to change the management order purpose at this time will provide the Council with the opportunity and flexibility to relocate the impounding facilities in the future when determined appropriate.

OC0205 STAFF RECOMMENDATION/COUNCIL DECISION

Moved Cr Bell, Seconded Cr Gibson

That Council resolves to request that the Department of Planning and Infrastructure change the Management Order for Reserve 24529 Range Road, Capel from the purpose of ‘Sanitation and Sand’ to a purpose that reflects the current refuse disposal activities, the proposed waste transfer station, all other waste disposal services and the proposed animal impounding and vehicle impounding facilities.

Carried 9/0

VOTING REQUIREMENTS

Simple majority

OPERATIONAL SERVICES REPORTS

OPERATIONAL SERVICES

OC0206 (13.1.1) Over Dimension Vehicles– Approval to Transport Overwidth Grape Harvesters at Night (T.1.29)

REPORTING OFFICER

TM Brockman – Operations Administration Officer

Date 22.01.07

DISCLOSURE OF INTEREST Nil

OWNER/APPLICANT

- WA Contractors Pty Ltd
- Witchcliffe Transport
- MRV Contractors
- K and A Jilley.

MATTER FOR CONSIDERATION

Approval for the transport of overwidth grape harvesters on Shire roads at night.

ATTACHMENTS Nil

APPLICANT’S SUBMISSION

The applicants need to transport grape harvesters on Shire roads during the forthcoming grape harvest season. Approval from local government is required as a prerequisite to Main Roads WA (MRWA) issuing a permit.

BACKGROUND

The request is an annual requirement for these contractors in order that they can service clients in this area. To ensure that the safety of other road users is not compromised by permitting harvesters of this dimension being transported at night, MRWA have been issuing permits with strict conditions regarding additional lighting and the requirement for all movements to be accompanied by an appropriate escort vehicle. This practise has been operating for the past five harvest seasons without any reported problems.

STATUTORY ENVIRONMENT

Under current legislation, vehicles and their load that exceed the parameters of 12 metres in length, 2.5 metres wide, 4.2 metres high and 42.5 tonnes gross weight require a permit to operate on any public road in WA. Main Roads WA (MRWA) are the issuing authority for all “over dimension” permits, however they do seek Local Government approval on roads that are not under MRWA control. With the exception of grape harvesters, overwidth permits are invalid for travel between the hours of sunset and sunrise.

In order for overwidth loads to be transported at night MRWA currently require additional lights to be displayed along the side of the load at one metre intervals and each load to be preceded by an accredited escort vehicle.

POLICY IMPLICATIONS

Council’s Policy 16.7, Roads – Extra Mass Vehicles, covers vehicle categories of over length and extra mass only.

FINANCIAL IMPLICATIONS Nil

STRATEGIC IMPLICATIONS Nil

CONSULTATION Nil

Information received from MRWA and other Shires involved in this process indicate a variety of responses ranging from blanket approval, relying entirely on MRWA conditions, to the approval of specific roads only, with additional limitations such as speed restrictions.

COMMENT

Council’s policy on over dimension vehicles was primarily designed to protect the road infrastructure from excessive weight, or damage from overlength vehicles that are unable to negotiate roads designed for “as of right” vehicle specifications. As grape harvesters weigh approximately 9 to 11 tonnes, the loads do not exceed mass or weight criteria and therefore do not pose a threat to the integrity of the roads. The issue then becomes a matter of road safety and this determination is made by MRWA in conjunction with the strict conditions imposed by MRWA for over dimension permits of this type. Local governments may impose additional conditions to those nominated by MRWA where permit vehicles utilise roads controlled by the local authority.

Grape harvesting contractors or operators generally apply for night use overwidth permits as a contingency only. In many instances the permit will not be used as the transport task can usually be completed in daylight hours. However, where schedules change due to weather conditions, breakdowns etc situations arise where transport must occur at night and a permit must be in place prior to the event.

OC0206 STAFF RECOMMENDATION 1/COUNCIL DECISION

Moved Cr Bell, Seconded Cr Gibson

That Council agree to the use of roads controlled by the Shire of Capel for the transport of overwidth grape harvesters, between sunset and sunrise, for the annual grape harvest season in accordance with the following conditions:

- **Maximum width of load not to exceed 3.1 metres**
- **Vehicle speed not to exceed 70 kilometres per hour on sealed roads and 40 kilometres per hour on unsealed roads**
- **All transport operations to be conducted in accordance with Main Roads WA permit conditions**
- **Details of transport routes to be submitted to Manager Operations prior to transportation.**

Carried 9/0

VOTING REQUIREMENTS

Simple majority

OC0207 STAFF RECOMMENDATION 2/COUNCIL DECISION

Moved Cr Bell, Seconded Cr Piesse

That Council delegate authority to the Chief Executive Officer to refuse approval or impose further restrictions or withdraw approval, for use of Overwidth Vehicles between sunset and sunrise on Shire of Capel roads, for any route within the Shire of Capel where circumstances are considered to unnecessarily compromise the safety of the road users or members of the public.

And any applicants aggrieved by these decisions can request that the matter be considered by Council.

Carried by an Absolute majority 9/0

VOTING REQUIREMENTS

Absolute majority

Note: Prior to the commencement of the meeting staff submitted an amended Staff Recommendation 2 that deleted point 1, deleted “for any future applications” in lines 1 and 2 and added “between sunset and sunrise” in line 2 after “Vehicles”.

Councillor Norton disclosed a financial interest in this item and left the chambers at 5.03pm. The nature of the interest being that he is an owner of land adjacent to the road closure.

OC0208 (13.1.2) Temporary Road Closure – Unmade road from Cloverdale Road to Location 1188 - Iluka Resources Ltd (T.1.33)

REPORTING OFFICER

TM Brockman – Operations Administration Officer Date: 08.02.07

DISCLOSURE OF INTEREST Nil

OWNER/APPLICANT

Iluka Resources Limited

MATTER FOR CONSIDERATION

A proposal to close a portion of unmade road reserve situated between Cloverdale Road and the North East corner of Wellington location 1188.

ATTACHMENTS

Plan showing details of the road closure required.

APPLICANT’S SUBMISSION

The closure is required to allow mining operations to continue at the Cloverdale mine site.

BACKGROUND

The section of road reserve proposed for temporary closure is unformed and is not required at present for access to adjoining properties. Temporary closure will ensure that unauthorised traffic does not enter the mine site and associated processing area.

STATUTORY ENVIRONMENT

Council can only approve a temporary road closure for a maximum period of four years without the closure being readvertised for public comment and consideration of any submissions.

POLICY IMPLICATIONS Nil

FINANCIAL IMPLICATIONS

A fee of \$500 is payable on each application to cover the administration and advertising costs.

STRATEGIC IMPLICATIONS Nil

CONSULTATION

The proposal has been advertised in the local newspaper and adjoining landowners have been individually advised by mail in accordance with Section 3.50 of the Local Government Act.

COMMENT

The proposal will assist with mine site security without any inconvenience to the public. As there are several other sections of road in the area already temporarily closed due to Iluka's mining operations this proposal should be linked to the common expiry date of those other road closures, being 1 April 2010.

OC0208 STAFF RECOMMENDATION/COUNCIL DECISION

Moved Cr Gibson, Seconded Cr Bell

That Council resolve to order the temporary closure of the unmade road reserve situated between the junction with Cloverdale Road , Capel and the North East corner of Wellington location 1188, as advertised in accordance with Section 3.50 of the Local Government Act 1995, to all vehicle classes, until 1 April 2010.

Carried 8/0

VOTING REQUIREMENTS

Simple majority

Councillor Norton returned to the chambers at 5.05pm.

FINANCE AND COMMUNITY SERVICES REPORTS

GOVERNANCE

OC0209 (14.1.1) Proposed Parking and Parking Facilities Local Law (A.4.40.35)

REPORTING OFFICER

D Freeman, Governance Officer

Date: 29.01.07

DISCLOSURE OF INTEREST Nil

OWNER/APPLICANT

Shire of Capel

MATTER FOR CONSIDERATION

To repeal existing Parking and Parking Facilities Local Laws and adopt new Parking and Parking Facilities Local Laws which incorporate amendments to the Traffic Code and embrace current dollar values for offences.

APPLICANT’S SUBMISSION

ATTACHMENTS

Attachments to this item are:

- Proforma gazettal by reference to the Town of Cottesloe Parking and Parking Facilities Local Law
- Shire of Capel Parking and Parking Facilities Local Law as it would then read
- National Competition Policy – Public Benefit Test.

BACKGROUND

On 21 February 2001, the current Shire of Capel Parking and Parking Facilities Local Law was published in the Government Gazette.

Since that time, the Road Traffic Code 2000 has become operative. These regulations include Australian road rules aimed at removing inconsistencies which have existed between Australian states.

Examples of these changes are ‘No Standing’ becomes ‘No Stopping’ and this means where these signs are installed vehicles shall not stop unless held up by traffic, in an emergency, or involved in a crash. Under the new No Stopping provisions, the distances within which the prohibition applies, from children’s crossings, pedestrian crossings and the like, change, and in order to promulgate the new traffic rules, it is now thought essential to build these changes into the Parking and Parking Facilities Local Law.

Another interesting change is that vehicles displaying ACROD parking permits now have extended privileges and these too are now built into the Parking and Parking Facilities Local Law.

Because of the extent of the changes, it was not considered practicable to prepare an amending Local Law which would simply delete and insert the appropriate modifications. Rather it was proposed to adopt the revised Model Local Law developed by WALGA Local Laws Service and adopt the Law by reference to a previous Gazetted adoption. This would save Council considerable expense as only the notice of Councils intent to adopt, and any particular enhancements to reflect local values are published, thus saving Council the expense of publishing the full text of the Local Law.

Accordingly, Council at its meeting held on 22 November 2006 resolved (OC1123), to give public notice in accordance with the provisions of Section 3.12 of the Local Government Act 1995 of its intention to make the Shire of Capel Parking and Parking Facilities Local Law.

In the report Council noted the purpose and effect of the new Parking and Parking Facilities Local Law as follows:

Purpose: The Purpose of this Local Law is to:

- Repeal the Shire of Capel Parking and Parking Facilities Local Law as published in the Government Gazette on 21 February 2001
- Constitute a parking region
- Enable the Shire of Capel to regulate the parking of vehicles within the parking region.

Effect: A person parking a vehicle within the parking region is to comply with the provisions of this Local Law.

Variations to the Model Local Law

It was also reported to Council that the only recommended variation to the Model Local Law was the revision of the modified penalties and increasing the setback from traffic islands and intersections within which a vehicle may not park. The Model Local Laws provided for a setback of only 10 metres but a setback of 20 metres is proposed. The Model Local Law also provided for a range of penalties from \$35 to \$55. It was the opinion of staff that these penalties should be revised to a range of \$50 to \$120 to reflect today’s dollar values and the serious manner in which the community considers some of the offences i.e. parking in bays set aside for ACROD permit users.

STATUTORY ENVIRONMENT

Local Government Act (1995) – Section 3.5(1) provides that a Local Government may make Local Laws under this Act prescribing all matters that are required to be prescribed by a Local Law, or are necessary or convenient to be so prescribed, for it to perform any of its functions under this Act.

Section 3.12 sets out the procedures for making a Local Law.

National Competition Policy – The previous Parking and Parking Facilities Local Laws were subjected to a public benefit test review as required under National Competition Policy. WALGA has advised that this test remains current for the revised Local Laws and does not need revision.

POLICY IMPLICATIONS	Nil
FINANCIAL IMPLICATIONS	Nil
STRATEGIC IMPLICATIONS	Nil

CONSULTATION

A statutory advertising period of 42 days followed the decision of Council to prepare the Local Law. No submissions were received.

If Council adopts the Local Law, it will also be required to give Local Public Notice of the adoption.

COMMENT

As result of there being no submissions for Council to consider, Council may resolve (by Absolute Majority) to adopt the new Parking and Parking Facilities Local Laws.

If Council adopts the Staff Recommendation, the new Local Laws will be published in the Government Gazette as well as submitted to the Hon Minister for Local Government and the Joint Standing Committee on Delegated Legislation.

The Local Laws will come into operation 14 days after publication in the Government Gazette.

OC0209 STAFF RECOMMENDATION/COUNCIL DECISION

Moved Cr Gibson, Seconded Cr Smith

That Council, in accordance with the powers granted under Section 3.5(1) of the Local Government Act 1995 resolve to adopt the Shire of Capel Parking and Parking Facilities Local Law as attached to this agenda.

Carried by an Absolute majority 9/0

VOTING REQUIREMENTS

Absolute majority

OC0210 (14.1.2) Local Laws Relating to Dogs – Amendment (A.4.40.30)

REPORTING OFFICER

D Freeman, Governance Officer

Date: 29.01.07

DISCLOSURE OF INTEREST Nil

OWNER/APPLICANT

Shire of Capel

MATTER FOR CONSIDERATION

Council to continue proceedings to amend the Local Law Relating to Dogs to give legal effect to Council’s decision from the meeting on 13 September 2006 (Minute OC0911), in relation to vehicle access and prohibited beach areas.

APPLICANT’S SUBMISSION Nil

ATTACHMENTS

Local Laws Relating to Dogs Amendment Local Law 2007 Gazettal

BACKGROUND

Council resolved (Minute OC0911) to:

1. Prohibit dogs on the beach northeast from the prolongation of Peppermint Grove Road to the prolongation of Wave Walk, Peppermint Grove Beach and north east of the prolongation of Dalyellup Road to the prolongation of Norton Promenade Dalyellup from 1 November to 30 April between 7.00am and 7.00pm:
2. Permit dogs on the beach from, Peppermint Grove Road south to Forrest Beach Road, Dalyellup Road car park south to Rich Road Stratham and from Rich Road Stratham to Wave Walk Peppermint Grove Beach: and
3. Amend the Local Laws Relating to Dogs to reflect points 1 and 2 above.

The relevant section of Council’s Local Laws Relating to Dogs is couched in prohibitive terms as follows:

Prohibited Places

- 10 Except in the case of a bona fide guide dog, or a hearing dog a person liable for the control of a dog shall prevent that dog from being in or on any of the following places:
 - (d) any of the beach foreshore areas from 1 November to 30 April each year, specified hereunder-
 - (i) northeast from the prolongation of Peppermint Grove Road, Peppermint Grove Beach, for a distance of 300 metres;
 - (ii) southwest from the prolongation of the Southernmost boundary of Wellington loc 497 to the prolongation of Rich Road, Stratham;
 - (iii) beach foreshore west of, and adjacent to reserve 25427, Forrest beach; and
 - (iv) northeast of the prolongation of Dalyellup Beach Road, Dalyellup to the prolongation of Norton Promenade, Dalyellup.

Accordingly the direction given by Council in resolution OC0911 has now also been couched in prohibitive terms and is contained in the recommendation.

Accordingly, Council at its meeting held on 22 November 2006, resolved (OC1124) to give public notice in accordance with the provisions of Section 3.12 of the Local Government Act 1995 of its intention to amend the Shire of Capel Local Laws Relating to Dogs.

In the report Council noted the purpose and effect of the amendment to the Local Law Relating to Dogs as follows:

Purpose - To amend Clause 10 of the Local Laws Relating to Dogs – places where dogs are prohibited

Effect - To update those sections of the coast within the Shire of Capel where dogs are prohibited.

STATUTORY ENVIRONMENT

Local Government Act (1995) – Section 3.5(1) provides that a Local Government may make Local Laws under this Act prescribing all matters that are required to be prescribed by a Local Law, or are necessary or convenient to be so prescribed, for it to perform any of its functions under this Act.

Section 3.12 sets out the procedures for making a Local Law.

Dog Act 1976

National Competition Policy - as the proposed amendments do not contain any restrictions on competition it is not considered necessary to undertake a review of the proposed amendments under the National Competition Policy.

POLICY IMPLICATIONS Nil

FINANCIAL IMPLICATIONS Nil

STRATEGIC IMPLICATIONS Nil

CONSULTATION

A statutory advertising period of 42 days followed the decision of Council to prepare the Local Law. No submissions were received.

If Council adopts the amendment to the Local Law, it will also be required to give Local Public Notice of the adoption

COMMENT

As result of there being no submissions for Council to consider, Council may resolve (by Absolute Majority) to adopt the amendment to the Dog Local Laws.

If Council adopts the Staff Recommendation, the amendment to the Local Laws Relating to Dogs will be published in the Government Gazette as well as submitted to the Hon Minister for Local Government and the Joint Standing Committee on Delegated Legislation.

The Local Laws will come into operation 14 days after publication in the Government Gazette.

OC0210 STAFF RECOMMENDATION/COUNCIL DECISION

Moved Cr Smith, Seconded Cr Manley

That Council, in accordance with the provisions of Section 3.5(1) of the Local Government Act 1995 and the Dog Act 1976 resolve to make the following amendment to the Shire of Capel Local Laws Relating to Dogs:

Subclause 10(d) is deleted and the following clause substituted:

10(d) any of the beach foreshore areas from 1 November to 30April each year, specified hereunder-

- (i) northeast of the prolongation of Peppermint Grove Road, Peppermint beach to the prolongation of Wave Walk, Peppermint Grove Beach between 7am and 7pm:**
- (ii) northeast of the prolongation of Dalyellup Beach Road, Dalyellup to the prolongation of Norton Promenade Dalyellup between 7am and 7pm:**
- (iii) Beach foreshore west of and adjacent to Reserve 25427, Forrest Beach, and**
- (iv) Northeast from the prolongation of Rich Road Stratham for a distance of 300 metres.**

Carried by an Absolute majority 9/0

VOTING REQUIREMENTS

Absolute majority

OC0211 (14.1.3) Lease of Lot 1 South West Highway Boyanup (R.1.7)

REPORTING OFFICER

D Freeman, Governance Officer

Date: 02.02.07

DISCLOSURE OF INTEREST Nil

OWNER/APPLICANT

Shire of Capel

MATTER FOR CONSIDERATION

Leasing of Lot 1 South West Highway Boyanup

APPLICANT'S SUBMISSION

ATTACHMENTS

Map Showing location of Lot 1 South West Highway Boyanup

BACKGROUND

In 1994 Council entered into a deed of agreement to acquire lot 1 South West Highway (8.1 hectares) from Mr M Morris, with the view to using the land for future expansion of the Boyanup Recreation ground.

Following the transfer of the land to Council, and because Council has not been ready to develop the land, Council has leased the land back to Mr Morris.

The lease of the land expires on 31 March 2007, and there is no option for a further term.

STATUTORY ENVIRONMENT

Local Government Act 1995 – Section 3.58

POLICY IMPLICATIONS Nil

FINANCIAL IMPLICATIONS Nil

By offering the land for lease, Council can expect to receive rental income as well as saving itself the cost of installing firebreaks and providing weed control on the land.

STRATEGIC IMPLICATIONS Nil

CONSULTATION Nil

COMMENT

At this stage, Council has not considered the development of the land for recreational purposes. Pending the allocation of funds for works on the land, Council may wish to continue to lease the land in the same manner as currently occurs.

Section 3.58(2) of the Local Government Act provides that:

“Except as stated in this section, a local government can only dispose of property to –

- (a) The highest bidder at public auction: or
- (b) The person who at public tender called by the local government makes what is, in the opinion of the local government, the most acceptable tender, whether or not it is the highest tender.”

As an alternative, Section 3.58(3) and (4) of the Local Government Act provides that

- (3) “A local government can dispose of property other than under subsection (2) if, before agreeing to dispose of the property –
 - (a) it gives local public notice of the proposed disposition –
 - (i) describing the property concerned,
 - (ii) giving details of the proposed disposition, and
 - (iii) inviting submissions to be made to the local government before a date to be specified in the notice, being a date not less than 2 weeks after the notice is first given:

and

- (b) it considers any submissions made to it before the date specified in the notice and, if its decision is made by the council or a committee, the decision and the reasons for it are recorded in the minutes of the meeting at which the decision was made.

- (4) The details of the proposed disposition that are required by subsection (3) (a) (ii) include –

- (a) the names of all other parties concerned
- (b) the consideration to be received by the local government for the disposition and
- (c) the market value of the disposition as ascertained by a valuation carried out not more than 6 months before the proposed disposition.”

Regulation 30(1) and (2) of the Local Government (Functions and General) Regulations 1996 provides as follows:

- (1) A disposition that is described in this regulation as an exempt disposition is excluded from the application of Section 3.58 of the Act.
- (2) A disposition of land is an exempt disposition if-
 - (a) the land is disposed of to an owner of adjoining land (in this paragraph called “the transferee)and –
 - (i) Its market value is less than \$5000, and
 - (ii) the local government does not consider that ownership of the land would be of significant benefit to anyone other than the transferee.

The Current lessee, Mr M Morris, has requested Council continue to lease the land to him after the 31 March 2007, expiration of the current arrangements.

An inspection of the land has shown that, while suitable for agistment, the land has no yards, no water supply and no direct access off South West Highway. These services are provided via the adjoining property owned by the Mr Morris. There is also some doubt as to the accuracy of the fencing on the lot.

It is considered that given these limitations there would be little significant benefit in the use of this land by anyone else other than the adjoining owner Mr Morris.

With regard to the rental to be paid for the property, previously when the existing agreement was entered in to, the rental value of the land was estimated at \$150.00 per hectare per year (plus GST), giving an annual rental of \$1320 inclusive of GST.

In preparing this item, advice has been received that the rental value of land for agistment purposes has increased approximately 20%. On this basis an annual rental of \$1600 inclusive of GST should be expected.

Given that there are no plans currently before the Council to develop this site, indeed the development has not been mentioned in Council's Plan for the Future, which covers the next 5 years, it is recommended that Council offer the land for lease for a period of 2 years with an option of a further 1 year.

It is considered that after the initial term, Council will be better placed to determine likely needs and a timetable for the future use and development of this land.

OC0211 STAFF RECOMMENDATION/COUNCIL DECISION

Moved Cr Smith, Seconded Cr Gibson

That Council offer to lease Lot 1 South West Highway Boyanup for a period of 2 years from 1 April 2007, with an option for a further 1 year, to Mr M Morris at an annual rental of \$1600.00 inclusive of GST, subject to Mr Morris maintaining all firebreaks and undertaking all appropriate weed eradication on the property during the term of the lease without advertising the proposed disposition of land as it does not consider that ownership of the land would be of significant benefit to anyone other than Mr M Morris who owns land adjoining the lease area.

Carried 9/0

VOTING REQUIREMENTS

Simple majority

OC0212 (14.1.4) Review of Policies- Health (A.2.11)

REPORTING OFFICER

D Freeman, Governance Officer

Date: 06.02.07

DISCLOSURE OF INTEREST Nil

OWNER/APPLICANT

Shire of Capel

MATTER FOR CONSIDERATION

As part of the ongoing process of reviewing the Policies of Council, the policy relating to Environmental Health is now submitted to Council.

APPLICANT'S SUBMISSION

Previously, there have been no policies adopted for Council's environmental health services.

However an area of operational discretion, which has been used for some considerable time is the manner in which applications for Temporary Accommodation are dealt with and those areas in which Temporary Accommodation will be permitted.

Information on Temporary Accommodation has been previously made available to members of the public by way of the Info Note attached to this agenda item.

As the areas in which accommodation of this nature may be permitted are considered to be discretionary, the support of Council by formally adopting a policy on this matter is sought.

ATTACHMENTS

- Info Note – Temporary Accommodation
- Draft Policy 17.1 – Temporary Accommodation.

BACKGROUND Nil

STATUTORY ENVIRONMENT

Local Government Act 1995

Health Act 1911

POLICY IMPLICATIONS

Policy will be used as a guideline for Council operations until further reviewed or made obsolete by legislative change.

FINANCIAL IMPLICATIONS Nil

STRATEGIC IMPLICATIONS Nil

CONSULTATION Nil

COMMENT

The draft policy seeks to address those areas of the Shire where temporary accommodation would not be seen as acceptable, as well as establishing the conditions for occupancy.

OC0212 STAFF RECOMMENDATION

That Council adopt Policy 17.1 – Temporary Accommodation.

OC1213 COUNCIL DECISION

Moved Cr Smith, Seconded Cr Manley

That Council adopt Policy 17.1 – Temporary Accommodation with the addition of Dalyellup townsite into Point 1 – Policy Statement, of the attachment.

Carried 8/1

VOTING REQUIREMENTS

Simple majority

OC0214 (14.1.5) Annual Performance Review– CEO (Personnel 110)

REPORTING OFFICER

PF Sheedy – Chief Executive Officer

Date 05.02.07

DISCLOSURE OF INTEREST Nil

OWNER/APPLICANT

Chief Executive Officer

MATTER FOR CONSIDERATION

The six monthly progress report by the Chief Executive Officer on the delivery of outcomes as stated in the Shire's Strategic Plan as required under his 2006/2007 Annual Performance Review.

ATTACHMENTS

Strategic Plan Actions – February 2007 Review

APPLICANT'S SUBMISSION Nil

BACKGROUND

The Chief Executives Officer's Annual Performance Review 2006/2007 includes a KRA that requires him to provide a six monthly report on the deliver of outcomes stated in the Strategic Plan.

STATUTORY ENVIRONMENT Nil

POLICY IMPLICATIONS Nil

FINANCIAL IMPLICATIONS

A number of the Actions will require the allocation of funds in future budgets to be completed.

STRATEGIC IMPLICATIONS Nil

CONSULTATION Nil

COMMENT

The attachment indicates that steady progress is being made with the Strategies/Actions outlined in the current Strategic Plan and in general they are being completed either before or during the financial year indicated in the Strategic Plan. However there are still some carryovers from previous years that have been delayed due to other priorities, lack of grant funding and staff movements. These are detailed as follows:

1. Coastal Facility Improvement Plan (No. 1 due 2004/05)

External funding is being sought to assist Council with the development of the Plan and then further funding will be sought, in addition to budget allocations for implementation.

2. Human Resources Plan (No. 3 due 2004/05)

A number of components of the Plan (induction manual, policies, staff appraisal system and recruitment and selection procedures) have already been developed and an overall Plan will be developed over the next twelve months.

3. Five Year It Systems Plan (No. 4 due 2004/05)

Quotations to have this completed by a consultant have been excessive in staffs view and the Manager Finance and Community Services has carried out some preliminary works and is hoping to complete it in 2007/08.

4. Key Performance Indicators (No. 5 due 2004/05)

This item needs to be considered as part of the next Strategic Plan as I am concerned that valuable staff resources and time will be required to monitor these and produce ongoing reports that will provide minimal benefits to the organisation. I intend to have further discussions with CEOs in neighbouring local governments on this matter and will include it as part of the Strategic Plan review programmed for 2007.

5. Historical and Archival Material (No. 10 due 2005/06)

A purpose built room for the materials is part of the Capel hall development and a records system will be developed when this is development is completed and will require funding in the 2007/08 budget.

6. Youth Needs Analysis and Policy (No. 11 due 2005/06)

Funding has been included in the 2006/07 budget for a Youth Strategic Plan, which includes a youth survey and development of a policy. This may have to be delayed until 2007/08 due to the recent loss of the Community Development Coordinator.

Further comment on the above and other Actions detailed in the Strategic Plan are included in the attachment which also includes those Actions listed for 2006/07.

OC0214 STAFF RECOMMENDATION/COUNCIL DECISION

Moved Cr Bell, Seconded Cr Smith

That the six monthly report (February 2007) submitted by the Chief Executive Officer on the delivery of Actions stated in the Shire of Capel Strategic Plan 2003-2007 be received and noted.

Carried 9/0

VOTING REQUIREMENTS

Simple majority

OC0215 (14.1.6) Review of Policies – Finance (A.2.11)

REPORTING OFFICER

D Freeman, Governance Officer

Date: 07.02.07

DISCLOSURE OF INTEREST Nil

OWNER/APPLICANT

Shire of Capel

MATTER FOR CONSIDERATION

As part of the ongoing process of reviewing the Policies of Council, those policies relating to Finance are now submitted to Council.

APPLICANT'S SUBMISSION Nil

ATTACHMENTS

- Policy – 11.1 Donations to Charitable Organisations
- Policy – 11.3 Financial Reports
- Policy – 11.4 Fixed Asset Accounting
- Policy - 11.7 Cheque Signing
- Policy – 11.8 Preparation of Budget
- Policy – 11.10 Self Supporting Loans
- Policy – 11.11 Investment of Funds
- Policy – 11.12 Tenders – (Regional Price Preference)
- Policy – 11.13 Local Purchasing.

BACKGROUND

The Policies of Council have been subjected to a review by staff who have made the following observations and recommendations in relation to each Policy:

Policy 11.1 Donations to Charitable Organisations

An Introduction and Objective has been inserted to keep with form of new policies. Significant changes are the insertion of a definition of Charitable Organisation, payment of donations to be made after the adoption of the budget but before December and no limit being set on the number of charitable organisations that Council will donate to.

Policy 11.3 Financial Reports

An Introduction and Objective has been inserted to keep with the form of new policies. Policy has been amended to reflect reports required by Council. In addition the policy has been expanded to reflect Council's decision of 28 September 2005 (Minute OCO929), wherein Council adopted a percentage of plus or minus 10% for the reporting of variances of actual expenditure and revenue to budgeted expenditure and revenue, in the monthly report of financial activity.

Policy 11.4 Fixed Asset Accounting

The reference to sewerage piping has been deleted from the list of depreciation periods as the provision of sewerage services is not a Local Government function.

Policy 11.5 Funding Contributions

It is recommended this policy be deleted as the role of this intended function has been replaced by the need to identify funding sources in the Plan for the Future, and the role this document plays as a prelude to the budget process.

Policy 11.6 Meat Inspection Services

It is recommended this policy be deleted as there are no longer any abattoirs operating within the shire.

Policy 11.7 Cheque Signing

Point 6 has been amended to clarify that under delegated authority, the list of payments can be authorised by the Manager Finance and Community Services or the Accountant.

Policy 11.8 Preparation of Budget

All references to the Plan of Principal Activities have been changed to Plan for the Future. A revised timetable for the budgetary process has also been included reflecting more fully the full process of preparing and adopting the Budget.

Policy 11.9 Public Address System

It is recommended this policy be deleted as Delegated Authority 146 allows for fees and charges up to \$200 to be waived by the Chief Executive Officer.

Policy 11.10 Self Supporting Loans

Statements of Introduction and Objective have been inserted to keep with the form of new policies. New sections have been introduced specifying the requirements of Council with regard to:

- Preparation of a Deed of Agreement
- Security over the loan
- Default
- Leases of land and
- Proof of Capacity to meet the repayments of the loan.

Policy 11.11 Investment of Funds

No changes are recommended other than to use numbering instead of bullet points for easier referencing.

Policy 11.12 Tenders (Regional Price Preference)

Minor grammatical changes made. Also the of the reference to \$50,000 in definitions – Formal Tender has been deleted as this amount is currently being reviewed by the Department of Local Government and Regional Development.

Policy 11.13 Local Purchasing

This policy has been amended to include a cross reference to include the requirement to comply with the Local Government (Functions and General) Regulations.

STATUTORY ENVIRONMENT

Local Government Act 1995

POLICY IMPLICATIONS

Policies will be used as guidelines for Council operations until further reviewed or made redundant by legislative change.

FINANCIAL IMPLICATIONS Nil

STRATEGIC IMPLICATIONS Nil

CONSULTATION Nil

COMMENT Nil

OC0215 STAFF RECOMMENDATION/COUNCIL DECISION

Moved Cr Bell, Seconded Cr Gibson

1. That Council rescind the following policies:

- **Policy 11.5 – Funding Contributions**
- **Policy 11.6 – Meat Inspection Services**
- **Policy 11.9 – Public Address System.**

2. That Council adopt the following policies as attached to this agenda:

- **Policy – 11.1 Donations to Charitable Organisations**
- **Policy – 11.3 Financial Reports**
- **Policy – 11.4 Fixed Asset Accounting**
- **Policy – 11.7 Cheque Signing**
- **Policy – 11.8 Preparation of Budget**
- **Policy – 11.10 Self Supporting Loans**
- **Policy – 11.11 Investment of Funds**
- **Policy – 11.12 Tenders – (Regional Price Preference)**
- **Policy – 11.13 Local Purchasing.**

Carried 9/0

VOTING REQUIREMENTS

Simple majority

COMMUNITY SERVICES**OC0216 (14.2.1) Marketing Strategy Shire of Capel (EC.2.2)**

REPORTING OFFICER

PF Sheedy – Chief Executive Officer

Date 06.02.07

DISCLOSURE OF INTEREST Nil

OWNER/APPLICANT

Chief Executive Officer/Shire of Capel

MATTER FOR CONSIDERATION

Council is required to consider the report from the CEO on the cost to develop an integrated marketing strategy and business case to promote the businesses opportunities, tourist attractions and lifestyle opportunities in the Shire so that its attractiveness as a place to live, visit and do business is enhanced and determine its future direction on the matter.

ATTACHMENTS Nil

APPLICANT'S SUBMISSION Nil

BACKGROUND

The Chief Executive Officer's annual performance appraisal (2007) under KRA 5 'Communications & Marketing', has as Objective 1 'The Shire's attractiveness as a place to live, visit and do business is enhanced' The specific Action detailed is to 'provide a report on the cost to develop an integrated marketing strategy and business case'

STATUTORY ENVIRONMENT Nil

POLICY IMPLICATIONS Nil

FINANCIAL IMPLICATIONS

Any decision of Council to proceed will require the allocation of funds and as there is no funds allocated in the 2006/07 budget for this project and it is anticipated that external funding would be sought for some of the components of the strategy, no action would be taken to progress the commencement of strategy until after the adoption of the 2007/08 budget in July 2007.

STRATEGIC IMPLICATIONS

The Shire of Capel Strategic Plan 2003-2007 Core Business Area 4 'Community Services', Strategy 5 'Support the processes to encourage economic activity' is applicable to this item.

CONSULTATION

The Chief Executive Officer has discussed the concept with Karen Frith from the South West Development Commission.

COMMENT

Following discussion with Karen Frith it is clearly evident that it is important at the start of this discussion to understand that both the development of an integrated marketing strategy and the implementation of it are integrally linked and there is no point in developing the strategy and then deciding not to proceed with its implementation or deciding to only proceed with parts of the marketing strategy. It is important to view the strategy as a complete package and it may be difficult to achieve the desired outcomes if only parts of the strategy are acted upon. There can be some substantial funding required to implement a marketing strategy, albeit over a 4-5 year period, for the initial infrastructure and then an ongoing commitment after that. Details of these are provided further in the report.

In order to implement a successful integrated marketing strategy Council would need to utilise a number of promotional mediums namely, Council’s web site, signage and tourism, newspaper and television, pamphlets and brochures and entry statement infrastructure (greatest cost). Karen has indicated that generally a marketing strategy is developed on the basis of being implemented over a period of 5 years which allows for an orderly implementation of the marketing strategy, the ability to spread the cost over an extended period, especially in regards to the hard infrastructure (signage, entry statements) and allows for the sourcing of outside funding to assist with the larger projects (entry statements).

Following the initial period, the marketing strategy would be reviewed, amended, added to, etc for a further five year period as an ongoing strategy. It may also be that if the development of new images, infrastructure, brochures etc has been completed in the first five years and no new strategies are required, that the ongoing strategy would just be a continuation of the promotional activities, such as web site, newspaper and television promotion and pamphlet and brochure production, which would require a smaller annual budget allocation.

The following information details the expected costs Council could incur in developing an integrated marketing strategy for the Shire of Capel and then implementing it over a five year period as discussed with Karen Frith, who has the expertise and a good understanding of the process and possible costs involved, as this is part of her brief at the South West Development Commission and secondly as her husband is a consultant in this line of work (she was very conscious of declaring her interest at the start of our discussion).

Integrated Marking Strategy	\$
Engagement of a consultant (50-70 hours)	7,000-10,000
 Implementation of the Marketing Strategy	
• Web site upgrade	7,000-10,000
• Logo development/Branding	3,000-4,000
• Image Library (available for use by others)	4,000
• Brochure & Pamphlets (information, tourism etc)	12,000
• Media campaign (1 st year)	5,000
• Stationery Upgrade (one off)	2,000-5,000
• Entry Statements (2 – signage and information bays)	100,000-120,000

As can be seen from the above estimates to fully implement an integrated marketing strategy for the Shire of Capel over a five year period would require expenditure of between \$133,000 and \$160,000 in addition to the initial cost to develop the marketing strategy. Ongoing funding would then be required each year to continue with promotion/marketing of the Shire and any additional projects identified as part of the ongoing review. It is expected that external funding would possibly only be available for entry statements, but all available funding opportunities would be explored.

As an extension to the concept of marketing the Shire of Capel the ongoing skills shortage and specifically the shortage of local government employees both professional and outside work force throughout Western Australian and in fact Australia has raised the question of a need for us to better promote the Shire of Capel to increase employment prospects. A comment was recently made that potential future employees, especially those currently within local government in Western Australia may not have a good knowledge or understanding of where the Shire is located in regards to the south west and what facilities, services and attractions it has to offer, both within the Shire and in close proximity in other local governments. To address this matter it is the intention to include in future budgets a request for funding to establish an information booth at career expos and major local government conferences within Western Australia

Finally, by way of information for Councillors, the Shire's current promotional activities consist of tourism brochures (10,000 every 3 years), newspaper features in conjunction with other events in the Western Australian and local newspapers such as south west region promotion and Capel Fest, Area promotion (Capel Fest, Harvest Highway, Food and Wine festival) and Business promotion and support, with a total budget allocation of \$35,000.

OC0216 STAFF RECOMMENDATION/COUNCIL DECISION

Moved Cr Smith, Seconded Cr Manley

That an amount of \$10,000 be included in the 2007/08 budget for consideration, to allow for the employment of a consultant to develop a Five Year Integrated Marketing Strategy for the Shire of Capel.

Carried 5/4

VOTING REQUIREMENTS

Simple majority

FINANCE AND RATING

OC0217 (14.3.1) Deed of Covenant – Lotterywest Grant for Capel Hall Redevelopment (R.1.28)

REPORTING OFFICER

Andrew Ross – Manager Finance & Community Services Date 02.02.07

DISCLOSURE OF INTEREST Nil

OWNER/APPLICANT

Lotteries Commission/Shire of Capel

MATTER FOR CONSIDERATION

Council to consider approving the Deed of Covenant for the \$600,000 grant from the Lotteries Commission for the redevelopment of the Capel Hall project.

ATTACHMENTS

Deed of Covenant between the Shire of Capel and the Lotteries Commission

APPLICANT’S SUBMISSION Nil

BACKGROUND

In October 2006 the Lotteries Commission advised that Council had been successful in its application for a \$600,000 grant towards the redevelopment of the Capel Hall.

STATUTORY ENVIRONMENT Nil

POLICY IMPLICATIONS Nil

FINANCIAL IMPLICATIONS

There are no financial implications associated with the signing of the Deed of Covenant.

STRATEGIC IMPLICATIONS

Strategy 1 within the Core Business Area of Community Services of The Strategic Plan 2003 – 2007 has specific action plan 1.4 which is to plan for the upgrade of the existing hall or the provision of a new community centre in Capel.

CONSULTATION Nil

COMMENT

The Deed of Covenant is a standard document that is designed to protect the interests of the Lotteries Commission specifically and the community in general by ensuring the funds granted by the Lotteries Commission are used for the purposes intended and for the benefit of the community in general. The schedule included with the Deed outlines the terms of the Deed and states the purpose, the term of 20 years and that there are no special conditions.

OC0217 STAFF RECOMMENDATION/COUNCIL DECISION

Moved Cr Bell, Seconded Cr Gibson

That Council authorise the Shire President and the Chief Executive Officer to sign and affix the common seal of the Shire of Capel to the Deed of Covenant with The Lotteries Commission for the \$600,000 grant for the construction of community spaces within the Capel Community Centre building.

Carried 9/0

VOTING REQUIREMENTS

Simple majority

OC0218 (14.3.2) Discretionary Donation – Bunbury Cathedral Grammar School P & F (A.2.27)

REPORTING OFFICER

Andrew Ross – Manager Finance and Community Services Date: 05.02.07

DISCLOSURE OF INTEREST Nil

OWNER/APPLICANT

Bunbury Cathedral Grammar School Parents and Friends Association (BCGS P & F).

MATTER FOR CONSIDERATION

Possible donation to the BCGS P & F for their fete on 25 March 2007.

ATTACHMENTS Nil

APPLICANT’S SUBMISSION

A letter has been received from the BCGS P & F seeking support from local businesses and industry for their Fete and Fun Run to be held on 25 March 2007. The letter refers to four categories of sponsorship and as an alternative or in addition to any of these categories product donations may also be provided for use in the silent auction, chocolate wheel, raffle baskets or as prizes for fun run winners. The four categories of sponsorship are:

- Category One, \$1,000.00 allows the sponsor two areas for banner displays, logo on stationery, acknowledgement in school newsletter, name on major sponsors board, PA announcements during the day and 2 invitations to the VIP sponsors tent
- Category two, \$500.00 allows the sponsor one area for banner displays, acknowledgement in school newsletter, name on major sponsors board, PA announcement during the day and 1 invitations to the VIP sponsors tent
- Category three, \$200.00 allows the sponsor one area for banner displays, acknowledgement in school newsletter, name on minor sponsors board
- Category four, \$100.00 allows the sponsor acknowledgement in school newsletter, name on minor sponsors board.

BACKGROUND

Council’s 2006/07 Budget provides for a \$1,500 budget for Council Discretionary Donations (refer to account 0222 and Council minute OC0415/06). \$500 of this amount is notionally allocated as a contribution to the Lord Mayor’s Distress Relief Fund, should such a fund be declared during the year.

STATUTORY ENVIRONMENT

Section 6.8 of the Local Government Act 1995 requires a local government not incur any expenditure that is not included in its budget.

POLICY IMPLICATIONS

Policy 11.1 Donations to Charitable Organisations, is not applicable.

FINANCIAL IMPLICATIONS

At this stage none of the \$1,000 budget for discretionary donations nor the \$500 budget for the Lord Mayor of Perth's Distress Relief Fund has been used.

Should Council agree to provide a donation to the BCGS P & F it could be accommodated within the overall budget for Account 0222.

STRATEGIC IMPLICATIONS

Strategic Plan 2003 – 2007 has no specific action plan concerning this matter. However, Core Business Area: Governance, Strategy 3: Provide efficient and effective financial management and the Core Business Area of Community Services both have relevance.

CONSULTATION

Nil

COMMENT

Council's discretionary donations budget exists for the purpose of meeting any unbudgeted requests for donations that are received from charitable or not for profit organisations that are received during the year. The request from the BCGS P & F meets this criteria.

In past years the size of the donations made from this account have generally been in the range of \$200.00 to \$500.00. It is therefore suggested to Council that the category three sponsorship proposal for \$200.00 be considered. A donation of this amount would ensure there are sufficient funds to satisfy other requests should they be received.

OC0218 STAFF RECOMMENDATION/COUNCIL DECISION

Moved Cr Piesse, Seconded Cr Smith

That Council approve a donation of \$200.00 to the Bunbury Cathedral Grammar School Parents and Friends Association for the Fete and Fun Run on 25 March 2007.

Carried 8/1

VOTING REQUIREMENTS

Simple majority

COMMUNITY RANGER SERVICES Nil

URGENT BUSINESS

OC0219 (15.1) Discretionary Donation – Dwellingup Fires Appeal (A.2.27)

REPORTING OFFICER

Andrew Ross – Manager Finance and Community Services Date: 12.02.07

DISCLOSURE OF INTEREST Nil

OWNER/APPLICANT

The Lord Mayor’s Distress Relief Fund.

MATTER FOR CONSIDERATION

Possible donation to the Lord Mayor’s Distress Relief Fund for the Dwellingup Fires Appeal.

ATTACHMENTS Nil

APPLICANT’S SUBMISSION Nil

BACKGROUND

Council’s 2006/07 Budget provides for a \$1,500 budget for Council Discretionary Donations (refer to account 0222 and Council minute OC0415/06). \$500 of this amount is notionally allocated as a contribution to the Lord Mayor’s Distress Relief Fund, should such a fund be declared during the year.

STATUTORY ENVIRONMENT Nil

POLICY IMPLICATIONS

Policy 11.1 Donations to Charitable Organisations, is not applicable.

FINANCIAL IMPLICATIONS

At this stage none of the \$500 budget for the Lord Mayor of Perth’s Distress Relief Fund has been used and only \$200.00 of the discretionary donations budget of \$1,000 has been allocated.

Should Council agree to provide a donation it could be accommodated within the overall budget for Account 0222.

STRATEGIC IMPLICATIONS

Strategic Plan 2003 – 2007 has no specific action plan concerning this matter. However, Core Business Area: Governance, Strategy 3: Provide efficient and effective financial management and the Core Business Area of Community Services both have relevance.

CONSULTATION Nil

COMMENT

The Lord Mayor's Distress Relief Fund for the Dwellingup Fires Appeal was advertised in The West Australian on Saturday 10th February 2007.

The bush fires in the Dwellingup and Coolup areas commenced on Australia Day 2007 and have had a devastating effect with the loss of 15 houses, many sheds, outbuildings, fencing, livestock and hectares of grazing property. Bush fire brigade volunteers from all of the Shire of Capel's bush fire brigades have assisted with fire control over the past fortnight. The fires have now been extinguished, however it will take time for the residents in the area to re-establish themselves and the provision of financial and other assistance will be essential to assist this process.

Council's discretionary donations budget exists for the purpose of meeting any unbudgeted requests for donations that are received from charitable or not for profit organisations that are received during the year. The budget already includes an allocation of \$500.00 for the Lord Mayor's Distress Relief Fund and it is proposed this amount be matched with \$500.00 from the discretionary donations budget. This would then allow Council to contribute \$1,000.00 to the Dwellingup Fires Appeal.

OC0219 STAFF RECOMMENDATION/COUNCIL DECISION

Moved Cr Lamb, Seconded Cr Bell

That Council approve a donation of \$1,000.00 to the Lord Mayor's Distress Relief Fund – Dwellingup Fires Appeal.

Carried 9/0

VOTING REQUIREMENTS

Simple majority

PUBLIC QUESTION TIME Nil

ITEMS FOR CONSIDERATION BEHIND CLOSED DOORS

OC0220 COUNCIL DECISION

Moved Cr Gibson, Seconded Cr Manley

That the meeting be closed to members of the public to deal with a matter which required the Shire to seek legal advice (S5.23(2)(d) of the Local Government Act 1995).

Carried 9/0

VOTING REQUIREMENTS

Simple majority

The meeting closed to the public at 5.40pm.

OC0221 STANDING ORDERS

OC0221 COUNCIL DECISION

Moved Cr Gibson, Seconded Cr Piesse

That Council move into a Committee of the Whole.

Carried 9/0

VOTING REQUIREMENTS

Simple majority

OC0222 (17.1) Storage of Disused Materials – Lot 1 Roberts Road, Capel (C5.21/2)

REPORTING OFFICER

A Dykstra – Planning Officer (Temporary) Date: 05.02.07
C Burwood – Coordinator Planning Services Date: 07.02.07

DISCLOSURE OF INTEREST Nil

OWNER/APPLICANT

Registered owner of lot 1 on Diagram of Survey 40490/Shire of Capel

MATTER FOR CONSIDERATION

To ascertain that in Council’s opinion the activity conducted on lot 1 Roberts Road is considered untidy.

To obtain Council’s directive to issue a notice on the owner of lot 1 for the removal of “Disused Materials” comprising of disused motor vehicles, old motor vehicle bodies and old machinery at lot 1 Roberts Road, Capel.

APPLICANT’S SUBMISSION Nil

ATTACHMENTS

Location Plan – Attachment Page 01

BACKGROUND

January 2005 – A complaint was received in relation to the accumulation of disused motor vehicles on the Site. This was confirmed by photographs taken of vehicles stored.

January 2005 – The Shire wrote to the owner of lot 1 to show cause why he should not be prosecuted as the use conducted on the Site was not a permitted use.

January 2005 – The owner's response included:

- (a) The property was bought through a Councillor advertising the land as ideal for a transport and storage business;
- (b) As the definition of 'Motor Vehicle Wrecking' would include dismantling and selling of parts, and that neither of those actions are occurring, there is no cause for concern under the Scheme; and
- (c) The Site was previously used to store ilmenite which had naturally occurring radioactive elements and the vehicles stored are of no type of hazard.

March 2005 – The Shire response to owner of lot 1 included:

- (i) The Councillor's business activity as a real estate agent has no relationship to Council decisions on land use;
- (ii) A significant number of vehicles are stored on the lot and it has been observed that crushing has occurred. The storage and crushing of vehicles falls under the interpretation of 'Motor vehicle Wrecking' and is not permitted;
- (iii) Previous mining activities were outside the control of the Shire and are conducted under State government legislation; and
- (iv) A timing of cessation of the activity was requested in order to determine if the matter should be reported to Council.

May 2005 – The Shire advised the owner of lot 1 that since its March 2005 letter, the number of vehicles stored on site has increased. The owner was given the opportunity to provide further comments before Council made a decision regarding the matter within 21 days.

May 2005 – The owner of lot 1 confirmed by phone to Shire staff that the activity involves the collection of vehicles over time and a mobile crusher visits the site every 4-5 months and removes the vehicles. He also confirmed he may pursue a rezoning to permit the activity. A response to Council's letter was forthcoming.

June 2005 – The owner of lot 1 attended the Shire offices to discuss the situation. He advised a crusher will visit the site to reduce the number of vehicles. He advised of other business opportunities he may pursue and that a rezoning application will be made.

June 2005 – Photo evidence revealed a large number of disused vehicles stored on the site, a crushing machine and a loader.

September 2005 – a number of written and phone complaints were again received. One complaint was concerned over unauthorised people accessing the Site through an adjoining property to obtain parts and in doing so, have cut fences & left gates open creating the possibility for cattle to escape.

September 2005 - Observations were made of a further accumulation of vehicles. Mr Piggin was advised of this issue and he stated by phone he will endeavour to discuss a submission to Council.

October 2005 - Further photographic evidence of accumulated vehicles was recorded.

October 2005 – Council at its meeting on the 26 October resolved to prosecute Mr Piggin for contravening the Scheme.

November 2005 – The owner of lot 1 attended a meeting at the Shire to discuss the matter. It was resolved Mr Piggin would submit a letter within 1 week to give a commitment to the preparation and submission of a rezoning proposal.

November 2005 – The owner of lot 1 wrote to the Shire advising he will submit a rezoning application in time for the Council meeting of 22 February 2006.

November 2005 – Council resolved to advise the owner of lot 1 that:

1. Council is prepared to delay the initiation of legal action required by Minute OC1014 of 2005 pending his submission and its consideration of a formal application to rezone his land to allow for an approval of the activity of storing motor vehicles for crushing and sale as scrap metal on lot 1 Roberts Road;
2. Council’s agreement to delay legal action does not endorse the current activity in contravention of Town Planning Scheme No. 7 and should not be taken to infer that if an application is lodged that it will lead to Council agreeing to initiate an amendment to the Scheme or proceeding to final approval pursuant to the Town Planning Regulations 1967 (as amended);
3. An application to rezone the land should clearly show that:
 - (a) It is possible to conduct the activity without an adverse impact on the visual amenity of the locality;
 - (b) That all actions associated with the storage, crushing and removal of vehicles can be conducted in a manner that avoids environmental pollution; and
 - (c) That a business plan for the activity can demonstrate that it is financially feasible to construct and maintain such measures as are necessary to sustain compliance with points (a) and (b).
4. Council has noted that the method of conducting the activity involves the accumulation of motor vehicles prior to crushing and removal by a scrap metal dealer and that currently he is in the process of accumulating sufficient vehicles prior to the next visit by the crusher. After that next visit by the crusher he should not accumulate further vehicles pending consideration of an application to rezone the land;
5. The owner of lot 1 should submit his formal application by 22 February 2006, after which time it will be assessed and reported on to Council in the normal course of dealing with such applications.
6. If the owner of lot 1 fails to comply with point 4 and the time requirements of point 5 legal actions will proceed in accordance with Council’s resolution recorded at Minute OC1014.

December 2005 – Photographic evidence of vehicles accumulated on the Site.

December 2005 – Written complaint was received at the Shire with six other signatories in regard to the activity. The Shire responded stating the matter was pending submission of a Scheme amendment proposal in February.

February 2006 – Photographic evidence of a large number of vehicles and a crusher existing on the Site.

February 2006 – The owner of lot 1 wrote to the Shire advising that “...all activities of a commercial nature will cease forthwith on the abovementioned premises, and due to a change in business plans, we do not intend on applying for planning permission.”

October 2006 – A Shire employee observed a small tray top truck carrying two vehicles on the tray and towing a third vehicle entering the Site. The driver, who is the owner of lot 1 was approached and responded stating people didn’t understand what he was doing, that the numbers of vehicles will be reduced when a crusher arrives in a few weeks and that a large shed will be built to house a large number of vehicles which are his own.

Recent inspections of the Site have revealed that the storage prior to crushing of motor vehicles is still being undertaken in the same manner.

November 2006 – The Shire sought a legal opinion from Slee Anderson & Pidgeon on preparing a case for prosecution of the proprietor of the site for the storage, crushing and removal of motor vehicles.

January 2007 – The Shire received advice from the Department of Environment and Conservation (DEC) of a formal Notice of a Classification that the site is known or suspected to be contaminated. The matter was reported to the DEC whom confirms that a vehicle wrecking yard and scrap metal recovery operation exists on the site having the potential to cause contamination. The DEC also note soil staining was observed on the site and although it cannot be confirmed to be contaminated (pending further investigation) a memorial stating the site’s classification has been placed on the Certificate of Title.

STATUTORY ENVIRONMENT

The legal opinion received from Slee Anderson and Pigeon identifies the statutory provisions that relate to both the Town Planning and Development Act 1928 and the Local Government Act 1995.

The Local Government Act 1995 Section 5.23(2) (d) relates to confidential matters and specifically legal advice relating to a matter to be discussed at the meeting.

POLICY IMPLICATIONS Nil

FINANCIAL IMPLICATIONS

The legal advice from Slee Anderson and Pidgeon has to date cost \$1735.80.

Additional legal costs will be incurred in both courses of action explained by the solicitors.

STRATEGIC IMPLICATIONS

Shire of Capel Land Use Strategy - 1999

The subject land is located within Planning Unit CA2 of the Land Use Strategy. The objectives for this unit include the provision of opportunities for a variety of rural uses. Major issues affecting the unit include protection of productive agricultural land for grazing, horticulture and viticulture” and the control of access onto Bussell highway.

It is stated under the desirable uses of the Scheme that the unit has the potential for a number of competing land uses and given its characteristics is likely to come under pressure for a land use change in the future. Most land uses will be able to be accommodated within existing lot patterns which are sufficiently large to provide buffers from other uses.

The strategy states that it is considered that the unit generally has the potential for uses such as horticulture, viticulture, grazing, low key tourist accommodation and basic raw material extraction.

CONSULTATION

As advised in the background section of this report the owner of lot 1 is aware of the condition of the site and Council’s concerns in regard to the uses conducted therein.

COMMENT

As this item relates to legal advice obtained by Council that is considered to be a confidential matter, the legal advice will not be included as an attachment to the agenda and minutes retained as Council’s official record. A confidential copy has been provided to Councillors and Senior staff as a separate attachment.

Council will also be requested to close the meeting to the public as the matter is considered to be confidential pursuant to Section 5.23(2)(d) of the Local Government Act 1995, being legal advice which relates to a matter to be discussed at the meeting.

Council will note that the advice of Slee Anderson and Pidgeon describes two options that Council may pursue in preventing the owner of lot 1 from continuing to use lot 1 to store disused materials associated with the ongoing business activities.

The first option relates to considering the pursuing of action under the provisions of the Town Planning and Development Act.

The second option Council may consider is to take action pursuant to the provisions of the Local Government Act.

Slee Anderson and Pidgeon have effectively recommended the second option.

Council is now required to decide whether or not to proceed with pursuing action to cease the activities conducted by the owner of lot 1 and the legislation by which such action would be undertaken.

Councillor Lamb left the chambers at 6.06pm.

Councillor Lamb returned to the chambers at 6.08pm.

OC0224 STANDING ORDERS

Moved Cr Gibson, Seconded Cr Lamb

That Council move out of a Committee of the Whole.

Carried 9/0

VOTING REQUIREMENTS

Simple majority

OC0223 COUNCIL DECISION

Moved Cr Bell, Seconded Cr Gibson

That Council reopen the meeting to members of the public.

VOTING REQUIREMENTS

Simple majority

The meeting reopened to the public at 6.10pm.

OC0225 STAFF RECOMMENDATION/COUNCIL DECISION

Moved Cr Gibson, Seconded Cr Lamb

That Council resolves:

- 1. It considers the disused material, being disused motor vehicles, old motor vehicle bodies and old machinery that exist on lot 1 (Certificate of title vol 414/folio 59A) Roberts Road, Capel to be untidy; and**
- 2. To issue a notice pursuant to Section 3.25 of the Local Government Act 1995 to the owner of lot 1, Mr Simon James Piggin, requiring within 60 days of the serving of the notice, the removal from the land(lot 1) of all disused material being disused motor vehicles, old motor vehicles and old machinery as the Shire of Capel consider it to be untidy.**

Carried 9/0

VOTING REQUIREMENTS

Simple majority

MEETING CLOSURE

The meeting closed at 6.12pm.

These minutes were confirmed at an Ordinary Council meeting on 28 February 2007.

Signed _____

Presiding Person at the meeting at which time the minutes were confirmed.

Date _____