

MINUTES OF THE ORDINARY MEETING OF COUNCIL HELD IN THE COUNCIL CHAMBERS ON TUESDAY 24 March 2009

1. COMMENCEMENT

The President declared the meeting open at 10:00am.

2. ATTENDANCE, APOLOGIES AND LEAVE OF ABSENCE

Attendance

| | | |
|-----------------|--------------------------------|------------|
| Cr JD Alexander | President | North Ward |
| Cr DJ Ridgway | Deputy President | South Ward |
| Cr WS McDonald | | South Ward |
| Cr KM Murray | | North Ward |
| Cr NF Flood | | West Ward |
| Cr BM Foster | | West Ward |
| Cr LC Shaw | | West Ward |
| Mr SP Gollan | Acting Chief Executive Officer | |
| Mrs SC Collins | Senior Administration Officer | |

Apologies

| | | |
|---------------|--|------------|
| Cr MG Roberts | | South Ward |
| Mr KL Byers | Chief Executive Officer (Annual Leave) | |

Leave of Absence

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| Cr P Gogol | | North Ward |
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3. PUBLIC QUESTION TIME

3.1 Mrs Gaenor Carter

Booking of Venue for Weightwatchers Country Forum

(File Reference: CP 009)

Mrs Carter advised this year that Beverley will be hosting the Weightwatchers Country Forum on Saturday 17 October 2009 and they expect over 100 people to attend. Their first choice of venue would be the Main Hall at the Town Hall, but due to uncertainty of availability they would like to hire the Exhibition Shed as the venue.

3. PUBLIC QUESTION TIME

3.1 Mrs Gaenor Carter

**Booking of Venue for Weightwatchers Country Forum
(Continued)**

Mr Stephen Gollan, Acting Chief Executive Officer, commented that the Youth Centre have sole use of this venue throughout the year apart from the show weekend, but with consultation with the Youth Co-ordinator can see no reason why this venue could not be used on this weekend.

The Shire President asked Mrs Carter to make arrangements to meet with the Deputy Chief Executive Officer to work through issues regarding using this building.

3.2 Mrs Bernie Carter

Requirements for Poultry

Mrs Carter enquired as to the distance a poultry yard has to be from a boundary fence and also a residential house.

At 10:15am Mr Peter Ibbott, Environmental Health Officer, entered the Chambers.

The Environmental Health Officer advised according to the Shire of Beverley Local Laws a poultry shed has to be 1.2 metres from a boundary fence and 15 metres from a house.

At 10:26am Mr Peter Ibbott, Environmental Health Officer, left the Chambers.

3.3 Mr Mike Hayman

Fencing By-Laws for R10 Zone

Mr Hayman advised he had collected from the Administration Officer a copy of the Fencing By-Laws and advised that he wished to erect standard 1.8m Colourbond fencing and asked for a verbal explanation of the requirements.

Cr Neil Flood advised Mr Hayman that he needs to put in an application seeking Shire approval prior to erecting the fencing.

**3. PUBLIC QUESTION TIME
(Continued)**

3.4 Mrs Gaynor Carter

RSPCA

Mrs Carter enquired in regard to whether Council has jurisdiction over the RSPCA.

The Acting Chief Executive Officer advised that Council has no jurisdiction over RSPCA.

4. CONDOLENCES

BROWING (nee Cole) Eileen Annie 10 March 2009

5. APPLICATIONS FOR LEAVE OF ABSENCE

Nil.

6. CONFIRMATION OF MINUTES AND BUSINESS ARISING

**6.1 Minutes of the Council Meeting held in the Council Chambers on
Tuesday 24 February 2009**

COUNCIL RESOLUTION

**M1/0309 Moved Cr Foster Seconded Cr Flood
That the Minutes of the Ordinary Meeting of Council held in
Council Chambers on Tuesday 24 February 2009, as printed, be
confirmed.**

CARRIED 7-0

6. CONFIRMATION OF MINUTES AND BUSINESS ARISING
6.1 Minutes of the Council Meeting held in the Council Chambers
on Tuesday 24 February 2009
(Continued)

BUSINESS ARISING

6.1.1 Item 8.5.2.6
Royalties for Regions – Regional Grants Scheme
– Beverley Caravan Park Ablution Block
(File Reference: GS 016 & VIN 1624B)

COUNCIL RESOLUTION

M2/0309 **Moved Cr Flood** **Seconded Cr McDonald**
That Council defer their grant application for the construction of a
Caravan Park Ablution Block under the Regional Grants Scheme
until the August funding round.
CARRIED 7-0

6.2 Minutes of the Finance and Audit Committee Meeting held in the
Council Chambers on Tuesday 3 March 2009.

Appendix 1

COUNCIL RESOLUTION

M3/0309 **Moved Cr McDonald** **Seconded Cr Shaw**
That the Minutes of the Finance and Audit Committee Meeting held
in the Council Chambers on Tuesday 3 March 2009, as printed, be
received.
CARRIED 7-0

BUSINESS ARISING

6.2.1 Budget Variance Percentage - Motion FA02/0309
(File Reference: FM 001)

COUNCIL RESOLUTION

M4/0309 **Moved Cr Flood** **Seconded Cr Ridgway**
Council set a variance of 15% on budget items of \$10,000.00 or
greater as per Section 34(5) of the Local Government (Financial
Management) Regulations 1996.
CARRIED 7-0

**6. CONFIRMATION OF MINUTES AND BUSINESS ARISING
(Continued)**

**6.3 Minutes of the Aged Care Committee Meeting held in the Council
Chambers on Friday 13 March 2009.**

Appendix 2

COUNCIL RESOLUTION

**M5/0309 Moved Cr Foster Seconded Cr Shaw
That the Minutes of the Aged Care Committee Meeting held in the
Council Chambers on Friday 13 March 2009, as printed, be
received.**

CARRIED 7-0

BUSINESS ARISING

6.3.1 Sizing of Lots for Grouped Dwellings (File Reference: LUP 011)

COUNCIL RESOLUTION

**M6/0309 Moved Cr Foster Seconded Cr Flood
Council commence to rezone Lots 121, 5 and 58 Dawson Street,
Beverley and portion of Lot 3 Vincent Street, Beverley to
Residential R40 for the purpose of group dwellings.**

CARRIED 7-0

**6.4 Minutes of the Plant & Works Committee Meeting held in the
Council Chambers on Monday 16 March 2009.**

Appendix 3

COUNCIL RESOLUTION

**M7/0309 Moved Cr Flood Seconded Cr Foster
That the Minutes of the Plant & Works Committee Meeting held in
the Council Chambers on Monday 16 March 2009, as printed, be
received.**

CARRIED 7-0

6. CONFIRMATION OF MINUTES AND BUSINESS ARISING
6.4 Minutes of the Plant & Works Committee Meeting held in the Council Chambers on Monday 16 March 2009.
(Continued)

BUSINESS ARISING

6.4.1 Item 4
2008 / 2009 Sealing Program of Town Streets
(File Reference: RO 003 & FM 001)

COUNCIL RESOLUTION

M8/0309 Moved Cr Flood Seconded Cr Foster
Council remove the sealing of Chipper, Courtney and Wright Streets from the 2008 / 2009 budget program.
CARRIED 7-0

6.4.2 Item 6
Refuse Site
(File Reference: WM 031 & BRE 30609)

COUNCIL RESOLUTION

M9/0309 Moved Cr Flood Seconded Cr Foster
Council engage a drilling contractor to drill sample holes over Council's Refuse Site to find suitable locations to enable new pits to be dug.
CARRIED 7-0

6.5 Minutes of the Finance & Audit Committee Meeting held in the Council Chambers on Tuesday 24 March 2009.

Appendix 4

COUNCIL RESOLUTION

M10/0309 Moved Cr Shaw Seconded Cr Ridgway
That the Minutes of the Finance & Audit Committee Meeting held in the Council Chambers on Tuesday 24 March 2009, as printed, be received.
CARRIED 7-0

6. CONFIRMATION OF MINUTES AND BUSINESS ARISING
6.5 Minutes of the Finance & Audit Committee Meeting held in the Council Chambers on Tuesday 24 March 2009.
(Continued)

BUSINESS ARISING

6.5.1 Budget Review – Motion FA04/0309
(File Reference: FM 001)

COUNCIL RESOLUTION

M11/0309 Moved Cr Murray **Seconded Cr Flood**
That the 2008 / 2009 Budget Review, be endorsed.
CARRIED 7-0

6.5.2 Audit Services – Motion FA05/0309
(File Reference: FM 003)

COUNCIL RESOLUTION

M12/0309 Moved Cr McDonald **Seconded Cr Shaw**
Council seek quotes for the supply of Audit Services for the next 2 years.
CARRIED 7-0

At 10:58am Mr Pat Curtin and Mr Richard Baldwin Environmental Consultant, Mr Peter Ibbott the Environmental Health Officer and Mr Peter Wright the Shire Planner, entered the Chambers.

11. OTHER BUSINESS

11.1 147 & 149 (Lots 55 & 56) Vincent Street, Beverley – Contaminated Site – Remediation
(File Reference: VIN 812)

Mr Baldwin addressed Council in regards to the removal of the old fuel tanks and soil from Barnsley's Service Station. Mr Baldwin requested Council consider permitting the use of an area of old taxi way at the airfield for the purpose of Soil Farming (removing contaminants from soil).

11. OTHER BUSINESS
11.1 147 & 149 (Lots 55 & 56) Vincent Street, Beverley –
Contaminated Site – Remediation
(Continued)

At 11:21am Mr Pat Curtin and Mr Richard Baldwin left the Chambers.

(Also refer Item 11.1 pages 44 & 45 of these Minutes.)

Council decided to receive the President and Councillors' Reports later in the meeting (refer pages 30 & 31 of these Minutes), and to deal with the Town Planning Items at this point in the meeting.

8. OFFICERS' REPORTS

8.1.1 TOWN PLANNING ITEMS

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|------------------------|--|
| SUBMISSION TO: | March Council Meeting 24 March 2009 |
| AGENDA ITEM: | 8.1.1.1 |
| REPORT DATE: | 17 March 2009 |
| SUBJECT: | DEVELOPMENT APPLICATION – CHANGE OF USE & SIGNAGE – 147 & 149 (LOTS 55 & 56) VINCENT STREET, BEVERLEY |
| APPLICANTS: | Brian Groves trading as: Beverley Dome Hire and Contracting |
| FILE REFERENCE: | VIN 812 |
| AUTHOR: | Shire Planner – Peter Wright |

Appendix 5

BACKGROUND

An application has been received to change the use of 147 & 149 (Lots 55 & 56) Vincent Street, Beverley from Motor Vehicle Repair Station to Shop. The applicant intends to establish a machinery and tool hire business with some ancillary sales.

The subject site is zoned Town Centre, 2575m² in area and consists of two lots. Contained on the site is a large outbuilding previously used for vehicle repairs and a domed building previously used for the sale of fuel. Also located on-site are redundant fuel storage tanks which have caused contamination of a portion of the site.

The large rectangular building is to be used for machinery hire, repairs and contracting. The domed building is proposed to be used as an office, showroom and for machinery sales. Should economic circumstances allow, the applicant proposes to eventually re-establish fuel sales on the site.

Ancillary to the application, the applicant seeks approval to sell takeaway food and drink and retrospective approval for signage.

COMMENT

The land use Shop is a "P" use in the Town Centre Zone. Therefore the use is permitted under the Shire of Beverley's Town Planning Scheme No. 2 (TPS 2) provided all scheme requirements and Council conditions of approval are met.

8.1.1 TOWN PLANNING ITEMS

Item 8.1.1.1

DEVELOPMENT APPLICATION – CHANGE OF USE & SIGNAGE – 147 & 149 (LOTS 55 & 56) VINCENT STREET, BEVERLEY (Continued)

The proposed development is in the Town Centre Design Control Area. As such under Clause 4.8 of TPS 2 the proposal is subject to civic and design guidelines aimed at ensuring the local amenity will not be detrimentally affected and the character of the Town Centre will be enhanced.

No alteration to the exterior architectural style is proposed, however as the applicants are rejuvenating the existing buildings changes in the exterior colour scheme may be anticipated. As the buildings are in a prominent location in the Town Centre Design Control Area, should Council approve the application, it will be recommended that Shire approval is required prior to any change of colour scheme, as a condition of approval.

Landscaping is considered by staff to be an important consideration given the location of the development. In the opinion of staff good landscaping on the site will enhance the entrance to the town centre of Beverley. Should Council approve the application, it will be recommended the submission and approval of a landscaping plan be a condition of approval.

To compliment any landscaping and prevent the development disturbing the aesthetics of the area by presenting large blank walls on the boundary, staff consider any fencing forward of the building line be visually permeable above 0.9 metres. It will be recommended, should Council approve the application, the visual permeability above 0.9 metres of fences forward of the building line, be a condition of approval.

As the development is on the corner of a major highway and the main street in the Beverley Townsite staff consider traffic management to be an important matter. The access, egress, traffic flow and parking on the site all have the potential to impact on the safety and convenience of traffic using the adjoining roads.

To minimize the impact on traffic and manage on-site vehicle movements, should Council approve the application, it will be recommended the submission and approval of a traffic management plan be condition of approval.

8.1.1 TOWN PLANNING ITEMS

Item 8.1.1.1

DEVELOPMENT APPLICATION – CHANGE OF USE & SIGNAGE – 147 & 149 (LOTS 55 & 56) VINCENT STREET, BEVERLEY (Continued)

In preparation for anticipated Council approval of the development application, the applicant has erected signage on the front of the building to be used for the hire of machinery. Staff consider the signage to be amenable to the aesthetics of the area and the nature of the proposed business. As the signage is a component of the application, Council approval of the application automatically approves the signage unless Council chooses to exclude the signage.

The proposed sale of takeaway food and drink is considered to be ancillary to the business and will provide convenient refreshment to patrons of the business. However any approval of the sale of food and drink will also be subject to licensing requirements from the Shire of Beverley's Health Department. To prevent the sale of food becoming more than a convenience to patrons, it will be recommended, should Council approve the application, only pre-prepared food and drink be available for sale as a condition of approval.

There is no specific proposal for the sale of fuel and any proposal would depend on a number of variables that cannot currently be adequately assessed. Should Council approve the application, it will be recommended Council provide "in principle" support for the sale of fuel as an advice note.

The economic development potential and service provision that would emanate from this proposal is considered by staff to enhance the lifestyle and business opportunities available in Beverley. The site is in a prominent location and has been vacant for some time. In the opinion of staff the proposal will fill a gap in service provision in the region and should economic circumstances allow and fuel sales eventuate, the provision of services will be further enhanced.

The application to change the use of 147 & 149 (Lots 55 & 56) Vincent Street, Beverley from Motor Vehicle Repair Station to Shop is supported due to:

- The proposal will activate a vacant site in a prominent location;
- A service will be provided that is not currently available in Beverley; and
- Recommended conditions of approval are anticipated to improve the visual amenity of the site and enhance safety.

Therefore it is recommended the application be approved.

8.1.1 TOWN PLANNING ITEMS

Item 8.1.1.1

**DEVELOPMENT APPLICATION – CHANGE OF USE & SIGNAGE –
147 & 149 (LOTS 55 & 56) VINCENT STREET, BEVERLEY
(Continued)**

8. A traffic management plan is to be submitted and approved within 90 days of the date of this approval (see Advice Note 4).
9. The sale of pre-prepared takeaway food and drink is permitted. No preparation of food is to occur on-site (see Advice Note 5).
10. The applicant shall only remove those trees and/or clear native vegetation as required for the efficient operation of the business or maintenance of the site and/or buildings and any associated access (see Advice Note 6).

Advice Notes:

1. Nothing in the approval or these conditions shall excuse compliance with all relevant written laws in the commencement and carrying out of the development.
2. The applicant is advised a building licence may be required prior to commencement of any building works.
3. With regard to Condition 6, the landscape plan is to include the location and species of plantings and a timeframe for planting.
4. With regard to Condition 8, the traffic management plan is to include details of access, egress, traffic flow and parking on the site.
5. With regard to Condition 9, the applicant is advised an application for a license is required to be submitted to the Council's Environmental Health Section and approved prior to the sale of any food and drink.
6. With regard to Condition 10, the applicant is advised approval may be required from the Department of Environment and Conservation prior to the removal of trees and/or clearing of vegetation.
7. The applicant is advised the Shire provides in principle support for the sale of fuel from the site, subject a future development application.

CARRIED 6-1

Cr Flood requested that his name be recorded as voting against the motion.

8.1.1 TOWN PLANNING ITEMS

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|------------------------|---|
| SUBMISSION TO: | March Council Meeting 24 March 2009 |
| AGENDA ITEM: | 8.1.1.4 |
| REPORT DATE: | 4 March 2009 |
| SUBJECT: | ROAD CLOSURES – SHORT STREET AND WRIGHT STREET, BEVERLEY |
| APPLICANTS: | Shire of Beverley |
| FILE REFERENCE: | PL 128633 |
| AUTHOR: | Shire Planner – Peter Wright |

Appendix 8

BACKGROUND

At its 29 June 2005 meeting Council resolved to recommend approval for the subdivision/amalgamation of Lots 12-19, 21-28 & 31 Bartram Street, Beverley. Incorporated in the resolution was the proposal to permanently close a section of Smith Street wholly contained within the proposed area of subdivision.

On 7 November 2005 the Western Australian Planning Commission granted conditional Planning Approval.

Due to difficulties with infrastructure provision a new subdivision/amalgamation proposal was formulated. The new proposal incorporates the original proposal as well as additional areas to the north. Within the proposed expanded area sections of Short Street and Wright Street are to be integrated.

To facilitate the new proposal, the identified sections of Smith, Short and Wright Street will have to be permanently closed.

COMMENT

The new proposed subdivision will create the following lots:

- 90 Water Corporation for a Pump Station;
- 91 Shire of Beverley – Recreation Reserve;
- 92 Beverley Tennis Club; and
- 93 Shire of Beverley – Recreation/Showgrounds.

It is considered the subdivision is desirable as it will allow rationalisation of existing development and assist in the future planning for the showground precinct. The proposal may be seen to aid in fulfilling the long-term community aspirations for the area. Roads proposed to be closed do not service any existing or proposed lot and as such are considered redundant.

8.1.1 TOWN PLANNING ITEMS

Item 8.1.1.4

**ROAD CLOSURES – SHORT STREET AND WRIGHT STREET,
BEVERLEY
(Continued)**

As Council resolved to permanently close Smith Street at its June 2005 meeting, a Council Resolution is only required for the closure of the identified sections of Wright and Short Streets.

STATUTORY ENVIRONMENT

The roads may be closed under section 52 of the Land Administration Act 1997 (LAA), with the land being incorporated into the proposed subdivision under section 87 of the Act.

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION

M16/0309 Moved Cr Flood Seconded Cr Foster

That Council:

- 1. Close the sections of Wright Street and Short Street, Beverley contained within proposed Lot 93 of the proposed plan of subdivision.**
- 2. Instruct the Shire Planner to complete the process of closing the streets in compliance with the requirements of the Land Administration Act 1997.**

CARRIED 7-0

8.1.1 TOWN PLANNING ITEMS

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|------------------------|---|
| SUBMISSION TO: | March Council Meeting 24 March 2009 |
| AGENDA ITEM: | 8.1.1.5 |
| REPORT DATE: | 12 March 2009 |
| SUBJECT: | AMENDMENT 15 TO TOWN PLANNING SCHEME NO.2 - INITIATION |
| APPLICANTS: | Shire of Beverley |
| FILE REFERENCE: | LUP010 15 |
| AUTHOR: | Shire Planner – Peter Wright |

Appendix 9

BACKGROUND

It is proposed to rezone 47 (Lot 121) Dawson Street from Residential R10 to Residential R40 and 50 & 52 (Lots 5 & 58) Dawson Street, and a portion of 139 (Lot 3) Vincent Street, Beverley, from Town Centre to Residential R40. The purpose of the rezoning is to facilitate a proposal for the staged construction of 10 aged persons Grouped Dwellings on 47 (Lot 121) Dawson Street and potential grouped dwellings on the remaining lots.

50 & 52 (Lots 5 & 58) Dawson Street, and the portion of 139 (Lot 3) Vincent Street are combined approximately 2150m² in area and zoned Town Centre. 47 (Lot 121) Dawson Street is 2580m² in area and zoned Residential R10. With the exception of 50 (Lot 5) Dawson Street the lots are generally flat, vacant and contain no buildings. 50 (Lot 5) Dawson Street contains a single dwelling with ancillary outbuildings. Access to the lots is via Dawson Street, although the portion of 139 (Lot 3) Vincent Street will have no street frontage.

COMMENT

The development of 10 aged persons grouped dwellings on 47 (Lot 121) Dawson Street is anticipated to meet community needs for the following reasons:-

1. The percentage of persons over 65 is substantially higher in the Shire of Beverley than the Western Australian average (Beverley 19%, Western Australian average 11%, 2006 *Australian Census*);
2. The proposed grouped dwellings are adjacent to the Town Centre precinct;

8.1.1 TOWN PLANNING ITEMS

Item 8.1.1.5

AMENDMENT 15 TO TOWN PLANNING SCHEME NO.2 - INITIATION (Continued)

3. The proposed grouped dwellings are within close proximity to the main shopping area;
4. There is good pedestrian access to appropriate facilities such as shopping, Shire offices and the "Mens Shed";
5. The proposed grouped dwellings are in close proximity to public transport (Westrail Bus);
6. A substantial waiting list exists for existing aged persons dwellings;
7. Preliminary interest has been shown by aged persons within the Shire of Beverley for the proposed grouped dwellings; and
8. The proposal complies with the District Rural Strategy by catering for "possible increases in the population".

At 47 (Lot 121) Dawson Street under the Shire of Beverley's Town Planning Scheme No. 2 (TPS 2), grouped dwellings may be developed up to a Residential R25 density under the current zoning. This would allow a potential of 7 grouped dwellings. The Residential Design Codes 2008 (R-Codes) allow a density concession of up to one third of the site area for aged persons grouped dwellings, provided specific criteria are met. Ten grouped dwellings could then be developed on the site without rezoning. However it may be considered the restrictions required under the R-Codes to obtain the density concession do not meet community and developer expectations.

Rezoning 47 (Lot 121) Dawson Street to Residential R40 will allow the development of ten grouped dwellings under the Acceptable Development provisions of the R-Codes, without the restrictions required to obtain aged persons density concessions.

50 & 52 (Lots 5 & 58) Dawson Street, and the portion of 139 (Lot 3) Vincent Street are currently zoned Town Centre, therefore under TPS 2 grouped dwellings are not permitted on these lots. There is no specific proposal for these lots and any rezoning would be to cater for possible future higher density development.

Whilst many of the reasons for the rezoning of 47 (Lot 121) Dawson Street pertain to 50 & 52 (Lots 5 & 58) Dawson Street, and the portion of 139 (Lot 3) Vincent Street, the lack of a specific proposal may be seen as an impediment to justification for the rezoning. Should the properties be rezoned, then there is the potential for inappropriate higher density development to occur, thus setting an undesirable precedent.

8.1.1 TOWN PLANNING ITEMS

Item 8.1.1.5

AMENDMENT 15 TO TOWN PLANNING SCHEME NO.2 - INITIATION (Continued)

Of further concern the current Town Centre zoning of 50 & 52 (Lots 5 & 58) Dawson Street, and the portion of 139 (Lot 3) Vincent Street relate to desired heritage, tourist and design development outcomes for the area. These outcomes may be seen as incompatible with grouped dwelling development. Other forms of development which may be approved in the Town Centre zone may be seen as more appropriate for the area.

It is open to Council to initiate the amendment of TPS 2 for the rezoning of all the subject lots. However whilst substantial justification exists for the rezoning of 47 (Lot 121) Dawson Street, the lack of a specific proposal and the existing Town Centre zoning of 50 & 52 (Lots 5 & 58) Dawson Street, and the portion of 139 (Lot 3) Vincent Street may be seen as an obstacle to justification for their rezoning. It will therefore be recommended Council initiate Amendment 15 to TPS 2 for the purpose of rezoning only 47 (Lot 121) Dawson Street, Beverley, to Residential R40. It is recommended the rezoning of 50 & 52 (Lots 5 & 58) Dawson Street, and the portion of 139 (Lot 3) Vincent Street not proceed at this time.

STATUTORY ENVIRONMENT

Amendments to the Shire of Beverley's Town Planning Scheme No. 2 are made under Section 75 of the Planning and Development Act 2005 in compliance with the Town Planning Regulations 1967 (as amended).

OFFICER'S RECOMMENDATION

That Council:

1. Initiate Amendment 15 to the Shire of Beverley's Town Planning Scheme No. 2 for the purpose of rezoning 47 (Lot 121) Dawson Street, Beverley, from Residential R10 to Residential R40.
2. Instruct the Shire Planner to prepare the amendment documentation and once prepared forward the amendment documentation to the Environmental Protection Authority for approval and the Western Australian Planning Commission for information.
3. Upon receipt of approval of the amendment documentation from the Environmental Protection Authority the Shire Planner is to advertise the amendment for comment in compliance with the Town Planning Regulations 1967.

8.1.1 TOWN PLANNING ITEMS

Item 8.1.1.5

**AMENDMENT 15 TO TOWN PLANNING SCHEME NO.2 - INITIATION
(Continued)**

COUNCIL RESOLUTION

M17/0309 Moved Cr Flood

Seconded Cr Foster

That Council:

- 1. Initiate Amendment 15 to the Shire of Beverley's Town Planning Scheme No. 2 for the purpose of rezoning 47 (Lot 121) and 50 & 52 (Lots 5 and 58) Dawson Street, Beverley, and a portion of 139 (Lot 3) Vincent Street, Beverley, from Residential R10 to Residential R40.**
- 2. Instruct the Shire Planner to prepare the amendment documentation and once prepared forward the amendment documentation to the Environmental Protection Authority for approval and the Western Australian Planning Commission for information.**
- 3. Upon receipt of approval of the amendment documentation from the Environmental Protection Authority the Shire Planner is to advertise the amendment for comment in compliance with the Town Planning Regulations 1967.**

CARRIED 7-0

8.1.2

INFORMATION BULLETIN REPORT – SHIRE PLANNER

(The following items 8.1.2.1 and 8.1.2.2 were provided under separate cover in the March Information Bulletin, for Council's information.)

Item 8.1.2.1

LOTS 73, 6208, 6405, 27638 & 9329

(File Reference: PL 138852)

Advice of Approval has been received from WAPC in regard to the above subdivision application, subject to conditions for a Freehold (Green Title) Subdivision.

Item 8.1.2.2

LOCAL PLANNING SCHEME ADVICE

(File Reference: LUP 004)

Correspondence has been received from the Western Australian Planning Commission regarding the proposed Local Planning Scheme No. 3. The WAPC provided no objection and commented that consideration should be given to state planning policies when preparing the scheme. Comment was also provided that the proposed scheme should be consistent with the Model Scheme Text.

Item 8.1.2.3

RECONSIDERATION – CONDITION 9 – COMMERCIAL VEHICLE PARKING – 96 (LOT 20) HARPER STREET, BEVERLEY

(File Reference: HAR 378)

BACKGROUND

Item 8.1.1.2 of Council's February meeting – deferred this item until the March meeting of Council.

COMMENT

With regard to the above agenda item 8.1.1.2, of Council's February meeting, concerning reconsideration of Condition 9 of the Commercial Vehicle Parking approval for 96 (Lot 20) Harper Street, Beverley, staff advise Council of the following information.

Further correspondence has been received from solicitors Corinne Griffin & Co. on 10 March 2009.

8.1.2 INFORMATION BULLETIN REPORT – SHIRE PLANNER
Item 8.1.2.3
RECONSIDERATION – CONDITION 9 – COMMERCIAL VEHICLE
PARKING – 96 (LOT 20) HARPER STREET, BEVERLEY
(Continued)

In the correspondence it is questioned why a meeting conducted on 17 October 2008 when staff were investigating allegations of a zoning breach, was not mentioned in the agenda item currently before Council. The reasons this particular information was not included is:

1. It was not relevant to the agenda item;
2. Council was informed of the outcome of the investigation in the 28 October 2008 Information Bulletin. Council subsequently endorsed staff actions; and
3. Similar to the complainant the applicant should be entitled to a degree of privacy.

Procedures relating to interviewing of persons under similar circumstances have been reviewed in response to Corinne Griffin & Co.'s correspondence.

The correspondence from Corinne Griffin & Co. then restates matters that were included in the staff investigation and found to have insufficient merit to warrant further action. As was previously mentioned Council was informed in the 28 October 2008 Information Bulletin and endorsed staff action.

Corinne Griffin & Co. then stated the complainant had insufficient knowledge concerning the substance of the complaints and questioned why the contentious condition (9) should be removed as the applicant had no difficulty complying with it. At no time has Corinne Griffin & Co. presented substantive reasons as to why the condition should remain, except to be used as cause for complaint by the complainant.

Point 3 of Corinne Griffin & Co.'s correspondence raises new allegations and relate to conditions of approval that have already been satisfied. As such in the opinion of staff there is no substance to these allegations.

The correspondence then incorrectly states the complainant's life is disturbed by "unnecessary commercial activity". The approved parking of a commercial vehicle on a property by the occupier of the property is not regarded as a commercial activity.

8.1.2 INFORMATION BULLETIN REPORT – SHIRE PLANNER
Item 8.1.2.3
RECONSIDERATION – CONDITION 9 – COMMERCIAL VEHICLE
PARKING – 96 (LOT 20) HARPER STREET, BEVERLEY
(Continued)

Corinne Griffin & Co. reiterated their demand that the applicants attest their denials in the form of a Statutory Declaration. Staff have not approached the applicants in relation to this matter as it would be regarded as an unnecessary impost and would be questionable legally, particularly where it has been concluded no further action is warranted.

The correspondence concludes with Corinne Griffin & Co. threatening the Shire with further action should the Shire not accede to the complainants demands.

Staff responded to Corinne Griffin & Co.'s correspondence of 5 March 2009 by thanking them for their correspondence and stating:

1. The matters had been investigated and it was concluded that no further action was warranted;
2. Council was informed of staff actions and subsequently endorsed the actions and conclusions;
3. The Shire had never publicly identified the complainant, as implied in Corinne Griffin & Co.'s correspondence;
4. Should new, substantive, evidence be presented the Shire would investigate the matter; and
5. The correspondence would be presented to Council at its 24 March 2008 meeting. The complainant and/or representatives from Corinne Griffin & Co. were invited to attend this meeting.

OFFICER'S RECOMMENDATION

For Council's consideration.

COUNCIL RESOLUTION

M18/0309 Moved Cr Flood **Seconded Cr Shaw**
That Council remove Condition 9, being the requirement for commercial vehicles to access and egress the property in a forward motion, from the Planning Approval granted on 23 September 2008 for the parking of a commercial vehicle at 96 (Lot 20) Harper Street, Beverley.

CARRIED 7-0

RESOLVED that Council supports the actions of the Shire Planner in this application.

8.2.1 HEALTH & BUILDING SERVICES ITEMS

| | |
|------------------------|--|
| SUBMISSION TO: | March Council Meeting 24 March 2009 |
| AGENDA ITEM: | 8.2.1.1 |
| REPORT DATE: | 16 March 2009 |
| SUBJECT: | SEAVROC WASTE MANAGEMENT PLAN 2009 - 2013 |
| APPLICANTS: | Shire of Beverley |
| FILE REFERENCE: | GR 018G & WM 004 |
| AUTHOR: | Environmental Health Officer – Peter Ibbott |

Appendix 10

BACKGROUND

SEAVROC Executive Officer, Dominic Carbone, with assistance from Shire Environmental Health Officers, has produced this plan on a business unit basis.

COMMENT

This plan addresses the longer term need for solid waste disposal within the SEAVROC member Shires. The long term recommendation is that a regional land fill site be established, appropriately licensed and controlled, with measures in place to capture methane produced and to undertake whichever measures may be necessary to reduce carbon footprint levy costs.

In the event that waste is accepted from outside the member Shires then any costs or review to landfill management will be passed on to the waste supplier.

The plan contains many of the requirements in phase 1 of Zero Waste planning, such as e-waste recovery, green waste recovery and mulching and composting at source.

There are presently very sparse actual figures on waste generation in the SEAVROC Shires, which can be addressed at a regional level that has the appropriate economies of scale.

A comment from Cunderdin Chief Executive Officer, Gary Tuffin, was received after the finalisation of this report:

“Whilst I support all the potential projects identified in the Plan, why would we not consider the introduction of a SEAVROC waste kerbside collections service (General and Recyclable)? It is noted in the Executive Summary as a possible shared service but does not appear to be investigated any further in Plan.”

8.2.1 HEALTH & BUILDING SERVICES ITEMS
Item 8.2.1.1
SEAVROC WASTE MANAGEMENT PLAN 2009 - 2013
(Continued)

Possibly not the highest priority at the moment, but its still a core local government service valued by our communities that needs to be considered over the long term and warrants further investigation.

It seems strange that a Strategic Waste Management Plan would not consider such a key waste service. Particularly given we (Cunderdin) have just gone through the exercise of reviewing input costs and identified substantial savings. Contractor rate - \$1.57 per bin down to \$1.23 cents if a in-house service is offered (refer to attached spreadsheet) – and if costs are spread amongst another three Shires of similar size the service comes down to 89 cents per bin for Cunderdin (Previously figures presented to SEAVROC included a landfill disposal cost for Cunderdin only.) A service of this kind could also evolve as a possible strong reliable revenue stream if the service was offered outside to our neighbours (Non-SEAVROC Councils)?

An in-house service has to be more cost efficient (based on cost recovery only and the right economies of scale being achieved), given it is not profit driven as a contractor is. This is not to say that a profit element could not be incorporated into a fee for service for members outside of SEAVROC.

The Shire of Cunderdin will be proposing the following minor amendment be inserted into the document prior to final adoption by all member Councils. Your feedback would be appreciated as soon as possible so that Dominic and Pete Stevens can amend the document prior to its due date of 21 March 2009 should there be general agreement with the proposed amendment.”

4. Action Planning
4.1 Table 1: Issues, Actions & Outcomes 2008-2013

| ISSUE | ACTION/RESPONSE | OUTCOME | | RESPONSIBILITY | ESTIMATED | POTENTIAL |
|--|---|--------------------------------|-----------|----------------|-----------|--|
| | | EVENT | DATE | | | |
| Undertake a feasibility study for an in-house SEAVROC Waste Kerbside Service | Identify opportunities for an in-house general & recyclable rubbish collection service for SEAVROC member council | Provide cost effective service | June 2010 | SEAVROC | \$20,000 | Waste Management Fund Federal or State regional funding programs |

8.2.1 HEALTH & BUILDING SERVICES ITEMS
Item 8.2.1.1
SEAVROC WASTE MANAGEMENT PLAN 2009 - 2013
(Continued)

5. Budget

| ACTION | TIMEFRAME | BUDGET (CAPITAL) | POSSIBLE SOURCES OF FUNDING | BUDGET (EXPENDITURE) | POSSIBLE SOURCES OF FUNDING |
|---|------------------|-----------------------------|---|---------------------------------|--|
| <i>Undertake a feasibility study for an in-house SEAVROC Waste Kerbside Service</i> | <i>June 2010</i> | <i>Nil.</i> | <i>Waste Management Fund Federal or State regional funding programs</i> | <i>\$20,000</i> | <i>Waste Management Fund</i> |

The funding for seeking the implementation of this policy will be sourced from Federal and State agencies as appropriate. This will be instigated by the SEAVROC Executive Officer and the executive members.

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION

M19/0309 Moved Cr Murray **Seconded Cr McDonald**
That Council endorse the SEAVROC Waste Management Plan 2009-2013 including the amendment proposed by the Shire of Cunderdin.

CARRIED 7-0

8.2.2 INFORMATION BULLETIN REPORT – HEALTH & BUILDING SERVICES

8.2.2.1 GENERAL

General correspondence, duties and communications for Environmental Health Officer/Building issues.

8.2.2.2 BUILDING LICENSES ISSUED

Cr NF Flood declared an interest in Item 8.2.2.2 being that he is the owner/builder of a license that was issued and left the Chambers at 12pm.

Building licenses issued up to Thursday 12 March 2009: -

Lic No: 35 08/ 09
No: 33 Nicholas St
Building: Pool
Value: \$8,000

Lic No: 36 08/ 09
No: 177 (L8) Plantation Dr
Building: Lean To
Value: \$9,000

Lic No: 37 08/ 09
No: Lot 29705 Lukin St
Building: Shed/ Hanger
Value: \$15,015

Lic No: 38 08/ 09
No: Lot 375 Brooking St
Building: Pool/ Spa
Value: \$18,000

Lic No: 39 08/ 09
No: Lot 2523 Edison Mill Rd
Building: Gazebo
Value: \$22,300

Lic No: 40 08/ 09
No: 169 Vincent St
Building: Patio
Value: \$18,800

Lic No: 41 08/ 09
No: 61 John St
Building: Patio
Value: \$5,650

Lic No: 42 08/ 09
No: 131 Forrest St
Building: Garage
Value: \$15,000

Lic No: 43 08/ 09
No: 241 Westdale Rd
Building: Farm Shed
Value: \$12,500

Lic No: 44 08/ 09
No: Lot 1 Southern Branch
Building: Shed
Value: \$90,060

Lic No: 45 08/ 09
No: 24 Brockman St
Building: Relocated House
Value: \$120,000

Lic No: 46 08/ 09
No: 39 Nicholas St
Building: Dwelling
Value: \$201,555

8.2.2 INFORMATION BULLETIN REPORT – HEALTH & BUILDING SERVICES
8.2.2.2 BUILDING LICENSES ISSUED
(Continued)

Lic No: 47 08/ 09
No: Lot 3 York-Quairading
Building: Dwelling
Value: \$50,000

Lic No: 49 08/ 09
No: 32 Great Southern Hwy
Building: Front Fence
Value: \$20,000

Lic No: 51 08/ 09
No: 2 Barnsley St
Building: Residential Extension
Value: \$15,000

Lic No: 53 08/ 09
No: Lot 158 Westdale Rd
Building: Dwelling
Value: \$350,000

Lic No: 55 08/ 09
No: 77 Harper St
Building: Shed
Value: \$16,800

Lic No: 57 08/ 09
No: Lot 139 Maitland Rd
Building: Dwelling
Value: \$55,000

Lic No: 59 08/ 09
No: 13 Hope St
Building: Dwelling (kit home)
Value: \$77,000

Lic No: 61 08/ 09
No: 234 Fishers Rd
Building: Shed
Value: \$10,000

Lic No: 48 08/ 09
No: 14 Short St
Building: Addition
Value: \$50,000

Lic No: 50 08/ 09
No: 14 Vincent St
Building: Swimming Pool
Value: \$6,825

Lic No: 52 08/ 09
No: 77 Harper St
Building: Dwelling
Value: \$150,000

Lic No: 54 08/ 09
No: Lot 35 Hope St
Building: Retaining Wall
Value: \$2,000

Lic No: 56 08/ 09
No: 3436 Westdale Rd
Building: Residential Extension
Value: \$40,000

Lic No: 58 08/ 09
No: 43 Hunt Rd
Building: Shed and Pool
Value: \$50,000

Lic No: 60 08/ 09
No: 2 Forrest St
Building: Carport
Value: \$3,000

Lic No: 63 08/ 09
No: 2 Grigson St
Building: Patio
Value: \$20,000

**8.2.2 INFORMATION BULLETIN REPORT – HEALTH & BUILDING SERVICES
(Continued)**

OFFICER’S RECOMMENDATION/COUNCIL RESOLUTION

**M20/0309 Moved Cr Foster Seconded Cr Murray
That the Health & Building Services Information Bulletin Report,
be received.**

CARRIED 6-0

At 12:05pm Mr Peter Wright the Shire Planner and Mr Peter Ibbott the Environmental Health Officer left the Chambers and Cr Flood returned to the Chambers.

Council agreed to receive the President and Councillors’ Reports at this point in the meeting.

7. PRESIDENT AND COUNCILLORS’ REPORTS

7.1 PRESIDENT’S REPORT

Avondale Discovery Farm (File Reference: RC 005 & WAT 37765)

I along with Keith Byers (Chief Executive Officer) had a meeting with Mr Alan Briggs and Mr Tom Perrigo of the National Trust to seek clarification on the current status of Avondale.

Mr Briggs advised that despite problems obtaining a Heritage Conservation Plan for Avondale, the National Trust is approaching the final stages of securing the property.

**M21/0309 Moved Cr Foster Seconded Cr Flood
Council advise the National Trust that it agrees in principle to entering into an agreement by way of a Memorandum of Understanding, stating that Council would be prepared to take over the ownership of the Machinery Museum and shed and to oversee, along with the Trust, an advisory committee to manage the Avondale Discovery Farm.**

CARRIED 7-0

COUNCIL RESOLUTION

**M22/0309 Moved Cr Shaw Seconded Cr Flood
That the President’s Report, be received.**

CARRIED 7-0

7.2 COUNCILLORS' REPORTS

Beverley Telecentre

Cr Ridgway gave an update on the Beverley Telecentre.

- The Centre is being kept open by volunteers.
- Lee Steel, Pingelly's Telecentre Co-ordinator, is currently acting as mentor for the management committee.
- The committee is looking at ways to reconfigure the layout.

Cr Belinda Foster advised that she has resigned as Council's Delegate on the Telecentre Committee.

Cr Neil Flood advised he will attend as Council's Delegate where possible.

COUNCIL RESOLUTION

M23/0309 Moved Cr Shaw **Seconded Cr Flood**
That the Councillors' Reports, be received
CARRIED 7-0

At 12:30pm Council adjourned for lunch.

At 1:45pm Council reconvened from lunch with Mr Steve Vincent the Works Supervisor, in attendance.

8.3.1 PLANT, WORKS, RECREATION AND TOURISM ITEMS Nil.

8.3.2 INFORMATION BULLETIN REPORT – WORKS SUPERVISOR

8.3.2.1 GENERAL – PLANT AND WORKS

8.3.2.1.1 Clearing Permits

Four permits have been lodged with the Department of Environment and Conservation for the clearing of trees near the Bowling Club and three roadwork projects. The trees on Lot 121 Dawson Street are exempt; permits are not required for proposed buildings and if it is not in an environmentally sensitive area and less than one hectare. The street trees along Vincent Street, west of the police station are also exempt as they have been planted.

8.3.2 INFORMATION BULLETIN REPORT – WORKS SUPERVISOR
8.3.2.1 GENERAL – PLANT AND WORKS
(Continued)

8.3.2.1.2 Tree Lopping

Twinkarri Lopping are currently lopping the following rural roads, Buckingham, Pike, Dale Bin North, Luptons, Butchers, west end of Westdale, sections of York Williams, Waterhatch, Talbot West, Waterhatch and Morbining. After the road inspection it was decided that sections of Kokendin Road are to be included.

8.3.2.1.3 Banner Pole

An inquiry has been made by Brian Groves as to whether the banner pole at the western end of Vincent Street could be relocated or removed. The current location of this pole is making it difficult for vehicles to come and go from his hire business he is setting up.

8.3.2.1.4 Ride on Mower

Following the sale by tender, the rancher ride on mower will be sold to Bob Shannon for \$1,276.

8.3.2.1.5 Cherry Picker

The cherry picker is at MISA in Redcliff undergoing its 10 year inspection. This is expected to be away for at least three weeks.

8.3.2.1.6 Plant Report

The Works Supervisor provided a Plant Report.
(Refer page 4 of the March Information Bulletin provided under separate cover.)

8.3.2.2 CONSTRUCTION

8.3.2.2.1 Talbot West Road

The bitumen has been laid. Minor clean-up work, a crossover and bus turnaround is to be installed.

8.3.2.2.2 Cemetery Roads

Both cemeteries have had the new roads and kerbing laid. The backfill behind the kerbs is yet to done.

8.3.2.2.3 Greenhills South Road

Proposed bitumen work is to begin next.

**8.3.2 INFORMATION BULLETIN REPORT – WORKS SUPERVISOR
8.3.2.2 CONSTRUCTION
(Continued)**

8.3.2.2.4 Edwards Street Footpath

Quotes have been received to lay a concrete path on the South side of Edwards Street between Forrest and Lennard Streets. The quote from All-round Concrete for \$14 960.00 has been accepted. This work is to be completed within 8 weeks.

8.3.2.2.5 Review of Construction Projects

After Greenhills South Road, the remaining bitumen jobs for the 2008/09 year are Courtney, Chipper, Railway, Chipper and Wright Streets. From there the gravel sheeting of the York Williams Road will commence.

Due to the storm damage, the backhoe has been busy cleaning out culverts during January and February, which has put the proposed drainage and culvert replacement behind. Our intension is to complete these projects however the culvert replacement on the Top Beverley Road will be left until last and may not be completed in this budget.

It is suggested that the gravel, drainage pipes and sumps be laid on Wright Street and left to settle over the winter months before the bitumen is laid. This would also allow the construction and earthworks of the new Pool Managers house to be completed.

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION

M24/0309 Moved Cr Foster **Seconded Cr McDonald**
That the Information Bulletin Report from the Works Supervisor be received.

CARRIED 7-0

At 2:10pm Mr Steve Vincent, Works Supervisor, left the meeting.

8.4.1 FINANCE ITEMS

SUBMISSION TO: March Council Meeting 24 March 2009
AGENDA ITEM: 8.4.1.3
REPORT DATE: 18 March 2009
SUBJECT: INVESTMENT OF SURPLUS FUNDS
FILE REFERENCE: FM 008
AUTHOR: Deputy Chief Executive Officer – Stephen Gollan

BACKGROUND

Council has at present surplus funds that have been invested in line with Council's policy.

COMMENT

Listed below are surplus funds that have been invested during the month of February 2009 with Esanda, ANZ and Commonwealth banks.

| | |
|----------------------------------|---------------|
| ▪ Office Equipment Reserve | \$ 21,240.00 |
| ▪ Annual Leave Reserve | \$ 107,083.00 |
| ▪ Building Reserve | \$ 370,033.00 |
| ▪ Plant Reserve | \$ 441,292.00 |
| ▪ Recreation Ground Reserve | \$ 251,379.00 |
| ▪ Bush Fire Fighters Reserve | \$ 81,579.00 |
| ▪ Avon River Development Reserve | \$ 16,463.00 |
| ▪ Community Bus Reserve | \$ 20,427.00 |
| ▪ Cropping Committee Reserve | \$ 82,165.00 |
| ▪ Road Construction Reserve | \$ 177,824.00 |
| ▪ Municipal Fund | \$ 500,000.00 |
| ▪ Municipal Fund | \$ 300,000.00 |

The Investment terms are as follows:

| Certificate# | Term | Interest Rate | Amount | Expires |
|--------------|-----------|---------------|---------------|------------|
| 1357709011 | 3 Months | 5.62% | \$ 441,292.00 | 02/04/2009 |
| ANZ Bank | 3 Months | 4.80% | \$ 370,033.00 | 27/05/2009 |
| ANZ Bank | 91 Days | 4.80% | \$ 358,462.00 | 01/05/2009 |
| ANZ Bank | 3 Months | 5.50% | \$ 399,698.00 | 28/02/2009 |
| CBA | 3 Months | 4.80% | \$ 500,000.00 | 14/04/2009 |
| CBA | 3 Months` | 4.80% | \$ 300,000.00 | 14/04/2009 |

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION

M27/0309 Moved Cr Flood **Seconded Cr Foster**
That Council receive the Investment Report for the month of
February 2009.

CARRIED 7-0

8.5.1 ADMINISTRATION ITEMS

| | |
|------------------------|--|
| SUBMISSION TO: | March Council Meeting 24 March 2009 |
| AGENDA ITEM: | 8.5.1.3 |
| REPORT DATE: | 17 March 2009 |
| SUBJECT: | TOURIST ADVERTISING – YENYENING LAKES |
| FILE REFERENCE: | ED 007 |
| AUTHOR: | Chief Executive Officer – Keith Byers |

Appendix 14

BACKGROUND

Walter and Adelphe King of York have advised they have been preparing self-drive tours around the Shire of York. They now wish to extend to Beverley, Yenyening Lakes, County Peak, Mawson and return to York.

COMMENT

The Kings are developing a pamphlet, a copy of which is enclosed, and are inviting Council and/or businesses to advertise inside the front and back cover at a cost of \$100.00 plus GST. The advertisements would be valid for a two year period.

It has also been stated that the toilets at the Lakes are in a very poor condition and they would like Council to consider regular cleaning of this amenity.

COUNCIL RESOLUTION

- M30/0309 Moved Cr Flood** **Seconded Cr Ridgway**
That Council advises Walter and Adelphe King that:-
- **The Council will advertise in the York & Surrounding Districts Scenic Self-Drive Routes pamphlet at a cost of \$100.00 excluding GST.**
 - **Request that the Avondale Discovery Farm be advertised in the pamphlets.**

CARRIED 7-0

8.5.1 ADMINISTRATION ITEMS

| | |
|------------------------|---|
| SUBMISSION TO: | March Council Meeting 24 March 2009 |
| AGENDA ITEM: | 8.5.1.5 |
| REPORT DATE: | 17 March 2009 |
| SUBJECT: | SEA CONTAINER – LOT 124 VINCENT STREET, BEVERLEY |
| FILE REFERENCE: | VIN 825 & DB 006 |
| AUTHOR: | Chief Executive Officer – Keith Byers |

BACKGROUND

At Council's December meeting the following agenda item was tabled on behalf of Beverley Supermarket & Liquor: -

“Beverley Supermarket and Liquor have requested an extension of Council approval (March 2007) to locate a refrigerated sea container in the rear of 122 Vincent Street.

At the March 2007 Council meeting Council resolved as follows;

“Council resolve to Grant approval to the owners of 124 Vincent Street, Beverley, to place a 6.0 metre refrigerated sea container on the property for a period of 12 months, subject to the following conditions:

- 1. Compliance with setback codes of the Town Planning Scheme; and*
- 2. Compliance with the Environmental protection (Noise) Regulations 1997.”*

As Council has not received any adverse comments in relation to the cool room I consider a further twelve month extension should be approved.”

In response Council resolved:-

“That a decision be deferred upon the application to grant an extension to locate a refrigerated sea container at the rear of 122 Vincent Street, until the Beverley Supermarket and Liquor supply a time frame for the removal of the sea container.”

COMMENT

The proprietor of Beverley Supermarket and Liquor has advised:-

- He is not in a financial position to replace the container freezer at present.

8.2.2

ADMINISTRATION ITEMS

**8.5.1.5 SEA CONTAINER – LOT 124 VINCENT STREET, BEVERLEY
(Continued)**

- As the main concern appears to be the noise from the unit we would be prepared to contribute to half the cost of a Colourbond fence between the railway station and the shop.
- He believes that the fence would mitigate the noise as well as enhancing the outlook for the railway station entertainment.

COUNCIL RESOLUTION

M32/0309

Moved Cr Flood

Seconded Cr Shaw

That Council advise the proprietor of Lot 124 Vincent Street, Beverley to remove the sea container within 6 months.

CARRIED 7-0

8.5.1 ADMINISTRATION ITEMS

| | |
|------------------------|--|
| SUBMISSION TO: | March Council Meeting 24 March 2009 |
| AGENDA ITEM: | 8.5.1.6 |
| REPORT DATE: | 17 March 2009 |
| SUBJECT: | LEGAL OPINION – DEFAMATION ALLEGATION |
| FILE REFERENCE: | LS 002 |
| AUTHOR: | Chief Executive Officer – Keith Byers |

BACKGROUND

At Council's February 2009, meeting the Chief Executive Officer was instructed to seek a legal opinion in relation to comments made by Mr AK Bird in e-mails dated 12 January 2009 and the 22 February 2009.

COMMENT

A full copy of McLeods opinion is provided under separate cover, but in summary Council has been advised:-

“In conclusion, we understand the frustration of Councillors and officers who are subject of false allegations and disparaging remark. It is a common problem faced by many people involved in local government. However, even if remarks were found to be defamatory, the remarks would need to be shown to cause damage to an identifiable individual before it would be actionable. It would furthermore be necessary to overcome the compelling defence of qualified privilege. It is therefore only the most damaging of attacks on an individual's personal or professional (but not political) reputation that would be actionable for defamation for practical purposes.

It is our opinion that although the remarks of Mr Bird could be considered defamatory it is unlikely that a defamation action could be maintained in the circumstances. However, if the Shire believes that these types of allegations will continue, we would recommend a letter be written to Mr Bird warning him that comments affecting the personal or professional reputations of Councillors or Officers are actionable for defamation, and if allegations do not desist the Shire will support any affected individual in an action for defamation.

The financial support of the Shire is whether that might cause difficulty. The Department generally takes the view that financial support might be given by a local government to a Councillor or employee defining a defamation allegation, as seeking apology or retraction, but not from an action in Court. We don't entirely agree with that approach, but most local governments tend to adhere to that approach.

8.2.2

ADMINISTRATION ITEMS

**8.5.1.6 LEGAL OPINION – DEFAMATION ALLEGATION
(Continued)**

Consequently, in the present case, the Council would need to give very careful consideration to the matter before it gave financial assistance for more than a lawyer's letter of warning, or seeking an apology and/or retraction."

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION

M33/0309

Moved Cr Ridgway

Seconded Cr McDonald

That Council takes no further action in relation to comments made by Mr AK Bird in his e-mails of 12 January and 22 February 2009.

CARRIED 7-0

**11. OTHER BUSINESS
147 & 149 (Lots 55 & 56) VINCENT STREET, BEVERLEY –
CONTAMINATED SITE - REMEDIATION
(Continued)**

COUNCIL RESOLUTION

- M35/0309 Moved Cr Flood Seconded Cr Foster**
That Council advise Mr P Curtin that it agrees in principle to his proposal, subject to:
- The Department of Environment and Conservation's approval, allowing the airfield site to be used to place the contaminated soil on.
 - A planning application for the excavation works being lodged.

CARRIED 7-0

At 3:49pm Mr Peter Ibbott the Environmental Health Officer and Mr Peter Wright the Shire Planner, left the Chambers.

12. CLOSURE

There being no further business the meeting closed at 3:57 pm.

I hereby certify these Minutes as being confirmed in accordance with Section 5.26 of the Local Government Act 2695.

Presiding Member

Date