



CITY OF KALGOORLIE-BOULDER

MINUTES

FOR THE

ALL PURPOSE COMMITTEE MEETING

**Held at 7:00 pm
ON
16 November 2009**

at the
COUNCILLORS CONFERENCE ROOM
ADMINISTRATION BUILDING

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1 ELECTION OF PRESIDING MEMBER

The Chief Executive Officer declared the meeting open at 7.00 pm and invited nominations for the Presiding Member.

The Mayor being the only nomination was declared the Presiding Member.

2 DECLARATION OF OPENING/ANNOUNCEMENT OF VISITORS

The Mayor assumed the chair.

3 RECORD OF ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE (PREVIOUSLY APPROVED)

IN ATTENDANCE

Mayor R Yuryevich
Cr A Pental
Cr A Petz
Cr R Haigh
Cr E Roadnight
Cr B Richardson
Cr L Schofield
Cr R Northcoat
Cr S Graham
Cr L Ayers
Cr N James

MEMBERS OF STAFF

Don Burnett	Chief Executive Officer
Braden Fisher	Director Corporate Services
Rob Radosevich	Director Engineering Services
Tony Chisholm	Director, Community and Development Services
Howard Duff	Manager Organisation, Development & Governance
Cherie Wallace	Coordinator Statutory Planning
Alex Wiese	Manager Health & Compliance
Jorine Bothma	Co-ordinator Strategic Planning
Irene Thompson	Minutes Officer

VISITORS

APOLOGIES - ELECTED MEMBERS

Cr A Cruse
Cr D Botica

APOLOGIES - MEMBERS OF STAFF

LEAVE OF ABSENCE

COMMITTEE RECOMMENDATION

MOVED BY: CR L SCHOFIELD

SECONDED BY: CR R HAIGH

Council accept apologies of Cr Cruse.

**CARRIED
(11/0)**

4 PETITIONS/DEPUTATIONS/PRESENTATIONS

4.1 Goldfields Community Bank – By James Saunders

Mr James Saunders joined the Meeting at 7.04 pm and gave his presentation. The Mayor thanked Mr Saunders for his presentation and advised that Council would consider a report.

Mr James Saunders left the Conference Room at 7.28 pm.

4.2 LandCorp – Lot 205 Aslett Drive, Karikurla – By Taylor Burrell Barnett

Mr Paul Ferrante from LandCorp joined the Committee at 7.29 pm and introduced his team members. Each member of the team gave a presentation on their section and answered various questions put to them.

The Mayor thanked them for their presentation and they left the Conference Room at 8.03 pm.

4.3 Preview Of “City Of Kalgoorlie-Boulder’s Updated Welcome DVD”

The Chief Executive ran the Preview at 8.05 pm which finished at 8.25 pm.

Miss Jorine Bothma and Mr Alex Weise left the Conference Room at 8.26 pm and did not return.

5 DECLARATIONS OF MEMBERS’ AND OFFICERS’ INTEREST

5.1 FINANCIAL INTEREST LOCAL GOVERNMENT ACT SECTION 5.60A

Mayor Yuryevich declared a financial interest in item 10.1.4 page 10 of the All Purpose Committee Agenda of 16 November 2009. The Mayor requested a ruling on interest being trivial.

Mayor Yuryevich requested the determination of his interest in this Item as trivial. He left the Committee Room at 8.32 pm while a decision to agree to this was made. Cr Pental assumed the Chair at this point.

MOVED BY: CR E ROADNIGHT
SECONDED BY: CR L SCHOFIELD

That the Mayors financial interest be deemed trivial and he be permitted to participate in the debate and vote.

CARRIED
(7/2)

The Chief Executive Officer declared a financial interest in item 11.1.1 Page 105 of the All Purpose Committee Agenda of 16 November 2009.

Cr Northcoat declared a financial interest in item 10.1.4 Page 10 of the All Purpose Committee Agenda of 16 November 2009.

Cr Ayers declared a financial interest in item 10.1.3 Page 10 of the All Purpose Committee Agenda of 16 November 2009.

Deputy Mayor Pental declared a financial interest in item 10.1.3 Page 10 of the All Purpose Committee Agenda of 16 November 2009.

Cr Haigh declared a financial interest in item 10.1.2 Page 5 of the All Purpose Committee Agenda of 16 November 2009.

5.2 PROXIMITY INTEREST LOCAL GOVERNMENT ACT SECTION 5.60B

Nil.

5.3 INTEREST AFFECTING IMPARTIALITY CITY OF KALGOORLIE-BOULDER CODE OF CONDUCT

Mayor Yuryevich declared an interest affecting impartiality in item 11.1.1 Page 105 of the All Purpose Committee Agenda of 16 November 2009.

Cr Petz declared an interest affecting impartiality in item 10.1.4 Page 10 of the All Purpose Committee Agenda of 16 November 2009.

Cr Roadnight declared an interest affecting impartiality in item 11.1.1 Page 105 of the All Purpose Committee of 16 November 2009.

Cr Haigh declared an interest affecting impartiality in item 10.1.3 Page 10 of the All Purpose Committee of 16 November 1009.

Cr Haigh declared an interest affecting impartiality in item 11.1.1 Page 105 of the All Purpose Committee of 16 November 2009.

6 APPLICATION FOR LEAVE OF ABSENCE

Nil.

7 CONFIRMATION OF MINUTES

MOVED BY: CR E ROADNIGHT
SECONDED BY: CR R HAIGH

[Minutes September 14 2009 All Purpose.doc](#)

That the minutes of the All Purpose meeting held on 14 September 2009 be confirmed as a true record of that meeting.

CARRIED
(11/0)

8 URGENT BUSINESS APPROVED BY THE PERSON PRESIDING OR BY DECISION

Nil.

9 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil.

10 REPORTS OF OFFICERS

10.1 CHIEF EXECUTIVE OFFICERS

10.1.1 2010 MEETING DATES OF THE ALL PURPOSE COMMITTEE

Responsible Officer: Don Burnett
Chief Executive Officer

Author: Lynette Howle
Executive Support Officer

Author Disclosure of Interest: Nil

EXECUTIVE SUMMARY

The All Purpose Committee meets generally on the third Monday of each month. A similar schedule is proposed for 2010 with no meetings planned to be held in January or December.

BACKGROUND

The Committee is convened in the Councillors Conference Room at 7.00pm. Members will be requested to determine if that timing also continues to be preferred.

COMMENT

The proposed meeting timetable is as follows:

(All meetings are scheduled to commence on Mondays at 7.00pm in the Councillors Conference Room).

15 February 2010
15 March 2010
19 April 2010
17 May 2010
21 June 2010
19 July 2010
16 August 2010
13 September 2010
18 October 2010
15 November 2010

Please note: September has been rescheduled to the second Monday accommodate Council Meeting dates due to the Queens Birthday, Public Holiday.

STATUTORY IMPLICATIONS

There are no Statutory Implications resulting from the recommendations of this report.

POLICY IMPLICATIONS

There are no policy implications resulting from the recommendations of this report.

FINANCIAL IMPLICATIONS

There are no financial implications resulting from the recommendations of this report.

COMMUNITY CONSULTATION

No community consultation was considered necessary in relation to the recommendation of this report.

VOTING REQUIREMENTS

Simple

OFFICER/COMMITTEE RECOMMENDATION

MOVED BY: CR E ROADNIGHT

SECONDED BY: CR A PETZ

That meetings of the All Purpose Committee be scheduled to convene at 7.00pm in the Councillors Conference Room on the following dates:

15 February 2010

15 March 2010

19 April 2010

17 May 2010

21 June 2010

19 July 2010

16 August 2010

13 September 2010

18 October 2010

15 November 2010

**CARRIED
(11/0)**

10.1.2 ADMINISTRATION RENOVATIONS & COUNCILLOR MEETING & FUNCTION ROOM FACILITY**File No:** 0**Attachments:** [Modified Plans](#)**Responsible Officer:** Don Burnett
Chief Executive Officer**Author:** Simone De Been
Contracts & Projects Coordinator**Author Disclosure of Interest:** NIL

Cr Haig declared a financial interest in this matter by: *"my employer is undertaking work on this project"*

Cr Haigh left the Conference room at 8.37 pm

EXECUTIVE SUMMARY

As per the Council resolution of the 25 May 2009, this is a report back to Council after the Working Group carried out further discussions and modifications on the Administration Renovation design. Officers are requesting Council authorise the CEO to call tenders for the Construction of the Administration Renovations.

BACKGROUND

The Administration building was built in 1997. The original concept for the building was to allow for a purpose built meeting room suitable for Committee meetings and functions, however Council did not proceed with design and the current meeting room is not suitable for these functions for a number of reasons.

A Working Group was formed and concept plans tabled at an Ordinary Council meeting on 25 May 2009, Council resolved the following:-

"That this item be referred back to the Working Group for Further Consideration."

The plans have now been back to the Working Group for further discussion and changes have been made (Plans attached).

COMMENT

Access through the rear door for after hours and community meetings is not satisfactory as there is no clear pathway for guests and could pose a potential security risk as they may gain entry to other parts of the building. There is no formal meeting area for visitors to gather and wait to be welcomed and seated.

There is no dedicated meeting or function room with facilities such as a beverage area, kitchenette and fridge or dedicated toilets. At the moment the staff fridge and toilets are used for all functions. The amenities room also caters for an after school crèche on a daily basis.

After further discussions with the Working Group, Officers are recommending tenders be called for a new Meeting & Function facility and the staff lunch room be extended to cater for the after school crèche.

After the recent changes, it is estimated that the cost of the renovations will decreased considerably, however accurate costs can not be determined until Tenders are called.

STATUTORY IMPLICATIONS

There are no Statutory Implications resulting from the recommendations of this report.

POLICY IMPLICATIONS

There are no policy implications resulting from the recommendations of this report.

FINANCIAL IMPLICATIONS

In the 2009/2010 budget \$500,000 was allocated to commence the project. There will however be a short fall and it is anticipated that this will be recouped from the Building Reserve Fund.

COMMUNITY CONSULTATION

No community consultation was considered necessary in relation to the recommendation of this report.

VOTING REQUIREMENTS

Simple

OFFICER/COMMITTEE RECOMMENDATION

MOVED BY: CR E ROADNIGHT

SECONDED BY: CR N JAMES

That Council:

- 1. Approve the design for the Administration Renovations including the Councillors Meeting & Function Room Facility.**
- 2. Authorise the CEO to proceed with the calling of Tenders, in accordance with part 4 Tenders for Providing Goods and Services of the Local Government (Functions & General) Regulations 1996, for the Administration Renovations including the Councillor Meeting & Function Room Facility.**

**CARRIED
(10/0)**

Cr Haigh entered the Conference Room at 8.43 pm

10.1.3 DEVELOPMENT OF THE GOLDFIELDS COMMUNITY BANK OF BENDIGO IN KALGOORLIE BOULDER

Responsible Officer: Don Burnett
Chief Executive Officer

Author: Lynette Howle
Executive Support Officer

Author Disclosure of Interest: Nil

Cr Ayers declared a financial interest in this matter by: *"Have supported Bendigo Bank Proposal and submitted monetary commitment re establishment"*

Deputy Mayor Pental declared a financial interest in this matter by: *Chairman of GCU"*

Cr Haigh declared an interest affecting impartiality in this matter by: *"Sit on the Bendigo Bank Community advisory group"*

Cr Pental and Cr Ayers left the Conference room at 8.43 pm

EXECUTIVE SUMMARY

Council is requested to consider endorsing in principal the development of the Goldfields Community Bank of Bendigo in Kalgoorlie-Boulder.

BACKGROUND

The City was recently been approached by the Bendigo Bank to seek support for the development of the first branch of the Goldfields Community Bank of Bendigo in Kalgoorlie-Boulder. The community bank concept has been a proposal for some time and apparently support has now been gained by the Community Bank Steering Committee to proceed to the feasibility stage with plans to open a bank in 2010.

COMMENT

The Community Bank branch will be a locally owned and operated company, which functions as a franchise of Bendigo Bank. It is managed by a Steering Committee made up of local residences and business. The Bendigo Bank provides the coverage of its banking licence, a full range of banking products, training of staff and ongoing support. As at June 2009 there were more than 230 Community Banks throughout Australia with contributions made back to the community of \$30.4 million.

One of the main aspects of the Bendigo Bank is to contribute and improve the economic and social prospects of the local community by employing local staff and retaining local earnings to be put back into the community. Once the branch begins to make a regular operating surplus, after the payment of branch running costs, and Bendigo Bank share of the revenue is received, the remaining funds are available to be reinvested back into the community through dividends to shareholders and grants to community groups and projects.

STATUTORY IMPLICATIONS

There are no Statutory Implications resulting from the recommendations of this report.

POLICY IMPLICATIONS

There are no policy implications resulting from the recommendations of this report.

FINANCIAL IMPLICATIONS

There are no financial implications resulting from the recommendations of this report.

COMMUNITY CONSULTATION

No community consultation was considered necessary in relation to the recommendation of this report.

VOTING REQUIREMENTS

Simple

OFFICER RECOMMENDATION/COMMITTEE RECOMMENDATION

MOVED BY: CR R HAIGH
SECONDED BY: CR L SCHOFIELD

That Council in principal supports the concept of the development of the Goldfields Community Bank of Bendigo in Kalgoorlie-Boulder based on its community development and fundraising opportunities.

THE MOTION WAS LOST
(4/5)

COMMITTEE RECOMMENDATION

MOVED BY: CR R NORTHCOAT
SECONDED BY: CR E ROADNIGHT

The Council welcome the concept of the Goldfields Community Bank of Bendigo to be established and the commitment that it has given to the community to fund raising.

CARRIED
(8/1)

Deputy Mayor Pental and Cr Ayers entered the Conference Room at 8.59 pm.

10.1.4 EXTENDED RETAIL TRADING HOURS RECOMMENDATION TO COUNCIL

Attachments: [Extended Retail Trading Hours Study Report](#)

Responsible Officer: Don Burnett
Chief Executive Officer

Author: Lynette Howle
Executive Support Officer

Author Disclosure of Interest: Nil

Mayor Yuryevich declared a financial interest in this matter by: "I own a business that has a small partial component". The Committee ruled that the financial interest was trivial and the Mayor could participate in the debate and vote.

Chief Executive Officer declared a financial interest in this matter by: "*own lot adjoining property*"

Cr Northcoat declared a financial interest in this matter by: *I am a part owner in a retail business (Wild West Sports Pty Ltd) that may or may not benefit from a decision relating to Councils decision regarding the deregulation of trading hours in Kalgoorlie-Boulder*

Cr Petz declared an interest affecting impartiality in this matter by: "*Employed by BP & DA and also committee member of K-B CCI Retail Committee*"

Cr Northcoat left the Conference Room at 9.35 pm

EXECUTIVE SUMMARY

The purpose of this report is to consider the outcome of the Extended Retail Trading Hours Survey and the recommendation of the Retail Trading Hours Working Group.

BACKGROUND

The Retail Trading Hours Working Group was formed to research and report on public sentiment of extended trading hours in the City of Kalgoorlie-Boulder. The City commissioned an independent research firm to conduct a telephone survey of local residents and business operators to gauge the community's attitudes and preferences.

COMMENT

The survey was conducted from 12 October to the 16 October by JMG Marketing. Questions regarding opinions on Sunday trading and extended trading Monday to Friday was included in the survey.

In order to ensure an outcome that would accurately reflect the wider community's opinion and be statistically robust the researchers conducted the survey representing a sample of residents and business operators randomly selected from across the community.

The results of the survey were used by the Working Group to determine a position on what is considered the best outcome for the community of Kalgoorlie-Boulder. All aspects of survey report were considered and the majority of the Working Group concluded they did not support any changes to current trading hours.

In addition the report showed that a large number of firms were unaware of the existing Department of Commerce exemption from retail trading hours restrictions to small firms with fewer than 13 employees. Given the large proportion of small firms it was suggested an information campaign be undertaken to assist business owners to take full advantage of their opportunities under these regulations.

STATUTORY IMPLICATIONS

There are no Statutory Implications resulting from the recommendations of this report.

POLICY IMPLICATIONS

There are no policy implications resulting from the recommendations of this report.

FINANCIAL IMPLICATIONS

There are no financial implications resulting from the recommendations of this report.

COMMUNITY CONSULTATION

Public consultation was sought by way of advertising for submissions from public individuals, community groups and business representatives, one community submission was received.

VOTING REQUIREMENTS

Simple

OFFICER RECOMMENDATION

That Council:

1. Not support any changes to the current retail trading hours in the City of Kalgoorlie-Boulder.
2. Request the Kalgoorlie-Boulder Chamber of Commerce and Industry and the Small Business Centre conduct an awareness program of the existing Department of Commerce, exemption from retail trading hours restrictions for small business.

MOTION

MOVED BY: CR S GRAHAM

SECONDED BY: CR N JAMES

That Council:

Authorise the CEO write to the Department of Consumer and Employment Protection requesting the following:

1. General Retail trading hours within the City if Kalgoorlie-Boulder be changed as follows:
 - a. Extension of weeknight trading to 7 pm

- b. Introduction of Sunday trading from 10 am to 4 pm
2. Request the Kalgoorlie-Boulder Chamber of Commerce and Industry and the Small Business Centre conduct an awareness program of the existing Department of Commerce, exemption from retail trading hours restrictions for small business.

**THE MOTION WAS LOST
(2/8)**

COMMITTEE RECOMMENDATION

MOVED BY: CR A PETZ

SECONDED BY: CR L SCHOFIELD

That Council:

1. **Not support any changes to the current retail trading hours in the City of Kalgoorlie-Boulder.**
2. **Request the Kalgoorlie-Boulder Chamber of Commerce and Industry and the Small Business Centre consider conducting an awareness program of the existing Department of Commerce, exemption from retail trading hours restrictions for small business.**

**CARRIED
(9/1)**

Cr Northcoat entered the Conference Room at 10.04 pm.

10.2 COMMUNITY AND DEVELOPMENT SERVICES

10.2.1 ADOPTION OF PROSECUTION AND COMPLIANCE POLICIES

Attachments: [Draft Compliance Policy](#)

[Draft Prosecution Policy](#)

Responsible Officer: **Tony Chisholm**
Director, Community and Development Services

Author: **Alex Wiese**
Manager Health & Compliance

Author Disclosure of Interest:

EXECUTIVE SUMMARY

The Council's Policy Manual contains various policies which provide guidance to the City's Administration and also to Elected Members for day to day management of issues and also decision making. As the need arises, new policies are created.

The City has a statutory role and obligation to enforce numerous Acts, Regulations and Local Laws. From time to time it appoints 'authorised officers' to enforce these statutes. It is considered appropriate and prudent to adopt a policy relating to enforcement of the statutes and also a policy to provide guidance for initiating prosecutions.

The Office of the Director of Public Prosecutions for Western Australia has published such policies and these have been used as a model, with appropriate changes to reflect the City's circumstances.

BACKGROUND

The City, through its various departments, has the responsibility to enforce legislation for which it has control and where appropriate, to hold people accountable for failure to meet their obligations under legislation.

Currently there are no policies that establish clear guidelines for the exercise of discretion the City must use in dealing with unlawful activity. This has resulted in an informal approach to compliance and prosecution issues throughout the City and has produced;

- Inconsistent compliance actions and outcomes;
- High levels of repeat offence in some areas;
- Confusion in the community about when the City will instigate enforcement actions or prosecution;
- Desirable compliance outcomes such as behavioural change not being achieved;
- Inefficient compliance activities – resulting in a disproportionate amount of officer time being spent dealing with compliance issues; and
- Staff uncertainty on how to handle different compliance issues.

The adoption of the proposed policies aims to address the above issues and is considered "best practice" as it provides for accountability in decisions relating to compliance and prosecutions. The policies will assist in delivering effective enforcement through the application of due process, natural justice, consistency, equity and proportionality.

COMMENT

The compliance and prosecution policies are required to assist City officers, empowered to administer legislation, to carry out their duties in a consistent, transparent, equitable and effective manner. The goal of the policies is to ensure that the objectives of legislation and schemes under the City's control are achieved. This from time to time requires the enforcement of provisions of Acts, Regulations and Local Laws. These enforcement and prosecution activities play a vital role in the enhancement of environmental amenity and public safety within the City.

The policies have been designed so that initially the emphasis is on communication and mediation. This includes giving advice and encouragement to companies and individuals to voluntarily comply with the required standards and therefore meet their statutory obligations. This cooperative approach incorporates the concept of staged proportionate escalation to deal appropriately with people or companies who fail or neglect to fulfil their obligations but does not preclude prosecution as an initial response, where reckless or wilful behaviour or gross negligence places people at risk. The policies aim to ensure an appropriate response given the significance of the non-compliance, whilst taking into consideration relevant factors such as honest mistakes.

The content of the individual policies are summarised below;

Compliance Policy

The main purpose of the compliance policy is to assist Council staff to act promptly, consistently and effectively in response to allegations of unlawful activity for which it has responsibility. The policy applies to the investigation and enforcement of unlawful activity or failure to comply with terms or conditions of approvals, licenses, orders, notices, directives and public signage.

To achieve this the policy establishes clear guidelines for the exercise of the discretion the City and its officers must use in dealing with unlawful activity; taking into account all relevant information including the available evidence, the circumstances of the individual case, the nature of the non-compliance, precedent considerations and risk to the community or environment.

The compliance policy;

1. Provides a legal and administrative framework to assist the City and its officers in making decisions in its enforcement functions;
2. Outlines the objectives and the principles to be applied following the discovery or report of a possible non-compliance statutory obligation over which the City has jurisdiction;
3. Specifies the criteria which the City and its officers will take into consideration when deciding:
 - a) If enforcement action is necessary;

- b) The most appropriate type of action to ensure risk associated with the non-compliance is minimised or controlled;
 - c) The appropriate administrative actions to be taken against people or companies who fail to comply with legislative requirements;
4. Ensures that the enforcement process is conducted in a consistent manner with maximum speed and minimal delay;
 5. Outlines procedures to be followed when the response by City staff is a recommendation to prosecute;
 6. Includes a matrix for classifying compliance issues;
 7. Provides information to the public about the Council's role and policy on enforcement.

The Prosecution Policy

The main purpose of the Prosecution Policy is to promote consistency in the making of the various decisions which arise in the initiation and conduct of prosecutions. The Prosecution Policy outlines the relevant factors and considerations which are taken into account when the City Officers are exercising discretion relevant to their role and responsibilities. The Policy also serves to inform the public of the principles which guide the decisions made by the City.

The decision to initiate or continue legal action is an important one and careful consideration must be given to each matter. The Prosecution Policy sets out the relevant guidelines for determining whether it is appropriate to initiate a prosecution (or continue a prosecution).

Under the Prosecution Policy there is a two-stage test that must be satisfied:

1. There must be sufficient evidence to prosecute the case; and
2. It must be evident from the facts of the case and all the surrounding circumstances that the prosecution would be in the public interest.

To determine whether there is sufficient evidence to prosecute a case, the policy outlines the process to evaluate if there is *prima facie* evidence of the elements of the offence, and a reasonable prospect of obtaining a conviction. In making this decision the policy requires that the City seeks legal advice to evaluate how strong the case is, if it is likely to be presented in court.

Stage two of the test requires that to justify the initiation or continuation of a prosecution, the City will consider whether it is in the public interest to pursue prosecution. In determining this, the policy requires the City to consider all of the provable facts and all of the surrounding circumstances, as outlined in the public interest section of the policy. In general terms, the more serious the alleged offence, the more likely the public interest test will require that a prosecution be pursued.

Examples of public interest factors that may be taken into account include:

- Whether the offence is serious or trivial;
- Any mitigating or aggravating circumstances;
- The alleged offender's past history;
- The availability and effectiveness of any alternatives to prosecution;
- The likely outcome of a finding of guilt; and
- The need for deterrence.

STATUTORY IMPLICATIONS

There are no Statutory Implications resulting from the recommendations of this report.

POLICY IMPLICATIONS

Policies are not legally enforceable; they provide guidance to the City's Administration and Elected Members when considering various matters.

The responsibility for enforcement of legislation on a day to day basis is undertaken by the Chief Executive Officer. Prosecutions will only be reported to Council for approval prior to action being undertaken by the Chief Executive Officer if they fall outside the scope of the Prosecution and Compliance Policies or if the Chief Executive Officer deems it appropriate.

FINANCIAL IMPLICATIONS

There are no financial implications resulting from the recommendations of this report.

COMMUNITY CONSULTATION

No community consultation was considered necessary in relation to the recommendation of this report.

VOTING REQUIREMENTS

Absolute

OFFICER/COMMITTEE RECOMMENDATION

MOVED BY: CR A PETZ

SECONDED BY: CR E ROADNIGHT

That:

- 1. Council approves the Compliance Policy and the Prosecution Policy as shown in attachment 1 and 2; and**
- 2. The policies be incorporated into the City's Policy Manual.**

**CARRIED
(11/0)**

10.2.2 BROADWOOD LAND USE ISSUES

Responsible Officer: Tony Chisholm
Director, Community and Development Services

Author: Cherie Wallace
Coordinator Statutory Planning

Author Disclosure of Interest: Nil

EXECUTIVE SUMMARY

Council is asked to consider the recommendations of the officer in relation to land use issues in the Broadwood area.

BACKGROUND

The City received two complaints regarding activities being undertaken on six properties in the Broadwood area. The Complainants expressed concern that the activities are in breach of the town planning scheme and asked that the matter be investigated.

A time line of events is set out below.

Date	Details
Feb 2009	Received general verbal complaint from complainant 1 and advised that details of specific properties would be required and that the complaint should be in writing.
11/06/2009	Received general complaint with no specific property details from complainant 1 via email.
12/06/2009	Received general complaint from complainant 2 and request for zoning clarification on own property via email.
25/06/2009	Replied to both complainants, separately, stating that specific details would be required such as property addresses, alleged conduct, general days and hours of the conduct, general perceived impact on the area, general size of vehicles.
29/06/2009	Received reply from complainant 1 giving details of six properties in Atbara Street, Jordan Street, Longmore Parade and O'Byrne Crescent. Complainant stated that there were others but did not give details.
07/07/2009	Received reply from complainant 2 stating that the reply on 25/06/2009 did not answer the zoning query. Also stated that the City's reply inferred that Council wanted the complainant to undertake the investigative work on behalf of Council.

	No property or activity details were received.
07/07/2009	Replied to complainant 2 advising zoning of own property and explaining why details of perceived non-compliance are required by City officers.
15/07/2009	General locality visit to view properties while waiting on response from complainant 2.
22/07/2009	Received email from complainant 1 requesting update.
23/07/2009	Replied to complainant 1 stating that the issues were being looked into and that a final outcome may take some time given the number of complaints and the varying levels of perceived non-compliance.
28/07/2009	No response from complainant 2 received so formal investigation commenced in the form of several site and locality visits, photographs taken, electronic and hard copy records checked for previous approvals, applications, etc.
24/08/2009	Questions asked at Ordinary Meeting of Council in relation to this issue.
28/08/2009	Letters sent to all properties that were subject of the complaint requesting contact with the City to discuss activities taking place on the sites. The letter requested a response by 21 September 2009.
28/08/2009	Progress update sent to both complainants stating that a further update will be sent following 21 September 2009.
21/09/2009	Responses were received from four of the six property owners with various levels of information provided.
21/09/2009	Progress update sent to both complainants with a brief overview of responses received and the further steps to be taken.
25/09/2009	Individual meetings held with all property owners in regards to the complaints that were made.
26/09/2009 – Present	Further investigations, cross-referencing of policies and town planning scheme and property files.
22/10/2009	Complainants advised that a report would be put to the November All Purpose Committee Meeting.

Information provided to the City on 29 June 2009 by Complainant 1 in relation to each property is set out below. It should be noted that no information regarding specific properties was received from Complainant 2. In order to maintain some confidentiality for the property owners, specific addresses have not been referenced in this report.

Should elected members wish to inspect the area prior to the committee meeting, details of specific property addresses can be made available. Locality plans and photographs indicating the location of various properties will be made available at the meeting.

Property 1 (Extensive Residential R2)

- Complaint** address
- Operating for a number of years
 - Advertising in directory as a workshop with the same address
 - Grinding, welding, machining, etc.
 - Working all days of the week and late into the night, sometimes later than 11.00pm
 - 4-5 tonne support truck on site
 - Surrounding properties affected by noise
- Officer Investigation (29/7/09 & 7/8/09)**
- No visible or audible activity at the time of the investigation
 - Large outbuilding at the rear with a 'no entry' sign
 - Rear access to the property has been removed
 - No activity on vacant portion of the property
- Owner Response**
- Some grinding is undertaken on the site
 - Vehicles are serviced on the site
 - Truck is parked on the site overnight

Property 2 (Special Residential R5)

- Complaint**
- Parking of workers vehicles on the verge
 - Dingo and trailer on the verge all the time
 - 3 tonne excavator and truck parked in yard or on the verge
 - Use of the rear outbuilding to run the business
 - Workers starting at the site each day as early as 7.15am
 - Activity has been taking place for 10 years
- Officer Investigation (29/7/09 & 7/8/09)**
- At least one private vehicle parked on verge
 - Large outbuilding at rear of property with no visible or audible activity
 - Earthmoving vehicle parked at rear of property
 - Trailer with bobcat parked on the verge
- Owner Response**
- Two family members work from premises, both with work vehicles
 - Trailer with bobcat parked on verge as owner was unable to move due to a health issue
 - Employees pick up daily 'jobs' and a tradesman each morning and don't come back for the rest of the day
 - Tradesmen's vehicles parked in driveway
 - Excavator and truck were parked on the verge and owner undertook to move them following the interview
 - No business operations (servicing, storing equipment, etc.) are undertaken on the property

Property 3 (Extensive Residential R2)

- Complaint**
- Advertise the business as being run from the property
 - Prime movers and semi trailers coming to use the property as a depot
 - Operating during the day, every day of the week
 - Complainant's tenants have complained (to the Complainant) about trucks using the road
- Officer Investigation (29/7/09 & 7/8/09)**
- No visible or audible activity on the site
 - Two company vehicles parked on the site
- Owner Response**
- Three prime movers parked on the site, but not all of them all of the time
 - The prime movers are 5m in length, 4.2m in height and approximately 10 tonne each
 - The prime movers leave around 6.00am and return around 8.30pm
 - Trucks are parked to the rear of the property
 - Trucks returning late are parked at an industrial block under the same ownership
 - Trucks are not left on the industrial block due to security issues
 - Freight being moved is not stored on the site
 - There is an industrial site within 300m of the property

Property 4 (Extensive Residential R2)

- Complaint**
- Truck, excavator and bobcat trailer parked at the site
 - Use of the site as a base for the operations
- Officer Investigation (29/7/09 & 7/8/09)**
- Earthmoving truck, excavator and bobcat on site
 - Large truck parked in front yard
- Owner Response**
- One 10-tonne truck and trailer, one bobcat and 1 mini digger parked on site
 - Activities began on site in 1993 as part of an approved Garden Centre business
 - Grounds are extensively landscaped and the company equipment is used for personal use on weekends
 - Vehicles go out around 7.00am and return around 5.00pm, no vehicle movements relating to the company on weekends
 - Garden Centre activities still undertaken on the site in addition to off-site excavation business. Same equipment is used for both ventures
 - All vehicles parked at the rear of the property and are well screened

Property 5 (Special Residential R5)

- Complaint**
- Company vehicles based at the site

- Business directly lists the address as the contact point
- Vehicles come and go all hours of the day and night

Officer Investigation (29/7/09 & 7/8/09) - At least four vehicles parked at the rear of the property
- No visible or audible activity

Owner Response - Four family members work for the same business, three with work vehicles
- One person comes to the property to undertake paperwork for the business
- Work involves being on-call
- No equipment is kept on site, only vehicles

Property 6 (Extensive Residential R2)

Complaint - Triple road train parked on weekends

Officer Investigation (29/7/09 & 7/8/09) - No visible activity on the site
- There is an uninstalled pool and a mound of dirt on the site

Owner Response - Persons unknown to the owner have parked vehicles on the site
- Persons unknown to the owner have dumped dirt and rubble on the site
- Owner is willing to place a 'private property' sign on the site to discourage the activity

The *City of Kalgoorlie-Boulder Town Planning Scheme* ('the Scheme') sets out objectives for the various zones. Clause 3.10 'Extensive and Special Residential Zones' states that the objectives are:

- a) *to facilitate low density residential development at R2 and R2.5 in the Extensive Residential Zone.*
- b) *to facilitate low density residential development at R5 in the Special Residential Zone.*
- c) *to encourage the establishment of stables and the keeping of livestock.*
- d) *to encourage the retention of significant vegetation.*
- e) *to facilitate businesses compatible with low density residential development and the keeping of livestock.*

The Scheme, at Clause 4.3, also provides the following with regard to parking of commercial vehicles in residential zones:

1. *Planning approval is required for the parking of commercial vehicles on any lot within a Residential Zone unless:*
 - a) *only one vehicle is parked on the lot; and*
 - b) *the vehicle is 2 tonnes tare weight or less.*
2. *The following requirements shall apply to any person parking a commercial vehicle in a Residential Zone:*

- a) *the vehicle shall form an essential part of the occupation of an occupant of the dwelling;*
 - b) *no vehicle shall exceed either 2.7m in height or 16m in length;*
 - c) *any vehicle exceeding 8m in length shall be screened from view from outside the lot;*
 - d) *major repairs to the vehicle shall not be undertaken on the lot; and*
 - e) *any minor repairs, servicing or cleaning of either vehicle shall be carried out in an area which is screened from view from outside the lot.*
3. *Planning approval granted under this clause:*
- a) *is granted to the person to whom it was granted;*
 - b) *is not capable of being transferred or assigned to any other person; and*
 - c) *does not run with the land in respect of which it is granted.*
4. *A person to whom planning approval has been granted under this clause shall not park or cause to be parked the vehicle on any lot within a Residential Zone other than on the lot in respect of which the approval is granted.*
5. *If:*
- a) *a vehicle has been parked pursuant to a planning approval granted under this clause: and*
 - b) *in the opinion of the Council such vehicle is causing a nuisance or annoyance to neighbours or to owners or to occupiers of land in the neighbourhood,*
- then the Council may rescind the approval granted by it and after the rescission, no person shall upon the land the subject of a resolution for rescission, park a commercial vehicle unless planning approval shall subsequently be granted by the Council.*

While there have been no formal complaints received regarding activities on properties in this area prior to this year, it is apparent that there has been ongoing activity in this general area for some years that could be perceived as non-compliant.

COMMENT

The general Broadwood area which is zoned 'Extensive or Special Residential' experiences a number of uses which conflict with the zoning. While the Scheme does not provide for the parking of large commercial vehicles or the operation of low impact businesses from sites within the area, many business owners are drawn to the area due to the size of the sites and their proximity to the neighbouring 'General Industry' area.

Comments on each individual property are set out below.

Property 1

This property is zoned 'Extensive Residential R2' in the *City of Kalgoorlie-Boulder Town Planning Scheme No. 1, 1997 (as amended)* and has an area of 12,026m². The City's records show that previous approvals include a dwelling (2002), an

outbuilding (1996) and the parking one commercial vehicle not more than six tonne, with further vehicles requiring planning approval (2002).

The owner parks a commercial vehicle less than six tonne on the site and also services the vehicle on site. The owner has stated that some grinding is undertaken on the site and the hours of operation would appear to be outside of the normal range of business.

Although the parking of one commercial vehicle less than six tonne has been previously approved, the vehicle must be parked on the site in an area to the rear of the site which is outside of view from the street.

Officers believe that the servicing of vehicles and any grinding should cease to be undertaken on the site. It would also be considered appropriate to restrict the hours and days in which vehicles enter and exit the site.

The officer's recommendation in relation to this property is set out below.

Property 2

This property is zoned 'Special Residential R5' in the *City of Kalgoorlie-Boulder Town Planning Scheme No. 1, 1997 (as amended)* and has an area of 2,004m². The City's records show that previous approvals include an outbuilding (2006). The dwelling did not require planning approval.

The activities taking place on this site can be defined as 'Depot' being a place where goods or vehicles are deposited or stored for purposes other than retail or wholesale. The property owner parks a number of commercial vehicles over 2 tonne on the site. 'Depot' is not a permitted use in areas zoned 'Special Residential'.

The owner has had some health issues recently which prevented the parking of the larger equipment at the rear of the property. During the meeting between the owner and City officers the owner gave an undertaking to have the equipment moved to the rear of the property as soon as possible. Due to the owner's health issues, employees with company vehicles collect the day's 'jobs' first thing in the morning and do not return throughout the day. These employees also pick up apprentices who do not have work vehicles. The apprentices park their cars on the owner's property. Employees with work vehicles take the vehicles home to their own residence.

However, given that there have been no complaints received from adjacent properties it is recommended that it be deemed appropriate to allow the commercial vehicles and the apprentices' private vehicles to be parked on the site in an area to the rear of the site which is outside of view from the street. It would also be considered appropriate to restrict the hours and days in which vehicles enter and exit the site.

The officer's recommendation in relation to this property is set out below.

Property 3

This property is zoned 'Extensive Residential R2' in the *City of Kalgoorlie-Boulder Town Planning Scheme No. 1, 1997 (as amended)* and has an area of 5,733m². The City's records show that previous approvals include a Garden Centre (1998) which is no longer in operation.

The activities taking place on this site can be defined as 'Depot' being a place where goods or vehicles are deposited or stored for purposes other than retail or wholesale. The property owner parks three commercial vehicles over 2 tonne on the site, although not all at the same time.

The owner stated that he also owns a property zoned for industrial purposes that is sometimes used to park the commercial vehicles if they are returning late at night. The owner has stated that the industrial property is not utilised for the vehicles all of the time due to security issues.

Given that there have been no complaints received from adjacent properties, it is recommended that it be deemed appropriate to allow the commercial vehicles to be parked on the site in an area to the rear of the site which is outside of view from the street. It would also be considered appropriate to restrict the hours and days in which vehicles enter and exit the site for commercial purposes.

City officers believe that the owner should utilise the industrial site for the parking of the commercial vehicles when the enter and exit times fall outside of the hours of operation set out in the recommendation.

The officer's recommendation in relation to this property is set out below.

Property 4

This property is zoned 'Extensive Residential R2' in the *City of Kalgoorlie-Boulder Town Planning Scheme No. 1, 1997 (as amended)* and has an area of 5,036m². The City's records show that previous approvals include an outbuilding (2003) and an outbuilding (2008).

The activities taking place on this site can be defined as 'Garden Centre' being land and buildings used for the growing or storage of trees, plants, shrubs or flowers for replanting in domestic, commercial or industrial gardens or the sale of trees, plants, shrubs or flowers and associated garden supplies; and 'Depot' being a place where goods or vehicles are deposited or stored for purposes other than retail or wholesale.

The property owner parks a commercial vehicle over 2 tonne on the site as well as a bobcat and mini digger.

The owner originally had approval to run a 'Garden Centre' in 1993 and still undertakes some activities in relation to this use, being the cultivation and sale of palm trees. The owner now also operates an excavation business off-site, however, the equipment used for the excavation business is the same as that used for the Garden Centre. The owner uses the equipment on weekends to maintain the property's extensively landscaped gardens. No business operations are undertaken during the weekend.

Given that there have been no complaints received from adjacent properties and also given that the original approval for a Garden Centre is still in operation, it is recommended that it be deemed appropriate to allow the commercial vehicles to be parked on the site in an area to the rear of the site which is outside of view from the street. It would also be considered appropriate to restrict the hours and days in which vehicles enter and exit the site for commercial purposes.

It is also appropriate for the owner to use the equipment outside of these hours for personal use on the site, however, any use must comply with noise regulations.

The officer's recommendation in relation to this property is set out below.

Property 5

This property is zoned 'Special Residential R5' in the *City of Kalgoorlie-Boulder Town Planning Scheme No. 1, 1997 (as amended)* and has an area of 2,000m². The City's records show that previous approvals include an outbuilding (1996).

The owner and residents of this property are all from one family and all work for the same company with three of the residents having company cars. During the meeting between the owner and City officers, the owner revealed that another unrelated person from outside of the property would travel to the property each day to undertake administrative work for the business. The owner stated that this person would now undertake this work from their own home.

All items required for the business to operate are contained in the vehicles or on their clients' sites.

There is no requirement for the occupiers of this property to seek approval for their activities as their vehicles and movements are solely in line with their day-to-day employment.

The officer's recommendation in relation to this property is set out below.

Property 6

This property is zoned 'Extensive Residential R2' in the *City of Kalgoorlie-Boulder Town Planning Scheme No. 1, 1997 (as amended)* and has an area of 5,259m². The City's records show that no previous approvals have been granted and that the site is currently vacant with the exception of an uninstalled pool.

It should be noted that the commercial vehicle subject of this complaint does not belong to the owner and was parked without the owner's knowledge or consent.

The owner has indicated that he is happy to install 'private property' signs on the site to deter others from using the property without his authority.

It is not considered appropriate to allow commercial vehicles to be parked on this undeveloped site.

The officer's recommendation in relation to this property is set out below.

STATUTORY IMPLICATIONS

There are no statutory implications resulting from the recommendations of this report.

POLICY IMPLICATIONS

There are no policy implications resulting from the recommendations of this report.

FINANCIAL IMPLICATIONS

There are no financial implications resulting from the recommendations of this report.

COMMUNITY CONSULTATION

No community consultation was considered necessary in relation to the recommendation of this report.

VOTING REQUIREMENTS

Simple

OFFICER/COMMITTEE RECOMMENDATION

MOVED BY: CR E ROADNIGHT

SECONDED BY: CR A PENDAL

That Council, in relation to complaints received about land use activities in the Broadwood area, having considered lot sizes and amenity of the neighbourhood:

- 1. Advise the current owner of Property 1, that:**
 - a) all grinding work and servicing of vehicles is to cease immediately;**
 - b) the previously approved commercial vehicle not more than 6 tonne which is currently parked on the site is to be parked to the rear of the property appropriately screened from the view of the street;**
 - c) no commercial vehicles are to be parked on the verge or on the street;**
 - d) no further commercial vehicles are to be parked on the site;**
 - e) all commercial vehicle movements must be contained between the hours of 7.00am and 6.00pm Monday to Friday, 7.00am and 5.00pm Saturday, with no commercial vehicle movements on Sunday or Public Holidays;**
 - f) this approval is not capable of being transferred or assigned to another person;**
 - g) this approval does not run with the land and will cease should the current owner vacate or sell the property.**
- 2. Advise the current owner of Property 2, that:**

- a) any commercial vehicles and employee vehicles (to be defined) currently parked on the site are to be parked to the rear of the property appropriately screened from the view of the street;
 - b) no commercial vehicles or employee vehicles are to be parked on the verge or on the street;
 - c) no further commercial vehicles or employee vehicles are to be parked on the site;
 - d) all commercial vehicle movements must be contained between the hours of 7.00am and 6.00pm Monday to Friday, 7.00am and 5.00pm Saturday, with no commercial vehicle movements on Sunday or Public Holidays;
 - e) this approval is not capable of being transferred or assigned to another person;
 - f) this approval does not run with the land and will cease should the current owner vacate or sell the property.
3. Advise the current owner of Property 3, that:
- a) any commercial vehicles (to be defined) currently parked on the site are to be parked to the rear of the property appropriately screened from the view of the street;
 - b) no commercial vehicles or employee vehicles are to be parked on the verge or on the street;
 - c) no further commercial vehicles or employee vehicles are to be parked on the site;
 - d) all commercial vehicle movements must be contained between the hours of 7.00am and 6.00pm Monday to Friday, 7.00am and 5.00pm Saturday, with no commercial vehicle movements on Sunday or Public Holidays;
 - e) where commercial vehicle movements may fall outside of the above hours, the commercial vehicles must be parked on the industrial site already in the owner's possession;
 - f) this approval is not capable of being transferred or assigned to another person;
 - g) this approval does not run with the land and will cease should the current owner vacate or sell the property.
4. Advise the current owner of Property 4, that:
- a) any commercial vehicles (to be defined) currently parked on the site are to be parked to the rear of the property appropriately screened from the view of the street;
 - b) no commercial vehicles are to be parked on the verge or on the street;
 - c) no further commercial vehicles are to be parked on the site;
 - d) all commercial vehicle movements must be contained between the hours of 7.00am and 6.00pm Monday to Friday, 7.00am and 5.00pm

Saturday, with no commercial vehicle movements on Sunday or Public Holidays;

- e) **this approval is not capable of being transferred or assigned to another person;**
 - f) **this approval does not run with the land and will cease should the current owner vacate or sell the property.**
5. **Advise the current owner of Property 5, that no further action will be taken by the City with regards to this matter.**
 6. **Advise the current owner of Property 6, that they are responsible for monitoring the site for unauthorised use and will be required to install appropriate signage if any unauthorised activity, including the parking of commercial vehicles, continues.**
 7. **Authorise the Chief Executive Officer to advise the complainants of the resolution of Council in relation to each property.**
 8. **Reserves the right to withdraw approval from any individual property owner should the amenity of the neighbourhood, in the opinion of the City, be adversely affected.**
 9. **Encourages each property owner to relocate their business activities to a more appropriately zoned location.**
 10. **Whilst having made this determination in respect of these properties, does not support any further increase in commercial activity on these, or other, properties in the area.**

**CARRIED
(11/0)**

10.3 CORPORATE SERVICES

10.3.1 REPORT ON THE STATUTORY REPEAL AND MAKING OF FENCING LOCAL LAW 2010

Attachments: [REPEAL AND MAKING OF CITY OF KALGOORLIE BOULDER FENCING LOCAL LAW 2010](#)
[Local Laws Relating to Fencing 23 November 2001](#)

Responsible Officer: **Braden Fisher**
Director Corporate Services

Author: **Gale Rabski**
Governance Officer

Author Disclosure of Interest: **Nil**

EXECUTIVE SUMMARY

This report recommends that the Council repeal the current City of Kalgoorlie-Boulder *Fencing Local Law 2000* and its amendments and make the new City of Kalgoorlie-Boulder *Fencing Local Law 2010* under the procedures as set out in section 3.12 of the *Local Government Act 1995*.

BACKGROUND

Section 3.16 of the *Local Government Act 1995*, requires that Local Government's review their local laws at least every eight (8) years. The City of Kalgoorlie-Boulder *Fencing Local Law 2000* was gazetted on 18 August 2000 and then an amendment was made on 23 November 2001.

The review was undertaken by City Officers recommending the repeal of the current Fencing Local Law 2000 due to it being out of date and being replaced by a new Fencing Local Law 2010 (attached).

COMMENT

The City Officers reviewed the current Fencing Local Law 2000 for its functionality since its gazettal in 2000 and agreed that changes needed to be modified to suit the City's requirements.

The City's Governance Officer reviewed the Department of Local Government and Regional Development (DLGRD) local laws register for recently gazetted local laws that were based on the WALGA Model Local Law and it was agreed that the Town of Vincent *Fencing Local Law 2008* was most appropriate.

The City's Officers recommends that the City make a new Fencing Local Law 2010, based on the Town of Vincent *Fencing Local Law 2008*. The major variation in the specification requirements between the Town of Vincent *Fencing Local Law 2008* and the City of Kalgoorlie-Boulder's, relates to the differences in soils that surround our City. In that regard, the specifications for a sufficient fence on a residential lot

must be in accordance with the conditions detailed in the Schedule 2 of the proposed City of Kalgoorlie *Fencing Local Law 2010*.

The major changes with our proposed new local law are detailed below.

Part 1 – Preliminary

This part includes all the statutory requirements of citation, objective, commencement, repeal and application of the local law. The interpretation clause is expanded to include a more comprehensive list of definitions. The fees and charges clause prescribes the current process.

Part 2 – Fences

- 2.1 *Sufficient fence* – this clause is similar to the current local law and requires compliance with a “Sufficient fence”. It has been expanded to refer to fences on residential, commercial or industrial lots.
- 2.2 *Fences within setback areas* – this new clause refers to front setbacks and formalises the City’s current practice.
- 2.3(a) Erect or maintain a gate in a fence not opening into the lot.
- 2.3(b) Erect or maintain a gate in a fence not sliding parallel and inside of fence.
- 2.6. *Maintenance of fences* – this clause reflects the City’s current local law, but has been expanded to be more prescriptive. The requirements of a “*dangerous fence*” are included.
- 2.7 *Fences and sight lines* – this clause requires compliance with sight lines, truncations and formalises the City’s current practice. It is similar to the current local law.
- 2.8 *Fences across right of way, public access ways thoroughfares or road reserves* - this clause reflects a clause in the current law.
- 2.9 *General discretion of the local government* this new clause gives the City the authority to approve a non-complying fence with both land owners agree.
- 2.10 *Pre-used fencing materials* – this clause reflects a clause in the current local law.
- 2.11 *Barbed wire fences and spiked or jagged materials* – this clause reflects a clause in the current local law but has been expanded to be more prescriptive.
- 2.12 *Electrified and razor wire fences* – this new clause specifies the requirements where electrified fences may be used. The requirements of razor wire fences are similar to the current local laws.
- 2.13 *Prohibited fencing materials* – this clause is similar to the current local law.

2.14 *Tennis court fencing* - this new clause prescribes the requirements for tennis court fences.

Part 4 – Miscellaneous

This Part includes:

- Appointment of authorised persons; and
- The power for authorised persons to demand the name and address of a person.

Part 5 – Notices of breach

This Part is similar to the current local law. A new clause limits the ability of a person to take action against the City or its employees/agents, where the City carries out works.

Part 6 – Offences

This Part introduces the power to issue modified penalties for non-compliance. This is new and the *Local Government Act 1995* allows it for all local laws.

This report also recommends that Council make the new City of Kalgoorlie-Boulder *Fencing Local Law 2010* under the procedures as set out in section 3.12 of the *Local Government Act 1995*.

The *Local Government Act 1995* has detailed procedures that local governments must follow when making, amending or repealing local laws.

Purpose:

The purpose of this local law is to establish fencing standards and subsequent maintenance.

Effect:

To ensure fencing is undertaken in accordance with the set standards.

STATUTORY IMPLICATIONS

There are no Statutory Implications resulting from the recommendations of this report.

POLICY IMPLICATIONS

There are no policy implications resulting from the recommendations of this report.

FINANCIAL IMPLICATIONS

Modified penalties as per Schedule 1 attached are for prescribed offences committed against this local law.

The Local Government Department's Circulars No. 916 and 824 advised local governments to submit a completed National Competition Policy (NCP) review at the same time as the proposed local law to the Minister. All governments need to make

a statement that competition policy restrictions, where applicable, have been assessed during the preparation of the proposed local laws.

The NCP Public Benefit Test has already been conducted on the basic WALGA model Fencing Local Law. No new clauses that restrict competition have been added in the draft proposed local law, so there was no necessity to conduct a new NCP review of the clauses in the draft law.

COMMUNITY CONSULTATION

The *Local Government Act 1995* requires the Presiding Officer, at a Council Meeting, to give notice of the purpose and effect of the proposed new Fencing Local Law 2010, give statewide and local public notice of its intention to repeal the current Fencing Local Law 2000 and make a new Fencing Local Law 2010. A copy of the current and proposed Fencing Local Law 2010 must be made available in any place specified in the Notice and take submissions about the Fencing Local Law 2010 up to a date not less than six (6) weeks after the notice is given.

VOTING REQUIREMENTS

Absolute

OFFICER/COMMITTEE RECOMMENDATION

MOVED BY: CR S GRAHAM

SECONDED BY: CR B RICHARDSON

That Council:

1. Pursuant to section 3.16 of the *Local Government Act 1995*, decides to repeal the City of Kalgoorlie-Boulder *Fencing Local Law 2000* published in the Government Gazette on 18 August 2000 and all subsequent amendments to that local law.
2. Pursuant to section 3.12 of the *Local Government Act 1995*, resolve to make a new Fencing Local Law 2010.
3. Pursuant to section 3.12(3) and (3a) of the *Local Government Act 1995*, advises of its intention by giving statewide and local public notice, both with the purpose and effect of the local law summarised in the notice, allowing for written submissions to be made during a minimum public consultation period of not less than six (6) weeks.
4. Pursuant to section 3.15 of the *Local Government Act 1995*, take reasonable steps to ensure that the inhabitants of the district are informed of the purpose and effect of the local law.
5. Authorise the Chief Executive Officer to report back to Council with any submissions received after the close of the public consultation period.

Council should consider the Officers report and –

- i. Should there be no submissions received, Council to proceed to repeal, make and adopt the Fencing Local Law 2010 and follow the rest of the procedures set out in the *Local Government Act 1995*; or

- ii. **Should there be significant changes made to the proposed Fencing Local Law 2010, pursuant to section 3.13 decide to recommence the procedure in accordance with the requirement of the *Local Government Act 1995*.**

**CARRIED
(11/0)**

Ms Cherie Wallace and Mr Howard Duff left the Conference Room at 10.04 pm and did not return.

11 CONFIDENTIAL ITEMS

11.1 CHIEF EXECUTIVE OFFICERS

11.1.1 MCMAHONS PTY LTD CONTRACT

Responsible Officer: Don Burnett
Chief Executive Officer

Author: Simone De Been
Contracts & Projects Coordinator

Author Disclosure of Interest: The CEO declares a financial interest as he owns a lot in the adjoining subdivision to the Golf Course.

Mayor Yuryevich declared a financial interest in this matter by: *"I am a member of Hannans and Goldfields Golf Club"*

Cr Roadnight declared an interest affecting impartiality in this matter by: *"Husband is a member of Hannans and Goldfields Golf Club"*

Cr Haigh declared an interest affecting impartiality in this matter by: *"Member of a golf club"*

EXECUTIVE SUMMARY

It is the recommendation of the Responsible Officer that this item be considered "in camera" due to the private and confidential nature of its contents.

OFFICER/COMMITTEE RESOLUTION

MOVED BY: CR S GRAHAM
SECONDED BY: CR E ROADNIGHT

That in accordance with Section 5.23 (2) of the Local Government Act 1995 the meeting is closed to members of the public with the following aspect(s) of the Act being applicable to this matter:

- A contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting.

**CARRIED
(10/0)**

Cr Richardson left at 10.03 pm and returned at 10.05 pm.

The Committee moved into camera at 10.04 pm

COMMITTEE RECOMMENDATION

**MOVED BY: CR R HAIGH
SECONDED BY: CR L SCHOFIELD**

1. Council authorise the CEO to release 50% of the retention money being \$186,098.97(one hundred and eighty six thousand and ninety eight dollars and ninety seven cents) to McMahons Pty Ltd on the last grassing of the Golf Course and the balance of the retention six months thereafter.

**THE MOTION WAS LOST
(3/8)**

COMMITTEE RECOMMENDATION

1. Authorise the CEO to engage Lavan Legal to prepare an agreement for a one off payment to McMahons Pty Ltd for unpaid works completed on the Grass Golf Course which to date remain outstanding.
2. Council subject to point 1, authorise the CEO to make a payment to McMahons Pty Ltd for the sum of \$153,847.96 (one hundred and fifty three thousand, eight hundred and forty seven dollars & 96 cents) being for the full and final settlement for their claim with payment to be made on practical compensation.
3. Council authorise the CEO to release 50% of the retention money being \$186,098.97(one hundred and eighty six thousand and ninety eight dollars and ninety seven cents) to McMahons Pty Ltd on the last grassing of the Golf Course and the balance of the retention six months thereafter.

**MOVED BY: CR S GRAHAM
SECONDED BY: CR N JAMES**

**CARRIED
(7/4)**

Mayor Yuryevich and Cr Northcoat requested that their name be recorded as voting against the motion.

**MOVED BY: CR E ROADNIGHT
SECONDED BY: CR L SCHOFIELD**

That standing orders be resumed.

**CARRIED
(11/0)**

12 DATE OF NEXT MEETING

The next meeting will be on Monday 15 February 2010

13 CLOSURE

There being no further business, the Mayor thanked Councillors and staff for their attendance at the meeting and declared the meeting closed at 10.48 pm.