

City of Fremantle

MINUTES

Special Meeting of Council

Monday, 11 February 2008
6.00 pm

COUNCIL MEMBERS

Mayor, Peter Tagliaferri
Cr John Alberti
Cr Donna Haney
Cr John Dowson (Deputy Mayor)
Cr Alice King
Cr Doug Thompson
Cr Georgie Adeane

Cr Shirley Mackay
Cr Les Lauder
Cr Brad Pettitt
Cr Bill Massie
Cr Robert Fittock
Cr Jon Strachan

Beaconsfield Ward
City Ward
East Ward
Hilton Ward
North Ward
South Ward

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SPECIAL MEETING OF COUNCIL

Minutes of the Special Meeting of Council
held in the Council Chambers, Fremantle City Council
on 11 February 2008 at 6.00 pm.

DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

The Mayor, Mr Peter Tagliaferri declared the meeting open at 6:00pm and welcomed members of the public to the meeting.

NYOONGAR ACKNOWLEDGEMENT STATEMENT

"We acknowledge this land that we meet on today is part of the traditional lands of the Nyoongar people and that we respect their spiritual relationship with their country. We also acknowledge the Nyoongar people as the custodians of the greater Fremantle/Walyalup area and that their cultural and heritage beliefs are still important to the living Nyoongar people today."

The Mayor congratulated the Federal Government for their initiative to say sorry to the Aboriginal community of Australia on Wednesday, 13 February 2008. On behalf of Council and the wider Aboriginal community, he gave Kerry Fletcher, who is a well known Aboriginal song writer who has been invited to this ceremony, a message stick and a Aboriginal tie that was created by a local Fremantle elder, to take with her to Canberra to present to the Prime Minister.

IN ATTENDANCE

Peter Tagliaferri	Mayor	
Cr Shirley Mackay	Beaconsfield Ward	
Cr John Alberti	Beaconsfield Ward	
Cr Les Lauder	City Ward	
Cr Brad Pettitt	East Ward	
Cr John Dowson	Deputy Mayor / East Ward	
Cr Alice King	Hilton Ward	entered at 6:09pm
Cr Bill Massie	Hilton Ward	
Cr Robert Fittock	North Ward	
Cr Doug Thompson	North Ward	
Cr Georgie Adeane	South Ward	entered at 6:06pm
Cr Jon Strachan	South Ward	
Mr Graeme Mackenzie	Chief Executive Officer	
Mr Glen Dougall	Director Corporate Services	
Mr Ken Posney	Director Cultural and Community Services	
Mr Philip St John	Director Planning and Development Services	
Mrs Natalie Cameron	Elected Members Support Officer	

There were approximately 6 members of the public and 2 members of the media in attendance.

APOLOGIES

Cr Donna Haney

City Ward

LEAVE OF ABSENCE

Nil

PUBLIC QUESTION TIME

Summary of Question by Dr Ian Alexander

He spoke in relation to item SC0802-2 and SC0802-3. He would like to hear from the Planning officers their opinion how likely it is that SAT will grant the Council the right to intervene in the appeal? The community is extremely concerned about this matter and the Victoria Quay Taskforce, is keen to be joined to the appeal, if this is possible. If the Taskforce and or the Fremantle Society sought to be joined to the appeal, would the Council be able to support the initiative from concerned citizens from Fremantle?

Summary of Response from Mr Philip St John, Director Planning and Development Services

In relation to the first question, he is not able to answer the likelihood of the City being granted the right to intervene. The legal advice that he has received is that there is no fixed criteria in which the tribunal, SAT makes these decisions. It really depends on what they see as the Councils standing and the relevance of the Councils position in the matters at hand. The reason why he is not able to give an answer is because he does not know the extent of the appeal. He can make a guess what is being appealed but he doesn't know in any official capacity. So he really can't speculate the possibility of the City's success in the intervention.

In relation to the second question, under tribunal rules, there are two forms of interventions, the City is not the respondent. So the City has to establish grounds to intervene. The WA Planning Commission is the respondent. There are essentially three ways that a third party can be heard at an appeal. The highest level is from an application to intervene. Which is what the City is doing. This is open to any individuals or groups to apply to intervene.

The second option is to apply to make submissions where you formally make submissions at the tribunal and they are formally heard as evidence and subject to the evidence rules and cross examination.

The third way, which the City does as a matter of course anyway, is that as part of our evidence we would include community submissions and the authors of those submissions do not give evidence. That is all dependent on what standing the tribunal grants the City for participating in the appeal in the first instance.

Summary of Comment by Nicolas Gurr

He spoke in relation to item SC0802-3. He commended Cr John Dowson for raising the Notice of Motion and he asked Councillors to support the Notice of Motion by Cr John Dowson.

DISCLOSURES OF INTEREST BY MEMBERS

Nil

PETITIONS / DEPUTATIONS / PRESENTATIONS

Cr Jon Strachan - He sent an email out to the Councillors about the meeting with Minister McTiernan on Thursday, 14 February 2008 about the 3 Harbours Redesign Workshop. Has the City been invited to attend? If so, who will be attending?

Given that the Minister has said that the public submissions are going to be ignored, it was actually those submissions that we used to develop our own position. The City needs to develop a position with some urgency.

Mayor, Peter Tagliaferri - This question will be taken on notice.

ANNOUNCEMENTS BY THE MAYOR

Nil

QUESTIONS OR PERSONAL EXPLANATIONS BY ELECTED MEMBERS

Nil

TABLED DOCUMENTS

Nil

LATE ITEMS NOTED

Nil

COMMITTEE REPORTS

REPORTS BY THE MAYOR OR OFFICERS OF COUNCIL

COUNCIL ITEMS

**SC0802-1 PROPOSED INDEPENDENT SURVEY OF FREMANTLE MARKETS
 STALLHOLDERS**

DataWorks Reference: 049/008, 091/001

Disclosure of Interest: Nil
Previous Item: Markets Committee Meeting 29 January, 2008
Responsible Officer: Glen Dougall, Director Corporate Services
Actioning Officer: Glen Dougall, Director Corporate Services
Decision Making Authority: Council
Agenda Attachments: Nil

PURPOSE

To approve expenditure to undertake the confidential survey of stallholders requested by the Markets Management Committee at its meeting held on 29 January, 2008.

EXECUTIVE SUMMARY

The Markets Committee have sought an independent confidential survey of stallholders in relation to the proposed business plan. A quote from Catalyse Consultants has estimated it will require between \$11,000 and \$14,000 to complete such a survey.

BACKGROUND

Nil.

COMMENT

As there is not much time to undertake this survey and respond back to the committee in time for the next meeting on 26 February, 2008, Council approval is sought to conduct this survey by using Catalyse and Edith Cowan University. Catalyse will develop a list of questions, similar to the process undertaken for the community survey on the ING proposal, to allow for some interpretation of the response to the main question on support/non support of the business plan. Catalyse will use Edith Cowan University research centre to conduct telephone surveys of the stallholders asking them a series of questions and informing them of some of the provisions of the business plan.

CONCLUSION

Approval from council is sought to appoint Catalyse for a survey up to the value of \$14,000.

STRATEGIC AND POLICY IMPLICATIONS

Nil

TRIPLE BOTTOM LINE IMPLICATIONS

Economic

Nil

Environmental

Nil

Social

Nil

BUDGET IMPLICATIONS

A budget allocation of \$20,000 remains in the current budget for consultants in relation to the Fremantle Markets. The proposed survey could be allocated against this line item.

LEGISLATIVE AND LEGAL CONSIDERATIONS

Any changes to budget need to be approved in accordance with the Local Government Act 1995 and associated Regulations.

PRECINCTS AND OTHER COMMITTEES RECOMMENDATIONS PLUS OTHER CONSULTATION

Nil.

VOTING AND OTHER SPECIAL REQUIREMENTS

Absolute Majority Required

OFFICER'S RECOMMENDATION / COUNCIL DECISION

MOVED: Mayor, Peter Tagliaferri

Council approve the appointment of Catalyse Pty Ltd to undertake the independent confidential survey of Fremantle Markets Stallholders in relation to the proposed Business Plan to enter into a 21 years lease with Fremantle Markets Pty Ltd up to the value of \$14,000.

SECONDED: Cr R Fittock

CARRIED: 7/5

For	Against
Cr Georgie Adeane Cr John Dowson Cr Alice King Cr Les Lauder Cr Shirley Mackay Cr Brad Pettitt Cr Jon Strachan	Mayor, Peter Tagliaferri Cr Bill Massie Cr Robert Fittock Cr Doug Thompson Cr John Alberti

**SC0802-2 STATE ADMINISTRATIVE TRIBUNAL REVIEW: PROPOSED
COMMERCIAL DEVELOPMENT - VICTORIA QUAY**

DataWorks Reference: 290/07
Disclosure of Interest: Nil
Previous Item: N0711-2, SC2510-1, SC00711-1
Responsible Officer: Director of Planning and Development Services,
Actioning Officer: Director of Planning and Development Services
Decision Making Authority: Council

PURPOSE

To consider Council's response to the application for review of the decision of the WAPC in relation to the proposed commercial development at Victoria Quay

EXECUTIVE SUMMARY

An application for review of the decision of the WAPC has been submitted to the State Administrative Tribunal. The parties to the SAT proceedings are ING Development Australia Pty Ltd (applicant) and the WAPC (respondent). The precise details of the review application are unknown at this stage. However, it is likely to concern one or more of the conditions imposed by the WAPC on the approval which it granted in December 2007.

BACKGROUND

An application for review of the decision of the WAPC has been submitted to the State Administrative Tribunal. The parties to the SAT proceedings are ING Development Australia Pty Ltd (applicant) and the WAPC (respondent). The precise details of the review application are unknown at this stage.

A directions hearing was held on 1 February 2008 at which the matter was adjourned to a further directions hearing on 28 March 2008. The purpose of the adjournment was to allow ING and the WAPC to have discussions about the matters giving rise to the proceedings.

COMMENT

Council options at this stage in relation to this issue are as follows;

1. Application to intervene in the review
2. Application to make submissions to the review
3. Monitor the situation and give further consideration to this issue following the next directions hearing.

There is no automatic right to intervene and SAT must grant leave for intervention, and there are no fixed criteria by which the SAT determines whether leave to intervene should be granted. If it grants leave for the City to intervene the SAT may impose conditions limiting the City's role in the proceedings.

Council officers have requested precise details of the review from officers of the DPI. This request has been denied. As the precise details of the application for review is uncertain at this stage it is unclear what level of response by the City is appropriate at this stage. Given, however, the critical significance of this development for the City it is considered prudent to seek leave of the SAT to intervene in the review or, in the alternative, leave to make submissions. Should, during the process of seeking leave to intervene, it become apparent that this is no longer necessary the matter will be brought back before the Council for a further decision.

CONCLUSION

Intervention in this review is considered to be prudent at this stage, with this action being reviewed later if necessary.

VOTING AND OTHER SPECIAL REQUIREMENTS

Simple Majority Required

OFFICER'S RECOMMENDATION / COUNCIL DECISION

MOVED: Mayor, Peter Tagliaferri

That;

1. **the Council make application to the State Administrative Tribunal for leave to intervene, and to make submissions, in Review No 22 of 2008 between ING Development Australia Pty Ltd (applicant) and the WAPC (respondent).**
2. **regular updates of the progress of this application are provided to the Council and this action be reviewed if necessary**

SECONDED: Cr D Thompson

CARRIED: 12/0

For	Against
Mayor, Peter Tagliaferri Cr Georgie Adeane Cr John Alberti Cr John Dowson Cr Robert Fittock Cr Alice King Cr Les Lauder Cr Shirley Mackay Cr Bill Massie Cr Brad Pettitt Cr Jon Strachan Cr Doug Thompson	

SC0802-3 NOTICE OF MOTION BY CR JOHN DOWSON - INVESTIGATION INTO THE ING PROCESS

DataWorks Reference: 097/004
Disclosure of Interest: Nil
Previous Item: Nil
Author: Cr John Dowson
Decision Making Authority: Council
Agenda Attachments: Nil

PURPOSE

To seek relevant documents relating to the ING proposal. Given that ING have lodged an appeal against conditions imposed by the WAPC regarding their application, and that Fremantle Council may be a party to that appeal, and given that Council needs to understand what has transpired in the process of various organizations dealing with the ING proposal irrespective of Council being party to any appeal, Council needs to acquire relevant documents.

RECOMMENDATION / COUNCIL DECISION

MOVED: Mayor, Peter Tagliaferri

- 1. Officers are instructed to urgently initiate FOI requests for:**
 - a. all documents submitted to WAPC in relation to the ING proposal excepting those from Fremantle Council**
 - b. all minutes of WAPC in relation to the ING proposal**
 - c. all letters, emails, and documents relating to ING between Fremantle Ports and ING, between Fremantle Ports and WAPC and between Fremantle Ports and Heritage Council of WA.**
- 2. A report to be brought to council as soon as these documents are available.**
- 3. The CEO be authorised to seek further relevant documents under FOI related to this matter from any source.**

SECONDED: Cr L Lauder

CARRIED: 12/0

For	Against
Mayor, Peter Tagliaferri Cr Georgie Adeane Cr John Alberti Cr John Dowson Cr Robert Fittock Cr Alice King Cr Les Lauder	

Cr Shirley Mackay Cr Bill Massie Cr Brad Pettitt Cr Jon Strachan Cr Doug Thompson	
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CONFIDENTIAL MATTERS

Nil.

CLOSURE OF MEETING

THE MAYOR, P TAGLIAFERRI DECLARED THE MEETING CLOSED AT 6:48PM.

SUMMARY GUIDE TO CITIZEN PARTICIPATION AND CONSULTATION

The Council adopted a Participation Policy in August 2001 to give effect to its commitment to involving citizens in its decision-making processes.

The City values citizen participation and recognises the benefits that can flow to the quality of decision-making and the level of community satisfaction.

Effective participation requires total clarity so that Elected Members, Council officers and citizens fully understand their respective rights and responsibilities as well as the limits of their involvement in relation to any decision to be made by the City.

How consultative processes work at the City of Fremantle	
The City's decision makers	1 The Council, comprised of Elected Members, makes policy, budgetary and key strategic decisions while the CEO, sometimes via on-delegation to other City officers, makes operational decisions.
Various participation opportunities	2 The City provides opportunities for participation in the decision-making process by citizens via its Advisory Committees and Task Forces, its Community Precinct System, and targeted consultation processes in relation to specific issues or decisions.
Objective processes also used	3 The City also seeks to understand the needs and views of the community via scientific and objective processes such as its annual Community Survey.
All decisions are made by Council or the CEO	4 These opportunities afforded to citizens to participate in the decision-making process do not include the capacity to make the decision. Decisions are ultimately always made by Council or the CEO (or his/her delegated nominee).
Precinct focus is primarily local, but also city-wide	5 The Community Precinct System establishes units of geographic community of interest, but provides for input in relation to individual geographic areas as well as on city-wide issues.
All input is of equal value	6 No source of advice or input is more valuable or given more weight by the decision-makers than any other. The relevance and rationality of the advice counts in influencing the views of decision-makers.
Decisions will not necessarily reflect the majority view received	7 Local Government in WA is a representative democracy. Elected Members and the CEO are charged under the Local Government Act with the responsibility to make decisions based on fact and the merits of the issue without fear or favour and are accountable for their actions and decisions under law. Elected Members are accountable to the people via periodic elections. As it is a representative democracy, decisions may not be made in favour of the majority view expressed via consultative processes. Decisions must also be made in accordance with any statute that applies or within the parameters of budgetary considerations. All consultations will clearly outline from the outset any constraints or

How consultative processes work at the City of Fremantle	
	limitations associated with the issue.
Decisions made for the overall good of Fremantle	8 The Local Government Act requires decision-makers to make decisions in the interests of “the good Government of the district”. This means that decision-makers must exercise their judgment about the best interests of Fremantle as a whole as well as about the interests of the immediately affected neighbourhood. This responsibility from time to time puts decision-makers at odds with the expressed views of citizens from the local neighbourhood who may understandably take a narrower view of considerations at hand.
Diversity of view on most issues	9 The City is wary of claiming to speak for the ‘community’ and wary of those who claim to do so. The City recognises how difficult it is to understand what such a diverse community with such a variety of stakeholders thinks about an issue. The City recognises that, on most significant issues, diverse views exist that need to be respected and taken into account by the decision-makers.
City officers must be impartial	10 City officers are charged with the responsibility of being objective, non-political and unbiased. It is the responsibility of the management of the City to ensure that this is the case. It is also recognised that City Officers can find themselves unfairly accused of bias or incompetence by protagonists on certain issues and in these cases it is the responsibility of the City’s management to defend those City officers.
City officers must follow procedures	11 The City’s consultative processes must be clear, transparent, efficient and timely. City officers must ensure that policies and procedures are fully complied with so that citizens are not deprived of their rights to be heard.
Consultation processes have cut-off dates that will be adhered to.	12 As City officers have the responsibility to provide objective, professional advice to decision-makers, they are entitled to an appropriate period of time and resource base to undertake the analysis required and to prepare reports. As a consequence, consultative processes need to have defined and rigorously observed cut-off dates, after which date officers will not include ‘late’ input in their analysis. In such circumstances, the existence of ‘late’ input will be made known to decision-makers. In most cases where citizen input is involved, the Council is the decision-maker and this affords citizens the opportunity to make input after the cut-off date via personal representations to individual Elected Members and via presentations to Committee and

How consultative processes work at the City of Fremantle	
	Council Meetings.
Citizens need to check for any changes to decision making arrangements made	1 The City will take initial responsibility, via 3 'Consultation Process notifications', for making . citizens aware of expected time-frames and decision making processes, including dates of Standing Committee and Council Meetings if relevant. However, as these details can change, it is the citizens responsibility to check for any changes by visiting www.freofocus.com/projects/html/default.cfm , checking the Port City Column in the Fremantle Herald or inquiring at the Service and Information Desk by phone or in-person.
Citizens are entitled to know how their input has been assessed	1 In reporting to decision-makers, City officers will in 4 all cases produce a Schedule of Input received . that summarises comment and recommends whether it should be taken on board, with reasons.
Reasons for decisions must be transparent	1 Decision-makers must provide the reasons for 5 their decisions. .
Decisions posted on www.freofocus.com/projects/html/default.cfm	1 Decisions of the City need to be transparent and 6 easily accessed. For reasons of cost, citizens . making input on an issue will not be individually notified of the outcome, but can access the decision at www.freofocus.com/projects/html/default.cfm or at the City Library or Service and Information counter.

Issues that Council May Treat as Confidential

Section 5.23 of the new Local Government Act 1995, Meetings generally open to the public, states:

1. Subject to subsection (2), the following are to be open to members of the public -
 - a) all council meetings; and
 - b) all meetings of any committee to which a local government power or duty has been delegated.
2. If a meeting is being held by a council or by a committee referred to in subsection (1) (b), the council or committee may close to members of the public the meeting, or part of the meeting, if the meeting or the part of the meeting deals with any of the following:
 - a) a matter affecting an employee or employees;
 - b) the personal affairs of any person;
 - c) 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;
 - d) legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting;
 - e) a matter that if disclosed, would reveal –
 - i) a trade secret;
 - ii) information that has a commercial value to a person; or
 - iii) information about the business, professional, commercial or financial affairs of a person.
Where the trade secret or information is held by, or is about, a person other than the local government.
 - f) a matter that if disclosed, could be reasonably expected to -
 - i) impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law;
 - ii) endanger the security of the local government's property; or
 - iii) prejudice the maintenance or enforcement of a lawful measure for protecting public safety.
 - g) information which is the subject of a direction given under section 23 (1a) of the Parliamentary Commissioner Act 1971; and
 - h) such other matters as may be prescribed.
3. A decision to close a meeting or part of a meeting and the reason for the decision are to be recorded in the minutes of the meeting.

