

City of Fremantle

MINUTES

Special Meeting of Council

Tuesday, 31 March 2009
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

SPECIAL MEETING OF COUNCIL

MINUTES

DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

The Presiding Member declared the meeting open at 6:02pm.

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."

IN ATTENDANCE

Cr John Dowson	Presiding Member
Cr Georgie Adeane	South Ward
Cr Les Lauder	City Ward
Cr Donna Haney	City Ward
Cr Shirley Mackay	Beaconsfield Ward
Cr Alice King	Hilton Ward
Cr Bill Massie	Hilton Ward
Cr Robert Fittock	North Ward (<i>entered 7:00pm</i>)
Mr Graeme Mackenzie	Chief Executive Officer
Mr Glen Dougall	Director Corporate Services
Ms Agnieszka Kiera	City Heritage Architect, Planning & Development Services

GUEST

Mr Julius Skinner Jackson McDonald Solicitors

There were approximately 90 members of the public in the gallery

APOLOGIES

Cr Jon Strachan
Cr Brad Pettitt
Cr Doug Thompson
Mayor, Peter Tagliaferri

LEAVE OF ABSENCE

Nil

PUBLIC QUESTION TIME

Darrel Cake spoke in favour of sorting out market issues in a reasonable manner.

Arie Schachor feels the markets is in a war zone and that the new monthly rent is robbery. Feels Fremantle Markets Pty Ltd (FMPL) is acting in an improper manner. Spoke of the stallholdings being modified and the City of Fremantle bears responsibility for this situation.

Judy Smyth put the question does Murdoch's vision override the requirements of the head lease.

Glen Dougall, Director Corporate Services, advised the head lease is the controlling document.

Phu & Lam Nguyen spoke of a complaint lodged to the CEO regarding treatment of his wife at the Fremantle markets.

Graeme Mackenzie, CEO, advised he has received the document and would respond.

Nicolas Gurr put the question who is comprised in the Working Group and if the Working Group agreed to the rent increase.

Glen Dougall, Director Corporate Services, advised that the head lease seeks that 'fair market rent' under the operational strategy be set. He also answered that the Working Group is made up on FMPL Directors, CEO of City of Fremantle and himself.

David Abbott made a statement about rent increases being to the detriment of the markets.

Mark Scott commented that the markets and stallholders are "safe" according to the City's website and that his stall will be reduced by 33%. He commented that the situation has now become a moral issue and the city has a duty of care.

Gerry Drenthe spoke to the Mayor and commented that he promised everyone would have a lease and he would like to hold him to that.

Bob Williams asked what the rent on Gino's and the Dome is.

Glen Dougall, Director Corporate Services, advised that the Working Group does not set the rental figure.

Graeme Mackenzie, CEO, advised that the rental was set by a licensed valuer.

Anna O'Sullivan asked the question what does 'fair market rental' mean?

Glen Dougall, Director Corporate Services, advised that 'fair market rental' under the lease is for negotiation between FMPL and stallholder. Anna also asked the question what were the credentials of the valuer? and suggested to do what the Council motto says.

Dean Whineray asked the questions are any Elected Members leaving before the resolution is considered?

Presiding Member Councillor John Dowson advised of the presumption that all will stay and that he hoped the meeting would take them somewhere.

Ian Alexander spoke of the threat of legal action affecting the decision of the council for the new lease. He asked the question is the improvement to the building to come from the stallholders rent?

Glen Dougall, Director Corporate Services, advised the head lease does not require improvement to come from rents. Ian asked the question how much does the City receive on a yearly basis?

Glen Dougall, Director Corporate Services, advised the City receives \$550K from the lease.

Ian asked the question of what the FMPL contributes to the conservation works.

Glen Dougall, Director Corporate Services, advised the head lease requires the Working Group to determine how to fund the conservation plan.

Ian asked the question was there a stallholder representative on the Working Group?

Glen Dougall, Director Corporate Services, advised Council did vote on stallholder being a Working Group but it was not carried.

Colin Wright asked the question why is this happening and will his business be viable? He spoke of the reasons for the 'downward spiral' being:

- Rent increases resulting in the most expensive in the country
- Dictatorial market manager
- Stallholders are starting to feel the reality of the increased rent
- Markets cannot afford to lose good stallholders

Colin commented that the Stallholders Association seeks that rents be indexed back to the head lease rent increases and urged Elected Members to vote in favour of the agenda items.

Julie Frankovich commented that she was recently asked to sign a lease but was not issued with a rent invoice last month. The lease was placed in the hands of a solicitor. FMPL stated there was no invoice because she had not signed the lease. Julie also commented that she had been a stallholder for 10 years and that under the old lease her rent was \$750 and under the new lease it was \$1,500. She spoke of the environment being intimidating and that Council needed to listen to what the stallholders were saying.

Penny Bannister advised that on 12th February she was told that rent would treble and that her stall needed to move. She was not able to meet with FMPL to discuss the chance to move. She mentioned that this has left her with an uncertain future. She asked the question is this kind of delay considered a negotiable process?

Glen Dougall, Director Corporate Services, advised that under the lease it is intended that negotiation and dialogue does take place.

Sonya Green advised that today she walked away from the markets after a 30 year association. She could not afford the 73% rent increase. She commented that the markets should not be allowed to die.

Audrey de Beer cited three documents dated 28th February 2009 which she would provide at a later date. She asked the question what is Council going to do to ensure these issues are resolved.

Glen Dougall, Director Corporate Services, commented he was sure that is what Council was at the meeting to do tonight; try to resolve these issues.

Angelo Magarelli expressed concern that dialogue with FMPL and stallholders was not working. He advised that FMPL have asked the stallholders to deal through Anne. He also mentioned that the fruit and vegetable stalls are being downsized and has been told his product may not be needed. He suggested it was time for the City to intervene.

Marilyn Wright commented she had been at the market for 22 years and in the location where the new food premises will be. She advised her stall may have to be moved or terminated which is contrary to the City's commitment. She commented that her stall business will not be viable if it is moved and that her business was not a game of monopoly – it was her livelihood. She suggested the stallholders should not become a legacy of this new lease and stallholders who need to move or be terminated should be compensated. She asked will the working group consider the request for compensation. Presiding member Councillor John Dowson advised the Council would take the comments on board.

Richard Murphy spoke of the conduct and behaviour of the leasing agent. He disagreed with the agent over the measurement of the stall. He commented he has never been sent the dimensions of the stall and has now been issued with an eviction notice.

Katie King spoke of her being a stallholder for 30 years. She asked the questions does the Council think this is extra-ordinary?, is the Council aware there is no negotiations?, is the Council aware there is no 5 x 5 tenure? and is the Council aware that the rent increase was done in small pockets? She suggested that surely as a Council it needs to stabilise this.

Presiding member Councillor John Dowson advised Council was aware of all problems and would be dealing with them at tonight's meeting.

QUESTIONS OR PERSONAL EXPLANATIONS BY MEMBERS

Cr Donna Haney

Responded against criticism in local community Gazette paper of 31st March 2009. If accurately reported the statement by Jamie Murdoch is untrue.

Cr Les Lauder

Responded to comments made by Mr Darrel Cake at the start of this meeting. He stated his agenda is to protect the rights of stallholders.

PETITIONS / DEPUTATIONS / PRESENTATIONS

Nil

DISCLOSURES OF INTEREST BY MEMBERS

Nil

TABLED DOCUMENTS

Nil

TABLE OF CONTENTS

ITEM NO	SUBJECT	PAGE
COUNCIL ITEMS		8
SC09031	NOTICE OF MOTION - FREMANTLE MARKETS LEASE COMPLIANCE	8
CONFIDENTIAL MATTERS		11
Summary Guide to Citizen Participation and Consultation Error! Bookmark not defined.		
MINUTES ATTACHMENTS		Error! Bookmark not defined.
CLOSURE OF MEETING		

MOVED Cr John Dowson and SECONDED Cr Robert Fittock go behind closed doors to discuss legal advice with Council's solicitors

CARRIED: 5/3

<i>For</i>	<i>Against</i>
Cr Georgie Adeane	Cr Alice King
Cr Robert Fittock	Cr Les Lauder
Cr John Dowson	Cr Donna Haney
Cr Shirley Mackay	
Cr Bill Massie	

MOVED Cr Bill Massie and SECONDED Cr Robert Fittock to not break for dinner.

CARRIED: 8/0

<i>For</i>	<i>Against</i>
Cr Georgie Adeane	
Cr Robert Fittock	
Cr John Dowson	
Cr Shirley Mackay	
Cr Bill Massie	
Cr Alice King	
Cr Les Lauder	
Cr Donna Haney	

MOVED Cr Donna Haney and SECONDED Cr Les Lauder came out from behind closed doors.

CARRIED: 8/0

<i>For</i>	<i>Against</i>
Cr Georgie Adeane	
Cr Robert Fittock	
Cr John Dowson	
Cr Shirley Mackay	
Cr Bill Massie	
Cr Alice King	
Cr Les Lauder	
Cr Donna Haney	

ADDITIONAL EXPLANATIONS

Cr Les Lauder

Cr Lauder clarified his previous explanation in that his agenda is to protect the rights of stallholders and the future of the markets.

COUNCIL ITEMS**SC09031 NOTICE OF MOTION - FREMANTLE MARKETS LEASE COMPLIANCE**

DataWorks Reference: 097/004,
Disclosure of Interest: Nil
Responsible Officer: Cr Donna Haney,
Decision Making Authority: Council
Agenda Attachments: Correspondence from Denning and Deane
Legal Opinion from Jackson MacDonald

EXECUTIVE SUMMARY

Given recent serious concerns raised by stallholders at the Fremantle Markets, and lawyers acting for the stallholders, it is prudent for Council to conduct an urgent review of alleged breaches of the head lease for the Fremantle Markets. To assist council in its deliberations officers have arranged for it as legal representatives to be present to brief council and answer questions from elected members.

RECOMMENDATION

1. Council urgently review and seek legal advice concerning alleged breaches of the head lease and the operating strategy for the Fremantle Markets. This investigation is to include, but not be confined to, alleged breaches of clause 4.5 (negotiating terms of subleases or licences), 4.7 (negotiating fair market rent) , 4.21 (quarterly meetings between stallholders and FMPL) and 4.22 (constructive dialogue with stallholders)
2. If breaches are found to have occurred, action is to be taken immediately to rectify the situation, including legal action if necessary.
3. That Council enter into negotiations to have the Markets Working Group expanded to include a representative of the Stallholders' Association.
4. Council seek an assurance from FMPL that no further rent increases or lease and licence terminations occur until alleged breaches of the lease have been resolved between Council and FMPL.
5. A report be brought to Council for the April 2009 Council meeting. The report is to address the above issues and is to include an assessment of the complaints from lawyers representing stallholders as documented in correspondence received such as the attached letter dated March 23rd

COUNCIL DECISION

MOVED: Cr D Haney

- 1. Council urgently review and seek legal advice concerning alleged breaches of the head lease and the operating strategy for the Fremantle Markets. This investigation is to include, but not be confined to, alleged breaches of clause 4.5 (negotiating terms of subleases or licences), 4.7 (negotiating fair market rent) , 4.21 (quarterly meetings between stallholders and FMPL) and 4.22 (constructive dialogue with stallholders)**

SECONDED: Cr G Adeane

CARRIED: 7/1

For	Against
Cr Georgie Adeane Cr John Dowson Cr Donna Haney Cr Alice King Cr Les Lauder Cr Shirley Mackay Cr Bill Massie	Cr Robert Fittock

MOVED: Cr D Haney

- 2. If breaches are found to have occurred, action is to be taken immediately to rectify the situation, including legal action if necessary.**

SECONDED: Cr G Adeane

CARRIED: 7/1

For	Against
Cr Georgie Adeane Cr John Dowson Cr Donna Haney Cr Alice King Cr Les Lauder Cr Shirley Mackay Cr Bill Massie	Cr Robert Fittock

MOVED: Cr D Haney

- 3. That Council enter into negotiations to have the Markets Working Group expanded to include a representative of the Stallholders' Association.**

SECONDED: Cr G Adeane

CARRIED: 7/1

For	Against
Cr Georgie Adeane Cr John Dowson Cr Donna Haney Cr Alice King Cr Les Lauder Cr Shirley Mackay Cr Bill Massie	Cr Robert Fittock

MOVED: Cr D Haney

- 4. Council seek an assurance from FMPL that no further rent increases or lease and licence terminations occur until alleged breaches of the head lease or operating strategy have been resolved between Council and FMPL.**

SECONDED: Cr G Adeane

CARRIED: 7/1

For	Against
Cr Georgie Adeane Cr John Dowson Cr Donna Haney Cr Alice King Cr Les Lauder Cr Shirley Mackay Cr Bill Massie	Cr Robert Fittock

- 5. A report be brought to Council for the April 2009 Council meeting. The report is to address the above issues and is to include an assessment of the complaints from lawyers representing stallholders as documented in correspondence received such as the attached letter dated March 23rd.**

SECONDED: Cr G Adeane

CARRIED: 8/0

For	Against
Cr Georgie Adeane Cr John Dowson Cr Robert Fittock Cr Donna Haney Cr Alice King Cr Les Lauder Cr Shirley Mackay Cr Bill Massie	

CONFIDENTIAL MATTERS

Nil.

CLOSURE OF MEETING

**THE PRESIDING MEMBER, CR JOHN DOWSON, DECLARED THE MEETING
CLOSED AT 9:10PM.**