



Ordinary Council Meeting

Notice is given that an Ordinary Meeting of the Kingston City Council will be held at 7.00pm at 1230 Nepean Hwy, Cheltenham, on Monday 26 November 2012.

- 1 Apologies**
- 2 Confirmation of Minutes of Previous Meetings**
- 3 Declaration by Councillors or Officers of any Conflict of Interest**
- 4 Petitions**
- 5 Presentations**
- 6 Reports from Village Committees**
- 7 Reports from Delegates Appointed by Council to Various Organisations**
- 8 Question Time**
- 9 Environmental Sustainability Reports**
- 10 Community Sustainability Reports**
- 11 Organisational Development and Governance Reports**
- 12 Corporate Services Reports**
- 13 Notices of Motion**
- 14 Urgent Business**
- 15 Items in Camera**

**City of Kingston
Ordinary Council Meeting**

Agenda

26 November 2012

Notice is given that an Ordinary Meeting of Kingston City Council will be held at 7.00pm at the Cheltenham Office, 1230 Nepean Highway, Cheltenham, on Monday 26 November 2012.

1. Apologies

2. Confirmation of Minutes of Previous Meetings

Minutes of Ordinary Council Meeting 22 October 2012

Minutes of Special (Statutory) Council Meeting 5 November 2012

3. Foreshadowed Declaration by Councillors, Officers or Contractors of any Conflict of Interest

[Note that any Conflicts of Interest need to be formally declared at the start of the meeting and immediately prior to the item being considered – type and nature of interest is required to be disclosed – if disclosed in writing to the CEO prior to the meeting only the type of interest needs to be disclosed prior to the item being considered.]

4. Petitions

Request for 15 Minute Parking Space – 94 Nepean Highway, Mentone

5. Presentation of Awards

Nil

6. Reports from Village Committees

Nil

7. Reports from Delegates Appointed by Council to Various Organisations

8. Question Time

9. Environmental Sustainability Reports

Nil

10. Community Sustainability Reports

Nil

11. Organisational Development & Governance Reports

O 199 Councillor Appointments to Committees 3

O 200 Assembly of Councillors Record 8

O 201 Confidential Information Register Report 21

12. Corporate Services Reports

O 202 Request to Review Council Decision on 4 Hazel Avenue,
Edithvale 23

O 203 Approval Charity Collections / Appeals - Carrum Volunteer
Coastguard..... 33

**City of Kingston
Ordinary Council Meeting**

Agenda

26 November 2012

13. Notices of Motion

| | | |
|-------|---|----|
| O 204 | Notice of Motion No. 34/2012 – Cr West..... | 42 |
| O 205 | Notice of Motion No. 35/2012 – Cr West..... | 43 |

14. Urgent Business

15. Items in Camera – Confidential Items

Confidential Attachments

| | | |
|-------|---|--|
| O 202 | Request to Review Council Decision on 4 Hazel Avenue, Edithvale | |
|-------|---|--|

Explanation of Meeting Procedure

Meeting Procedure Regulated by Local Law

The procedure for this Ordinary Council Meeting is regulated by Local Law 7.

Chairperson

The Mayor as Chairperson is the ultimate authority for the conduct of the meeting.

Agenda

The business to be dealt with at the meeting is set out in the agenda (in which this document is included). No other business can be dealt with, unless admitted as “ Urgent Business” by resolution of Council.

Motions

A motion must be moved and seconded to be valid. The mover of the motion will then be permitted to speak to it. Other Councillors will then be permitted to speak either for or against the motion. The mover will be permitted a right-of-reply, which will conclude the debate.

Voting

The motion will then be voted on by show of hands. If the motion is carried, it becomes a resolution (decision) of the Council. Any Councillor may call for a Division, in order that the vote of each Councillor is formally recorded.

Amendments

A Councillor may move an amendment to a motion prior to the resolution being determined. Any amendment moved shall be dealt with in the same way as a motion, except that there is no right of reply. If carried, the amendment becomes the motion (the previous motion is abandoned)

Addressing the Meeting

No gallery member may speak to the meeting, except for:

Village Committee Chairpersons presenting Committee recommendations to Council;
The applicant (or his/her representative) and one objector in relation to an application for a town planning permit;
Special circumstances in which leave to speak is granted by the Chairperson.

Unless special circumstances apply, the Mayor will limit the presentation of a speaker to three minutes duration.

Questions

Gallery members may put questions in writing to Council which will be dealt with during Question Time. The Question Box is located in the foyer. Residents asking a question must be present in the gallery during Question Time, or the question will not be responded to.

Questioners are asked to keep their questions as succinct as possible. Questions which cannot be accommodated on the single sided question form provided are likely to require research, and are more appropriately directed to Council in the form of a letter. In such cases, a response will be provided in writing subsequent to the meeting.

Confidential Business

The meeting may be closed at any time to deal with confidential items in camera. In these instances the gallery will be cleared, and the meeting re-opened once the confidential business is completed.

Courtesy to the Mayor

All Councillors are required to direct their attention towards the Mayor when speaking, and not the public gallery. This is in accordance with protocols relating to respect for the Chairperson of a meeting, and is a requirement of Council's Meeting Procedures Local Law.

Emergency Evacuation of Chamber

Members of the public are requested to note the green and white EXIT signs.

In the event of an emergency requiring evacuation of the Chamber, the public should evacuate by way of the EXIT located to the right hand side of the public gallery. This leads to the foyer through which you passed in order to enter the Chamber. Proceed from the foyer through the revolving door/side door and out of the building. This is the primary evacuation route.

If the nature of the emergency is such that the primary evacuation route is impracticable, the public should evacuate by way of the EXIT located just beyond and to the right of the media table, as viewed from the public gallery. Follow further EXIT signs thereafter, which lead to an exit point on the south side of the building. This is the secondary evacuation route.

Council staff will issue directions on how to proceed to evacuate in the event of an emergency

Are You Hard of Hearing

Phonic Ear Hearing Assistance is available to any member of the public gallery with a hearing disability. Just ask Civic Facilities Officer Lindsay Holland for a unit prior to the meeting.

Arabic / العربية

للاستفسار أو للحصول على المساعدة بقمركم هذا الاجتماع اتصلوا على الرقم 9679 9881

Cambodian / ភ្នំពេញ

ប្រសិនបើលោកអ្នកមានសំណួរឬត្រូវការជំនួយដែលទាក់ទងនឹងការប្រជុំនេះ សូមទូរសព្ទទៅលេខ 9679 9882

Cantonese / 廣東話

致電9679 9885 • 有關此項活動詳情請電9679 9885

Croatian / Hrvatski

Informacije ili pomoć u vezi pitanja vezanih za ovaj sastanak, možete dobiti ako nazovete 9679 9884

Greek / Ελληνικά

Μπορείτε να πάρετε πληροφορίες ή βοήθεια σχετικά με τη συνάντησή αυτή αν τηλεφωνήσετε στο 9679 9885

Italian / Italiano

Si possono ottenere informazioni o assistenza riguardo a questa riunione, telefonando al 9679 9885

Vietnamese / Việt ngữ

Muốn biết thêm chi tiết hoặc muốn được giúp đỡ về buổi họp này, vui lòng gọi số 9679 9885

Other Languages

Enquiries or assistance in relation to this meeting can be obtained by calling 9679 9887

Turkish / Türkçe

Spanish / Español

Mandarin / 普通话

Polish / Polski

Somali / Soomaali

Sinhalese / Sinhala

Ordinary Meeting of Council

26 November 2012

Agenda Item No: O 199

COUNCILLOR APPOINTMENTS TO COMMITTEES.

Contact Officer: Angela Granter

Purpose of Report

This report requires Council to appoint Councillors for the next 12 months to various Council committees comprising of Legislative committees, Advisory committees and other agencies' committees which Council participates in as a member (called external committees).

Disclosure of Officer / Contractor Direct or Indirect Interest

No Council officer/s and/or Contractor/s who have provided advice in relation to this report have declared a Conflict of Interest regarding the matter under consideration.

Recommendation

Officer recommend that:

1. Councillors be appointed to the various committees for a 12 month period from the time of resolution, as identified in section 4 of this report.

1. Executive Summary

Council has a comprehensive program of consultation that occurs through a variety of mechanisms including Councillor representation on a range of special interest committees and networks. Councillor appointments to these committees occur annually and this report is tabled to initiate the appointment process.

The committees comprise of:

- Committees established pursuant to the Local Government Act 1989 (Legislative Committees);
- Council Advisory Committees (comprising both of Councillor only membership and Councillor / officer / community representation); and
- External committees where Council participates as a member of the committee.

2. Background

Councillor appointments to the various Advisory and external committees normally occur at the annual statutory meeting. With the declaration of the poll occurring on 30 October 2012 and subsequent statutory meeting on 5 November 2012 focused upon the swearing-in of the recently elected councillors for the 2012-2016 Council term and the election of the Mayor, Councillor appointments were scheduled to be discussed at the first Ordinary Meeting of Council. This was also to provide some additional time, particularly for newly elected Councillors, for information sharing and discussion between Councillors about these committees and appointments.

3. Discussion

3.1. Council Plan Alignment

Goal 3 – Healthy, Strong and Connected Communities

Outcome 3.2 - Strong, cohesive & engaged communities with a sense of civic pride and participation.

Outcome 3.4 - Effective planning for the changing needs and aspirations of the community that supports a partnership approach and effective use of resources.

Goal 5 – Efficient and Innovative Stewardship of the Organisation and Resources

Outcome 5.1 - An organisation that demonstrates, enhances and improves its “community inspired” culture and reputation.

Councillor representation on Advisory and external committees provides Council with consultation, advocacy and network opportunities to develop partnerships and support our community.

3.2. Consultation/Internal Review

Councillors will need to consult with each other to ensure representation across the various committees is equitable and reflective of Council and Ward priorities.

3.3. Operation and Strategic Issues

3.3.1. Appointment of Councillors to Committees and Organisations for 2012/13

1. Legislative Committees

Legislative Committees are established under to the Local Government Act 1989. Section 86 Committees are known as Special Committees of Council. The Planning Committee is a Council decision making forum with extensive delegation while the Audit Committee, established under section 139 of the Act, has an advisory role.

| | 2012/13 Appointee/s |
|----------------------------------|----------------------------|
| 1. Section 86 Planning Committee | All Councillors |
| 2. Audit Committee (Section 139) | Mayor, Cr Ronke |

2. Advisory Committees - Councillor Only

| Kingston Councillor Only Committee * | 2012/13 Appointee/s |
|--|--|
| Foreshore Sub-Committee | No ongoing specific committee required |
| Kingston Council Green Wedge Plan Steering Committee | No ongoing specific committee required |

3. Advisory Committees – with Officer and/or community representatives

| Kingston Councillor Only Committee * | 2012/13 Appointee/s |
|--|--|
| Access and Equity Committee | Cr Gledhill Cr Peulich |
| Arts and Culture Advisory Committee | Crs Peulich and Staikos |
| Australia Day Committee | Mayor, Cr Staikos |
| Carols by the Bay Committee | Cr Gledhill |
| Chelsea Community Renewal Project | Crs Bearsley, Eden and Ronke |
| Clayton Community Strengthening Project | Cr Barth |
| Climate & Biodiversity Reference Group | Cr West |
| Community Vision Reference Group | Mayor, Crs Gledhill and West |
| Community Vision Steering Group | No ongoing specific committee required |
| Fine Food, Wine and Music by the Bay Festival | Mayor, Crs Gledhill and Ronke |
| Historical Societies Network | Crs Bearsley and West |
| Kingston Charitable Trust Community Grants Panel | Mayor, Crs Staikos Sub: Cr Ronke |
| Kingston Harvest Festival Committee | Crs Bearsley, Eden and Ronke |
| Kingston Interfaith Committee | Crs Barth and Staikos |
| Kingston Youth Advisory Committee | Crs Eden and Peulich |
| L F Payne Hall Usage Committee | Crs Bearsley, Eden and Ronke |
| Mordialloc Creek Advisory Committee | Mayor, Crs Gledhill, Ronke and West |
| Municipal Emergency Planning Committee | Cr Ronke |
| Public Art Advisory Panel | Crs Peulich and Staikos |
| Positive Ageing Steering Group | Mayor |

| Kingston Councillor Only Committee * | 2012/13 Appointee/s |
|---|-------------------------------|
| Sport and Recreation Reference Group | Crs Barth and Peulich |
| World Globe to Globe Festival Committee | Cr Peulich Sub: Cr Staikos |

* If one Councillor present (irrespective of officers) then an Assembly of Councillor form is required and will be attached to the next practicable Council Meeting and included in the minutes.

4. External or Other Agencies Committees with Councillor representation

| External/Other Groups/Agencies with Councillor Representation | 2012/13 Appointees |
|--|-------------------------------|
| Association of Bayside Municipalities (ABM) | Cr West Sub: Cr Gledhill |
| Australian Mayoral Aviation Council | Appointment not to be renewed |
| Friends of Manatuto Committee | Cr Staikos |
| Inter Council Aboriginal Consultative Committee | Cr Bearsley Sub: Cr West |
| Local Government Waste Management Forum | Cr Barth Sub: Cr Peulich |
| Melbourne Water Eastern Treatment Plant Community Liaison Committee | Cr West |
| Metropolitan Transport Forum | Cr Eden Sub: Cr West |
| Moorabbin Airport Consultative Committee | Crs Barth and West |
| Municipal Association of Victoria (MAV) | Mayor Sub: Cr Staikos |
| Municipal Association of Victoria Planning Committee | Cr West Sub: Cr Ronke |
| Municipal Association of Victoria Strategic Environment Advisory Group | Appointment not to be renewed |

| External/Other Groups/Agencies with Councillor Representation | 2012/13 Appointees |
|--|----------------------------|
| Patterson Lakes Advisory (Melbourne Water) Committee | Cr Bearsley |
| Victorian Local Governance Association (VLGA) | Cr Staikos Sub: Cr West |

4. Conclusion

4.1. Environmental Implications

Not applicable

4.2. Social Implications

Councillor representation on Advisory and external committees provides Council with consultation, advocacy and network opportunities to develop partnerships and support our community.

4.3. Resource Implications

Council officers provide advice and support to the various committees.

4.4. Legal / Risk Implications

Not applicable

5. Appendices

Nil

Author/s: Angela Granter, Governance Officer

Reviewed and Approved By: Elaine Sowerby, General Manager, Organisational Development and Governance

Ordinary Council Meeting

26 November 2012

Agenda Item No: O 200

ASSEMBLY OF COUNCILLORS RECORD

Contact Officer: Phil DeLosa

Trim: 12/121587

Purpose of Report

To provide copies of the Assembly of Councillors records in line with Section 80A of the Local Government Act to support openness and transparency of Governance processes.

Disclosure of Officer / Contractor Direct or Indirect Interest

No Council officer/s and/or Contractor/s who have provided advice in relation to this report have declared a Conflict of Interest regarding the matter under consideration.

Recommendation

That Council note the contents of this report for the public record.

1. Executive Summary

This report contains records for all meetings defined as an Assembly of Councillors under the Local Government Act 1989, Section 80A.

2. Background

The Local Government Act (The Act) requires that Assembly of Councillors records are reported to the next possible Council Meeting. This seeks to promote openness and transparency of Council decision making and to place on public record any declarations of direct or indirect interests by Councillors and / or officers.

3. Discussion

3.1. Council Plan Alignment

Strategy 5.3 – Sound governance and responsible financial leadership

The reporting of Assembly of Councillors meets the requirements of the Local Government Act and is critical to Strategy 5.3.

3.2. Consultation/Internal Review

Not applicable to this report.

3.3. Operation and Strategic Issues

The Chief Executive Officer must ensure that a written record is kept of every Assembly of Councillors. These records must be reported to the next Ordinary Council Meeting.

The written record only needs to be a simple document that records:

- The names of all Councillors and staff at the meeting,
- A list of the matters considered,
- Any conflict of interest disclosed by a Councillor; and
- Whether a Councillor who disclosed a conflict left the room.

A standard Assembly of Councillors form will generally be used as the record for the purposes of the Act. These forms are included as appendices to this report. At times however to avoid duplication minutes of some meetings may be attached as the record of the Assembly if they include the required information, including disclosures.

Section 80A of the Act requires a Councillor attending an assembly to disclose a conflict of interest and leave the room whilst the matter is being considered.

This requirement is explained in further detail in Practice Note No. 6 Assemblies of Councillors which was authored by Local Government Victoria. This Practice Note advises that unlike Council meetings, it is not necessary for a Councillor to disclose any details of the conflict of interest. It is sufficient to just disclose that the conflict of interest exists and this is all that should be recorded.

The rationale behind this limited requirement is to protect Councillors' privacy. In Council or Special Committee meetings, Councillors have an option under the Act to disclose a conflict of interest in writing to the CEO, which allows for the nature and type of the conflict of interest to remain private. The Act does not provide this option in relation to Assemblies of Councillors and thus Councillors are only required to disclose the existence of a conflict of interest and not the nature and type of interest at an assembly.

3.4. Options Not applicable to this report

4. Conclusion

The report is provided in line with the Local Government Act Section 80A which requires that the record of an assembly must be reported to the next practical Ordinary Council Meeting and recorded in the minutes of that meeting.

4.1. Environmental Implications

Nil

4.2. Social Implications

Nil

4.3. Resource Implications

Nil

4.4. Legal / Risk Implications

Nil

5. Appendices

5.1. Appendix 1 – Assembly of Councillors records

| Date of Assembly | Reason of Assembly |
|-------------------------|---------------------------------|
| 1 November 2012 | Councillors Welcome Meeting (1) |
| 14 November 2012 | Historical Societies Network |
| 15 November 2012 | Governance Workshop Day 1 |
| 16 November 2012 | Governance Workshop Day 2 |
| 19 November 2012 | Councillors Welcome Meeting (2) |

Author/s:

Stephanie O’Gorman, Governance Officer

Reviewed and Approved By:

Elaine Sowerby General Manager
Organisational Development and Governance

ASSEMBLY OF COUNCILLORS RECORD



City of
KINGSTON

This Form MUST be completed by;

- (i) The appropriate attending Council Officer or;
- (ii) Advisory Officer of a Village Committee or;
- (iii) Chairperson of any Council Advisory Committee where there is no Council Officer present and returned IMMEDIATELY to the Manager Governance and Performance Planning for filing.

Assembly details:

Date: 01/11/2012

Time: 5.45.m.

Assembly Location: Oakleigh Room, 1230 Nepean Hwy, Cheltenham

Assembly Reason: Councillors Welcome Meeting (1)

Attendees:

Councillor/s:

Cr John Ronke
Cr Tamara Barth
Cr Tamsin Bearsley
Cr Ron Brownlees OAM
Cr David Eden
Cr Geoff Gledhill
Cr Paul Peulich
Cr Steve Staikos
Cr Rosemary West OAM

Officer/s:

John Nevins, Chief Executive Officer
Mauro Bolin, General Manager Community Sustainability
Julian Harvey, Acting General Manager Corporate Services
Rachel Hornsby, General Manager Environmental Sustainability
Phil De Losa, Program Leader Governance
Stephanie O'Gorman, Governance Officer

Apologies:

Nil.

Matter/s Discussed:

1. Difference between Councillors and Council (Council Meetings & Assembly Meetings)
4. Background from each Councillor and Corporate Leadership Group (CLG) member and Councillor to introduce themselves; discussion of mutual interests and questions from Councillors
2. Overview of the Council Commencement Program
3. Council business processes to support both Councillors and Council
5. Advisory Committees and the appointment of Councillors to Committees
6. Overview of the Governance Workshop
7. Living Kingston 2035 Forums throughout November
8. Overview of the role of Mayor

Conflict of Interest Disclosures:

10/95035

Did senior officer present ask for disclosure of Conflicts of Interest

NA

Councillor Disclosures: (refer 2 over page) NA

Record if a Councillor left the meeting during the discussion.

Nil.

Officer Disclosures: (refer 4 over page)

Nil.

.....
Completed by: Stephanie O’Gorman

Date: 13 November 2012

Assembly of Councillors Record - Any record of an Assembly of Councillors is reported at next practicable Council meeting and recorded in the Minutes

Requirements and explanation:

1. Section 80A(1) and (2) Officer Requirements (re Written Record to be made of disclosure of Conflicts of Interest):

Section 80A(1) and (2) of the Local Government Act 1989, stipulates:

“(1) At an assembly of Councillors, the Chief Executive Officer must ensure that a written record is kept of:-

- (a) the names of all Councillors and members of Council staff attending,
- (b) the matters considered,
- (c) any conflict of interest disclosures made by a Councillor attending under subsection (3).”

(2) The Chief Executive Officer must ensure that the written record on an assembly of Councillors is-

- (a) kept for a period of 4 years after the date of the assembly; and
- (b) made available for public inspection at the Offices of the Council for a period of 12 months after the date of the Assembly.”

2. Section 80A(3) and (4) Councillor Requirements (re Conflict of Interest):

Section 80A(3) and (4) of the Local Government Act 1989, stipulates:

“(3) If a Councillor attending an assembly of Councillors knows that a matter being considered by the assembly is a matter that, were the matter to be considered and decided by Council, the Councillor would have to disclose a conflict of interest under section 79, the Councillor must, at the time set out in subsections (4), disclose to the assembly that he or she has a conflict of interest and leave the assembly whilst the matter is being considered by the assembly.

(4) A Councillor must disclose the conflict of interest either-

- (a) immediately before the matter in relation to which the Councillor has a conflict of interest is considered, or
- (b) if the Councillor realises that he or she has a conflict of interest after consideration of the matter has begun, as soon as the Councillor becomes aware that he or she has a conflict of interest”

3. Section 76AA definition:

as amended in Section 8 Local Government & Planning Legislation Bill 2010

“*Assembly of Councillors*” (however titled) means a planned or scheduled meeting of at least 5 Councillors and one member of Council staff, or an advisory committee of the Council where one or more Councillors are present which considers matters that are intended or likely to be:

- the subject of a decision of the Council: or
- subject to the exercise of a function, duty or power of the Council that has been delegated to a person or Committee; or

but does not include a meeting of the Council, a Special Committee of the Council, a club, association, peak body, political party or other organisation.”

Brief Explanation:

Some examples of an *Assembly of Councillors* will include:-

- Meeting / briefing of five Ward Councillors;
- Advisory committee or Village Committee Meeting where 1 or more Councillor is present
- Other Councillor briefing sessions;
- Budget discussions
- Workshops re key Council priorities
- Site inspections / preliminary planning conferences

providing **at least 5 Councillors and 1 Council Staff member present** and the matter/s considered are intended **or likely to be** subject of a future decision by the Council **OR** an officer decision under delegated authority.

As a matter of good practice, it would be considered exceptional not to deem any scheduled / planned meeting of five or more Councillors and an officer/s as an Assembly of Councillors.

If you require further clarification, please call the Manager Governance and Performance Planning.

4. Section 80B Officer Requirements (re Disclosure of Conflicts of Interest):

as amended in Section 18 Local Government & Planning Legislation Bill 2010

A member of Council staff who has a conflict of interest in a matter in which they also have delegated power, duty or function must:

- not exercise the power or discharge the duty or function; and
- disclose the type of interest and the nature of the interest to the Chief Executive Officer, in writing, as soon as he or she becomes aware of the conflict of interest in the matter, including those situations when the Officer is exercising a statutory power or duty of the CEO.

ASSEMBLY OF COUNCILLORS RECORD



City of
KINGSTON

This Form **MUST** be completed by;

- (i) The appropriate attending Council Officer or;
- (ii) Advisory Officer of a Village Committee or;
- (iii) Chairperson of any Council Advisory Committee where there is no Council Officer present and returned **IMMEDIATELY** to the Manager Governance and Performance Planning for filing.

Assembly details:

Date: 15/11/2012

Time: 8.45am

Assembly Location: Spring Valley Golf Course

Assembly Reason: Governance Workshop Day 1

Attendees:

Councillor/s:

Cr Ron Brownlees OAM
Cr Tamara Barth
Cr Tamsin Bearsley
Cr David Eden
Cr Paul Peulich
Cr John Ronke
Cr Steve Staikos
Cr Rosemary West OAM

Officer/s

John Nevins
Elaine Sowerby
Paul Franklin
Mauro Bolin
Anthony Basford
Phil DeLosa
Stephanie O’Gorman
Angela Granter

Apologies:

Cr Geoff Gledhill

Matter/s Discussed:

Legacy
Roles and Responsibilities
Governance
Legislation

Conflict of Interest Disclosures:

Did senior officer present ask for disclosure of Conflicts of Interest Yes

Councillor Disclosures: (refer 2 over page)

Record if a Councillor left the meeting during the discussion.

Officer Disclosures: (refer 4 over page)

Nil.

Completed by: Stephanie O’Gorman

Date: 20/11/2012

Assembly of Councillors Record - Any record of an Assembly of Councillors is reported at next practicable Council meeting and recorded in the Minutes

Requirements and explanation:

1. Section 80A(1) and (2) Officer Requirements (re Written Record to be made of disclosure of Conflicts of Interest):

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“(1) At an assembly of Councillors, the Chief Executive Officer must ensure that a written record is kept of:-

- (a) the names of all Councillors and members of Council staff attending,
- (b) the matters considered,
- (c) any conflict of interest disclosures made by a Councillor attending under subsection (3).”

(2) The Chief Executive Officer must ensure that the written record on an assembly of Councillors is-

- (a) kept for a period of 4 years after the date of the assembly; and
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Section 80A(3) and (4) of the Local Government Act 1989, stipulates:

“(3) If a Councillor attending an assembly of Councillors knows that a matter being considered by the assembly is a matter that, were the matter to be considered and decided by Council, the Councillor would have to disclose a conflict of interest under section 79, the Councillor must, at the time set out in subsections (4), disclose to the assembly that he or she has a conflict of interest and leave the assembly whilst the matter is being considered by the assembly.

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- (a) immediately before the matter in relation to which the Councillor has a conflict of interest is considered, or
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but does not include a meeting of the Council, a Special Committee of the Council, a club, association, peak body, political party or other organisation.”

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providing **at least 5 Councillors and 1 Council Staff member present** and the matter/s considered are intended **or likely to be** subject of a future decision by the Council **OR** an officer decision under delegated authority.

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If you require further clarification, please call the Manager Governance and Performance Planning.

4. Section 80B Officer Requirements (re Disclosure of Conflicts of Interest):

as amended in Section 18 Local Government & Planning Legislation Bill 2010

A member of Council staff who has a conflict of interest in a matter in which they also have delegated power, duty or function must:

- not exercise the power or discharge the duty or function; and
- disclose the type of interest and the nature of the interest to the Chief Executive Officer, in writing, as soon as he or she becomes aware of the conflict of interest in the matter, including those situations when the Officer is exercising a statutory power or duty of the CEO.

ASSEMBLY OF COUNCILLORS RECORD



City of
KINGSTON

This Form **MUST** be completed by;

- (i) The appropriate attending Council Officer or;
- (ii) Advisory Officer of a Village Committee or;
- (iii) Chairperson of any Council Advisory Committee where there is no Council Officer present and returned **IMMEDIATELY** to the Manager Governance and Performance Planning for filing.

Assembly details:

Date: 16/11/12

Time: 8.45am

Assembly Location: Kingswood Golf Course

Assembly Reason: Governance Workshop Day 2

Attendees:

Councillor/s:

Cr Ron Brownlees OAM
Cr Tamara Barth
Cr Tamsin Bearlsey
Cr David Eden
Cr John Ronke
Cr Steve Staikos
Cr Rosemary West OAM

Officer/s:

John Nevins
Paul Franklin
Mauro Bolin
Anthony Basford
Angela Granter
Phil DeLosa
Stephanie O’Gorman

Apologies:

Cr Geoff Gledhill
Cr Paul Peulich

Matter/s Discussed:

Kingston Governance Framework
Panel Discussion
Code of Conduct

Conflict of Interest Disclosures:

Did senior officer present ask for disclosure of Conflicts of Interest Yes

Councillor Disclosures: (refer 2 over page)

Record if a Councillor left the meeting during the discussion.

Officer Disclosures: (refer 4 over page)

Nil

Completed by: Stephanie O’Gorman

Date: 20/11/12

Assembly of Councillors Record - Any record of an Assembly of Councillors is reported at next practicable Council meeting and recorded in the Minutes

Requirements and explanation:

1. Section 80A(1) and (2) Officer Requirements (re Written Record to be made of disclosure of Conflicts of Interest):

Section 80A(1) and (2) of the Local Government Act 1989, stipulates:

“(1) At an assembly of Councillors, the Chief Executive Officer must ensure that a written record is kept of:-

- (a) the names of all Councillors and members of Council staff attending,
- (b) the matters considered,
- (c) any conflict of interest disclosures made by a Councillor attending under subsection (3).”

(2) The Chief Executive Officer must ensure that the written record on an assembly of Councillors is-

- (a) kept for a period of 4 years after the date of the assembly; and
- (b) made available for public inspection at the Offices of the Council for a period of 12 months after the date of the Assembly.”

2. Section 80A(3) and (4) Councillor Requirements (re Conflict of Interest):

Section 80A(3) and (4) of the Local Government Act 1989, stipulates:

“(3) If a Councillor attending an assembly of Councillors knows that a matter being considered by the assembly is a matter that, were the matter to be considered and decided by Council, the Councillor would have to disclose a conflict of interest under section 79, the Councillor must, at the time set out in subsections (4), disclose to the assembly that he or she has a conflict of interest and leave the assembly whilst the matter is being considered by the assembly.

(4) A Councillor must disclose the conflict of interest either-

- (a) immediately before the matter in relation to which the Councillor has a conflict of interest is considered, or
- (b) if the Councillor realises that he or she has a conflict of interest after consideration of the matter has begun, as soon as the Councillor becomes aware that he or she has a conflict of interest”

3. Section 76AA definition:

as amended in Section 8 Local Government & Planning Legislation Bill 2010

“*Assembly of Councillors*” (however titled) means a planned or scheduled meeting of at least 5 Councillors and one member of Council staff, or an advisory committee of the Council where one or more Councillors are present which considers matters that are intended or likely to be:

- the subject of a decision of the Council: or
- subject to the exercise of a function, duty or power of the Council that has been delegated to a person or Committee; or

but does not include a meeting of the Council, a Special Committee of the Council, a club, association, peak body, political party or other organisation.”

Brief Explanation:

Some examples of an *Assembly of Councillors* will include:-

- Meeting / briefing of five Ward Councillors;
- Advisory committee or Village Committee Meeting where 1 or more Councillor is present
- Other Councillor briefing sessions;
- Budget discussions
- Workshops re key Council priorities
- Site inspections / preliminary planning conferences

providing **at least 5 Councillors and 1 Council Staff member present** and the matter/s considered are intended **or likely to be** subject of a future decision by the Council **OR** an officer decision under delegated authority.

As a matter of good practice, it would be considered exceptional not to deem any scheduled / planned meeting of five or more Councillors and an officer/s as an Assembly of Councillors.

If you require further clarification, please call the Manager Governance and Performance Planning.

4. Section 80B Officer Requirements (re Disclosure of Conflicts of Interest):

as amended in Section 18 Local Government & Planning Legislation Bill 2010

A member of Council staff who has a conflict of interest in a matter in which they also have delegated power, duty or function must:

- not exercise the power or discharge the duty or function; and
- disclose the type of interest and the nature of the interest to the Chief Executive Officer, in writing, as soon as he or she becomes aware of the conflict of interest in the matter, including those situations when the Officer is exercising a statutory power or duty of the CEO.

ASSEMBLY OF COUNCILLORS RECORD



City of
KINGSTON

This Form **MUST** be completed by;

- (i) The appropriate attending Council Officer or;
- (ii) Advisory Officer of a Village Committee or;
- (iii) Chairperson of any Council Advisory Committee where there is no Council Officer present and returned **IMMEDIATELY** to the Manager Governance and Performance Planning for filing.

Assembly details:

Date: 19/11/12

Time: 5.45pm

Assembly Location: Oakleigh Room, 1230 Nepean Hwy, Cheltenham

Assembly Reason: Councillors Welcome Meeting (2)

Attendees:

Councillor/s:

Cr Ron Brownlees OAM
Cr Tamara Barth
Cr Tamsin Bearsley
Cr David Eden
Cr Geoff Gledhill
Cr John Ronke
Cr Steve Staikos
Cr Rosemary West OAM

Officer/s:

John Nevins
Paul Franklin
Mauro Bolin
Anthony Basford
Ian Nice
Jonathan Guttman
Rosa Zouzoulas
Hannah McBride-Burgess
Nicole Worsley
Naomi Crowe
Phil DeLosa
Stephanie O'Gorman

Apologies:

Cr Paul Peulich

Matter/s Discussed:

- Councillors and Council's Strategic and Statutory Planning Roles and the basic Council Business processes to support these roles.
- Review Agenda for Planning Committee on 3 December
- Review Agenda for Ordinary Council Meeting on 26 November
- Northcliffe Residential Hostel Licence Transfer Update

Conflict of Interest Disclosures:

Did senior officer present ask for disclosure of Conflicts of Interest Yes

Councillor Disclosures: (refer 2 over page)

Record if a Councillor left the meeting during the discussion.

Officer Disclosures: (refer 4 over page)

Nil

Completed by: Stephanie O’Gorman

Date: 20/11/12

Assembly of Councillors Record - Any record of an Assembly of Councillors is reported at next practicable Council meeting and recorded in the Minutes

Requirements and explanation:

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(4) A Councillor must disclose the conflict of interest either-

- (a) immediately before the matter in relation to which the Councillor has a conflict of interest is considered, or
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3. Section 76AA definition:

as amended in Section 8 Local Government & Planning Legislation Bill 2010

“*Assembly of Councillors*” (however titled) means a planned or scheduled meeting of at least 5 Councillors and one member of Council staff, or an advisory committee of the Council where one or more Councillors are present which considers matters that are intended or likely to be:

- the subject of a decision of the Council: or
- subject to the exercise of a function, duty or power of the Council that has been delegated to a person or Committee; or

but does not include a meeting of the Council, a Special Committee of the Council, a club, association, peak body, political party or other organisation.”

Brief Explanation:

Some examples of an *Assembly of Councillors* will include:-

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- Budget discussions
- Workshops re key Council priorities
- Site inspections / preliminary planning conferences

providing **at least 5 Councillors and 1 Council Staff member present** and the matter/s considered are intended **or likely to be** subject of a future decision by the Council **OR** an officer decision under delegated authority.

As a matter of good practice, it would be considered exceptional not to deem any scheduled / planned meeting of five or more Councillors and an officer/s as an Assembly of Councillors.

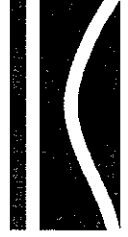
If you require further clarification, please call the Manager Governance and Performance Planning.

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as amended in Section 18 Local Government & Planning Legislation Bill 2010

A member of Council staff who has a conflict of interest in a matter in which they also have delegated power, duty or function must:

- not exercise the power or discharge the duty or function; and
- disclose the type of interest and the nature of the interest to the Chief Executive Officer, in writing, as soon as he or she becomes aware of the conflict of interest in the matter, including those situations when the Officer is exercising a statutory power or duty of the CEO.



City of
KINGSTON

ASSEMBLY OF COUNCILLORS RECORD

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Assembly details:

Date: 14/11/12 Time: 12.30 ~~a.m.~~ p.m.

Assembly Location: DINKLEY NEIGHBOURHOOD COMMUNITY CENTRE

Attendees:

Councillor/s: CR WEST

Officer/s: PATRICIA SMYTH, MLE
DR G. WHITEHEAD, CITY HISTORIAN

Matter/s Discussed:

1. Historical Societies reported
2. City historian reported

Conflict of Interest Disclosures:

Did senior officer present ask for disclosure of Conflicts of Interest None declared Yes No (Please circle)

Councillor Disclosures: (refer 2 over page)

Record if a Councillor left the meeting during the discussion and at what time?

NOT APPLICABLE

Officer Disclosures: (refer 4 over page)

Completed by: PATRICIA SMYTH
Date: 14/11/12

Date of Ordinary Council meeting at which the Assembly was reported.....

Ordinary Council Meeting

26 November 2012

Agenda Item No: O 201

CONFIDENTIAL INFORMATION REGISTER

Contact Officer: Phil DeLosa, Program Leader Governance

Purpose of Report

This report seeks a Council resolution to declare information confidential in accordance with the requirements of section 77(2)(b) of the Local Government Act 1989.

Disclosure of Officer / Contractor Direct or Indirect Interest

No Council officer/s and/or Contractor/s who have provided advice in relation to this report have declared a Conflict of Interest regarding the matter under consideration.

Recommendation

That Council in accordance with section 77(2)(b) of the Local Government Act 1989 :

- 1. Declare the StopLine Report confidential as it is a personnel matter; and*
- 2. Add the StopLine Report to the Confidential Information Register.*

1. Executive Summary

This report has been prepared in response to a Council resolution from the Ordinary Meeting of Council on 25 June 2012 that all confidential items for which confidential status is due to expire are brought to the attention of the Mayor and Councillors prior to their expiry and with adequate opportunity for Council to consider them at a Council meeting.

Section 77(2)(c) of the Local Government Act 1989 enables the Chief Executive Officer to designate information that is confidential, specifying the relevant ground/s applying under section 89(2) of the Act. Such information is designated confidential for a period of 50 days only and requires a Council resolution in order to remain confidential unless Council resolves that the information is not confidential.

2. Background

The definition of 'confidential information' in section 77 of the Local Government Act is as follows:

- “(2) For the purposes of this section, information is “confidential information” if -
- (a) the information was provided to the Council or a special committee in relation to a matter considered by the Council or special committee at a meeting closed to members of the public and the Council or special committee has not passed a resolution that the information is not confidential; or
 - (b) the information has been designated as confidential information by a resolution of the Council or a special committee which specifies the relevant ground or grounds applying under section 89(2) and the Council

or special committee has not passed a resolution that the information is not confidential; or

(c) subject to sub-section (3), the information has been designated in writing as confidential information by the Chief Executive Officer specifying the relevant ground or grounds applying under section 89(2) and the Council has not passed a resolution that the information is not confidential.

(3) Confidential information referred to in sub-section (2)(c) ceases to be confidential at the expiry of the period of 50 days after the designation is made unless sub-section (2)(a) or (2)(b) applies to the information.”

Under section 77(3), if the Chief Executive Officer has designated in writing that the information is confidential information, the information will cease to be confidential at the expiration of 50 days after the designation was made.

A Council resolution is now required to ensure the confidential status and legislative protection of the document.

3. Discussion

3.1. Council Plan Alignment

Planned Outcome 5 – Efficient and Innovative Stewardship of the Organisation and Resources

Strategy 5.2.3 – Deliver open and transparent Council and organisational decision making and reporting processes.

The Confidential Information Register provides a clear process for the classification of confidential information for Councillors.

4. Conclusion

This report will now be entered into the Confidential Information Register and will remain confidential in accordance with the Local Government Act 1989.

5. Appendices

Nil.

Author: Stephanie O’Gorman, Governance Officer

Reviewed and Approved By: Elaine Sowerby, General Manager Organisational Development and Governance

Ordinary Council Meeting

26 November 2012

Agenda Item No: O 202

REQUEST TO REVIEW COUNCIL DECISION ON 4 HAZEL AVENUE, EDITHVALE

Contact Officer: Dusan Ivanic

Purpose of Report

In accordance with Section 205 of the Public Health and Wellbeing Act 2008, the applicant for the rooming house at 4 Hazel Avenue, Edithvale on 6 November 2012 submitted an application for Council to review its decision made on 24 of September 2012 to not register the rooming house.

Disclosure of Officer / Contractor Direct or Indirect Interest

No Council officer/s and/or Contractor/s who have provided advice in relation to this report have declared a Conflict of Interest regarding the matter under consideration.

Recommendation

Officers recommend that Council:

1. Review the original decision as required under the Public Health and Wellbeing Act 2008.
2. Revoke the original decision and allow registration upon compliance with the Public Health and Wellbeing Act 2008 as there are no grounds for refusal of registration under the Act.
3. Provide written confirmation of the outcome of the review and Councils decision.

1. Executive Summary

Council refused registration of a rooming house at 4 Hazel Avenue Edithvale at the 24th of September 2012 Council meeting on the grounds that there would be an adverse impact on the amenity of the community and an inappropriate use of the site. The applicant has now lodged a formal request for a review of that decision. In accordance with the Public Health and Wellbeing Act 2008, Council must review the initial decision to refuse registration and provide to the applicant a written statement of the new decision and the reasons for that decision.

2. Background

An application for the registration of a Rooming House under the Public Health and Wellbeing Act 2008 was received by Council and was a subject of concerns within the neighboring community. While council officers hold delegated authority to approve registration under the Act, a request was made for the application to be presented to Council for a decision.

A report was presented at the 24th September Council meeting as Agenda Item No: O 179, BRIEFING ON PROPOSED ROOMING HOUSE - 4 HAZEL AVENUE EDITHVALE and is attached for information. Council's decision was:

1. That the application for registration at 4 Hazel Avenue, Edithvale be refused as there would be an adverse impact on the amenity of the community and an inappropriate use of the site.
2. That Council receives legal advice on how to prevent the ongoing use of the property as a rooming house/ boarding house registered or otherwise.

3. Discussion

3.1. Council Plan Alignment

Planned Outcome 5 – Community Inspired Leadership

Strategy 5.3 Sound Governance and responsible financial leadership.

3.2. Consultation/Internal Review

Council's Building Department has conducted a final inspection of the premises on the 20th of September and found it to comply with the relevant requirements for safety measures. An Occupancy Permit allowing the property to be used was subsequently issued on the 21st of September.

An inspection was carried out by Council's Environmental Health Officer to ascertain compliance with the Public Health and Wellbeing Act and relevant Regulations. In general the premise complies with the requirements of the Act and Regulations, and as such would normally be registered by Council as a rooming house.

3.3. Operation and Strategic Issues

3.3.1. Environmental Health Statutory Process:

The Public Health and Wellbeing Act and the Public Health and Wellbeing Regulations 2009 set out requirements that need to be met prior to Council registering a rooming house. There is no allowance within the Act for objection or appeal from affected residents to a registration decision.

Grounds to Refuse Registration - Refusal of registration may only occur where an application does not comply with the requirements of the Act and the grounds for refusing to issue the registration are specifically listed within the Public Health & Wellbeing Act - Section 76 (2), being;

- a) the applicant, registration holder, prescribed accommodation or the premises do not meet or comply with any requirements of this Act or the regulations that is applicable;
- b) the registration holder has failed to comply with any conditions to which the registration is subject;
- c) the applicant has ceased to provide accommodation or conduct the business in respect of which the registration is required;
- d) there is a risk to the health of persons if the registration is not cancelled or suspended or is issued, transferred or renewed;
- e) any other ground which is prescribed for the purpose of this section (Council is asked to note that no further grounds have been prescribed by either legislation or Regulation).

Section 76 (3) Requires Council to notify the applicant in writing of the decision made under Section 76 (2) and the ground or grounds on which the decision is based.

The Public Health and Wellbeing Act also provides for an aggrieved person, the applicant, to have a decision reviewed by Council under Section 205. This section states

- 1) In this section –
decision means a decision made by Council under section 74 or 76 in respect to the issue, variation, transfer, renewal, cancellation or suspension of registration;
person aggrieved means the person who is the applicant for, or the holder of, the registration in respect of which the decision was made.
- 2) A person aggrieved by a decision may within 28 days of being notified of the decision apply to Council for a review of the decision.
- 3) On receiving the application under subsection (2), the Council must review the decision.
- 4) The Council is taken to have affirmed the decision if the Council has not determined an application under this section within –
 - a) 28 days of receiving the application; or
 - b) the period agreed to by the Council and the applicant under subsection (5)
- 5) The Council and the applicant may agree that the Council may determine the applicant's application within a period that is greater than the 28 days specified in subsection (4)(a).
- 6) The Council may –
 - a) make a decision affirming, varying or revoking the decision; and
 - b) if the Council revokes the decision make any other decision as the Council considers appropriate under the provisions under which the decision was made.
- 7) The Council must within the period applying under subsection (4) give the applicant for review a written statement of the decision and the reasons for the decision.
- 8) The Council must inform an applicant for review in writing of the applicant's right to apply to VCAT for a review under section 207.

3.3.2. Planning Permit
 Not required

3.3.3. Building Act Compliance

The premises has been assessed for compliance with a previous Building Notices and has been found to comply. An Occupancy Permit was issued on the 21st of September 2012.

3.4. Options

3.4.1. Option 1 – Council revoke the original decision and allow registration of the rooming house.

The application complies with the major requirements for registration within the Public Health and Wellbeing Act and Regulations. Minor items relating to operational requirements are to be provided once the premises is registered and operating. The Building Department has issued an occupancy permit for the premises. There are no identified grounds under the Public Health and Wellbeing Act to refuse registration.

While this decision may not be consistent with the wishes of the residents, once an applicant has complied with the requirements of the Public Health and Wellbeing Act, Council has no legal grounds to refuse the registration.

3.4.2. Option 2 – Council affirm the original decision to not register the rooming house.

Grounds for refusing to issue the registration are listed within the Public Health & Wellbeing Act - Section 76 (2). There are no grounds within the Public Health and Wellbeing Act or the Regulations that would support this decision.

The applicant has undertaken the first step in requesting the refusal to register be internally reviewed by Council. If an applicant has had a decision

reviewed by Council and they are still not satisfied with the outcome, a further appeal process is available through VCAT.

As there are no legal grounds for refusal of registration under the Public Health and Wellbeing Act, the applicant has sufficient grounds to appeal to VCAT with a likely outcome of Council's decision being overturned and costs may be awarded against Council. There is also a risk of the applicant seeking further damages beyond legal cost through litigation (lost income).

4. Conclusion

The applicant has sought a review of council's decision as required under the Act. Council has no legal grounds to refuse the registration.

4.1. Environmental Implications

Not Applicable

4.2. Social Implications

Public concern that the rooming house will lower housing values, cause antisocial and inappropriate behaviour which may impact on the residents in the area.

Low cost housing is in short supply throughout Melbourne, registering the rooming house would provide housing options for disadvantaged individuals.

4.3. Resource Implications

Not Applicable.

4.4. Legal / Risk Implications

Refusal to grant registration can be challenged in VCAT. As there are no grounds for refusal of registration applicable under the Act, Council does not have grounds to refuse registration. Any appeal to VCAT would likely succeed and Council may be subject to cost. The applicant also has indicated that he is prepared to undertake legal action for recovery of lost revenue which would potentially be around \$1,200 in weekly rent, plus legal costs.

5. Appendices

- 5.1.** Appendix 1 – Agenda Item No: O 179, Briefing on Proposed Rooming House - 4 Hazel Avenue, Edithvale
- 5.2.** Appendix 3 – Extract of Council Minutes – 24 September 2012
- 5.3.** Appendix 2 – Application for review of decision – **Confidential**
- 5.3** Appendix 3 - Legal Advice - **Confidential**

Author/s: Dusan Ivanic – Team Leader Environmental Health
Reviewed and Approved By: Paul Franklin – General Manager Corporate Services

Ordinary Council Meeting

24 September 2012

Agenda Item No: O 179

BRIEFING ON PROPOSED ROOMING HOUSE – 4 HAZEL AVENUE EDITHVALE

Contact Officer: Dusan Ivanic

Purpose of Report

Advise Council of registration requirements Under the Public Health and Wellbeing Act 2008 and present report for registration of a rooming house.

Disclosure of Officer / Contractor Direct or Indirect Interest

No Council officer/s and/or Contractor/s who have provided advice in relation to this report have declared a Conflict of Interest regarding the matter under consideration.

Recommendation:

Officer recommends that Council:

1. Receive the information and progress registration for a Rooming House located at 4 Hazel Avenue, Edithvale, upon compliance with the Public Health and Wellbeing Act 2008 as there are no grounds under the Act to refuse registration for this application.

1. Executive Summary

An application for registration of a 12 person Rooming House under the Public Health and Wellbeing Act 2008 has been received by Council. Prior to application, the proposal for the Rooming House located at 4 Hazel Avenue, Edithvale, had been the subject of concern within the neighbouring community.

Council's Planning, Building and Environmental Health Teams have Legislative responsibilities in relation to the nature and operation of rooming houses. The application has been assessed by all relevant departments and there are no legislative grounds to refuse the registration. Council officers hold delegated authority to approve registration under the Public Health and Wellbeing Act 2008 (PHWA), however a request to present the application to Council for decision has been made.

2. Background

Initial correspondence was received by Council raising concerns that a 12 person rooming house was operating at 4 Hazel Avenue Edithvale. Residents were particularly concerned about the negative impact of likely users of the rooming house. These impacts included anticipated inappropriate behaviour, excessive noise, the use of illegal drugs and competition for limited on road parking.

Upon further investigation, it was found that the rooming house was not operating; however, a building permit for internal works had been sought and was issued for a 1b Boarding House as the proposal complied with the State Government Building Legislation. The permit related to removal/movement of walls to increase the size of rooms as well as installation of fire safety measures.

There were no grounds to refuse the Building Permit. Currently the Building Department is awaiting further advice from the owner on the status of the building works and as a result the final building approval (Certificate of Occupancy) has not yet been issued.

Subsequent to the building permit being issued, additional information was submitted by the applicant, who is also the owner of the property, to Council's Building Department enquiring about a proposal to install partition walls which would turn the house from 3 large bedrooms into 12 partitioned rooms.

Advice was sought from Council's Solicitors to clarify meaning of "room" and requirements under the Planning Legislation. The advice was consistent with Officers opinion that installing partitions would make each partitioned area a room. By installing partitions the proposal would effectively require a Town Planning Permit as there would be more than 10 rooms within the proposed use.

A meeting was held between the applicant and Council Officers to clarify intentions regarding the property, the nature of the proposed rooming house and to ensure all appropriate applications and permits are sought.

During this meeting, the owner of the site confirmed that the proposed rooming house does not include the installation of any partitions (or similar) within any bedroom and that the bungalow in the rear yard will not be used for sleeping purposes.

The owner was made aware that the property was not to be used as a rooming house until appropriate registration has been granted by Council. He was also informed that the installation of partitions would be seen as increasing the number of rooms and as such applications for an amended Building Permit and a Town Planning Permit would need to be submitted if the partitions were installed.

3. Discussion

3.1. Council Plan Alignment

Planned Outcome 5 – Community Inspired Leadership

Strategy: 5.3 Sound governance and responsible financial leadership

The recommendation complies with the requirements of the Public Health and Wellbeing Act as there are no grounds for refusal of registration upon completion of all required works. This recommendation also encompasses the requirements of transparency and accountability in decision making as well as meeting all statutory requirements.

3.2. Consultation/Internal Review

Discussions have occurred with the Mayor, CEO and Ward Councillors in regard to the proposed rooming house as a result of community concern. A written response has been provided to residents that have voiced their concern or opposition to the rooming house. Letters from Environmental Health and Planning have been sent to the owner of the proposed rooming house addressing relevant requirements.

Statutory Planning, Planning Enforcement, Building Services and Environmental Health have held discussions to ensure consistent information is provided to residents and the proposed applicant has been made aware of all Legal requirements.

A further meeting has occurred between residents, the Mayor John Ronke, The Local Member of Parliament Donna Bauer, a representative of the Minister for Consumer Affairs, a representative₂ of Consumer Affairs Victoria and Dusan Ivanic,

Team Leader Environmental Health. Following this meeting a request was made that the registration for the rooming house at 4 Hazel Avenue be presented to Council for a decision, rather than it being made through delegated authority by Officers.

3.3. Operation and Strategic Issues

3.3.1. Statutory Planning:

Council Planning Officers have obtained legal advice from Maddocks Lawyers in relation to this matter particularly the permit triggers and exemptions that apply to rooming houses (called “boarding houses”) in the Kingston Planning Scheme.

In essence, a planning permit is not required to establish or operate a rooming house if:

- the proposal involves 10 or less habitable rooms; and/or
- there are no external building works.

As the proposed Rooming House has 5 habitable rooms and the owner of the facility has indicated that no partitions are to be installed so as to exceed the 10 habitable room threshold, the use of the site for the purposes of a rooming house capable of housing up to 12 people does not require a Planning Permit.

3.3.2. Building:

Building Permits are not subject to objection by affected residents. A permit for internal works was applied for and granted. As at the time of writing this report, a final inspection is scheduled to be completed by the Building Department. As there is one minor item remaining, it is envisaged that the applicant will comply and the Municipal Building Surveyor will have no option under the Building Act but issue an Occupancy Permit.

3.3.3. Environmental Health – Statutory Process:

The PHWA and the Public Health and Wellbeing Regulations 2009 set out requirements that need to be met prior to Council registering a rooming house. There is no allowance within the Act for objection or appeal from affected residents to a registration decision.

In the process of registering a premises, applicants are provided with advice and information to ensure they complete any works so that compliance is gained prior to final inspection. Officers would normally issue a notice requiring certain items to be completed as a result of any site visits or discussions. A Conditional Registration may be issued where items which are minor in nature and do not affect the health or safety of the rooming house residents have not as yet been completed.

A site visit was conducted at the premises and it was found to comply with the size of rooms and provision of other amenities allowing for a maximum of 12 persons to be accommodated.

Several items were not noted during the inspection as the rooming house currently is not in operation. These normally form part of the operational activities of the rooming house and include provision of hot water and a register of occupants. These items would generally be provided prior to the final inspection and registration being granted.

Further information has been received from the owner of the property including a copy of the house rules. These are not required as part of the registration process.

Grounds to Refuse Registration - Refusal of registration may only occur where an application does not comply with the requirements of the Act and

the grounds for refusing to issue the registration are specifically listed within the Public Health & Wellbeing Act - Section 76 (2), being;

- a) the applicant, registration holder, prescribed accommodation or the premises do not meet or comply with any requirements of this Act or the regulations that is applicable;
- b) the registration holder has failed to comply with any conditions to which the registration is subject;
- c) the applicant has ceased to provide accommodation or conduct the business in respect of which the registration is required;
- d) there is a risk to the health of persons if the registration is not cancelled or suspended or is issued, transferred or renewed;
- e) any other ground which is prescribed for the purpose of this section (Council is asked to note that no further grounds have been prescribed by either legislation or Regulation).

Section 76 (3) Requires Council to notify the applicant in writing of the decision made under Section 76 (2) and the ground or grounds on which the decision is based.

Currently there are only minor items that require attention, however once completed, Council would have no grounds to refuse to issue the registration. Should Council refuse to register the rooming house upon their compliance, Section 205 of the PHWA sets out the requirements and timeframes for an applicant to have an internal review by Council of that decision. Section 207 allows for an applicant to have a decision under Section 76 or Section 205 to be review by VCAT.

3.3.4. Consumer Affairs Victoria:

New legislation which covers amenities within a rooming house comes in force in the 1st of April 2013. This new legislation is enforced by Consumer Affairs Victoria. It appears that the owner of the property may find it difficult to comply with these new provisions for 12 residents; however they would be able to comply by having a reduced number of residents. The owner of the property has been advised of these new standards.

3.3.5. Victoria Police:

Concerns raised by residents about use of drugs and other anti social/inappropriate behaviour are controlled by legislation which is enforced by Victoria Police. They are the appropriate authority to deal with any such issues that may arise from this property.

3.4. Options

3.4.1. Option 1 – Council allow registration of the rooming house

The application complies with the major requirements for registration within the PHWA and Regulations. There are minor items requiring attention, as well as the final inspection from the Building Department to be completed prior to registration. There are no identified grounds under the PHWA to refuse registration once these items are completed.

While this decision may not be consistent with the wishes of the residents, once an applicant has complied with the requirements of the PHWA, Council has no legal grounds to refuse the registration.

3.4.2. Option 2 – Council formally refuse to register the rooming house.

Grounds for refusing to issue the registration are listed within the Public Health & Wellbeing Act - Section 76 (2). Once final completion of works occurs there are no grounds within the PHWA or the Regulations that would support this decision.

The PHWA provides an aggrieved applicant the opportunity to have a refusal to register decision internally reviewed by Council or by VCAT. If an applicant

has had a decision reviewed by council and they are still not satisfied with the outcome, a further appeal process is available through VCAT.

As there are no legal grounds for refusal of registration under the PHWA , the applicant has sufficient grounds to appeal to VCAT with a likely outcome of Councils decision being overturned and costs may be awarded against Council.

4. Conclusion

The applicant has sought registration for a rooming house under the Public Health & Wellbeing Act. A final inspection for an Occupancy Permit is due for completion by Councils Building Surveyor. Once completed a final inspection would be conducted by Environmental Health for compliance to the PHWA. When all requirements under the Act have been met, Council has no legal grounds to refuse registration and as such Option 1 should be adopted.

4.1. Environmental Implications

Not applicable.

4.2. Social Implications

Public concern that the rooming house will lower housing values, cause antisocial and inappropriate behaviour which may impact on the resident in the area.

Low cost housing is in short supply throughout Melbourne, registering the rooming house would provide housing options for disadvantage individuals.

4.3. Resource Implications

Not applicable.

4.4. Legal / Risk Implications

Refusal to grant registration can be challenged in VCAT. As there are no grounds for registration applicable under the Act, Council does not have grounds to refuse registration. Any appeal by the applicant would succeed and Council may be subject to costs.

Author: Dusan Ivanic – Team Leader Environmental Health

Reviewed and Approved By: Paul Franklin – General Manager Corporate Service

O 179 Hazel Avenue Rooming House Application

Moved: Cr Brownlees

Seconded: Cr Shewan

1. That the application for registration at 4 Hazel Avenue, Edithvale be refused as there would be an adverse impact on the amenity of the community and an inappropriate use of the site.
2. That Council receives legal advice on how to prevent the ongoing use of the property as a rooming house/boarding house registered or otherwise.

Cr Staikos left the Council Chamber at 10.12pm.

Cr Staikos returned to the Council Chamber at 10.14pm.

CARRIED

Agenda Item No: O 203

APPROVAL CHARITY COLLECTIONS/APPEALS

Contact Officer: Neil Sheppard

Purpose of Report

This is a request for Council to approve the application for a charity collection/appeal by an organisation not currently listed in Council policy 1.01 Charity Collections/Appeals and amend the current delegation for approvals for such applications to the General Manager Corporate Services

Disclosure of Officer / Contractor Direct or Indirect Interest

No Council officer/s and/or Contractor/s who have provided advice in relation to this report have declared a Conflict of Interest regarding the matter under consideration.

Recommendation

That Council approve the application for the **Carrum Volunteer Coastguard** to undertake:

1. An intersection collection on Saturday 8 December 2012 at the intersection of Station Street and Edithvale Road Edithvale.
2. That Council delegate authority to approve future permit applications to the General Manager Corporate Services pending a review of the current policy.

1. Executive Summary

The current Council Policy 1.01 Charity Collections/Appeals only allows 7 listed organisations to conduct door knock appeals and intersection collections in Kingston. All other organisation's applications must be approved by Council. This report requests Council to consider an application by the **Carrum Volunteer Coastguard** undertake the following activities.

1. An intersection collection on Saturday 8 December 2012 at the intersection of Station St and Edithvale Road Edithvale.

Council officers support the application.

Until the current policy has been reviewed and updated it is requested that Council delegate authority to approve permit applications to the General Manager Corporate Services. This will streamline the permit application and approval process.

2. Background

The current Council Policy 1.01 Charity Collections/Appeals adopted in 1997 allows the following charity organizations to conduct one door knock appeal in Kingston per year:

1. Red Cross (March of each year)
2. AUSTCARE (May-June of each year)
3. Salvation Army (May of each year)

4. National Heart Foundation (Sunday in August of each year)
5. Freedom from Hunger (October of each year)
6. Spastic Society of Victoria (April of each year)
7. Royal Children's Hospital Good Friday Appeal

In addition to the 7 listed organizations, other organizations may be permitted to conduct door knocks, however all applications received from other organizations must be referred to Council for approval.

This policy has not been reviewed since 1997 and will be the subject of a further report recommending amendments to the existing policy.

3. Discussion

3.1. Council Plan Alignment

Planned Outcome 3 - Healthy, Strong and Connected Communities

Planned Outcome 5 – Community Inspired Leadership

3.2. Consultation/Internal Review

Statutory Education and Compliance have liaised with the Communications and Governance teams. Further consultation will occur as part of the review of the Council Policy 1.01 Charity Collections/Appeals.

3.3. Operation and Strategic Issues

Statutory Education and Compliance will now work with the Communications team to resolve operational issues associated with applications received from organisations that are not listed on the 1997 Policy. A report to Council will be prepared recommending an amendment to the current Council Policy 1.01 Charity Collections/Appeals that will remove the restrictions on which charities may be granted a permit to fund raise by door knocking or undertaking an intersection collection in Kingston, without the requirement of a report being prepared for Council consideration.

4. Conclusion

4.1. Environmental Implications

There are no environmental implications.

4.2. Social Implications

There are no social implications.

4.3. Resource Implications

There are no resource implications.

4.4. Legal / Risk Implications

Officers believe there is no legal or risk implications for the recommended amendment.

5. Appendices

5.1. Appendix 1 – A-Z Policy 1.01 Charity Collections/Appeals (TRIM 08/97835)

Author/s: Neil Sheppard, Team Leader Statutory Compliance
Reviewed and Approved By: Paul Franklin, General Manager Corporate Services

POLICY

CHARITY COLLECTIONS/APPEALS

INTRODUCTION

This policy provides guidelines for the assessment of applications from Community and Charity Organisations to undertake charity collections within the City of Kingston. This policy seeks to facilitate the collection of funds for community projects by charitable and community organisations in balance with minimising the imposition on residents and regular road users due to excessive numbers of collections.

1. Highway Collections

1.1 Power to Issue Approvals

Clause 1802 of the Road Safety (Traffic) Regulations 1988 requires a written permit to be obtained through the Chief Commissioner of Police before a person may undertake the collection of contributions on a Highway. Prior to this approval being given, Council must initially give its approval to the collection being undertaken.

While Council is required to give approval to highway collection the policy recognises the limited control Council has over the actual management of the intersections where the collections occur and the behaviour of the people involved in the collections.

The Policy and Education Division of the Victoria Police have developed specific guidelines for the administration of Highway Collections - refer to the attachment to this policy.

In addition, Clause 19 of Council's Local Law No. 2, 1996 stipulates a person must not undertake Highway Collections without obtaining an appropriate permit from the Victoria Police.

Therefore, the criteria for assessing Council approval for Highway Collections is directed toward issues of relevance to Council being:-

- The frequency of occurrence at any particular site;
- The type of organisation applying
- The frequency of approval for any particular organisation.

2. Door Knock Appeals

2.1 The following organisations in any one year will be permitted on application to conduct door knocks:-

- (a) Red Cross (March of each year)
- (b) AUSTCARE (May - June of each year)
- (c) Salvation Army (May of each year)

- (d) National Heart Foundation (Sunday in August of each year)
- (e) Freedom from Hunger (October of each year)
- (f) Spastic Society of Victoria (April of each year)
- (g) Royal Children's Hospital Good Friday Appeal

In addition to the above organisations, other organisations may be permitted to conduct door knocks each year should worthwhile applications be received. All such applications will be referred to Council for consideration. Council will have a preference for City of Kingston based organisations and organisations which utilise volunteer collectors when considering applications.

3 Applications To Undertake Charity Collections

3.1 A formal annual application will be required from each charitable organisation or community organisation proposing to undertake door knock appeals or highway collections in the City of Kingston. The applicants will be required to provide the following information:

- details of preferred collection dates/times,
- areas to be covered,
- promotional and information material,
- who would be doing the door knocking/highway collection,
- training procedures for collectors,
- insurance and liability matters,
- identification of collectors,
- complaint handling arrangements,
- how the collected funds will be distributed, and
- what are the benefits/services flowing to the City of Kingston

4 Criteria For Assessing And Issuing Of Approvals

4.1 Frequency of Approvals

In order that motorists and residents from the local area are not subjected to constant requests for donations, only one approval per month shall be granted for any particular location for either door knock appeals or highway collections. Keeping in mind the impact on traffic during peak periods, permits for highway collections should be limited to weekends or public holidays.

4.2 Appropriate Organisations

Permission to undertake Highway Collections should be limited to recognised charitable/community based organisations and take into account annual fund raising appeals. Preference will be given to organisations based within the City of Kingston.

In assessing the appropriateness of particular organisations, consideration shall be given to the proposed disbursement of contributions collected and the resulting benefit to the Kingston Community.

4.3 Number of Approvals Issued to Organisations

Organisations shall generally be limited to one permit per year. However, where appropriate, a single organisation may be allowed to collect from multiple sites. Approvals may cover the full weekend period.

4.4 Approval Fees

As the approvals will only be given to recognised community and charity organisations, no fees will be charged for assessing/issuing approval.

4.5 Condition of Approval - Highway Collections

Approvals for highway collection shall be issued by Council on the condition that the applicant obtain and abide by the appropriate Victoria Police Permits. In issuing an approval, consideration shall be given to the standard of compliance of the applicant to previous approvals. The issuing of approvals remains at the discretion of Council.

The following condition shall be attached to any approval:-

The City of Kingston has no jurisdiction in the matter of assessing the appropriateness of a site for Highway Collection or for conditions which must be met when operating within a Permit issued by the Victoria Police under the Road Safety (Traffic) Regulations 1988.

Council's jurisdiction for granting or withholding approval for Highway Collections is limited to assessment of the following factors:

- 1) *The frequency of occurrence at any particular site;*
- 2) *The type of organisation applying; and*
- 3) *The frequency of approval for any particular organisation.*

Approval for Highway Collections is granted by the City of Kingston after consideration of the above factors and on the condition that the applicant obtains and abides by the appropriate Victoria Police Permit. The City of Kingston has not made any assessment of the appropriateness of locations as this is a matter for the Victoria Police and therefore the City of Kingston will not be liable for any loss or injury whatsoever which occurs as a result of the issuing of a Victoria Police Permit to undertake a Highway Collection.

5. Review of Policy

- 5.1 This policy will be reviewed by May 1998 to enable planning and consideration of applications for 1999.

Granting of Approvals for Highway Collections

Clause 1802 of the Road Safety (Traffic) Regulations 1988 requires a written permit to be obtained through the Chief Commissioner of Police before a person may undertake the collection of contributions on a Highway. Application for permission must be made at least one month in advance, and if permission is given, it would be subject to conditions set out in the permit. The Victoria Police as such have the direct responsibility for the assessment of the appropriate locations for the Highway Collections and the conditions under which these collections occur. The Council has no jurisdiction in this matter and for the majority of sites that meet the guidelines, the Council is not the Responsible Highway Authority.

The Police have established their own guidelines for assessing the appropriateness of a site and the conditions to operate with the permit. These guidelines stipulate the written permission of the appropriate Council must be obtained by the applicant and submitted with the application. This is the only involvement of Council in the issuing of the permits and is intended to address previous problems experienced where the Police had issued permits which were subsequently not supported by the respective Council. It should be noted that Vic Roads as the Highway Authority for the majority of potential collection sites in the Municipality has no involvement at all in the permit approval or enforcement of Highway Collection permits.

Clause 19 of Council's Local Law No. 2, 1996 stipulates a person must not undertake Highway Collections without obtaining an appropriate permit from the Victoria Police.

Guidelines for the Assessment of Highway Collection Approvals

The Victoria Police guidelines for the assessment of appropriate locations for Highway Collections are:

1. The nominated intersection must be controlled by traffic signals.
2. No highway collection shall take place between sunset and sunrise.
3. No Highway Collections shall take place at an intersection located in a speed zone greater than 70 kph.
4. No highway collection shall commence or continue during inclement weather or abnormal atmospheric conditions.
5. Collectors shall only enter upon the carriageway:-
 - when a red traffic control signal is displayed facing vehicles from which they wish to solicit for contributions; and
 - shall immediately leave the carriageway and remain on the reservation or footpath when that traffic control signal changes from red.

When the carriageway is divided into more than four lanes (including turn lanes), collectors shall not proceed onto the carriageway further than two lanes from the boundaries of the carriageway.

Agenda Item No: O 204

NOTICE OF MOTION NO. 34/2012 – CR WEST

I move that:

As a measure of commitment to protecting the Green Wedge boundaries, Council resolves to retain the Urban Growth boundary in its present location along Springvale Road as shown in the original April Kingston Green Wedge Plan (final plan), subject to discussions with existing landholders conducting non-compliant commercial uses to permit extra signage on their properties.

Cr Rosemary West
21 November 2012

Officer Comment

On 27 August 2012 the Kingston Council resolved:

- To adopt the Green Wedge Plan *Planisphere* April 2012 as a framework for action in respect to the management of the Kingston
- Green Wedge, and
- That Council commence negotiations with the Minister for Planning requesting that consideration be given to amending the Urban Growth Boundary to include the following land within the Urban Area, viz Land identified within the GWP fronting Springvale Road Braeside.

The Draft Green Wedge Plan in April did in fact recommend this land be included in the urban growth boundary although there was some ambiguity in relation to the key on the map. *Planisphere* clarified that the intent was to have the Springvale Road land included inside the Urban Growth boundary and this was conveyed to the Councillors.

The existing business hold existing use rights or a valid planning permit and cannot be described as non-compliant. It is likely that to allow extra signage on the properties, a planning scheme amendment or planning permit would be required. Officers would not recommend that Council seek to discuss an outcome without following the statutory requirements.

The submissions from key landowners of the Springvale Road properties were strong in seeking to have their land within the Urban Growth Boundary. The submissions did not indicate that signage was a particularly important element in their request for inclusion inside the Urban Growth boundary.

Ordinary Council Meeting

26 November 2012

Agenda Item No: O 205

NOTICE OF MOTION NO. 35/2012 – CR WEST

I move that:

As a measure of commitment to protecting the Green Wedge for non-urban uses, Council resolves to write to the Planning Minister to ask him not to introduce the following urban uses currently prohibited or not supported by the recently-adopted Kingston Green Wedge Plan into the Green Wedge A Zone proposed for Kingston's Green Wedge: Backpackers Lodge, Boarding House, Conference Centre, Display Home, Exhibition Centre, Function Centre, Group Accommodation, Hostel, Medical Centre, Motel, Nurses' Home, Reception Centre, Residential Aged Care Facility, Residential Building, Residential College, Residential Hotel, Restaurant and Service Station.

Cr Rosemary West
21 November 2012

Officer Comment

On 27 August 2012 the Kingston Council resolved:

- To adopt the Green Wedge Plan *Plannisphere* April 2012 as a framework for action in respect to the management of the Kingston
- Green Wedge, and
- That Council commence the preparation of the documentation to amend the Kingston Planning Scheme to give effect to the adopted GWP including the rezoning of land from Green Wedge Zone and Special Use 2 Zone to Green Wedge A.

On 19 September 2012 the Kingston Council resolved:

- To submit Attachment 1 except paragraphs 122, 123 and 124 as the City of Kingston's response to the DPCD Planning Reform Consultation by 21st
- September 2012, and
- that the submission to the Minister include the following paragraph: That Kingston Council supports the uses proposed by the Minister for inclusion in the Green Wedge A Zone that includes the following uses as a section 2 use:
 - Backpackers lodge
 - Boarding house
 - Carnival
 - Circus
 - Conference centre
 - Display house

- Exhibition centre
- Function centre
- Group accommodation
- Hall
- Hostel
- Medical centre
- Motel
- Nursing home
- Place of Assembly
- Primary School
- Reception centre
- Residential Aged care facility
- Residential building
- Residential college
- Residential hotel
- Restaurant
- Secondary school
- Service station

On 19 September, following the Council resolution, Council made its submission to the State Government's proposal to change the provisions relating to zones, including the Green Wedge Zones. The Department of Planning and Community Development website advises that at the completion of consultation (28 September 2012) the Minister would appoint an Advisory Committee to review and report back on all submissions by the end of February 2013. Note this date has been extended from end of November 2012.

Officers note that any new request to the Minister would now be outside the formal consultation period. This is a complex issue because the Minister is seeking to change the provisions for the Green Wedge A Zone which is applied to land in different municipalities across Melbourne. Officers consider that there is a greater chance of success to influence land use outcomes in Kingston by pursuing a Kingston-specific Green Wedge Zone or by developing local planning policy that will guide discretionary land uses such as those listed above.