

**City of Kingston
Ordinary Council Meeting**

Minutes

26 May 2008

Notice is given that an Ordinary Meeting of Kingston City Council will be held at 7.00pm at the Clarinda Community Centre, 58 Viney Street, Clarinda, on Monday, 26 May 2008.

- 1. Apologies**
- 2. Confirmation of Minutes of Previous Meetings**

Minutes of Ordinary Council Meeting 28 April 2008.

Minutes of Special Council Meeting 19 May 2008.

- 3. Declaration by Councillors or Officers of any Interest or Conflict of Interest**

- 4. Petitions**

4a) A petition signed by 116 residents requesting Council support a motion for a maximum three storey height limit for any development within a residential interface within the boundaries of Nepean Highway, Balcombe road and the Railway line, will be tabled by the Ward Councillor, Cr West.

4b) A petition signed by 147 residents requesting Council amend the proposed four storey height overlays suggested for Mentone and set a maximum height of three storey's for the Mentone shopping precinct,. will be tabled by the Ward Councillor, Cr West.

- 5. Presentation of Awards**

Presentation of certificate of appreciation to Carmel Smart from Kilbreda College who has spent the past 27 years dedicating her time to the education of students, both as a teacher and as a mentor.

- 6. Reports from Village Committees**

Recommendations from the May cycle of meetings are enclosed. Page 2

- 7. Reports from Delegates Appointed by Council to Various Organisations**

- 8. Environmental Sustainability Reports**

K 72 Town Planning Application Decisions February 2008 Page 5

K 73 Town Planning Application – Lot 1 Centre Dandenong Road, Heatherton Page 6

- 9. Community Sustainability Reports**

K 74 Winter Foreshore Dog Restrictions Page 23

*K 75 Response to the Inter Council Aboriginal Consultative Committee
Regarding Indigenous Polices and Protocols* Page 29

*K 76 Central Bayside Community Health Services Edithvale Site-
to Incorporate Residents with Disabilities* Page 32

K 77 Food sample Analysis Report, January – March 2008 Page 35

- 10. Organisational Development and Governance Reports**

- 11. Corporate Services Reports**

K 78 Policy Review Sale of Right-Of-Way & Drainage Reserves Page 37

K 79 Advertising Council Budget -2008 – 2009 and Council Plan 2008 – 2013 Page 40

- 12. Notices of Motion**

K 80 Cr Petchey- Kara Grove, Aspendale - Landscaping Page 41

- 13. Question Time**

- 14. Urgent Business**

- 15. Items in Camera**

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Minutes of the Ordinary Meeting of the Kingston City Council held at Clarinda Community Centre at 58 Viney Street Clarinda, on Monday 26 May 2008 at 7:00pm.

Present: Cr Bill Nixon OAM (Mayor)
Cr Arthur Athanasopoulos
Cr Justin McKeegan
Cr Topsy Petchey
Cr Rosemary West OAM

In Attendance: John Nevins – Chief Executive Officer
Paul Franklin-General Manager Corporate Services
Tony Rijs- General Manager Environmental Sustainability
Elaine Sowerby – General Manager, Organisational
Development and Governance
Trevor McCullough, General Manager Community
Sustainability
Michael Petit-Manager Communications and Promotions
Ian Nice-Manager Planning and Building
Paul D’Elia- Acting Governance Co-ordinator

1. Apologies

Cr Ronke and Cr Alabaster.

Crs Petchey/West

That the apology from Crs Ronke and Alabaster be received, and leave of absence from this meeting be granted.

Carried

2. Confirmation of Minutes of Previous Meetings

Crs McKeegan/Athanasopoulos

That the minutes of the Ordinary Council Meeting held on 28 April 2008 and the Special Council Meeting held on 19 May 2008 be confirmed.

Carried

3. Declaration by Councillors or Officers of any interest or conflict of interest in any items on the Notice Paper, pursuant to Section 79 of the Local Government Act 1989

Cr West declared an interest in Item K73 (Lot 1 Centre Dandenong Road, Heatherton), the nature of the interest stated that Cr West is the Co-ordinator of the Green Wedge Coalition.

Cr Nixon declared an interest in item K76 (34 Nepean Highway, Mentone), the nature of the interest stated that Cr Nixon is on the Board of Management of the Central Bayside Community Health Services.

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4. Petitions

Cr West tabled the following petitions.

A petition signed by 116 residents requesting Council support a motion for a maximum three storey height limit for any development within a residential interface within the boundaries of Nepean Highway, Balcombe road and the Railway line.

A petition signed by 147 residents requesting Council amend the proposed four storey height overlays suggested for Mentone and set a maximum height of three storey's for the Mentone shopping precinct.

A petition signed by 115 residents opposing Planning application KP 699/07.

Crs Petchey/Athanasopoulos

That the petitions be referred to the Chief Executive Officer for response.

Carried

5 Presentations

The Mayor Cr Bill Nixon advised the meeting of a certificate of appreciation to be presented to Carmel Smart from Kilbreda College who has spent the past 27 years dedicating her time to the education of students, both as a teacher and as a mentor.

PRESENTATION OF VILLAGE COMMITTEE REPORTS

6(a) Cheltenham Village Committee

Chairperson-John Natoli

Report of Meeting held on 13 May 2008

CT 24 Nature Strip Maintenance

Members considered advice of who was responsible for the maintenance of nature Strip adjacent to the Moorabbin Airport

Committee Recommendation

That Council write to Vic Roads requesting more regular maintenance of nature strips on major roads.

Officer Comment

Council and Vicroads have an agreement which specifies responsibility for the maintenance of nature Strips on main roads.

The section of nature Strip on Centre Dandenong Road adjacent to the Moorabbin airport is the responsibility of Vicroads.

Council has recently written to VicRoads raising concerns regarding the frequency and standard of horticultural maintenance being conducted along main roads within Kingston that they are responsible for, this was also discussed with VicRoads senior management at a recent Regional meeting with council officers.

Most nature strips are usually maintained by the adjacent property owner or occupier, which in this case is the Moorabbin Airport Corporation (MAC). VicRoads is the Responsible Road Authority for this section of road and would perform intervention maintenance along the roadside to address any safety hazards. This section of nature strip has been inspected by council officers and was in a satisfactory condition at the time of inspection.

West/Athanasopoulos

That Council forward a letter to Vicroads requesting more regular frequency of horticultural maintenance along their main roads within Kingston.

Carried

6(b) Mordialloc Village Committee

Chairperson-Andrew Gustke

Report of Meeting held on 13 May 2008

Highlight: Discussion on the Bay to rail signage.

6(c) Mentone/Parkdale Village Committee

Chairperson-Dorothy Booth

Report of Meeting held on 13 May 2008

MP 58 Mentone Toilet Block

The members discussed the possibility of an additional toilet block being erected on the Council carpark behind Coles.

Committee Recommendation

In light of the aging population, an additional toilet block should be erected on the Council land. The committee ask that the Council prepare a report as to the feasibility of this request.

Officer Comment

Council has an annual capital works allocation to upgrade its public toilet facilities throughout the municipal district. At this time the program does not extend to the provision of additional facilities. When the current upgrade program is completed, Council will be in a position to consider the provision of additional facilities.

West/Petchey

That the Mentone/Parkdale Village Committee be advised that Council will monitor this issue but at this time is not in a position to fund the provision an additional toilet facility in the Mentone Shopping Centre under the current 5 year Capital Works Program.

Carried

6(d) Dingley/Heatherton Village Committee

Chairperson-Bruce Reynolds

Report of Meeting held on 14 May 2008

Highlight: Receipt of a reply from Minister Anthony Albanese, regarding the Moorabbin Airport Development, advising about the ability of the community to consult on the draft Moorabbin Airport Masterplan in 2009.

6(e) Chelsea/Chelsea Heights/Bonbeach Village Committee

Chairperson-Nigel McGillivray

Report of Meeting held on 14 May 2008

CH 64 Storm Surges

The members discussed the possible affect of rising flood waters and storm surges.

Committee Recommendation.

That all submissions dealing with increased density be individually addressed with Kingston's vulnerability to storm surges in mind.

Officers Comment

The State Government is currently investigating the impact of climate change and storm surges for the Victorian coast including Port Phillip Bay, through its 'Future Coast Program'. The review will identify the level of risk, vulnerable sections of coast line and develop design standards and options for management, that Council's can use to assess future development proposals.

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McKeegan/Petchey

That Council acknowledges the Village Committee concerns and will await the findings of Dept Sustainability and Environment Future Coast Program.

Carried

CH 65 Nativity and Easter Scenes at Chelsea.

The members discussed the issue of the Nativity and Easter Scenes.

Committee Recommendation.

Council ensure that the nativity and Easter scenes continue to be displayed from the L.F. Payne Chelsea Hall.

Officers Comment

This matter was discussed at the last meeting of the LF Payne Community Usage Committee and the following information was requested to be provided at the next meeting.

1. Complete an OH&S hazard and risk assessment into the erection and dismantling of the nativity scene.
2. Evaluate the current state of the nativity scene (including what works may be required if any) and
3. Investigate any other potential locations in the area.

The information received will be considered by the usage committee at the next meeting.

Petchey/McKeegan

That Council advise the Village Committee that the LF Payne Community Usage Committee is investigating the use of the Nativity and Easter Scenes and will report to its next meeting.

Carried

**6(f) Patterson Lakes/Carrum Village Committee
Chairperson-Glen Baker**

Report of Meeting held on 14 May 2008

Highlight Discussion on the request for bus shelter on Wells Road, Chelsea Heights.

**6g) Moorabbin/Highett Village Committee
Chairperson-Ian Shearer**

Report of Meeting held on 15 May 2008

Highlight Discussion on the Community Grants.

**6(h) Aspendale/Edithvale/Aspendale Gardens Village Committee
Acting Chairperson-Ken carny**

Report of Meeting held on 15 May 2008

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Highlight Discussion on maintenance issue at Glen St Oval and screening of the industrial development in Braeside.

7 Reports from Delegates Appointed by Council to Various Organisations

Cr West reported on the meeting with Metropolitan Transport Forum and the ensuing discussions regarding the recently released Road Transport Plan.

Cr Petchey reported on the meeting with Inter Council Aboriginal Consultative Committee.

Athanasopoulos/Petchey

The reports be received and Cr West be thanked for her attendance

Carried

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8. Environmental Sustainability Reports

K 72 Town Planning Application Decisions – April 2008

Approved By: Tony Rijs-General Manager, Environmental Sustainability

Author: Ian Nice – Manager, Planning

Attached for information is the report of Town Planning Decisions for the month of April 2008.

A summary of the decisions is as follows:

Type of Decision	Number of Decisions Made	Percentage (%)
Planning Permits	77	87
Notice of Decision	6	6
Refusal to Grant a Permit	1	1
Other - Withdrawn (0) - Prohibited (0) - Permit not required (2) - Lapsed (4)	6	6
Total	90	100

(NB: Percentage figures have been rounded)

Recommendation

That the report be noted.

Petchey/McKeegan

That the recommendation be adopted

Carried

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K 73 KP414/07 – Centre Dandenong Road, Heatherton

Author: Sherie Kirby – Senior Planner

APPLICANT:	MacroPlan Australia Pty Ltd
APPLICATION NO.	KP414/07
LOCATION:	Lot 1 on PS143145, Centre Dandenong Road, Heatherton
MELWAYS REF:	88A3
PROPOSAL:	Two (2) Convenience Restaurants, Advertising Signage and Alter Access to Land Adjacent to a Road Zone (Category 1)
ZONING:	Green Wedge Zone (Schedule 2)
KINGSTON PLANNING SCHEME ORDINANCE CONTROLS:	Clause 15.02: Floodplain Management Clause 17.02: Business Clause 19.03: Design & Built Form Clause 21.03: Land Use Challenges for the New Millennium Clause 21.10: Non Urban Areas Clause 22.04: South East Non Urban Area Policy Clause 22.15: Outdoor Advertising Signage Policy Clause 35.04: Green Wedge Zone (Schedule 2) Clause 43.02: Design & Development Overlay (Schedule 4 & Schedule 5) Clause 44.04: Land Subject to Inundation Overlay Clause 45.02: Airport Environs Overlay (Schedule 1) Clause 52.05: Advertising Signs Clause 52.06: Car Parking Clause 52.07: Loading & Unloading of Vehicles Clause 52.29: Land Adjacent to a Road Zone (Category 1) Clause 57: Metropolitan Green Wedge Land Clause 65.01: Decision Guidelines Clause 66.02: Referrals

Main Issue:

The main issue in this application is whether the proposal for two (2) convenience restaurants would satisfy the “existing use” requirements under Clause 63.08 of the Kingston Planning Scheme, given that the proposed use is prohibited under the Green Wedge Zone. Specifically, Council needs to be satisfied that the proposed alternative use would be less detrimental to the amenity of the locality.

Existing Conditions:

The subject site is located on the north-west corner Centre Dandenong Road and Boundary Road, Heatherton. The site is slightly irregular in shape and has a frontage of approximately 80 metres to Centre Dandenong Road and a frontage of approximately 80 metres to Boundary Road with an overall site area of 6071m².

The land is currently vacant, however, was previously used for a service station. At present, there are four (4) access points to the subject site with two (2) along Centre Dandenong Road and two (2) along the site’s Boundary Road frontage. A number of

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established Eucalyptus and Melaleuca trees exist on the site, predominantly along the site's north and west property boundaries.

Land to the north, west and east (opposite Boundary Road) of the subject site is used for market gardens whilst the land directly to the south (opposite Centre Dandenong Road) is owned and developed by the Moorabbin Airport Corporation. Both Centre Dandenong Road and Boundary Road are zoned Road Zone (Category 1).

The applicant has signed a declaration stating that there is no restrictive covenant on the subject site.

Site History:

Council records indicate that a planning permit was issued by the former City of Springvale on 7th July, 1983, to allow the land to be used and developed for a service station.

Proposal:

It is proposed to develop and use the land for two (2) convenience restaurants and to alter and/or remove access to land adjacent to a Road Zone Category 1.

Each restaurant would have gross floor area of 250m² and would be provided with a maximum of 48 seats in addition to a "drive-thru" facility. A total of sixty (60) car parking spaces would be provided for both restaurants. Two (2) of the existing vehicle crossovers would be removed in addition to the western-most accessway being altered along the site's Centre Dandenong Road frontage.

It is proposed that the facility will operate between the hours of 6:00am to 11:00pm everyday (except Friday) and from 6:00am to 12 midnight on Fridays. A total of six (6) advertising signs are proposed, with two (2) internally-illuminated business signs to be displayed on each building and a 10 metre high pylon sign to be erected along each road frontage.

The proposal also includes the removal of twelve (12) native specimens of vegetation, comprising seven (7) Eucalyptus trees and five (5) Melaleuca trees. It should be noted, however, that no planning approval is required for the removal of these trees given that all specimens would be located within ten (10) metres of the proposed buildings and therefore exempt under the provisions of Clause 52.17 (Native Vegetation) of the Kingston Planning Scheme.

Planning Scheme Requirements:

Pursuant to Clause 35.04 of the Kingston Planning Scheme, the use of land for a service station is prohibited. However, there are provisions under Clause 63 of the Scheme which may allow a prohibited use to be undertaken on land where existing land use rights can be demonstrated. With respect to this proposal, the applicant submits that existing use rights exists on this land for the following reasons:

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- A permit for the use had been granted immediately before the approval date of the Kingston Planning Scheme and the use commenced before the permit expired.
- The site has been used for a continuous services station use for 15 years as required by Clause 63.11.

Although the proposed use is “prohibited” under the provisions of the Green Wedge Zone, there is evidence to suggest that the applicant is entitled to seek approval for and alternate land use under the provisions of Clause 63.08 of the Scheme provided that Council is satisfied that the proposed new use would be less detrimental to that of the previous use.

A planning permit is also required under the following sections of the Scheme:

- Clause 44.04 – Land Subject to Inundation Overlay (LSIO)
- Clause 52.05 – Advertising Signs
- Clause 52.29 – Land Adjacent to a Road Zone (Category 1)

A number of the policies contained within the State Planning Policy Framework (SPPF) and Local Planning Policy Framework (LPPF), including Council’s Municipal Strategic Statement (MSS) are considered relevant in the consideration of this proposal, namely:

- *Clause 21.03: Land Use Challenges for the New Millennium*
- Clause 21.10: Non Urban Areas
- Clause 22.04: South East Non Urban Area Policy
- Clause 22.15: Outdoor Advertising Signage Policy
- Clause 35.04: Green Wedge Zone (Schedule 2)
- Clause 44.04: Land Subject to Inundation Overlay
- Clause 45.02: Airport Environs Overlay (Schedule 1)
- Clause 52.05: Advertising Signs
- Clause 52.06: Car Parking
- Clause 52.07: Loading & Unloading of Vehicles
- Clause 52.29: Land Adjacent to a Road Zone (Category 1)
- Clause 57: Metropolitan Green Wedge Land
- Clause 65.01: Decision Guidelines
- **Clause 66.02: Referrals**

Amendment to the Application Before Notification:

In response to Council’s further information letter dated 5th July, 2007, the applicant submitted amended plans showing details regarding the proposed advertising signage and also the submission of a landscape plan.

The proposed amendments to the application were considered appropriate and approved prior to public notification.

Advertising:

The proposal was advertised by sending notices to adjoining and opposite property owners and occupiers and by maintaining a notice on site for fourteen (14) days. Two (2) objections were received from McDonalds Australia Limited and the Defenders of the South East Green Wedge Inc.

The grounds of objection are as summarised, as follows:

- The case for existing use rights under Clause 63 of the Kingston Planning Scheme has not been qualified.
- The use and development of the land for two (2) convenience restaurants is a further and more intensive use of the site.
- It will result in reduced amenity of the area, given the height and type of the new signage.
- The design of the proposal is not respectful of its position as a gateway site to the “green wedge”.
- The proposal would have a significantly greater impact compared to that of the service station and would result in a larger site coverage, the type of activity, more cars parked on site, more visible signage.
- Increased litter associated with use.
- Longer operating hours than the previous service station.

Response to Grounds of Objection:

Existing Use Rights/ Intensity of Proposed Use/Reduced Amenity

This is one of the key issues raised by the objectors in relation to this proposal. As previously discussed, Council officers are satisfied that the applicant has provided sufficient evidence to suggest that the proposed use would meet the criteria for alternative land use rights under Clause 63.08 of the Kingston Planning Scheme. In determining this, Council officers gave careful consideration to the nature and potential impact of the land use on the surrounding area with particular regard to traffic, advertising signage, native vegetation removal and general amenity concerns.

Whilst the current zoning of the subject site is acknowledged, it is strongly argued that the location, visibility and proximity of the land to similar land use (namely the McDonalds Restaurant diagonally opposite the site at No. 370 Boundary Road, Dingley Village) ensures that the proposed land use is appropriate.

Gateway site

One of the issues raised in relation to the location of the site is that it is a “gateway” site to the Green Wedge. As discussed above, the subject land has a high level of exposure to the public realm particularly given its location at the corner of two main roads.

It is for this reason (in addition to the previous use of the land) that Council officers consider that the proposed development and use of the site for two (2) convenience restaurants is appropriate.

Operating hours

A concern raised by objectors refers to the likelihood of extended operating hours compared to the previous use of the land as a service station. Council officers consider that the hours of operation of the new proposal would be similar to that of the previous land use. Furthermore, the subject site is not within close proximity to any sensitive land use such as residential areas and therefore is not a major consideration in this application.

Preliminary Conference:

A preliminary conference was conducted at Council's Cheltenham Office on 22nd November, 2007. The meeting was attended by the applicant, objectors (two representatives from McDonalds Australia Limited) and a Council officer.

At the meeting discussion revolved around the issues raised in the submission provided by McDonalds Australia Limited, however, no resolution was reached.

Referrals:

Pursuant to Clause 66.02 of the Kingston Planning Scheme, the application was referred to Vic Roads, Melbourne Water and the Moorabbin Airport Corporation for consideration.

- Vic Roads had no objection to the proposal subject to a number of conditions being placed on any permit issued.
- The Moorabbin Airport Corporation had no objection to the proposal as it considered that the proposal would have no impact on the statutory areas affecting the Airport.
- Melbourne Water had no objection to the proposal subject to a number of conditions being included on any permit issued.

The application was referred to the following internal Council departments for consideration:

- Development Approvals Engineer
- Vegetation Management Officer
- Traffic Engineering
- Strategic Planning

No objection was offered from any of the above internal departments.

Planning Assessment:

The following section will consider the application against the relevant sections of the State Planning Policy Framework, Local Planning Policy Framework (including the MSS), zoning objectives and Particular Provisions of the Kingston Planning Scheme.

State Planning Policy Framework:

Clause 15.02: Floodplain Management

In respect to this section of the Planning Scheme it is noted that the applicant will be required to satisfy the requirements of Melbourne Water as permit conditions should a permit be issued.

Clause 19.03: Design & Built Form

It is therefore considered that the proposal (as amended) generally satisfies the broader objectives under the relevant sections of the State Planning Policy Framework.

Local Planning Policy Framework (including the MSS)

Clause 21.10: Non Urban Areas:

It is considered that the proposal would satisfy the relevant strategies outlined under this section of the Scheme, namely:

- “Objective 1: Support and maintain the green wedge concept. Activities in the non urban area must be consistent with, and contribute to, optimal long-term planning solutions for the whole of the south-east metropolitan non urban area”.
- “Objective 7: To manage the edge of urban areas in a manner, which ensures that the non urban area is both stable and enduring”.

Clause 22.04: South East Non Urban Area Policy:

The subject site is located within the South East Non Urban Policy area.

Under this section of the Scheme, it is policy that (amongst other things):

- Non urban land be protected for non urban purposes and used for activities which are consistent with the function and character of the non urban area.
- The following uses (amongst other things) are supported within the non urban area: public open space facilities including parks, sports fields, bicycle networks, etc.

Whilst the proposed use of the land is inconsistent with the “preferred uses” outlined above, strong consideration is required to be given to the previous use of the land. Specifically, the development and use of the land for two (2) convenience restaurants is considered to be no more detrimental to the surrounding amenity of the area. The proposal includes the removal of two (2) existing access points to the land and minimal signage on the proposed buildings.

With regards to the proposed internally-illuminated panel signs, it is suggested that a condition of any planning permit issued require the height to be reduced from 10 metres to 7 metres to be more consistent with similar signage in the surrounding area.

Clause 22.15: Outdoor Advertising Signage Policy:

A number of policies under this section of the Scheme are considered relevant in the consideration of the proposed advertising signage, which forms part of the application, namely in relation to “main road areas” and “non urban areas”.

- **Main Road Areas:** It is acknowledged that signs along declared main roads offer opportunities for long distance visibility. The impact of advertising signs adjacent to main roads are of principal concern with respect to visual amenity, streetscape character and road safety. The policy does not discourage business identification signs, but recognises that there is limited opportunity for major signage within these areas.

- **Non Urban Areas:** The policies generally encourage signs that relate to the use of the land and the scale of surrounding development. Business Identification signs are also not discouraged within these areas.

A number of performance standards for the display of signs are outlined under Clause 22.15-4 of the Scheme and include specific guidelines for advertising signs displayed along main road areas and within non urban areas, such as:

- Signs do not contribute to a safety hazard or potentially distract motorists or pedestrians through the type and level of illumination, colours or form of advertising.
- Signs do not obscure major view lines.
- Signs do not dominate the host buildings and are in scale with their surroundings.
- In the opinion of the Responsible Authority, the signs do not reduce the visual quality of the setting through their size, scale or placement.

It is considered that the proposed signage associated with the proposed development and use, in accordance with the proposed permit condition, is consistent with the relevant policies as outlined above.

Zoning Provisions

Clause 35.04: Green Wedge Zone (Schedule 2):

One of the key purposes of the zone is “to recognise, protect and conserve green wedge land for its agricultural, environmental, historic, landscape, recreational and tourism opportunities, and mineral and stone resources”.

As previously discussed, the proposed use is not consistent with the “preferred” land use within the Green Wedge Zone. However, Council officers consider that regard must be given to the previous use of the site and the site’s location at the juncture of two (2) main urban roads. Given that the proposed land use should not be more detrimental to the amenity of the area compared with the previous use, it is considered that development of the land for two (2) convenience restaurants is reasonable in this instance.

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Pursuant to Clause 35.04-6 of the Kingston Planning Scheme, it is noted that the advertising sign requirements fall under Category 3 under Clause 52.05 of the Scheme.

Clause 43.02 Design and Development Overlay (Schedule 4 and 5):

The proposal has been referred to the Moorabbin Airport Corporation as required and there are no issues with respect to these provisions in the Scheme.

Clause 44.04: Land Subject to Inundation Overlay: It is considered that the proposal would be consistent with the purposes of this Overlay and would accord with the requirements of the relevant floodplain authority (Melbourne Water).

Clause 45.02 Airport Environs (Overlay Schedule 1)

The proposal has been referred to the Moorabbin Airport Corporation as required and there are no issues with respect to these provisions in the Scheme.

Particular Provisions

Clause 52.05 – Advertising Signs

Pursuant to Clause 52.05-8 of the Scheme, the display of an internally-illuminated panel sign is prohibited. The submitted plans indicate that a ten (10) metre high panel sign would be displayed adjacent to each road abuttal. However, given that the proposed signage is prohibited under the requirements of Category 3 of this section of the Scheme, it is considered that signage at a reduced height may be considered reasonable in this location.

A condition of any planning permit issued should require that the two (2) panel signs be reduced in height to a maximum of seven (7) metres, to satisfy the definition of a pole sign (which includes panel signage no greater than 7 metres in height) which is permissible under Category 3.

Clause 52.06 – Car Parking

This section of the Scheme suggests that a car parking ratio of one (1) space per every 0.6 seats be made available to the public. With respect to this proposal, a car parking rate of one (1) space per every 0.625 seats would be provided, therefore exceeding the minimum requirement.

Clause 52.07 – Loading & Unloading of Vehicles

Each of the proposed convenience restaurants would be provided with a loading bay area for delivery vehicles. The dimension and area of each loading bay satisfies the relevant requirements under this section of the Scheme.

Clause 52.29 – Land Adjacent to a Road Zone (Category 1)

The objectives of this Clause are considered to have been satisfied, with the required design modifications made in response to Vic Roads' requirements.

Clause 65.01 – Decision Guidelines

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In considering the proposal (as amended), Council officers have had regard to the key decision guidelines under this Clause particularly in relation to the effect on the amenity of the area and the relevant provisions of the Kingston Planning Scheme.

General Comment:

It is the view of Council officers that the proposal represents an appropriate land use and development opportunity for this site given the current zoning and location of the subject site. The relevant policies under the State and Local Planning Policy Frameworks encourage the development and use of green wedge land for appropriate land uses, particularly where there is excellent access to the land and other forms of physical infrastructure.

In summary, the main attributes of the proposed development are summarised as follows:

- § It is generally consistent with the relevant policies under the State Planning Policy Framework (SPPF), the Local Planning Policy Framework (LPPF) and Council's Municipal Strategic Statement (MSS).
- § The proposal represents a significant opportunity to utilise land that is highly visible, accessible from two (2) main roads and subject to a number of land use constraints, such as flooding;
- § The overall design and built form of the proposed facility would be sympathetic to the surrounding land uses and the visual impact of the development would be minimised with generous building setbacks, landscape buffers and limited advertising signage;
- § Any amenity impacts should be adequately controlled through appropriate planning permit conditions.

It is considered that the objector's concerns have been addressed, and that subject to the inclusion of suitable permit conditions, the proposal is considered reasonable for the site and warrants Council support.

Recommendation:

That Council resolve to issue a Notice of Decision to Grant a Permit to develop and use the land for two (2) convenience restaurants, to display advertising signage and to alter and remove access to land adjacent to a Road Zone (Category 1), subject to the following conditions:

- 1 Before the development and/or use starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be substantially in accordance with the plans submitted to Council on 29th August, 2007, but modified to show:
 - a) the provision of an amended landscape plan and associated planting schedule in accordance with the submitted concept landscape plan prepared by Memla Landscape Architects (dated 21st December, 2007) but modified to show: a

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- tree protection zone (TPZ) around the two (2) trees to be retained within the front setback. The TPZ must be three (3) metres in a radius surrounding the *Ficus macrophylla* (Moreton Bay Fig) and *Myoporum insulare* (Common Boobialla).
- b) the maximum height of the two (2) internally-illuminated panel signs reduced from ten (10) metres to seven (7) metres the location of any external waste storage/collection areas; and
 - c) full details of all external building materials and colours for the proposed buildings.
- 2 The development and/or use as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
 - 3 Any new building must be constructed so as to comply with any noise attenuation measures required by Section 3 of Australian Standard AS2021-2000, Acoustics – Aircraft Noise Intrusion – Building Siting and Construction, issued by Standards Australia International Limited.
 - 4 The development of the site must be provided with stormwater treatment works which must incorporate water sensitive urban design principles (including re-use) to improve discharge quality and a detention system for any increase in runoff as a result of the approved development. The system must be maintained to the satisfaction of the Responsible Authority. Council’s Development Approvals Engineer can advise on treatment options.
 - 5 The development must not be occupied and the permitted use/s must not commence until all buildings and works and the conditions of this permit have been complied with, unless with the further consent of the Responsible Authority.
 - 6 Before the development hereby permitted commences, a drainage plan showing the method of stormwater treatment from the development must be submitted to the Responsible Authority for approval. The plan must be prepared by a qualified person and show all drainage works required. The plan must also show all existing and proposed features that may have an impact on drainage (e.g. trees to be retained, crossings, services, fences, abutting buildings, existing boundary surface levels, etc.)
 - 7 Stormwater drainage of the site must be provided so as to prevent any overflows onto adjacent properties and be in accordance with the approved drainage plan.
 - 8 Before the use allowed by this permit commences, landscaping works as shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority. The landscaping must then be maintained to the satisfaction of the Responsible Authority.
 - 9 All existing vegetation shown on the endorsed plans for retention must be suitably marked and adequately protected before any development starts on the site and

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that vegetation must not be removed, destroyed or lopped without the prior written consent of the Responsible Authority.

- 10 Before commencement of the use hereby permitted, areas set aside for parking vehicles, access lanes and paths as shown on the endorsed plans must be:
 - a) Constructed to the satisfaction of the Responsible Authority.
 - b) Properly formed to such levels that they can be used in accordance with the plans.
 - c) Surfaced in a manner to the satisfaction of the Responsible Authority.
 - d) Drained to the satisfaction of the Responsible Authority.
 - e) Line-marked to indicate each car space, all access lanes and, if necessary, the direction in which vehicles are to travel to the satisfaction of the Responsible Authority.
 - f) In accordance with any Council adopted guidelines for the construction of car parks.Parking areas and access lanes must be kept available for these purposes at all times and maintained to the satisfaction of the Responsible Authority.
- 11 In areas set aside for car parking, measures must be taken to the satisfaction of the Responsible Authority to prevent damage to fences or landscaped areas.
- 12 The car parking provided on the land must always be made available for the use by persons employed or residing on the subject land to the satisfaction of the Responsible Authority and no measure restricting access by such persons to the car park may be taken without the prior written consent of the Responsible Authority.
- 13 Access to the site must be constructed in accordance with the requirements of Vic Roads and the Responsible Authority.
- 14 The surface of the car parking area must be treated to the satisfaction of the Responsible Authority to prevent dust resulting in loss of amenity to adjoining and nearby properties.
- 15 The amenity of the area must not be detrimentally affected by the development and/or use, through the:
 - a) transport of materials, goods or commodities to or from the land;
 - b) appearance of any building, works or materials;
 - c) emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil;
 - d) Presence of vermin; and
 - e) In any other way.
- 16 No goods or packaging materials must be stored or left exposed outside the building so as to be visible to the public from a road or other public place.
- 17 No bins or other receptacles may be placed or allowed to remain in the view of the public, and no receptacle shall emit any smells.

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- 18 The use hereby permitted must only operate between the hours of 6:00am and 11:00pm, everyday except Fridays, and between 6:00am and midnight on Fridays, unless otherwise approved with the prior written consent of the Responsible Authority.
- 19 Without the prior written consent of the Responsible Authority, no form of public address system or sound amplification equipment must be used on the premises so as to be audible outside the subject site.
- 20 No burglar alarm or warning bell or buzzer or other device may be installed on the subject property unless it is so designed as to shut off automatically after five (5) minutes operation.
- 21 Outdoor lighting must be provided, designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on neighbouring land.
- 22 Exterior lights must be installed in such positions to effectively light all pathways, car parks and other public areas to the satisfaction of the Responsible Authority.
- 23 All external surfaces of the building elevations must be finished in accordance with the schedule on the endorsed plans and maintained in good condition to Council satisfaction.
- 24 The location of external fans, air-conditioning apparatus and the like must be to Council approval and installed to prevent loss of amenity to the area by its appearance, noise, emission or otherwise.
- 25 Any plant and/or equipment proposed on the roof of the building must be screened in a manner to complement the appearance of the building to the satisfaction of the Responsible Authority.
- 26 Construction on the site shall be restricted to the following times:
- | | |
|-------------------|------------------|
| Monday to Friday: | 7:00am to 7:00pm |
| Saturday: | 9:00am to 6:00pm |
- Or otherwise as approved by the Responsible Authority in writing.
- 27 Street numbers of 100mm minimum height and contrasting in colour to the background must be displayed on the front building. Such numbers must be clearly legible from the footpath, roadway, car park or laneway.
- 28 **Conditions required by Vic Roads:**
- a) Prior to endorsement of the plans and any works authorised by this permit, the applicant must arrange for a revised Traffic Impact Assessment Report (TIAR) to be prepared to the satisfaction of VicRoads. The report must:
- (i) Include, but not be limited to, the following:

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- Whilst the proposed development may generate less traffic than the former development for a total day or week, it generates moderately more traffic for the critical design period (Friday PM peak - approx. 5.30pm - 6:30pm) - this impact must be analysed. It should be noted, even if the proposed development generated less traffic than the former development, it does not necessarily mean that the site operated satisfactorily, nor that the site had no impact on the surrounding road network (in particular, Centre Dandenong Rd/Boundary Rd intersection).
- For the critical design period (Friday PM peak), a pre and post-development traffic analysis (eg. SIDRA and/or first-principles) should be provided to determine the impact by the development generated traffic on the signalised intersection of Centre Dandenong Rd/Boundary Rd and the proposed access arrangements (eg. gap-analysis, including a survey of actual gaps available). Include an electronic copy of the data files to allow the analysis to be reviewed.
- For pre and post-development scenarios, a map/table showing the traffic volumes and associated directional distributions for the critical design period.
- Further clarification on the access arrangements to the subject site, in particular, the proposed operation (eg. left-in/left-out, any banned movements).
- An investigation into the appropriateness and feasibility of left-turn deceleration lanes for both accesses.
- A road safety analysis on the proposed access arrangements, including; available sight distance and the effects of queuing and delays (in particular, caused by the west approach of the Centre Dandenong Rd/Boundary Rd intersection).
- A crash analysis (latest 5yr period) in the vicinity of the site, including a summary of the number of crashes, DCA type of crashes, any trends and whether it impacts on the development.
- A review of permitted on-street parking (if any) and associated restrictions - eg. to discourage parking on Centre Dandenong Rd/Boundary Rd, parking should be banned via the use of 'No Stopping' signs, in the vicinity of the site, as parking should be contained wholly within the site.
- An investigation into re-arranging the 'order' and 'pick-up' windows for fast food outlet 'B', in order to ensure there is sufficient storage space within the site to accommodate queued vehicles, which will also assist in improved traffic flow through the site.
- MAC is proposing to redevelop land on the south-west corner of the intersection - it would be appropriate that both developers meet to discuss

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- their proposed access arrangements to their respective sites, to ensure that there is no conflicting interests/issues.
- (ii) Identify all improvement works required to mitigate the effect of the proposed development along Boundary Road, Centre Dandenong Road and the intersection of Boundary Road and Centre Dandenong Road.
 - (iii) Be developed generally in accordance with VicRoads' Draft Guidelines for preparation of a Traffic Impact Assessment Report.
- b) Prior to commencement of any use or any roadworks authorised by this permit the applicant must :
- (i) Prepare functional layout plans for the access arrangements on Edithvale Road to manage the traffic flow, to the satisfaction of VicRoads.
 - (ii) Subsequent to the approval of the functional layout plans, prepare detailed engineering plans for the roadworks along Edithvale Road, to the satisfaction of VicRoads.
- c) Before the commencement of any roadworks authorised by this permit, the developer must demonstrate to VicRoads' satisfaction that they and their contractors have developed and maintained a :
- i. Quality Management System
 - ii. Occupational Health and Safety System
 - iii. Environmental Management System
 - iv. Traffic Management System
- d). Before the commencement of any roadworks authorised by this permit, the developer must
- i. Provide a bank guarantee (in the name of the developer/owner) without a termination date, to VicRoads for the estimated cost of works.
 - ii. Provide evidence that the Contractor has a public liability insurance policy for at least \$10 million, effective for the duration of the works.
 - iii. Provide VicRoads with the name, address, business and out-of-hours telephone numbers of the principal roadworks contractor.
- e). At least 7 days prior to roadworks commencing, the applicant must contact VicRoads Surveillance Coordinator (Ph 9881 8079) to notify when work will commence.
- f) The applicant must pay VicRoads for the cost of roadworks surveillance which may be undertaken at certain key times during works.
- g) The applicant must pay the full cost of all roadworks, drainage, service relocations, public lighting and modifications, and any other costs associated

with the subject development.

- h) The design, depth and composition of pavement within the road reservation must be to the satisfaction of VicRoads.
- i) Prior to the commencement of any use authorised by this permit the applicant must complete all roadworks in accordance with approved plans and to the satisfaction of VicRoads.
 - i. The existing vehicular crossover near the western boundary must be modified to at least 4.5 m wide, as measured at the property boundary, to operate as an entry only.
 - ii. The existing second-vehicular crossover must be modified to at least 4.5 m wide, as measured at the property boundary, to operate as an exit only.
 - iii. The edges of the vehicular crossovers shall be angled at 60° to the road reserve boundary, to improve entry and exit conditions.
 - iv. Signs and line markings must be provided to direct and control the flow of traffic internal/external to the site, to the satisfaction of the Responsible Authority.
 - v. Any redundant vehicular crossover on Centre Dandenong Road shall be removed and the footpath, nature strip and curbing reinstated to the satisfaction of the Responsible Authority.
 - vi. Car parking spaces must be designed to allow vehicles to drive in a forward direction when both entering and exiting the property, to the satisfaction of the Responsible Authority.
 - vii. The developer must pay the full costs of all roadworks, drainage, service relocations, and any other associated costs.

28. Conditions required by Melbourne Water:

- a) No polluted and/or sediment laden run-off is to be discharged directly or indirectly into Melbourne Water's drains or watercourses.
- b) Finished floor levels must be a minimum of 300mm above the applicable flood level.
- c) Prior to the issue of a Certificate of Occupancy, a certified survey plan, showing finished floor levels (as constructed) reduced to the Australian Height Datum (AHD), must be submitted to Melbourne Water to demonstrate that the floor levels have been constructed in accordance with Melbourne Water's requirements.
- d) Any car parking and driveway areas are to be greater than 350mm below the flood level.
- e) Prior to the commencement of works separate application, direct to Melbourne Water, must be made for any new or modified storm water connection to Melbourne Water's drains or watercourses. Prior to accepting an application, evidence must be provided demonstrating that Council considers that it is not feasible to connect to the local drainage.
- f) No fill is to be imported into the overland flow path.

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29. A sign(s) to the satisfaction of the Responsible Authority must be provided directing drivers to the area set aside for car parking and deliveries and must be located and maintained to the satisfaction of the Responsible Authority. The sign must not exceed 0.3 square metres.
30. The location and details of the sign(s) shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
31. All sign(s) must be constructed to the satisfaction of the Responsible Authority and maintained to the satisfaction of the Responsible Authority.
32. Sign(s) must not be animated or contain any flashing or intermittent light.
33. External sign lighting must be designed, baffled and located to the satisfaction of the Responsible Authority.
34. The sign(s) must be only illuminated during the trading hours for the proposed use hereby approved.
35. This permit (or part of the permit that relates to advertising signage) expires fifteen (15) years from the date of issue of the planning permit.
36. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.

Expiry of Permit:

In accordance with section 68 of the *Planning and Environment Act 1987*, this permit will expire if one of the following circumstances applies:

- The development and/or use is not started before "[insert date]" (date to be two (2) years from date of permit issue).
- The development is not completed before "[insert date]" (date to be four (4) years from date of permit issue).

In accordance with section 69 of the *Planning and Environment Act 1987*, the responsible authority may extend the periods referred to if a request is made in writing before the permit expires, or within three months afterwards.

Note (1): Prior to the commencement of the development or use you are required to obtain the necessary building permit.

Note (2): Prior to the commencement of the development and/or use hereby approved, you are required to obtain any necessary Council Environmental Health approvals.

Note (3): Before removing/pruning any vegetation from the site, the applicant or any contractor engaged to remove vegetation should consult Council's Vegetation Management Officer to verify if a Local Law permit is required for the removal of such vegetation.

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Note (4): Unless no permit is required under the Planning Scheme, other signs must not be constructed or displayed without a further permit.

Note (5): If further information is required in relation to Melbourne Water's permit conditions shown above, please contact Melbourne Water on telephone 9235 2517, quoting Melbourne Water's reference 133535.

The applicable flood level for the property is 16.2m to Australian Height Datum (AHD).

The meeting was addressed by Mr Pullan on behalf of objectors and Mr Beatty on behalf of the applicant

West/Petchey

That the permit be refused on the following grounds.

1. The proposal is contrary to the orderly and proper planning of the area.
2. The proposal is contrary to the objectives and intentions of the Green Wedge Zone.
3. The proposal would be detrimental to the visual amenity of the area.
4. The proposal fails to satisfy the Existing Use requirements pursuant to clause 63.08 of the Kingston planning Scheme.

Carried

Question Time

Steve Buckingham asked the following questions regarding the Energy Saving Bulb Project.

1. What happens if the Council coordinator fitter damages even accidentally a light fitting, resulting in there being required the services of an electrician to install a new fitting?

The Chief Executive Officer advised the meeting that Council that this would be an issue between the contractor and the householder, however, Council would be happy to investigate any issue of concern and intervene if appropriate.

2. Has Council performed a cost analysis of providing or coordinating this service and if so how much is it costing Kingston ratepayers?

The Chief Executive Officer advised the meeting that Council does not provide any financial contribution to the scheme.

Brian Hurley asked if a flyer could be placed with Rate Notices requesting people to cut Trees/Bushes off at the fence line.

The Chief Executive Officer advised the meeting that Council is reluctant to include too much additional material in with Rate Notices so that the importance of such message is not diluted.

The concerns raised will be taken onboard and Council will look at publishing an article in Kingston Your City to remind residents of their responsibilities for overhanging branches.

Simon Meates advised in relation to the Winter Foreshore Dog Restrictions that in a survey run by Council, an overwhelming 69% of respondents supported the proposal and in an independent survey by the Leader 92 % supported the proposal. Simon asked how can Council say they are representing the desires of their constituents?

The Chief Executive Officer advised the meeting that Council would be considering the issues raised later in the meeting when considering the matter of Winter Foreshore Dog Restrictions.

Margaret Howse asked why is Council voting against a 1 hour increase given that council claims to support “positive ageing” is concerned about mental health needs and wants to support a “sense of community.”

The Chief Executive Officer advised the meeting that Council would be considering the issues raised later in the meeting when considering the matter of Winter Foreshore Dog Restrictions.

9. Community Sustainability Reports

**K 74 Proposed Amendments to Winter Foreshore Dog Restrictions
Section 223 Committee Hearing Report**

Approved By: Trevor McCullough, General Manager Community Sustainability
Author: Tony McNamara, Acting Manager Health and Local Laws

1. Purpose

To consider the report of the section 223 Committee convened to review submissions received from residents in response to a public notice placed in local newspapers and the Government Gazette in January 2008 (*see attachment 1*).

2. Background

The current winter restrictions allow dogs to be off leash in Section B (*see attachment 2*) of the foreshore precinct before 10 am and after 3pm. The Section B defined area is between Plummer Rd Mentone and Bay St Car Park Mordialloc and between the eastern sides of Mordialloc Creek to Old Post Office Lane Carrum. The winter restrictions are in place from 1 April to 31 October each year.

In September 2000 Council conducted extensive public consultation to determine adequate and acceptable winter and summer dog restrictions on the foreshore. The existing foreshore dog restrictions were put into place the following year, based on the community response from this consultation process. As part of this process Council considered the importance of attaining a balance of use between dog owners and those wishing to use the beach without encountering off-leash dogs. When considering the winter times it was decided that requiring dogs to be on leash between 10am and 3pm represented roughly half of the 10 to 12 hours of daylight available during the winter months. Council also considered the limited other park opportunities for residents in the beachside strip, limited time opportunities for shift workers and the need to recognise that the foreshore provided the only local recreational open space for many of these residents. Council at the time was comfortable that 5 hours on-leash and 5 to 7 hours off-leash during daylight hours in the winter months was a good balance and was respectful of the need for sharing of the foreshore open space.

Council received a petition from a Clarinda resident mid-2007 requesting that the time of the winter restriction be amended to allow dogs off leash on the foreshore Section B until 11am. The petition contained 714 signatures, of which 467 were from Kingston residents and 247 from non-Kingston residents. Extending the time would allow some dog owners a longer opportunity to walk their dogs, off leash, when the winter weather may be milder later in the morning.

Council determined to undertake a broad public consultation on the proposal and during November 2007 a public survey was circulated seeking community comment on the proposal.

3. Consultation process

The consultation process undertaken involved the following:

- The Kingston Foreshore reference group and Council's Village Committees were briefed on the proposal and the consultation process.
- Press releases were placed in all local newspapers inviting residents to 'have their say' on the proposal.
- Public notices were placed in all local newspapers inviting residents to complete the survey and comment.
- A printed survey brochure was distributed to approximately 6000 residencies located within the vicinity of the foreshore (their responses would be considered in the context that the beach serves them in lieu of local parks and reserves that are typically available to other residents across the municipality). The brochure incorporated a map displaying the existing restrictions, information relating to the potential benefits and potential disadvantages of the proposed changes and a survey question to be completed and returned to Council.
- An online survey form was placed on the City of Kingston website allowing interested parties to complete online submissions until 16 November 2007.
- Hard copy survey forms were made available at Council customer service centres and libraries to enable those without internet access to also make submissions.
- The establishment of a section 223 review committee consisting of Councillor Petchey, the General Manager Community Sustainability and Manager Local Laws and Health Services to consider submissions.
- Officers submitted a report to the Council 17 December 2007.

623 submissions were received from individuals with 429 (69%) respondents in favour of the proposed changes and 194 (31%) respondents against the proposal. 389 (62%) of survey responses were from residents located within the foreshore vicinity, with 59% of this group supporting the proposal to alter the winter restrictions.

It is important to keep any conclusions drawn from these submissions in context. Any statistics drawn from these submissions need to be mindful that the views represented are only representative of those people who took the time to respond and so do not necessarily reflect the views of all residents or all users of the foreshore areas. Care therefore needs to be taken in drawing definitive conclusions. The results from the submissions nevertheless do provide some guidance on the feeling of the community.

After considering the results of the public consultation at its Ordinary Council Meeting held on 17 December 2007, Council resolved to commence statutory procedures to further consider the proposed winter foreshore dog restrictions. A total of ten submissions were received and of those, two residents elected to present verbal submissions to the section 223 Committee.

4. Issues identified in consultation process

A summary of the likely impacts identified by residents via the consultation process include:

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Potential benefits -

- In addition to 24 hour winter on-leash access, dog walkers will have an extra hour to walk their dogs off leash during daylight hours in winter (this may appeal to shift workers, parents of school age children or those who do not live within the immediate area of the two designated 24 hour off leash areas at Mentone and Carrum).
- Allow dog walkers to exercise their dogs off-leash when the winter weather may be milder later in the morning (strongly noted in regards elderly residents or beach users with special needs).
- Encourage greater utilisation of the foreshore area during the winter months.
- Further promote and encourage pet owners to walk/exercise their pets and enjoy the health benefits available to both dogs and owners.
- Extend the sense of community that exists amongst dog owners and the positive benefits of responsible pet ownership.

Potential disadvantages -

- An increase in complaints regarding animal litter and other unwanted animal behaviours particularly from less responsible owners who do not maintain effective control of their dogs.
- An increase in incidents involving dogs including, dog rushes, attacks and the possible resulting injuries to both people and animals.
- Extra patrols required by Local Laws Officers, taking resources away from other areas, to ensure responsible pet ownership in the foreshore precinct.
- An inconsistency with summer restrictions, which may confuse some beach users and the need to replace existing signage throughout the entire foreshore reserve.
- An hour less each day for beach users who prefer not to encounter dogs off leash particularly at risk groups such as young children or those not familiar (or fearful) with dog behaviours and the effective further reduction of the proportion of Kingston's foreshore that is dog free with the limited Mordialloc prohibited zone the only area available.
- Even though the current Regulations already allow all day access for dogs on the foreshore, the additional off-leash time may lead to a perception that balance of usage would weigh too much towards dog owners and away from other recreational users.

5. Section 223 Committee Hearing

On 21 February 2008, a Committee of Council comprising Councillor Topsy Petchey (South Ward Councillor), Trevor McCullough, General Manager Community Sustainability and Tony McNamara, Acting Manager Health and Local Laws convened to consider the submissions.

Ms Howse (supporting the proposal) and Mr VanderLinde (opposing the proposal) spoke to their submissions (*see attachment 3*).

In summary, submissions from those parties (5 in total) supporting the proposal cited the following reasons for their position:

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- Limited access, particularly for elderly or special needs residents, to the foreshore in the winter months due to cooler temperatures in the morning period.
- The inconsistency of Kingston's foreshore regulations with neighbouring Councils.
- The positive health benefits to both owners and their pet companions to exercise regularly.

Submissions from those parties (5 in total) opposing the proposal cited the following reasons for their position:

- The current winter restrictions do not stop dog owners using the beach with dogs on-lead.
- Dog owners already have a fair share of daylight hours to utilise the foreshore under the existing restrictions.
- Dog owners consistently do not keep their pets under effective control and are not always considerate of other beach users.
- The off-leash zones at each end of the municipality are sufficient for those wishing to exercise their animals.
- A perception of a lack of visibility of local laws officer patrols on the foreshore.

6. Section 223 Committee Findings and Comments

The Committee has heard and considered the submissions and offers the following comments for Councillors consideration:

- The existing foreshore restrictions have been in place for seven years and have worked effectively providing a fair share of the beach for both dog owners and other beach users. During this period Council has received a low number of complaints in this regard and this indicates a high level of satisfaction with the current arrangement.
- Both supporters and opponents of the proposal made comment in regards a lack (either perceived or real) of visible enforcement on the foreshore and voiced concerns about animal owners not taking responsibility for their pets in regard to dogs not being under effective control.
- A dedicated Local Laws officer is currently assigned to patrol the foreshore during the summer period 1 November to 31 March each year. To provide consistency in enforcement presence, the Committee recommends that Council consider extending the foreshore patrol to incorporate the winter months and thus provide a year round coverage.
- Whilst the survey process and submissions offered majority support for the proposal, consideration must be given to all beach users particularly those living close to the foreshore precinct that utilise the foreshore as their local reserve for recreation.

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- Those beach users who do not wish to be confronted with dogs (either on or off leash) are limited to the Mordialloc No Dog Zone to allow for their dog-free enjoyment of the foreshore reserve.
- Dog owners are currently free to utilise the Kingston's foreshore at all times throughout winter to exercise and enjoy their pets, with the Mordialloc prohibited zone the only exception. During the hours of 10am to 3pm dogs must be on a leash.
- For dog owners who only wish to exercise their pets off leash, areas at both the northern and southern ends of the municipality (Mentone and Carrum beaches) have been set aside for 24 hour off leash dog access.
- In addition, Council has 26 permanent off-leash reserves across the municipality that facilitate off-leash exercise opportunities. Further off leash areas are also available nearby in the City of Bayside. The City of Frankston does not permit any off leash foreshore access.
- Council currently has purpose built dog agility courses in two of its off-leash reserves, Bicentennial Park in Chelsea and Kevin Hayes Reserve in Mordialloc. Council has recently approved for a third dog agility course to be installed at Bald Hill Park in Clayton South. These areas provide dog owners a great facility to exercise, socialise and train their dogs in a safe environment without adversely impacting other park users.
- The Committee recommends that Council consider the installation of further dog agility courses in designated off-leash reserves. This would offer more residents the opportunity to enjoy the positive social benefits of responsible pet ownership by utilising Kingston's open space recreational areas. Encouraging greater use of inland off leash areas will also assist in providing alternatives for dog owners and may take some of the pressure off the foreshore as the only option for some residents.
- Whilst the committee is comfortable that the current winter hours still represent the fairest balance of shared foreshore access, it is recommended that the Regulations be kept under close watch and if the conditions change future changes may be appropriate.

7. Conclusion

The Committee has considered submissions and further reviewed responses from the community consultation process. Committee members have weighed up the arguments in terms of a fair share of the foreshore for all users and believe that the existing restrictions strike an appropriate balance. The Committee is mindful of Council's dual animal management responsibilities in delivering both education and enforcement services to the community and thus recommends the expansion of recreational facilities coupled with additional winter patrols. With these considerations in mind, the Committee has determined not to support the proposal to

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amend the winter foreshore dog restrictions at this time, but continue to monitor for any change.

Recommendation

- (1) that Council notes the report of the section 223 Committee and supports the Committee's recommendation not to amend the winter foreshore restrictions at this time;
- (2) that Council support the Committee's recommendation for the appointment of a dedicated local laws officer to provide foreshore enforcement for the winter period;
- (3) that Council authorise Officers to investigate further opportunities for the installation of dog agility courses in Kingston's designated off-leash reserve areas;
- (4) that Council Officers continue to monitor animal management issues on the foreshore and other inland off leash areas during the winter period and that any changes be reported to a future meeting for Council's consideration

Petchey/McKeegan

That the recommendation be adopted

Carried

A division was called

For
Cr Petchey
Cr West
Cr Athanasopoulos
Cr McKeegan
Cr Nixon

Against
Nil

The Motion was **Carried**

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**K 75 Response to the Inter Council Aboriginal Consultative Committee
Regarding Indigenous Polices and Protocols.**

Approved by: Trevor McCullough, General Manager Community Sustainability

Author: Janice Raux, Community Development Coordinator

1. Purpose

This report provides Council with possible responses to a request from the Inter Council Aboriginal Consultative Committee (ICACC) that Council formalise policies, procedures and practices in relation to working with the Indigenous community and traditional landowners¹ of the municipality.

This report links to Planned Outcome Three of the Council Plan, 3.2 'Bringing people together to celebrate our cultural diversity and promote pride in the City and its people'.

2. Background

Inter Council Aboriginal Consultative Committee

ICACC is a partnership between eight local governments (Casey, Cardinia, Greater Dandenong, Bass Coast, Mornington Peninsula, Knox, Frankston and Kingston), Indigenous community agencies and the Indigenous community to address issues affecting the Aboriginal² community on a regional basis. This commitment is in the form of fostering self determination and empowerment for Aboriginal people by information provision and influencing future planning at all levels of government to work collaboratively to improve outcomes in areas of respect, recognition, reconciliation, equity, and health and wellbeing.

Cr Nixon is currently Council's endorsed representative on ICACC, along with Council's Community Development Coordinator, Janice Raux. The role of Council representatives is to participate in the ICACC Local Governance Liaison Group and Community Forums held by ICACC.

In March 2007 the ICACC Secretariat wrote to each of the eight member Councils requesting consideration of the following recommendations;

1. Adoption of a policy directing the use of a 'Statement of Acknowledgement',
2. Instalment of acknowledgement plaques in buildings and areas of significance,
3. Instalment of acknowledgment signs at municipal gateways,
4. Adoption of a policy on flying the Aboriginal flag.

¹ There is debate around the use of the term traditional landowners, which is beyond the scope of this report. An alternative term that is also widely used is 'traditional custodians'. Both of these terms refer to the Indigenous people who occupied the land prior to and during white settlement.

² The terms Indigenous and Aboriginal are used interchangeably in this report.

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Council has shown its links with its Aboriginal heritage through the flying of the Aboriginal flag at Attenborough Park, alongside Mordialloc Creek. Kingston is one of a number of councils that have dedicated a site to its Aboriginal population.

A Statement of Acknowledgement would show the value that Council gives to the unique status of Aboriginal people as the original custodians of Australian land and waters. The practice of giving public acknowledgement and recognition to Traditional Custodians is seen as an appropriate and respectful way of breaking down cultural barriers and progressing reconciliation.

3. Issues

Indigenous issues have been considered of national significance over the past 12 months with previous and current federal government initiatives receiving significant media coverage. Most prevalent was the bipartisan support in Parliament in early 2008 for an apology to the Indigenous community for past government sanctioned practices. Within the current environment, Council has an opportunity to make a contribution towards moving forward with the Indigenous community by showing community leadership through the way in which Council engages with Indigenous residents and their representative groups.

Many municipalities, including the neighbouring cities of Frankston and Bayside, have adopted Indigenous strategies over recent years. These outline the commitment of each organisation to engaging with the Indigenous community and the strategies and actions that will be used to achieve this.

4. Options

After consideration of neighbouring municipalities' Indigenous strategies, government best practice documents and the request from ICACC, the following policy platform is proposed for Kingston Council. The highlights of this policy are:

- A statement of commitment to consultation with the Indigenous community and traditional owner groups as identified as relevant to Council,
- Ensuring that all Aboriginal Heritage legislation is complied with,
- That Council engages in consultation with Indigenous representative groups when considering using Aboriginal words for naming of sites within the municipality,
- The recognition of significant Indigenous celebratory weeks with the flying of the Aboriginal flag at Council offices, and
- Reading a 'Statement of Acknowledgement' at public events where Indigenous representatives have been invited to participate.

The proposed Policy Platform is included as Attachment A.

5. Triple Bottom Line Checklist

5.1 Budget/Financial impact

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There is no significant financial impact associated with adoption of the proposed policy platform.

5.2 Social impact

Establishment of a policy framework for engagement with the Indigenous community and Indigenous representative groups will place Council in a position of leadership and provide an enhanced opportunity for strategic engagement for important social issues.

5.3 Environmental impact

The engagement of the Indigenous community will provide for the historical, spiritual and cultural appreciation of the environment.

6. Summary and Conclusion

Council has demonstrated strong leadership and commitment to engaging and responding to the needs of its local community through a variety of strategies, actions and policies. The adoption of an Indigenous Policy Platform will continue to strengthen the view of Council as a leader within the community, and by Indigenous community members and representative organisations. A review of the Policy Platform is proposed following its implementation over time and within the context of changing social interest.

West/Athanasopoulos

1. That Council endorse the Indigenous Policy Platform included as Attachment A.
2. That the Inter Council Aboriginal Consultative Committee be advised of Council's policy position with respect to Indigenous issues.
3. That the Policy Platform be reviewed by Council around October 2010.

West/Athanasopoulos

That the recommendation be adopted

Carried

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K 76

**Central Bayside Community Health Service Edithvale Site
to Incorporate Residents with Disabilities**

Approved by: Trevor McCullough, General Manager Community Sustainability

Author: Rob Crispin, Manager, Community & Aged Services

1. Purpose

This report advises Council of a request from Central Bayside Community Health Service for Council to join in a project to establish a site in Edithvale Road, Edithvale. The centre will support programs and services specifically tailored for people with disabilities.

2. Background

Central Bayside Community Health Services (CBCHS) has written to Council requesting a \$20,000 contribution from the City of Kingston to support a capital project at Edithvale Road, Edithvale.

The project aims to create a site providing adult learning and a social connectedness meeting point for people living in the Edithvale and surrounding areas. The centre will be known as the CBCHS Edithvale site and it is intended that the development of the capital project be in partnership between the State Government and CBCHS. This community based facility will offer programs and services specifically tailored for:

- 12 people with disabilities and who have high support needs
- Up to 25 other members accessing similar programs
- 16 people with disabilities who have missed abilities
- Complementary community primary health services
- A mixture of other users.

The planning of this project is aligned with the Disability Act 2006 as well as the Victorian State Disability Plan. The principles that underpin these references aim to enable people with disabilities to pursue individual lifestyles, to build inclusive communities, and to provide leadership in the community.

It is proposed that the site will provide an integrated facility that generally includes all people with a disability. The opportunities provided by the centre include:

- Providing a stimulating, enjoyable, safe, supportive and secure environment
- Providing opportunities for learning
- Enhancing the status of people with disabilities so that they can gain acceptance and inclusiveness

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- Assisting with skills and personal development and ongoing training of participants
- Fostering an environment that empowers people to make informed decisions
- Enabling participants to reach their own or collective potential.

In addition, the centre will provide opportunities for the broader community including:

- Extending existing partnerships with non-disability service based providers
- Providing and maintaining a strong welcoming and supportive environment for the community
- Providing opportunities for support and social connectedness and a base for local community groups to network, meet and grow.

The core hours of the service will be Monday to Friday 9am - 5pm. The centre will be available for other community groups to use at nights or on weekends when other program activities are not operating.

Some of the joint programs to be offered by the service partner organisations include: music, healthy wellbeing, adult literacy and numeracy, arts and crafts, short courses in computing, vocational education and volunteer training.

Some of the complementary primary health services will include: physiotherapy, strength training, tai chi, community health nursing, dietetics, podiatry and general health promotion.

The proposed facility is owned by Peninsula Health with CBCHS currently renting part of the facility. It is anticipated that CBCHS will negotiate the purchase of the site.

The proposed building has one large and two smaller program areas as well as a reception area and three small offices, which is ideal for a community centre and an adult learning environment.

The Department of Human Services has advised CBCHS that it is likely to receive a \$500,000 grant towards the project subject to the City of Kingston also contributing financially.

3. Issues

The proposal from CBCHS would directly benefit a number of people within the City of Kingston who may otherwise not have an opportunity to participate in a supported community learning environment. The partnership between CBCHS and the State Government presents Council with an opportunity to support a community based venue.

Should Council make a contribution of the \$20,000 requested it is recommended that this is on the conditions that Council would be recognised for its contribution and that

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there would be no further financial obligation on Council to support capital works and/or any other projects on the site.

4. Options

The allocation of funding to support this proposal is at the discretion of Council. The request of \$20,000 from CBCHS seems to be a reasonable contribution that will assist CBCHS to obtain a \$500,000 grant from the Department of Human Services for the venture.

5. Triple Bottom Line Checklist

5.3 Budget/Financial impact

Council has the opportunity to fund the request from the 2007-2008 Financial Year expected operational budget surplus.

5.4 Social impact

The opportunity to support this venture has benefits for those directly participating as well as the wider community who can use a facility in the Edithvale area. The establishment of the centre will enhance the lives of the participants.

5.3 Environmental impact

Not applicable.

6. Summary and Conclusion

Council's support of CBCHS Edithvale site Capital Project will provide a benefit to the community, especially those who have a disability. It also demonstrates a joint venture with community based learning organisations. A \$20,000 grant could be made available by Council within the current financial year budget.

Recommendation

That Council grant \$20,000 to Central Bayside Community Health Service as a contribution to the CBCHS Edithvale site project.

Petchey/Athanasopoulos

That the recommendation be adopted

Carried

K 77 Food Sample Analysis

Approved by: Trevor McCullough,
 General Manager Community Sustainability

Author: Robert Beattie, Coordinator Policy & Projects

1. Purpose

To advise Council of the results of food sampled and analysed pursuant to section 32(1) of the Food Act 1984.

This report relates to: The quarter January 2008 to March 2008.

2. Background

Council is obligated under section 32 (1) of the Food Act 1984 to obtain, at a minimum, three food samples for every thousand persons of the population, and submit them for analysis. In Kingston, this equates to approximately 410 samples per annum. The target for this reporting period is 102 per quarter and the actual achievement was 123. Under the Act there is also a requirement to formally report the results of analysis to Council.

The food-sampling program is conducted by Council's Environmental Health Officers (EHO's), who visit food premises, purchase samples and submit them to an accredited independent laboratory for analysis. Samples for analysis are also sometimes received from the public or another Council as a result of a consumer complaint.

Any failed samples are followed up by the EHO's with the relevant business. Samples are considered to have failed if they do not meet any number of criteria including incorrect labelling or issues arising from poor handling. The sample may not necessarily pose a risk to health. The type and level of failure will direct the type of follow up action taken such as a letter being sent to the premises, or an inspection by an officer, or education leading to changes in procedures within the premises or in some cases, prosecution. There have been no prosecutions in relation to this reporting period so far.

3. Summary and Conclusion

Council continues to meet its statutory obligations pertaining to the purchase and analysis of food samples. Attachment 1 lists the 123 food samples taken and attachment 2 is an overview the actions taken with non-complying samples for the period.

It should be noted that the failure rate is not indicative of the whole food supply, as sampling is targeted at specific food types and also includes specific complaint samples.

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Recommendation

That Council note the report.

Athanasopoulos/McKeegan

That the recommendation be adopted

Carried

11. Corporate Services Reports

K 78 Policy Review Sale of Right-Of-Way & Drainage Reserves

Authors: Julian Harvey, Manager Property Services
 Newton Gatoff, Coordinator Property Services

Approved by: Paul Franklin, General Manager Corporate Services

1.0 Purpose

The purpose of this report is to seek Council approval for the adoption of the revised Sale of Right of Way & Drainage Reserves Policy.

2.0 Background

Under Section 206 of the Local Government Act 1989, Council has the power to discontinue roads and rights-of-way or part thereof and sell them to a third party or retain them for municipal purposes. Council's policy for the sale of Right-of-Way & Drainage Reserves was first adopted on 11th December 1995. Since that date Council has sold numerous parcels of land by following a procedure established as the result of the adopted policy. The objective of the policy is to establish a clear process to formerly close a road and to provide officers with the directions to transact the sale of the parcels of land which arise from the closure. With the passage of time and with improvements to legislation including the Road Management Act in 2004, and protection from adverse possession claims from Council certain elements of the adopted policy required review.

3.0 Issues

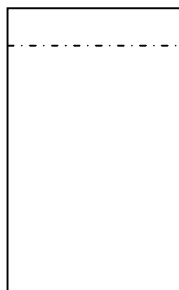
Examples of why changes are needed to the 1995 policy

- The policy does not adequately deal with the situation arising from a purchasers objection to Councils valuation for the land and provide clear valuation rationale to determine the value of the land.
- The policy does not encourage consolidation of title once a parcel has been purchased. Both Land Registry and Lands Victoria have recently requested Council to encourage the practise of title consolidation.
- The policy holds each party responsible for legal costs and fails to address the responsibility for other costs which are incurred including surveyors, subdivision and valuation costs.
- The pricing regime provided in the policy does not adequately address possessory claims and does not provide sufficient incentive for the finalisation of closure schemes.

Scenario 1

Rear residential land

ROW occupied for over 10 years but less than 15 years



Land value before purchase

= \$300,000

Land value after purchase

= \$320,000

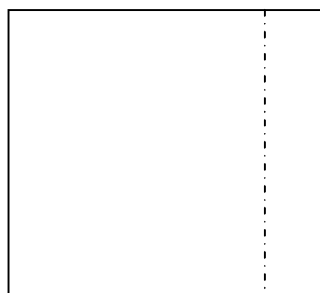
Value of ROW = \$20,000 (\$320,000 - \$300,000)

Market valuation	=	\$20,000	
Part A discount	=	10% of \$20,000	= \$2,000
Part B discount	=	50% of \$20,000	= \$10,000 (one off incentive)
Total discount	=	\$12,000	
Total sale price	=	\$8,000 (\$20,000 - \$12,000)	

Scenario 2

Side residential land

ROW occupied for less than 10 years



3 unit site

Land value

= \$600,000

4 unit site

Land value with ROW

= \$700,000

Value of ROW = \$100,000 (\$700,000 - \$600,000)

Market valuation	=	\$100,000	
Part A discount	=	not applicable	
Part B discount	=	50% of \$100,000	= \$50,000 (one off incentive)
Total discount	=	\$50,000	
Total sale price	=	\$50,000 (\$100,000 - \$50,000)	

4.0 Triple Bottom Line Checklist

Environment

The reduction in the numbers of unused rights of way will relieve Council of maintenance responsibilities and bring previously underutilised land into service.

Social

Those owners whose blocks of land back on to rights of way will have a better opportunity to purchase land which has previously remained in Council's control and they can set about making improvements to the land which would otherwise remain fallow.

Financial

By providing greater incentives to property owners to purchase pieces of land adjoining their properties, Council can increase the amount of sales and therefore capital sums received, whilst also relieving the ratepayers of the burden of responsibility of maintenance.

5.0 Summary and Conclusion

A 13 year old policy which was written in a very different economic and social climate to the present day is clearly in need of review. The proposed revisions to the policy will enable Council to transact a greater number of sales.

Recommendation

Council adopts the revised Sale of Right of Way & Drainage Reserve Policy.

Athanasopoulos/Petchey

That the revised Sale of Right of Way & Drainage Reserve Policy be adopted subject to the procedure for the Commencement of Statutory Procedures reading as follows:

If the Manager Property Services believes that a road, right of way or reserve is no longer reasonably required for the purpose for which it was set aside, he or she may commence statutory procedures to either discontinue and sell by private treaty, public tender or public auction or retain for municipal purposes. The Discontinuance shall be advertised by Public Notice with directions for those interested parties to make submissions to Council. Council will also write to adjoining property owners informing them of its proposal to discontinue the road, right of way or reserve and place a sign on the land where practical.

Carried

K 79 Advertising of Proposed 2008/09 Budget and Proposed 2008 – 2013 Council Plan

Approved by: John Nevins, Chief Executive Officer

Authors: Paul Franklin, General Manager Corporate Services
Elaine Sowerby, General Manager Organisational Development and Governance.

Background

Council is required to formally resolve to advertise its inspection period for the Draft Budget Statutory Information and Draft Council Plan required pursuant to Sections 125, 127(2)(d) and Section 158(1) of the Local Government Act 1989 and Regulation 8 of the Local Government (Finance and Reporting) Regulations 2004.

To give effect to these recommendations, a Public Notice will be inserted in The Age on Wednesday 28 May 2008 noting that copies of the Draft Budget and Statutory Information and the Draft Council Plan 2008 – 2013 will be available for inspection at Council's Customer Service Centres and Libraries. The Draft Budget and Draft Council Plan will also be available for inspection and downloading from the Council's website www.kingston.vic.gov.au. Further, the Public Notice will invite written submissions on proposals contained in the Draft Budget and Statutory Information and the Draft Council Plan by 5.00pm on Thursday, 12 June 2008. This is a period of 14 days for the community to provide comment on the Draft Budget and Draft Council Plan as is required under Section 223 of the Local Government Act.

Recommendation

That:-

1. The Budget annexed to this resolution and initialled by the Mayor for identification be the Budget prepared by Council for the purposes of Section 127 of the Local Government Act 1989;
2. The Chief Executive Officer be authorised to:-
 - (a) give public notice of the preparation of such Budget, in accordance with Section 129 of the Local Government Act; and
 - (b) make available for public inspection the information required to be made available by Regulation 8 of the Local Government (Finance and Reporting) Regulations 2004; and
3. Council hear any presentations in support of any submissions received in relation to the draft Budget, made in accordance with Section 129(2) of the Local Government Act 1989, at a Special Meeting of Council to be held on Monday, 16 June 2008 at 6.30pm at 1230 Nepean Highway, Cheltenham.
4. The Chief Executive Officer be authorised to give public notice of the preparation of the Council Plan, in accordance with Section 125 of the Local Government Act 1989;
5. Council hear any presentations in support of any submissions received in relation to the draft Council Plan, made in accordance with Section 125(9) of the Local Government Act 1989, at a Special Meeting of Council to be held on Monday, 16 June 2008 at 6.30pm at 1230 Nepean Highway, Cheltenham

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Athanasopoulos/McKeegan

That the recommendation be adopted

Carried

12 Notices of Motion

K 80 Kara Grove, Aspendale - Landscaping

Cr Petchey has given notice to move the following motion

That Council officers prepare a landscape plan for the Kara Grove Road Reserve, Aspendale for consideration by Council.

Petcheys/McKeegan

That Council officers immediately prepare a landscape plan for the Kara Grove Road Reserve, Aspendale for consideration by Council.

Carried

14 Urgent Business

Nil

15 Items in Camera

Nil

There being no further business, the meeting closed at 8.41pm.

ConfirmedHis Worship The Mayor 23 June 2008