

CITY OF ARMADALE

**ORDINARY MEETING
OF COUNCIL**

5 DECEMBER 2005

C O N T E N T S

1 AGENDA

**2 MINUTES OF ORDINARY MEETING OF COUNCIL
HELD ON 21 NOVEMBER 2005**

3 REPORTS

**3.1 TECHNICAL SERVICES COMMITTEE
HELD ON 28 NOVEMBER 2005**

**3.2 COMMUNITY SERVICES COMMITTEE
HELD ON 29 NOVEMBER 2005**

3.3 CHIEF EXECUTIVE OFFICERS REPORT

NOTICE OF MEETING AND AGENDA

CR _____

PLEASE TAKE NOTICE that the next **ORDINARY MEETING OF COUNCIL** will be held in the Council Chambers, Orchard Avenue, Armadale at **7.00pm**

MONDAY, 5 DECEMBER 2005



R S TAME
CHIEF EXECUTIVE OFFICER

2 December 2005

1 **DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS**

2 **RECORD OF ATTENDANCE / APOLOGIES / LEAVE OF ABSENCE**

**3 ADVICE OF RESPONSE TO PREVIOUS PUBLIC QUESTIONS
 TAKEN ON NOTICE**

The following questions were taken on notice at Council's meeting on 21 November 2005 and a response forwarded on 1 December 2005.

Mr A Pilkington, 312 Croyden Road, Roleystone

Q-2 What role does the City of Armadale play in policing Local Laws in the area of the Araluen Botanic Park particularly in regarding to Zoning Law, Bush Fire Control – Fire Breaks, Local Law relating to the Health Act 1911, Building Codes, Road Construction Australian Standards? What is the role of the City of Armadale relating to the Araluen Botanic Park when it comes to Local Laws?

A-2 Executive Director Technical Services:

*With respect to local laws, unless there is a specific provision within an Act of Parliament a local government cannot make local laws that are binding on the Crown. The Local Government Act 1995 says that it does not bind the Crown (with limited exceptions) and consequently local laws made under the Act **are not binding on the Crown.***

Since Araluen Park is held in the name of the Department of Planning and Infrastructure (a State Government Department) it is not subject to our local laws or to any other laws that do not specifically bind the Crown.

The Araluen Botanic Park is reserved for parks and recreation under the Metropolitan Region Scheme. Accordingly, the City has no planning or land use powers which it can exercise over the Park under its Town Planning Scheme.

The Araluen Botanic Park Management always comply with the Firebreak Notice and constantly consult with the appropriate Fire Services to review their current mitigation arrangements and responsibilities

As the Park is owned by the Crown, the City's Building Control Legislation does not apply.

The Araluen Botanic Park does not construct roads other than on its own land and consequently does not require approval of the City as none of these roads are in the City's domain.

Q-3 Is the City of Armadale aware of any instances whereby the Araluen Botanic Park is not conforming with the City of Armadale Local Laws?

A-3 No

Q-5 Referring once again to paragraph 4 of the Mayor's letter of 11 November 2005 where you say "it is the understanding that Council has no power to determine if the Araluen Botanic Park can" etc. – I am concerned that the Araluen Botanic Park is in fact an incorporated body, it is an entity and I refer now to a letter from Mr Jeremy Dawkins which states in part "the Park is operated by the Foundation, that is the Araluen Botanic Park Foundation Inc., as lessee". The WA Planning Commission and the State Government have no day-to-day involvement in the operation of the park nor the staging of events. Whereas in letters and in Minutes of Meetings of this organisation, it is mentioned as a Government instrumentality. I don't believe that is so – I believe it is an incorporated body, it is an entity and, therefore, capable of being sued and given the Nation's three-tiered Government, Federal state and Local, I believe that this Council can tell the Araluen Botanic Park Inc. what to do and when to do it. – will Council examine this aspect with a view to clarification?

A-5 The WAPC would be able to control the use of the Park by the Araluen Botanic Park Foundation Inc so that the use accords with the lease, in addition to its powers under the Metropolitan Region Scheme. The lease may provide some consents or approvals to the Araluen Botanic Park Foundation Inc to carry out particulars uses and developments on the Park, in accordance with Clauses 13 and 16 of the Metropolitan Region Scheme. The City has no role to play in this.

Accordingly, the City has no power under its Scheme to direct the Araluen Botanic Park Foundation Inc as to how it uses the Park. That power rests with the WAPC under the Metropolitan Region Scheme and the lease.

4 PUBLIC QUESTION TIME

Minimum time to be provided – 15 minutes (unless not required).

A procedure has been adopted by Council to ensure the orderly conduct of Public Question time and a copy of this procedure is attached to the Council Agendas made available in the public gallery.

The public's cooperation in this regard will be appreciated.

5 APPLICATIONS FOR LEAVE OF ABSENCE

6 PETITIONS

7 CONFIRMATION OF MINUTES

7.1 PREVIOUS ORDINARY MEETING OF COUNCIL
HELD ON 21 NOVEMBER 2005.

8 ANNOUNCEMENTS BY THE PERSON PRESIDING WITHOUT DISCUSSION

9 QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN - WITHOUT DISCUSSION

Nil

10 REPORTS

10.1 TECHNICAL SERVICES COMMITTEE

Report of the Technical Services Committee held on 28 November 2005 be received.

BUSINESS ARISING FROM REPORT

10.2 COMMUNITY SERVICES COMMITTEE

Report of the Community Services Committee held on 29 November 2005 be received.

BUSINESS ARISING FROM REPORT

10.3 CHIEF EXECUTIVE OFFICER'S REPORT

Report of the Chief Executive Officer as at 1 December 2005.

BUSINESS ARISING FROM REPORT

11 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Under the provisions of Standing Order 3.8 Cr Zelones has given notice of the following motion:-

That Recommendation D155/11/05 adopted by Council on 21 November 2005 being:-

“That Council refuse the request by Mr & Mrs Fava of Lot 19 (75) Roberts Road, Kelmscott to refund a \$200 application fee for a development application, as the application was assessed in full and a determination made.”

be revoked and the report and recommendation D155/11/05 be recommitted to the next Development Services Committee for reconsideration.

In terms of Regulation 10 of the Local Government (Administration Regulations 1996 i.e. *Revoking or changing decisions made at council or committee meetings*, the above motion must be supported by at least 1/3 of the number of offices of members of the Council.

Crs Munn, Everts, Hart and Wallace have supported the above revocation motion of Cr Zelones.

Though Council has, under Clause 10 of the Local Government (Administration) Regulations 1996, the discretion to revoke or change decisions made at Council or Committee meetings. Where a Council decision has been “acted upon” Local Law 14.1.3 of the City’s Standing Orders Local Law requires that a statement of impact prepared by or at the direction of the CEO of the legal and financial consequences of the proposed revocation, be considered.

Resolution D155/11/05 has been acted upon, therefore the following is submitted:-

LEGAL CONSEQUENCES

Other than the potential precedent referred to below, there do not appear to be significant legal consequences for Council in reconsidering the matter and revoking recommendation D155/11/05. Legal advice has not been sought, given the scale of this request.

However, to endorse such action would be likely to weaken the City’s position in contesting similar cases through the Courts in the event of this occurring in the future.

FINANCIAL CONSEQUENCES

The Town Planning (Local Government Planning Fees) Regulations 2000 empowers a Local Government to impose fees for the determination of a development application. Council endorsed a schedule of fees and charges for Development Applications in December 2000. These fees and charges are imposed for the service provided in assessing and determining an application. The issue apparently raised by the applicant is that if advised from the outset that the application had no chance of support, only one (complying) application would have been made.

Experience has shown this is not always the case. Officers must also take care not to pre-empt Council consideration. Where any discretion remains applicants may push the decision to the highest level, some times to the State Minister.

In this instance time was spent responding to the complaints and concerns of the surrounding community and the applicant was advised at the counter, prior to determination of the original application, that between 10 and 12 dry sheep equivalent only would be permitted on the subject property.

As services had been provided in determining both applications, a decision to revoke the recommendation to refuse the reimbursement of a second fee could have financial consequences. The refund of the fee would suggest that fees are not really required for that service.

If a precedent was to be set by revoking the recommendation and reimbursing the fee, the City could potentially create a situation where all unsuccessful applicants might seek a refund or reduction on their second application... Some fees are substantially greater than the \$200 sought by Mr. and Mrs. Fava (one substantial development in Kelmscott wanted a \$25,000 fee returned). It has to be said however, that the number of instances of fee reimbursement is likely to be small.

Other financial issues that come to mind in this matter are the costs of each officer's time spent on assessing each application (time spent on the initial application was significant), item to Council addressing the refund request and currently revisiting the matter, which without doubt have exceeded the fees paid. Further expense could also be incurred in seeking legal advice, if such advice is deemed necessary.

**12 URGENT BUSINESS APPROVED BY THE PERSON PRESIDING OR
BY DECISION**

**13 MATTERS FOR REFERRAL TO STANDING COMMITTEES -
WITHOUT DISCUSSION**

14 MATTERS REQUIRING CONFIDENTIAL CONSIDERATION

15 CLOSURE
