

Proposed Metropolitan Region Scheme Amendment 1280/41

Regarding Land at Point Peron

Hands Off Point Peron Inc. (HOPP) Submission

VOLUME 1

To the Governor of Western Australia

and

The Western Australian Planning Commission (WAPC)

13 November 2015



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EXECUTIVE SUMMARY

1. The case for rejection of the proposed MRS amendment is overwhelming. In this submission HOPP presents a vast array of relevant information, analysis and expert opinion to substantiate this conclusion. In contrast, the case put by the WAPC in support of the proposed MRS amendment is extremely weak.
2. HOPP submits that the proposed MRS amendment, and the development proposal it seeks to facilitate, are fundamentally at odds with sound planning principles, with the underlying purpose of the *Planning and Development Act 2005 (WA)* and with the State's own planning policies. HOPP submits that any well informed, fair and diligent assessment would inevitably reach this conclusion.
3. This raises serious questions as to how the MRS amendment proposal could have come this far. The explanation appears to lie partly in the fact that it is a proposal to facilitate a politically directed state government initiative, which has contributed to the WAPC's failure to exercise objectivity, even-handedness, and diligence. HOPP also alleges that there are other serious process and probity issues associated with the MRS amendment process and with the development proposal it is designed to facilitate.
4. HOPP submits that the approval of the proposed MRS amendment would bring Western Australia's planning regime into disrepute.
5. HOPP is calling for the proposed MRS amendment to be abandoned and for the government to adhere to the longstanding planning blueprint for Point Peron, which will allow for the establishment of a world class coastal park covering all of Point Peron and Lake Richmond, and the economic, social and environmental advantages this course of action will bring.
6. If the government wishes to continue its pursuit of this MRS amendment then HOPP calls for:
 - a. The halting of the existing MRS amendment process and the initiation of a fresh process involving independent, diligent and impartial evaluation of the proposed amendment, at arm's length from the government proponent; and
 - b. An independent inquiry to investigate the conduct of various parties involved in this matter, with the power to call witnesses, inspect documents and make findings and recommendations.

SECTION 1 – INTRODUCTION

References to Point Peron and Cape Peron

7. All the land to the west of Safety Bay Road and Hymus Street has for many years been commonly referred to as 'Point Peron', although this land is sometimes also referred to as 'Cape Peron'. This submission generally uses the expression 'Point Peron' for this land. Point Peron and Cape Peron have the same meaning in this submission, unless stated otherwise.

Purpose of this submission

8. The purpose of this submission is to demonstrate and substantiate:
 - a. Serious concerns regarding the probity and process of the MRS amendment planning process and the MBM development that the MRS amendment is designed to facilitate;
 - b. The lack of merit of the proposed MRS amendment; and
 - c. The overwhelming economic, environmental, social and cultural advantages of instead integrating the land into a world class coastal park covering all of Point Peron and Lake Richmond, for the benefit of locals and tourists alike.

Request for oral presentation

9. HOPP requests the opportunity to make an oral presentation to the WAPC, in a public forum, in relation to this submission.

Why this submission is also directed to the Governor of Western Australia

10. Ordinarily submissions in relation to an MRS amendment proposal are made to the Western Australian Planning Commission (WAPC). However, in view of the fact that HOPP's concerns go to issues of fairness and probity and include the assertion that the WAPC has badly mishandled the planning process and is perceived to be biased¹, HOPP considers it appropriate to make this submission to a higher authority in addition to the WAPC.
11. HOPP contemplated making this submission to the Minister for Planning or the Premier, however HOPP also has concerns about their respective conduct in relation to, or affecting, the fairness and probity of the MRS amendment process². After careful consideration HOPP therefore decided to direct this submission to the Governor of

¹ Refer section 3 below

² Refer section 3 below

Western Australia, in the Governor's constitutional capacity and in view of the Governor's role pursuant to section 53 of the *Planning and Development Act 2005 (WA)*.

12. This submission is provided to the WAPC without prejudice to HOPP's position and arguments regarding the defects of the MRS amendment process. The fact that HOPP is also directing this submission to the WAPC should not be construed as acknowledgement or acceptance by HOPP of the fairness, diligence or probity of the WAPC's MRS amendment process.

Information about Hands Off Point Peron Inc. (HOPP)

13. HOPP began as an unincorporated group in 2009. In 2012 it became an incorporated association, with the key objective of protecting the integrity of Point Peron's environment for present and future generations.
14. HOPP has a wide supporter base, mainly from the Rockingham area, but also from other parts of the Perth metropolitan area and the state. It has gained recognition and respect for its passion and hard work in relation to Point Peron and Lake Richmond.
15. HOPP supports the staged development of a world class coastal park at Cape Peron and the construction of a marina at Wanliss Street, adjacent to the Rockingham Beach foreshore tourist precinct.

SECTION 2 – CONTEXT OF PROPOSED MRS AMENDMENT

Background and current status of the land

16. A large amount of land at Point Peron was previously vested in the Commonwealth. This included the land that is now subject to the proposed MBM development and MRS amendment. In 1964 the Commonwealth transferred its Point Peron land to the state on condition that its future use would be "*restricted to a reserve for recreation and / or park lands*"³ (**the Commonwealth / State Point Peron Agreement**). The plan was for the land to be turned into an "A" class reserve but unfortunately this has not yet occurred.

³ Refer report of Dr Ron Chapman (Attachment 5)

17. In 1968 the Commonwealth confirmed that the land must not be used “*for private industrial, commercial or residential development*”.⁴
18. In 2000 most of the land subject to the MRS amendment proposal was declared “*Bush Forever*” by the state government and incorporated into the Rockingham Lakes Regional Park, vested with the Conservation Commission and now managed by the Department of Parks and Wildlife.
19. Several leases have continued within the proposed MRS amendment area along the Mangles Bay foreshore – the RSL and AIW leases for ex-servicemen and the adjacent fishing club and yacht club leases.

The proposal for a high quality coastal park covering Point Peron and Lake Richmond

20. This proposal has been developed in recent years as a result of widespread community support and input. It stems from, and is consistent with, the 1964 Commonwealth / State Point Peron Agreement.
21. In 2012 a draft community vision for the coastal park was publicly launched to great enthusiasm. Since then further community consultations and forums have led to a more developed plan for the coastal park. Further information and expert opinion about this plan is set out at section 4 below. Suffice to say here that developing a world-class coastal park at Point Peron would have enormous benefits not only for the local community but also for Perth and the State.
22. This excellent initiative has been held up by the ongoing uncertainty caused by the state government’s so-called Mangles Bay Marina proposal.

The so-called Mangles Bay Marina (MBM) proposal

23. This is a state government proposal, driven by the government’s land development arm, LandCorp, with approval and support from the Premier and Cabinet. It is for an inland marina and canal housing estate on land at Point Peron.
24. The MBM proposal and the proposed MRS amendment are both in clear breach of the 1964 Commonwealth / State Point Peron Agreement, reached between Liberal Premier

⁴ Refer report of Dr Ron Chapman (Attachment 5)

David Brand and Liberal Prime Minister Robert Menzies. As mentioned above, that agreement requires that the land be held in public hands and its use restricted to recreation and / or park lands. The MBM proposal (which is said to be the prime purpose of the proposed MRS amendment) is for much of the MBM development land to be sold for private use for housing and various commercial enterprises. Only a small proportion of the land would be retained as public reserve for recreation and / or park lands.

25. Further analysis of the MBM proposal is set out in sections 3 and 4 below.

SECTION 3 – CONCERNS ABOUT PROBITY AND PROCESS

Introduction

26. This section of the submission addresses HOPP's serious concerns about the probity of the MBM development proposal and about the way the MRS amendment process has been / is being conducted. These concerns relate to the fairness, diligence and probity of the process and include an assertion of bias / apprehension of bias in relation to the WAPC's handling of the proposed MRS amendment, which is designed to facilitate a state government development proposal known as the Mangles Bay Marina (MBM) proposal.

27. The concerns outlined below do not reflect all aspects of HOPP's concerns about probity and process. HOPP is seeking and will consider further information and advice as it comes to hand and reserves its right to make supplementary or amended submissions in regard to such matters and to take such other action as HOPP considers appropriate.

28. For the reasons outlined below, HOPP considers that the MRS amendment process is defective and that appropriate steps need to be taken to address such defects.

Draft South Metropolitan Peel Sub-regional Planning Framework

29. HOPP became seriously concerned about the conduct of the WAPC in relation to Point Peron after the WAPC released a document called the "*Draft South Metropolitan Peel Sub-regional Planning Framework*". This is a document that, once finalized, contains the Sub-regional structure plan for a large area, including Point Peron. On close inspection, two of the maps in the document show the marina proposal land at Point Peron as

“urban expansion”, instead of its current status as parks and recreation reserve, located for the most part within the Rockingham Lakes Regional Park vested with the Conservation Commission.

30. The text of this draft document failed to mention the proposed change of status of the land to “urban expansion”. This proposed change is only noticeable by looking very closely at the map.
31. Furthermore, the document did not provide any basis or reasons for the proposed change, to which the public could respond.
32. We have been informed⁵ that no public forums were held regarding the draft document - only consultations with ‘big stakeholders’ – industry, the property sector, local government. Unfortunately it would seem that the public was not considered a significant enough stakeholder, so missed out.
33. No steps were taken by the WAPC, the Department of Planning or the City of Rockingham to raise public awareness about the significance of the document to future planning decisions about the MBM proposal.
34. We have been informed⁶ that there is no set of guidelines setting out the process by which the WAPC and the Department of Planning considers and deals with the public submissions it received. This in itself causes concern and does not instill confidence and public trust in the process.
35. HOPP made a submission to the Department of Planning setting out its concerns regarding aspects of the Draft South Metropolitan Peel Sub-regional Planning Framework document, the lack of proper public consultation and other matters (see Attachment 1). In its submission HOPP expressed the view that it could have no confidence in the fairness, even-handedness and diligence of the WAPC in relation to planning processes for the MBM proposal and HOPP specifically requested the government to address this problem.

Misleading and deceptive conduct

36. Over several years the MBM proponents LandCorp and Cedar Woods have

⁵ By an officer of the Dept of Planning, confirmed in writing 21 August 2015

⁶ By an officer of the Dept of Planning, confirmed in writing 21 August 2015

engaged in an expensive marketing campaign to try and drum up support for the MBM proposal, making various dubious claims, not backed up by evidence, about the alleged need for, and benefits of, a marina at this site. They no doubt realized that they would not get to first base with a proposal to bulldoze existing holiday homes and club facilities on the foreshore, and 'bush forever' in the regional park, for just another housing estate, in the absence of the promise of a marina and tourist precinct.

37. The centrepiece and rationale of the proposal has always been an inland marina and canals, with ancillary development around the marina. Importantly, the proponents have never said publicly that the marina may not in fact be built due to lack of funding, and they continue to rely on the promise of a marina to garner support for the proposal, using expressions such as "*the marina will...*".
38. HOPP is very concerned that the WAPC has been propagating the same misleading message, and failing to inform the public that the construction of the marina depends on generating sufficient net income from the sale of lots and that there is a substantial risk the marina will not be built due to financial constraints.
39. The WAPC has, by its silence and choice of language in this regard, participated in what HOPP regards as a misleading marketing campaign by the MBM proponents. The WAPC has failed to provide a fair and balanced account of the proposed development and its associated risks.
40. The proponents initially said that the construction of the marina would commence as part of the first stage of the development⁷. However, it has now emerged that the proponents no longer intend to commence construction of the marina in the first stage of the development. Their primary aim is to gain control of this prime public land and secure approval to clear, subdivide and sell it for residential housing, on the unfunded promise of delivering a marina made without any legally binding, secure guarantee that they will actually build a marina.
41. The priority of selling off lots is made clear in the development agreement between LandCorp and Cedar Woods which provides that "*the Parties must produce Lots for sale*

⁷ Refer the proponent's Public Environmental Review document dated February 2012

as soon as possible⁸. An extract of the agreement can be found at Annexure AC2 of Attachment 3.

42. There are huge doubts about the marina's feasibility. The state government has said the development must be self funded from the sale of lots⁹. Given the extremely high costs and risks associated with the "wet construction" method that would be required to build this inland marina¹⁰, we are advised that it would only be feasible with heavy government subsidy. However the government has said it definitely will not subsidise it. This means that the construction could only commence in several years time if the sale of the housing lots raises enough money (which we are told is unlikely) and then only if LandCorp and Cedar Woods are willing to sink their profits into such a high-cost, high-risk venture.
43. Even if they do manage to obtain sufficient finance at some stage in future, they would have no incentive to build the marina because *not* building it would be far more profitable.
44. In cases such as this, where the project has to be self funded (without government subsidy) LandCorp has a legislative responsibility under the *Western Australian Land Authority Act 1992 (WA)* to only embark on projects that are likely to yield the prescribed hurdle rate of return. This would likely prevent LandCorp from ever proceeding with the construction of the marina. Similarly Cedar Woods is a publicly listed company with responsibilities to shareholders and in the absence of a strict, fully secured and legally enforceable guarantee, is unlikely to be prepared to sink the profits it makes from the sale of the lots into the construction of the marina.
45. Unfortunately neither LandCorp nor Cedar Woods nor the WAPC have told the public this; instead they misleadingly continue to portray the marina as the centrepiece of the development; they have not been candid about the high degree of uncertainty about the marina's financing.

⁸ Development Agreement dated 5 October 2011 between the Western Australian Land Authority, Cedar Woods Properties Limited, Cranford Pty Ltd and Cedar Woods Properties Management Pty Ltd at clause 18.1

⁹ Refer the comments of LandCorp CEO Mr Marra quoted in Hansard 9 June 2015 at page E143 (Attachment 4)

¹⁰ Refer proponent's Public Environmental Review document dated February 2012. "Wet construction" would require extensive and prolonged dredging to excavate the marina and canals, due to the fact that the proponent would not be allowed to de-water the site during construction due to the irreversible damage this would cause to Lake Richmond and its threatened ecological communities. Such 'wet construction' is notoriously expensive and time consuming.

46. This all means that the basis upon which the marina proposal has been promoted, and pursuant to which it has received environmental approvals and now seeks planning approvals, is highly questionable.
47. This in turn taints the MRS amendment public consultation process and in itself is sufficient reason why the process needs to be revamped and entered into afresh, based on proper public disclosure and sound planning principles.
48. Approval of the proposed MRS amendment would play right in to the hands of the proponents in this regard. It would re-zone the vast majority of the land "Urban", thereby facilitating the excision of the land from the regional park and the bulldozing and sale of the 'bush forever' for private housing without any secure guarantee of achieving the central purpose of the MRS amendment – the construction of the marina.
49. HOPP respectfully submits that the granting of such approval in these circumstances would be seen as rewarding unethical and misleading conduct on the part of the proponents, to the great detriment of current and future generations of West Australians. It would, in short, be a travesty. It would destroy the great opportunity we have to establish a world-class coastal park at Point Peron and the enormous economic and environmental benefits that would bring – all for the sake of a housing estate which is not needed, and the unfunded and highly doubtful promise of a marina.
50. We have asked several questions and sought key documents under Freedom of Information from LandCorp relating to this issue. To date we have only received a small number of documents from LandCorp. Most of the documents requested have not been provided. For example, LandCorp has failed to provide any documents that show:
- a. The estimated cost of the MBM project;
 - b. The estimation of the amount of additional public funding required for the MBM project to be completed (including construction of the marina);
 - c. The estimation of the amount of project generated funding required for the MBM project to be completed (including construction of the marina);
 - d. The assessment of the business case for the MBM project including the terms of reference and who carried out the assessment;
 - e. The evaluation of the MBM project's financial feasibility, including the terms of reference and who carried out the evaluation;

- f. The estimation of the cost of maintaining and managing the MBM project waterways;
- g. The valuation of the MBM project land;
- h. The estimated net revenue from sales of the MBM project land and the basis of the estimate;
- i. The proposed stages of on-ground implementation of the MBM project and the proposed timetable for each stage, with particular reference to the proposed timing of the construction of the marina, clearing and demolition work, the creation of commercial and residential lots and other components of the MBM project;
- j. The Development Agreement between LandCorp and Cedar Woods;
- k. Details of the participation fee payable by Cedar Woods to LandCorp pursuant to the Development Agreement;
- l. The formula for calculating the amount of money Cedar Woods would receive for each lot of MBM project land sold.

51. This failure to disclose information and documents only serves to raise further suspicion and doubt.

Issues regarding LandCorp's engagement of Cedar Woods

52. In 2011 LandCorp engaged private developer Cedar Woods to help get environmental and planning approvals, to project manage the development and to market and sell the subdivided lots on behalf of LandCorp. According to Mr Marra, the CEO of LandCorp, Cedar Woods stands to make a profit of *"Depending on the revenue component of it...50 per cent of the revenue that can be generated"*¹¹. As mentioned above, the agreement provides that *"the Parties must produce Lots for sale as soon as possible"*¹².

53. Despite the scope of this lucrative government contract and the amount of profit to be gained, LandCorp selected Cedar Woods for this role after an expression of interest process, not a formal competitive tendering process.

¹¹ Hansard 9 June 2015 at page E143

¹² Development Agreement dated 5 October 2011 between the Western Australian Land Authority, Cedar Woods Properties Limited, Cranford Pty Ltd and Cedar Woods Properties Management Pty Ltd at clause 18.1

54. We have asked several questions and sought key documents under Freedom of Information from LandCorp relating to this matter.¹³ To date we have only received a small number of documents from LandCorp. Most of the documents requested have not been provided. For example, LandCorp has failed to provide any documents that show:

- m. The valuation of the MBM project land;
- n. The estimated net revenue from sales of the MBM project land and the basis of the estimate;
- o. The proposed stages of on-ground implementation of the MBM project and the proposed timetable for each stage, with particular reference to the proposed timing of the construction of the marina, clearing and demolition work, the creation of commercial and residential lots and other components of the MBM project;
- p. Why LandCorp decided not to conduct a competitive tendering process for the appointment of its so called 'private sector partner';
- q. The Development Agreement between LandCorp and Cedar Woods;
- r. Details of the participation fee payable by Cedar Woods to LandCorp pursuant to the Development Agreement;
- s. Why LandCorp wrongly advised the Office of the Environmental Protection Authority by email dated 9 February 2012 that it was "*not a co-proponent for the Mangles Bay project*" and that "*Cedar Woods is the sole proponent for the project*";
- t. The amount of money or other form of remuneration that Cedar Woods stands to receive from the MBM project if the MBM project is carried out to completion;
- u. The formula for calculating the amount of money Cedar Woods would receive for each lot of MBM project land sold.

The state government's refusal to provide information relevant to the MRS amendment process

55. On 8 May 2015 HOPP wrote to the WA Premier attaching a series of questions about key financial and probity issues concerning the MBM proposal and the government's handling of it, including its handling of planning issues. The Premier referred our questions to Mr Redman, the Minister for Lands, to answer. To this date, more than 6 months later, no answers to any of the questions have been provided despite reminder letters having been sent.

¹³ Refer affidavit of Ambrose Cummins at Attachment 3

56. The sequence of correspondence is explained and attached in full to the affidavit of Dawn Jecks affirmed 10 November 2013 (see Attachment 2)
57. HOPP considers that this excessive delay demonstrates a lack of accountability, transparency and candour.
58. We have also sought information and documents from LandCorp under FOI. However, LandCorp has refused to provide nearly all documents sought - refer affidavit of Ambrose Cummins affirmed 13 November 2015 (Attachment 3).
59. The refusal to provide answers to HOPP's questions has had a serious adverse impact on the fairness and transparency of the MRS amendment process because the state government has, in effect, refused HOPP's reasonable request for information about matters of relevance and importance to the MRS planning process and to HOPP's submission about the proposed MRS amendment. HOPP submits that in the interests of good governance and procedural fairness, answers should have been provided several months ago and certainly well before the deadline for public submissions in relation to the proposed MRS amendment.
60. LandCorp's refusal to provide documents has exacerbated the problem caused by the Premier and Minister Redman failing to respond to HOPP's questions.
61. HOPP submits that the prolonged failure to provide reasonable and relevant information renders the MRS amendment public consultation process fatally flawed. HOPP submits that the public consultation process should be re-started afresh on a proper footing, once the requests for information have been properly addressed.
62. Furthermore, the lack of answers reinforces the doubts about the viability and economic credentials of the MBM proposal, and about the lack of due diligence and probity in relation to the MBM proposal.

Lack of due diligence

63. We understand that no duly diligent analysis has been carried out to compare the environmental, economic, social and cultural costs and benefits of:

- a. Retaining the land as part of an integrated nature-based coastal park covering all of Point Peron and Lake Richmond (Cape Peron Coastal Park option), consistent with the current planning blueprint based on the Commonwealth / State Point Peron Agreement, the Rockingham lakes Regional Park and the 'bush forever' listing; and
- b. The MBM proposal, the nature of which is in flux and uncertain, as discussed below.

64. In the current circumstances this failure is inexcusable and contrary to sound planning principles, and provides further evidence of the government's failure to handle the matter diligently, objectively and even-handedly to date.

65. Proposing that the MBM proposal land be changed to "Urban", in the absence of a diligent comparative analysis, is especially irresponsible in view of the fact that the MBM proposal land (and adjacent land) was transferred by the Commonwealth to the State on the basis that the future use of the land would be "*restricted to a reserve for recreation and / or park lands*", with much of it since classified "*Bush Forever*" by the WA government and incorporated into the Rockingham Lakes Regional Park, and there is now an opportunity and well developed proposal to develop a world class coastal park that would bring in high economic, environmental, social and cultural returns to the region, the city and the state - an opportunity that would be forever lost if the MBM proposal goes ahead.

66. Under the circumstances this failure amounts to a fundamental flaw on the part of the planning process to date, and is in itself sufficient reason why the proposed MRS amendment is premature and should be rejected.

67. See also section 4 below in this regard.

Conflict of interest and perception of bias

68. Our concerns about the process are all the more serious because of the conflict of interest, bias/apprehension of bias and probity issues that arise due to the fact that the WA Government is itself, through its land development arm LandCorp (aka the WA Land Authority) the lead proponent of the MBM development. LandCorp's role

has occurred with express support and approval from the Premier and Cabinet¹⁴. LandCorp in turn has entered into a legally enforceable Development Agreement with private sector developer Cedar Woods¹⁵, under which Cedar Woods stands to gain a large profit from the subdivision and sale of the MBM proposal land for housing and other purposes¹⁶. Furthermore, under this agreement¹⁷ LandCorp has agreed with Cedar Woods to “*produce Lots for sale as soon as possible*”. This places the WAPC in a position where it has a key regulatory and advisory role to play but is not at arm’s length from the developer, in a situation where the government is itself constrained by contractual arrangements already entered into by the government’s land development arm.

69. Furthermore, issues arise as a result of LandCorp making contractual commitments to Cedar Woods that would allow Cedar Woods to make windfall profits from the sale of this prime public land at Point Peron without having to provide any legally binding, fully secured guarantee that the marina will be built.

70. The WAPC itself appears to have a pre-conceived view and vested interest in the implementation of the marina proposal because, according to Hansard¹⁸, it previously contributed \$250 000 to fund the Cape Peron Tourist Precinct Steering Committee which was charged with coordinating the community consultation, due diligence, planning and environmental studies in relation the MBM proposal¹⁹. We have obtained various documents under Freedom of Information about this transaction²⁰. The following is a brief analysis of some of the issues emerging from the documents received.

¹⁴ See Development Agreement between LandCorp, Cranford Pty Ltd, Cedar Woods Properties Limited and Cedar Woods Properties Management Pty Ltd dated 5 October 2011, which states (Background paragraph B) that “the Western Australian Cabinet has approved expenditure to progress Phase 2 which will involve undertaking statutory investigation and seeking necessary regulatory approvals and instructed LandCorp to report back to Cabinet at the end of that process.” Refer also to comments made to the Legislative Assembly Estimates Committee by the Hon DT Redman, Minister for Lands, and by Mr F Marra, CEO of LandCorp, on 9 June 2015 (Hansard 9 June 2015 at pages E143-4)

¹⁵ See Development Agreement between LandCorp, Cranford Pty Ltd, Cedar Woods Properties Limited and Cedar Woods Properties Management Pty Ltd dated 5 October 2011 (contained in Attachment 3)

¹⁶ Said by the CEO of LandCorp to be “Depending on the revenue component of it... 50 per cent of the revenue that can be generated” (Hansard 9 June 2015 at page E143)

¹⁷ At paragraph 18.1

¹⁸ Hansard 7 August 2013 page 2840-41

¹⁹ Known at that time as the Cape Peron Tourist Precinct

²⁰ See the documents annexed to affidavit of Ambrose Cummins, at Annexure AC4 (in Attachment 3)

WAPC provision of \$250,000 to MBM project

71. On 1 December 2003 the South West Corridor Development and Employment Foundation Inc. wrote to Minister MacTiernan requesting \$250,000 from the state government for a planning and implementation project for the Cape Peron Marina in Mangles Bay.
72. On 4 December 2003 Minister MacTiernan wrote to the MLA for Rockingham, Mark McGowan, to say that *"we will be able to provide \$250,000 assistance through the WA Planning Commission (WAPC) for environmental study into the proposed Mangles Bay Marina"* and *"I have formally written to the WAPC requesting that the money be allocated for the study. I expect confirmation of the allocation by 16 December 2003"*.
73. On 16 December 2003 there was a special meeting of the Executive, Finance and Property Committee of the WAPC attended by the Chair (Terry Martin) and 3 members (Paul Frewer, Corinne MacRae and Greg Martin) and various support staff. A report was provided to the Committee seeking approval for the allocation of the \$250,000 requested, from the Metropolitan Region Improvement Fund (MRIF) (New Project Allocation).
74. The meeting minutes refer to: *"Discussion: Considered the basic question of the applicability of the MRIF funding to this project, concluding that justification lies in facilitating the determination of the most appropriate use for P&R Reserves."*
75. The Committee resolved to *"consider"* contributing the \$250,000, subject to various conditions. The Committee also resolved *"to require that, should the project proponent achieve planning and environmental approvals to conclude the Feasibility of the Cape Peron Marina Implementation as a commercial venture, then the amount contributed by WAPC will be repaid by the proponent"*.
76. HOPP notes that:
 - a. No documents were provided regarding the *actual decision to provide the money*;
 - b. The WAPC decision to appropriate the money appears to have been made in haste, under extreme time pressure from the minister;
 - c. The WAPC asserted that the use of \$250,000 from the MRIF to, in effect, further a proposal that would expunge a large amount of a P&R reserve and

- to bulldoze the 'bush forever' located on it, was justified on the grounds that the funds were '*facilitating the determination of the most appropriate use*' of the reserve. There appear to be serious questions about the validity and probity of this large allocation of funds from the MRIF on this pretext, seemingly without due diligence or proper decision making process; and
- d. It appears that the WAPC has a financial interest in the MRS amendment approval, as it would get back its \$250,000 following environmental and planning approvals.

WAPC meeting minutes regarding the proposed MRS amendment

77. On 31 January 2006 there was a special presentation by a delegation comprising the City of Rockingham, LandCorp and Garry McKeown (from the Dept of Planning) to the WAPC.

78. On 22 July 2014 a deputation from LandCorp and another organization (information redacted) addressed the WAPC.

79. HOPP notes that it appears the WAPC did not consider at any of its meetings prior to advertising the proposed MRS amendment:
 - a. Any advice or report comparing the merits of the proposed MRS amendment with the option of retaining the land as 'bush forever' public reserve and incorporating into a high quality coastal park covering all of Cape Peron, consistent with the existing planning blueprint including the terms of the 1964 Pt Peron agreement between the State and the Commonwealth;
 - b. Any advice or report in relation to the need or otherwise for a housing subdivision at Point Peron; or
 - c. Any advice or report in relation to the feasibility of the MBM project, assessing and addressing, among other things, the risk that the proponent would subdivide and sell off the land for housing but would not secure sufficient funds to build the marina, thus resulting in the failure of the MRS amendment to meet the WAPC's stated rationale and purpose of the amendment.

80. It is also apparent from the documents obtained under FOI that the Department of Planning and the WAPC have been put under some pressure from the government and LandCorp to facilitate the required planning approvals.

81. This all raises a reasonable apprehension of bias (if not actual bias) and a failure to appropriately manage conflict of interest. Unfortunately HOPP can have no confidence in the objectivity, open-mindedness and procedural fairness of the WAPC and the Department of Planning in regard to their consideration of this MRS amendment proposal.
82. Furthermore HOPP contends that this is a situation where there has been distinct lack of orderly and proper planning.
83. HOPP also refers to, and relies upon, the comments in regard to the objectivity of the WAPC in the report of Dr Linley Lutton at Attachment 13.

What is HOPP calling for in view of these process and probity defects?

84. HOPP is calling for the so-called marina proposal to be abandoned and for the government to develop a world-class coastal park covering Point Peron and Lake Richmond.
85. If the government wishes to continue its pursuit of this MRS amendment then HOPP calls for:
- a. The halting of the existing MRS amendment process and the initiation of a fresh process involving independent, diligent and impartial evaluation of the proposed amendment, at arm's length from the government proponent; and
 - b. An independent inquiry to investigate the conduct of various parties involved in this matter, with the power to call witnesses, inspect documents and make findings and recommendations.

SECTION 4 – EVALUATION OF THE PROPOSED MRS AMENDMENT

The evidence

86. HOPP relies on the evidence of residents and others in relation to the high amenity of the land and the loss of amenity that the MRS amendment would cause.
87. HOPP also relies on the analysis and conclusions of a variety of highly qualified experts, whose reports are attached to this submission. This includes well

respected experts in urban planning, tourism, the relationship between urban planning and health, relevant economic and environmental issues, and relevant social and cultural issues. This analysis and opinion carries considerable weight and should be accepted and acted upon, particularly given that the Department of Planning / WAPC has failed to establish any credible basis for rejecting their analysis and opinions.

88. HOPP also relies on other information and analysis contained in this submission and its attachments.

General comments about the MRS Amendment Report

89. The MRS amendment report provides an inadequate and misleading account of the proposed MBM development and fails to provide an adequate fair and diligent analysis of the proposed MRS amendment against the relevant planning principles and criteria. The document contains numerous glaring omissions.

90. Many of the views expressed in the amendment report are not substantiated or supported by rational analysis or expert opinion.

91. The amendment report exhibits the hallmarks of a document designed to veil critical defects of the proposed MRS amendment and development it is designed to facilitate. HOPP maintains that these characteristics of the report are a symptom of bias on the part of the WAPC or, at the very least, reinforce the apprehension of bias on the part of the WAPC.

92. This submission addresses various specific aspects of the MRS amendment report below.

Can the proposed MRS amendment be justified?

93. In order to answer this question it is necessary to carefully consider the rationale and basis of the existing planning blueprint for Point Peron.

94. Regardless of whether it is, technically, legally enforceable or not, the 1964 Commonwealth / State Point Peron agreement is of high relevance from a planning point of view because it has underpinned the planning for Point Peron for the last 50 years, reflected in for example the inclusion of the land in the Rockingham Lakes Regional Park and its designation as 'Bush Forever'.

95. The WAPC is now proposing a radical departure from this longstanding planning blueprint and framework. As explained above, if implemented the proposed MRS amendment and MBM development would be in fundamental conflict with the Commonwealth / State Point Peron Agreement. It would also be completely at odds with the planning initiatives that have been flowed from that agreement – i.e. it would cause the excision of a large amount of land from the Rockingham Lakes Regional Park and the clearing of over 40 hectares of Point Peron's 'Bush Forever'.
96. From both an ethical and 'orderly and proper planning' point of view any departure from this longstanding planning blueprint can only be justified if it can be clearly demonstrated that such departure would result in net advantage to the community and the metropolitan region based on sound planning principles. The onus is on those proposing the change to clearly demonstrate such net advantage.
97. On the other hand, breaching the Commonwealth / State Point Peron agreement and departing from the longstanding planning blueprint for Point Peron in the absence of clear and compelling justification would not only be 'disorderly' planning but would also amount to a serious breach of public trust, undermining the public's confidence in the planning regime and the integrity of Western Australia's government.
98. Unfortunately neither the MBM development proponent nor the Department of Planning / WAPC has conducted a due diligence comparative analysis of the options (refer section 3 above). Instead the WAPC in the MRS amendment report relies on a very superficial and unconvincing treatment of only some of the relevant considerations in its attempt to justify the proposed MRS amendment.

The true nature of the MBM development proposal

99. In order to properly evaluate the proposed MRS amendment it is necessary to consider carefully the true nature of the development proposal it is said to be facilitating.
100. As discussed in section 3 above, the MBM proposal has changed over the years and there are now very serious doubts as to whether the marina and canal components of the development would materialise. Even if they do eventually proceed, there is great uncertainty as to what form they would take or how many

years or decades into the future such construction would occur.

Substantial risk that the core purpose of the MRS amendment would not be achieved

101. The doubts about the marina's feasibility means that the MRS amendment proposal is highly speculative and based on what may turn out to be a false premise and undelivered promise.

102. If, as proposed by the WAPC, the majority of the land is re-zoned 'Urban' this would pave the way for the subdivision and sale of the land for housing, with no legally binding guarantee that the marina will ever be built. Its construction would require, among other things, that:

- a. The net income from sales of the land is sufficient to cover the high cost of marina construction; and
- b. The proponents are willing and able to sink the net land sales proceeds into a marina, which appears unlikely given LandCorp's statutory obligation to achieve a hurdle rate of return and Cedar Woods' duties to its shareholders.

103. It is therefore clear that there is a substantial risk that if the proposed MRS amendment is implemented it may not achieve the core purpose and rationale of the MRS amendment and the Mangles Bay *Marina* development – the construction of the marina. This risk amounts to a fundamental flaw in the MRS amendment proposal because:

- a. The MRS amendment proposal is speculative and as such does not meet 'orderly and proper planning' criteria; and
- b. The amendment would not be '*efficient and effective land use planning*', contrary to the *Planning and Development Act 2005 (WA) (PDA)*²¹.

Has the need for a marina at Point Peron been established?

104. Leaving aside the substantial doubt about whether the marina would ever be built, there remains a key question – is there a demonstrated need to build the marina at this site?

105. In the MRS amendment report the WAPC refers to the *Perth Recreational Boating Facilities Study 2008 – Technical Report No 44* and implies that this study

²¹ Refer section 3(1)(b)

supports the need for the marina at this site. However, this study does not recommend a marina at this site. It merely recommends a marina in Mangles Bay and refers to the two options – the MBM proposal (which it refers to as the ‘Cape Peron Tourist Park’ (sic)) and the Wanliss Street marina proposal. It does not express preference for one over the other, although it does refer to slow progress with the Point Peron proposal ‘due to environmental concerns’²².

106. It is important also to note that the study’s recommendation was made before it became clear that ‘wet excavation’ methods would be required to build the marina at the Point Peron site, meaning that construction would be a great deal slower and a great deal more costly than would have been anticipated in 2008 when the study’s authors considered the proposal. If the authors of the study had known this at the time, it is quite likely that they would not have included the Mangles Bay Marina as a practical option.

107. HOPP submits that the Wanliss Street location is a much better location to build a marina. HOPP relies on the opinion of University of WA urban planner Dr Linley Lutton in this regard. He provides a compelling analysis showing why Wanliss Street is a much better site, for several reasons (refer his report at Attachment 13). The 2008 study does not contradict this view, and therefore does not assist the WAPC’s argument that the MRS amendment is justified due to the need to build a marina at this particular site; on the contrary it cannot be justified on this basis.

Unpopularity of the proposed MBM development

108. The evidence establishes that Point Peron is highly valued by the community as public land for recreation and nature based activities. There is very strong public support for keeping Point Peron, including the land subject to the proposed MRS amendment, in public hands, and conserving and enhancing its natural and social values.

109. On the contrary, the proposed MBM development is demonstrably very unpopular; it has very little support from the general community. There is no groundswell of support for a marina at this site. On the contrary, the opposition to the proposal is growing all the time, as people gain a better understanding of the

²² at page 52

true nature of the proposed development and the doubts and risks surrounding it.

110. In support of these contentions HOPP refers to and relies on the following documents:
- a. Published correspondence and articles (Attachments 9 and 10) provided courtesy of Charles Lammers, retired naval officer of Preserve Point Peron Inc.) comprising:
 - i. Attachment 9: Approximately 160 published letters and articles between 1964 and 2010 showing support for keeping Point Peron in public hands and / or opposition to a marina development; and
 - ii. Attachment 10: Published letters for and against the proposed MBM development between January 2011 and October 2015. Of these letters only 59 are for the MBM development whilst 277 are against.
 - b. The report of Dr Ron Chapman (Attachment 5) – see in particular reference to the petition in opposition to the proposal containing approximately 8,000 signatures;
 - c. The Sound Telegraph newspaper, 3 and 10 October 2015, disclosing the position of all the candidates for the City of Rockingham October 2015 elections. Of a total of 22 candidates, 15 were against the proposed MBM development, 2 were in favour, 3 abstained and 2 did not respond.
111. Nevertheless, the WAPC, by way of the proposed MRS amendment, seeks to impose this highly unpopular development on the people of Rockingham and Western Australia. It appears that the financial windfall to be made by the appropriation and sale of this prime public land outweighs the WAPC's regard for public opinion.

Is there a need for a housing development at this site?

112. The MRS amendment report has failed to address this critical question. In fact it has greatly downplayed the fact the housing would be the predominant type of development, even if the marina does eventually proceed. A great deal of housing lots would need to be created and sold (for a very high price) in order to have any prospect of raising the necessary finance to build a marina. Indeed, given the doubts about the marina's feasibility, housing appears to be just about the only type of development at the site that we can be sure will occur if the development is allowed to proceed.

113. Despite this reality, the MBM proponents have never sought to justify the development of this public land at Point Peron on the basis that it is needed to meet a pressing demand for housing. They seem to have deliberately avoided putting forward this argument, knowing that it would not be credible. Their argument has always been that it is the *marina* that is needed and that is what justifies appropriating this public parkland. Similarly the WAPC's MRS amendment report has failed to demonstrate, or even argue, that there is a *need* for a housing development at this site.
114. Dr Linley Lutton has carefully considered this issue in his report (Attachment 13). He expresses the view that there is no need or justification for housing at this site.
115. In view of the likely magnitude of the housing footprint if the development were to proceed, and the destruction of 'bush forever' and loss of public open space that would result, the WAPC's failure to show the *need* for housing at this site is a fundamental flaw of the proposed MRS amendment and reason alone for its rejection.
116. Taken in combination, this failure to demonstrate the need for housing at this site and for a marina at this site completely undermines the basis and rationale of the proposed MRS amendment.

Absence of evidence that the proponent has the authority from the current agencies with whom the land is vested

117. The WAPC has provided no evidence that the agencies who hold the tenure over the land have authorised or approved the use of the land for the purpose of the MBM development. For example there is no evidence that the Conservation Commission has approved the transfer of land within the regional park to LandCorp.
118. Concerns previously expressed by the Conservation Commission (see for example the correspondence at Attachment 12) point to the fact that it has serious misgivings about the MBM proposal and would likely (justifiably) be reluctant to part with the land, especially now that it has emerged that the primary justification and stated objective for taking the land – the construction of a marina – may never be achieved, meaning that 40 hectares of regional park 'bush forever' under the

Conservation Commission's care and management may end up being sacrificed just for the sake of a housing subdivision.

119. It is of concern that the MBM proposal has got this far in the absence of demonstrating to the public that the relevant agencies have formally authorised the appropriation of the land under their control. HOPP calls upon the WAPC to immediately produce evidence of such authorisation, if it exists, failing which the MRS amendment process should be halted on that ground alone.

The requirement for sustainable land use and development

120. A key purpose of the PDA (see section 3) is to "*promote the sustainable use and development of land in the State*". HOPP submits that the proposed MRS amendment promotes unsustainable land use and development, contrary to the PDA and the state's planning policies

121. The functions of the WAPC are set out in section 14 of the PDA. Functions relevant to this matter include (emphasis added):

- a. advising the Minister on:
 - i. the coordination and promotion of land use, transport planning and land development in the State in a sustainable manner;
 - ii. the administration, revision and reform of legislation relating to land use, transport planning and land development;
 - iii. local planning schemes, and amendments to those schemes, made or proposed to be made for any part of the State;
- b. to prepare and keep under review:
 - i. a planning strategy for the State; and
 - ii. planning policies,

as a basis for coordinating and promoting land use planning, transport planning and land development in a sustainable manner, and for the guidance of public authorities and local governments on those matters;

122. As can be seen, the PDA places considerable emphasis on the need for sustainable land development.

123. The State's own definition of sustainability can be found in the State Sustainability Strategy 2003 (at page 24):

*Sustainability is defined as **meeting the needs of current and future generations through an integration of environmental protection, social advancement, and economic prosperity**. The definition of sustainability is very challenging. It demands that we act together, providing an integrated and mutually reinforcing approach to issues that in the past have been treated more in isolation. It implies that proposals need to begin by considering all three factors together and that trade-offs are minimised. While recognising that any steps forward require some trade-offs the Strategy seeks to enable firms, the community and government to find 'net benefit' in all three areas.*

Sustainability is sometimes described as the 'triple bottom line', to reflect the importance of environmental, social and economic factors in decision-making. However, the definition proposed here goes beyond the triple bottom line through emphasising the importance of integration between these factors and achieving them synergistically.

124. State Planning Policy 2.6 also defines sustainability:

Sustainability means achieving as much as possible with as little as possible. This requires current generations to minimise consumption and imports on natural and other resources in order to continue their activities in the long-term and maintain future options. It involves wealth creation, while preserving our natural, biodiversity and ecosystem integrity and cultural heritage, for the benefit of current and future generations.²³

125. On any fair and reasonable assessment, the proposed MBM development fails on all counts – economic, environmental and social - to meet the state's own sustainability requirements. In support of this submission HOPP refers to and relies upon the facts, analysis and opinions contained in the following documents:

- a. Report of Dr Linley Lutton (Attachment 13);
- b. Report of Dr Vic Semeniuk (Attachment 14);
- c. Submission prepared on behalf of the Cape Peron Coastal Park Steering Committee (Attachment 7);
- d. Cape Peron Coastal Park Concept Plan (Attachment 6);

²³ See SPP 2.6, Section 7, Definitions.

- e. Cape Peron Community Vision Working Group's submission to the EPA (Attachment 8);
- f. Report of Dr Ron Chapman (Attachment 5);
- g. Tourism Report of Dr Georgette Burns (Attachment 15);
- h. Report of Adjunct Prof George Burns (Attachment 16);
- i. Submission of Keren Geddes (Attachment 17);
- j. Open letter at Attachment 18;
- k. Report prepared by the Cockburn Sound Management Council (Attachment 19);
- l. Report of Dr Mike van Keulen (Attachment 20);
- m. Report of Dr JN Dunlop on behalf of the Naragebup Marine Working Group (Attachment 21);
- n. Published correspondence and articles (Attachments 9 and 10);
- o. Correspondence at Attachment 11;
- p. Correspondence with the Conservation Commission (Attachment 12);
- q. EPA strategic advice (chairman's forward) (Attachment 23); and
- r. Fishing concerns article (Attachment 24).

126. In contrast to the wealth of analysis and opinion relied upon by HOPP in support of HOPP's contention that the proposed MRS amendment fails to meet sustainability requirements, the MRS amendment report (at page 9) contains only a very short paragraph addressing 'Sustainability', unsubstantiated by any proper analysis or expert opinion. The MRS amendment report states:

8 Sustainability

The proposed amendment seeks to create a tourist marina precinct within the Mangles Bay locality to facilitate recreational activities, activation of the beachfront and provision of passive / active public open space. Retail / commercial development will contribute to the creation of employment opportunities for the Mangles Bay locality in accordance with sustainable environment, social and economic outcomes.

127. This analysis is completely inadequate and without credibility; it is embarrassingly shallow and entirely unconvincing. Indeed the fact that such an analysis is put forward by the WAPC in the MRS amendment report shows that the WAPC, at least in regard to this MRS amendment proposal, is simply not up to the task it is charged with under the PDA. The WAPC's treatment of this vitally

important issue is, quite frankly, of a standard that is not fitting of a government body with responsibility for planning in 2015.

128. This reinforces concerns HOPP has raised about probity and process issues in section 3 above.

Failure to conduct comparative analysis based on sustainability principles

129. As mentioned in section 3, there has been a failure to conduct any comparative analysis of the MBM development option as against the option of retaining the land as part of an integrated nature-based coastal park covering all of Point Peron and Lake Richmond (**Cape Peron Coastal Park option**), consistent with the current planning blueprint based on the Commonwealth / State Point Peron Agreement, the Rockingham lakes Regional Park and the 'Bush Forever' listing.

130. Under the circumstances, this failure amounts to a fundamental flaw on the part of the planning process to date, and is in itself sufficient reason why the proposed MRS amendment is premature and should be rejected.

131. By way of further analysis, HOPP makes the following submissions in regard to key components against which sustainability is assessed – the 'triple bottom line' of economic, environmental and social criteria.

Economic evaluation

132. As pointed out above, there has been a failure to conduct a proper economic cost / benefit analysis of the proposed MBM development, and there has been no comparative economic cost / benefit analysis of the MBM proposal as against the Cape Peron Coastal Park option. As such there has been a lack of due diligence on the part of the Department of Planning / WAPC.

133. Based on its own research and expert advice HOPP submits that the proposed MBM development would result in far less net economic benefits than the Cape Peron Coastal Park option, whether or not the MBM option involves a housing development without marina or a housing development with (eventually) a marina.

134. The Cape Peron Coastal Park option is low risk and has great economic

potential in view of current and projected tourism trends. Nature-based tourism is becoming ever more attractive and lucrative and this option is perfectly positioned to take advantage of these trends.

135. On the other hand, the MBM proposal would destroy this golden opportunity, all for the sake of yet another housing subdivision and the possibility (eventually) of a high cost inland marina of doubtful feasibility and high maintenance costs and risks – a marina that is not needed in this particular location and would be better built elsewhere for the reasons outlined earlier in this submission. The implementation of the proposed MRS amendment would therefore, from an economic point of view, be highly irresponsible.

136. Even without taking into account the net economic benefits that would accrue from its population health advantages, the Cape Peron Coastal Park option is vastly superior from an economic point of view to the MBM option.

137. In support of the above contentions regarding economic matters relevant to the proposed MRS amendment, HOPP refers to and relies on the facts, analysis and opinions contained in the following documents:

- a. Submission prepared on behalf of the Cape Peron Coastal Park Steering Committee (Attachment 7);
- b. Cape Peron Coastal Park Concept Plan (Attachment 6);
- c. Tourism Report of Dr Georgette Burns (Attachment 15);
- d. Cape Peron Coastal Park – An economic imperative for Rockingham and WA, by Leisha Jack, Defending Public Spaces WA, November 2015 (not attached, to be submitted by its author to the WAPC);
- e. Open letter at Attachment 18;
- f. Report of Dr Ron Chapman (Attachment 5);
- g. Fishing concerns article (Attachment 24)
- h. Report of Dr Linley Lutton (Attachment 13);
- i. Report of Dr Vic Semeniuk (Attachment 14);
- j. Cape Peron Community Vision Working Group's submission to the EPA (Attachment 8);
- k. Report of Adjunct Prof George Burns (Attachment 16);
- l. Submission of Keren Geddes (Attachment 17);
- m. Report prepared by the Cockburn Sound Management Council (Attachment 19);

- n. Report of Dr Mike van Keulen (Attachment 20);
- o. Report of Dr JN Dunlop on behalf of the Naragebup Marine Working Group (Attachment 21);
- p. Published correspondence and articles (Attachments 9 and 10);
- q. Correspondence at Attachment 11;
- r. Correspondence with the Conservation Commission (Attachment 12); and
- s. EPA strategic advice ('chairman's forward') (Attachment 23).

138. The MBM proponents have for some considerable time sought to rely on what they say is an economic study that shows the benefits the proposal would deliver. However the proponents have steadfastly refused to release the document for public scrutiny, despite many calls for them to do so. HOPP makes the following comments in regard to this 'phantom' so-called economic study:

- a. The fact that the proponents have been unwilling to release the study means that it has not been available for public scrutiny or peer review. For this reason the report carries no weight and cannot be relied upon when considering the merits of the proposed MRS amendment.
- b. HOPP is confident that the economic study would not withstand expert scrutiny. If it is a credible study then why are the proponents hiding it? They appear to lack confidence in it.
- c. Without being allowed to see it one cannot be certain, but it appears that the study is premised on the construction of the marina, and fails to take account of the risk that the marina may never be constructed due to lack of feasibility and, even if it is eventually built, may take an entirely different form than originally proposed.
- d. The study is now becoming dated and therefore fails to take account of the significant changes occurring in the Western Australian economy as a result of the cessation of the mining boom, including but not limited to a greatly reduced demand for housing.
- e. HOPP anticipates that the study fails to takes account of the adverse economic effects that the development at this site would bring, including but not limited to the adverse impacts on commercial and recreational fishing (refer Attachment 24) and on tourism (refer report of Dr Burns - Attachment 15, and the submission of Leisha Jack in relation to the proposed MRS amendment, which focuses on tourism economics).

Environmental evaluation

139. There has been no comparative environmental appraisal of the MBM proposal as against the Cape Peron Coastal Park option.
140. There is no doubt that, from an environmental point of view, the MBM option is profoundly inferior to the Cape Peron Coastal Park option, whether or not the MBM option involves a housing development without marina or a housing development with (eventually) a marina.
141. The MBM proposal would result in serious adverse environmental impacts and risks including, but not limited to:
- a. A development that is inconsistent and insensitive to the character and quality of the unique landscape of Point Peron;
 - b. Impairment of the geomorphological and ecological values of Point Peron;
 - c. The destruction of scarce coastal 'bush forever', and the important habitat it provides. Such bushland and public open space will become all the more important in years to come as the population and urban development of Rockingham and Perth intensifies;
 - d. The incursion of saltwater into the aquifer, threatening nearby Lake Richmond and its highly significant thrombolite and sedge communities, as well as adjacent native vegetation and domestic bores;
 - e. The creation and ongoing maintenance of a channel cutting off beach access along Mangles Bay and causing major loss of vital seagrass meadows and fish nurseries in Mangles Bay;
 - f. Polluted, inadequately flushed artificial waterways and resulting deterioration of Mangles Bay water quality;
 - g. Risk of mercury contamination cause by dredging of sediments;
 - h. Adverse impacts on the Little Penguin;
 - i. Risk of excessive seaweed accumulation and odour;
 - j. Risk of adverse coastal processes – sedimentation in some places, erosion in others;
 - k. Construction site works and their associated public exclusion, dust, noise, visual pollution and traffic impacts, estimated by the proponent to be up to 9 years in duration; and
 - l. The need for never-ending dredging, maintenance and remedial works at considerable, but yet to be determined, public expense.
142. These impacts and risks would be incurred all for the sake of yet another

housing subdivision and the possibility (eventually) of a high cost inland marina of doubtful feasibility and high maintenance costs and risks – a marina that is not needed in this particular location and would be better built elsewhere for the reasons outlined earlier in this submission.

143. On the other hand the Cape Peron Coastal Park option would avoid all these adverse environmental consequences and would in fact ensure and enhance the protection of the high natural values of Point Peron.

144. The implementation of the proposed MRS amendment would therefore, from an environmental point of view, be highly irresponsible.

145. In support of the above contentions regarding environmental matters relevant to the proposed MRS amendment, HOPP refers to and relies on the facts, analysis and opinions contained in the following documents:

- a. Report of Dr Vic Semeniuk (Attachment 14);
- b. Open letter at Attachment 18;
- c. Fishing concerns article (Attachment 24);
- d. Report prepared by the Cockburn Sound Management Council (Attachment 19);
- e. Report of Dr Mike van Keulen (Attachment 20);
- f. Report of Dr JN Dunlop on behalf of the Naragebup Marine Working Group (Attachment 21);
- g. Submission prepared on behalf of the Cape Peron Coastal Park Steering Committee (Attachment 7);
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- k. Cape Peron Community Vision Working Group's submission to the EPA (Attachment 8);
- l. Correspondence with the Conservation Commission (Attachment 12); and
- m. EPA strategic advice (chairman's forward) (Attachment 23).

The lack of Environmental Protection Authority (EPA) assessment of the proposed MRS amendment and what this means

146. The WAPC has not conducted any environmental appraisal of the MRS amendment, nor has the EPA. Indeed the EPA refused to take the opportunity it

had to assess the MRS amendment. The WAPC seeks to rely on the EPA's decision not to assess the amendment. Section 48A of the *Environmental Protection Act 1986* (WA) states:

S 48A . Authority to decide whether or not schemes to be assessed

(1) When a scheme is referred to the Authority under the relevant scheme Act, the Authority shall, if it considers that the scheme —

(a) should not be assessed by it under this Division, so inform in writing the responsible authority within 28 days after that referral, but may nevertheless give advice and make recommendations to the responsible authority and any other relevant person on the environmental issues raised by the scheme.

147. It is very difficult to understand why the EPA failed to assess the proposed amendment. HOPP considers it certainly should have, and its failure to do so points to a serious lack of due diligence on the part of the EPA.

148. HOPP considers that it is reasonable to infer that the EPA may have been reluctant to assess the proposed amendment because it knew that in doing so it would inevitably conclude that the proposed MRS amendment was far worse for the environment than maintaining the *status quo* / pursuing the Cape Peron Coastal Park option. Instead of reaching this conclusion, which it would have known would be unpalatable to the government, perhaps the EPA chose to avoid this outcome by simply refusing to assess the proposed amendment.

149. In any event, whatever the reason and motive of the EPA, its failure to assess the proposed amendment hinders rather than assists the proposed amendment because the WAPC cannot rely on the EPA when evaluating the proposed amendment against the sustainability and other environmental criteria set out in the PDA and in the State Planning Policies.

150. This means that the expert opinion HOPP relies upon in this regard (as set out above) is not controverted and should be accepted and acted upon by the WAPC.

151. The WAPC cannot rely in this regard on the MBM proposal's conditional

environmental approvals. Under its statutory terms of reference the Public Environmental Review of the MBM proposal only examined the proposal before it. It did not conduct a comparative evaluation of the environmental merits of that proposal vis a vis the merits of maintaining the status quo – i.e. retaining the ‘bush forever’, not excising the land from the regional park and generally proceeding in accordance with the longstanding planning blue print for the land and Point Peron generally (consistent with the Cape Peron Coastal Park option).

152. The fact that the EPA and the State and Commonwealth Environment ministers ended up providing environmental approval for the MBM proposal (subject to numerous conditions) does not mean that they concluded that the MBM proposal was a good outcome for the environment or a better environmental outcome than *not* proceeding with the MBM development.

Social evaluation

Health and wellbeing

153. Although public health is part of the social matrix against which the amendment proposal needs to be considered, it is such an important issue that it is addressed separately here. Population health of course also needs to be taken into account from as part of the economic evaluation of the proposal.
154. The origins of town planning are closely linked to the objective of fostering positive health outcomes / minimising negative outcomes due to environmental factors. Severe health issues associated with urban environments were a key catalyst for the emergence of town planning.
155. The big health problems now are not the same as they were in the past, but the planning principle remains the same and just as relevant as ever. In the current era mental illness, diabetes, obesity and other illnesses linked to environmental factors are widespread. These illnesses need to be addressed as a matter of urgency and the planning agencies have a key role to play in this.
156. Despite the direct correlation between urban planning and population health the WAPC has completely failed to consider or address this issue in the MRS amendment report. In view of Point Peron’s history and culture as a vital recreational and nature-based public space this failure on the part of the WAPC is

very serious.

157. There is no doubt that the Cape Peron Coastal Park option stands head and shoulders above the MBM option from the point of view of population health net benefits. There is a considerable body of well accepted research that makes this conclusion undeniable. For this reason alone the proposed MRS amendment should be rejected: it represents planning of the kind that undermines public health and flies in the face of internationally accepted best practice.

158. In support of these contentions HOPP relies on the facts, analysis and opinion contained in the following documents:

- a. Report of Adjunct Prof George Burns (Attachment 16), who is a world renowned expert in this field;
- b. Submission of Keren Geddes (Attachment 17), a clinical psychologist;
- c. Report of Dr Linley Lutton (Attachment 13), a highly qualified and experienced urban planner;
- d. Submission prepared on behalf of the Cape Peron Coastal Park Steering Committee (Attachment 7); and
- e. Cape Peron Coastal Park Concept Plan (Attachment 6);

Other social considerations

Heritage

159. The subject land, and Point Peron generally, has very high heritage values.

160. The WAPC's failure to take account of the intrinsic natural heritage values of the site has been addressed above.

161. The MRS report states "*two Aboriginal heritage assessments have been undertaken for this land and a Section 18 application for consent to use the land has been lodged*". This is presumably a reference to section 18 of the *Aboriginal Heritage Act 1972 (WA)*. An application to the minister under this section is an application for approval to destroy or damage an Aboriginal site. The MRS amendment report fails to make this clear to the lay reader.

162. HOPP understands that Point Peron is of very high cultural significance to the Noongar traditional owners. The fact that the proposed MBM development

would adversely impact on Aboriginal heritage is another very negative aspect of the proposed MRS amendment from a planning of point of view. The Aboriginal heritage values of Point Peron should be respected and protected, not compromised and diminished.

163. No proper heritage assessment appears to have been conducted in relation to non Aboriginal heritage values that would be destroyed or diminished as an outcome of the proposed MRS amendment, including for example:
- a. The military and social heritage values of the RSL Caravan Park;
 - b. The heritage values of the AIW holiday camp;
 - c. The heritage values of the Alfred Hines Home; and
 - d. The overall heritage values of the Point Peron holiday camp precinct of which the Alfred Hines, AIW and RSL facilities are an integral part.
164. This lack of proper assessment demonstrates a lack of appreciation and respect on the part of the WAPC for these values, and is another example of the WAPC's failure to exercise due diligence.
165. HOPP submits that the amendment would, if implemented, result in a development that is very destructive of heritage values and completely out of keeping with the character and qualities of Point Peron. On this ground alone the proposed amendment should be rejected.
166. The lack of due consideration of heritage values means, at the very least, that the proposed MRS amendment is premature and needs to be put on hold until a fair and diligent assessment is carried out.
167. In support of the above contentions regarding heritage HOPP refers to and relies on the facts, analysis and opinions contained in the following documents:
- a. Report of Dr Linley Lutton (Attachment 13);
 - b. Submission prepared on behalf of the Cape Peron Coastal Park Steering Committee (Attachment 7);
 - c. Cape Peron Coastal Park Concept Plan (Attachment 6);
 - d. Cape Peron Community Vision Working Group's submission to the EPA (Attachment 8);
 - e. Report of Dr Ron Chapman (Attachment 5);
 - f. Tourism Report of Dr Georgette Burns (Attachment 15);

- g. Published correspondence and articles (Attachments 9 and 10);
- h. Correspondence at Attachment 11; and
- i. Aboriginal Heritage Survey Report in relation to Point Peron prepared by anthropologist Brad Goode

The proposed MRS amendment is in breach of the State's Planning Policies

168. The WAPC's assessment of the proposed MRS amendment against the state's planning policies is very shallow and unconvincing.

169. HOPP submits that any fair, reasonable and diligent analysis would conclude that the proposed MRS amendment does not comply with State Planning Policies 2, 2.6, 2.8 and 3. In this regard HOPP relies in particular on the facts, analysis and opinions contained in the following documents:

- a. The report of Dr Linley Lutton (Attachment 13) which concludes that the proposed amendment is in breach of:
 - i. State Planning Policy No. 2 – Environment and Natural Resources;
 - ii. State Planning Policy No. 2.6 – Coastal Planning;
 - iii. State Planning Policy No. 2.8 – Metropolitan Bushland; and
 - iv. State Planning Policy No. 3 – Urban Growth and Settlement.
- b. Report of Dr Vic Semeniuk (Attachment 14) which contains analysis and conclusions specifically directed to these planning policies;
- c. Report prepared by the Cockburn Sound Management Council (Attachment 19);
- d. Report of Dr Mike van Keulen (Attachment 20);
- e. Report of Dr JN Dunlop on behalf of the Naragebup Marine Working Group (Attachment 21);
- f. Correspondence with the Conservation Commission (Attachment 12);
- g. EPA strategic advice (chairman's forward) (Attachment 23);
- h. Fishing concerns article (Attachment 24); and

170. In contrast the Cape Peron Coastal Park option is compliant with all state planning policies.

Strategic planning documents relied on by the WAPC

171. In the MRS amendment report the WAPC refers to the draft *Towards Perth and Peel @ 3.5 Million* and *Draft South Metropolitan Peel Sub-Regional Planning Framework* documents.

172. The WAPC seeks to rely on the latter document because *'it identifies the amendment area as "Urban Expansion", and this amendment therefore contributes to implementing that document's recommendations'*. This argument has no credibility for all the reasons set out in HOPP's submission to the Department of Planning date 31 July 2015 (Attachment 1) in regard to this draft document (see Attachment 1), referred to in section 3 above.
173. Far from being of assistance to the WAPC's argument, the identification of the land in that draft document as "Urban Expansion" appears to have been a self serving step, in stealth, to lay the foundation for the MRS amendment now sought by LandCorp and the WAPC. The conduct exhibited raises an apprehension of bias on the part of the WAPC.
174. Furthermore, because the framework document was a draft only, and the public consultation process was so badly flawed (as outlined in Attachment 1), it cannot be relied on at all by the WAPC in support of the proposed MRS amendment.
175. Furthermore, the proposed amendment is starkly at odds with the EPA's strategic advice regarding Perth and Peel @ 3.5 million (see Attachment 23) and with numerous aspects of the State's Planning Strategy 2050.

Failure to preserve amenity

176. One of HOPP's central arguments is that the land subject to the proposed MRS amendment is a place of high amenity, appreciated greatly by a vast number of people. Furthermore the land is an integral part of the amenity of Point Peron as a whole.
177. Implementation of the Cape Peron Coastal Park option would preserve and enhance the amenity both of the land in question and Point Peron as a whole.
178. On the other hand the proposed MRS amendment would have a profoundly negative effect on the amenity of the land and Point Peron as a whole.
179. In support of these contentions regarding amenity HOPP refers to and relies on the facts, analysis and opinions contained in the following documents:

- a. Published correspondence and articles (Attachments 9 and 10);
- b. Report of Dr Ron Chapman (Attachment 5);
- c. Report of Dr Linley Lutton (Attachment 13);
- d. Report of Adjunct Prof George Burns (Attachment 16);
- e. Submission of Keren Geddes (Attachment 17);
- f. EPA strategic advice (chairman's forward) (Attachment 23); and
- g. Aboriginal Heritage Survey Report regarding Point Peron prepared by anthropologist Brad Goode
- h. Report of Dr Vic Semeniuk (Attachment 14);
- i. Submission prepared on behalf of the Cape Peron Coastal Park Steering Committee (Attachment 7);
- j. Cape Peron Coastal Park Concept Plan (Attachment 6);
- k. Cape Peron Community Vision Working Group's submission to the EPA (Attachment 8);
- l. Tourism Report of Dr Georgette Burns (Attachment 15);
- m. Open letter at Attachment 18;
- n. Report prepared by the Cockburn Sound Management Council (Attachment 19);
- o. Report of Dr Mike van Keulen (Attachment 20);
- p. Correspondence at Attachment 11;
- q. Correspondence with the Conservation Commission (Attachment 12);

Other Issues and flaws

180. HOPP notes that the City of Rockingham has raised a number of concerns regarding the proposed MRS amendment – refer Attachment 16, which contains letters from the City of Rockingham dated 3 December 2013, 3 December 2014, 5 June 2015 and 6 August 2015. It is clear that the City of Rockingham, with good justification, is very concerned that the MRS amendment would allow housing development to occur without any guarantee that the MRS amendment would achieve its stated purpose – the construction of the marina.
181. HOPP also notes the City of Rockingham's justified concerns about taking on the management of the waterways in view of the high risks and potential for incurring crippling expenses if the marina goes ahead. This is a fundamental flaw of the proposal, and one of the main reasons why canal estates have been banned in many other jurisdictions.

182. There are also a number of other serious problems with the proposed MRS amendment, not the least of which relates to the location of the Point Peron sewage treatment plant, which presents an appropriate metaphor on which to end this submission.

Proposed Metropolitan Region Scheme (MRS) Amendment 1280/41

Submission of Hands Off Point Peron Inc. (HOPP)
to the Western Australian Planning Commission (WAPC)
13 November 2015

ATTACHMENT 1

HOPP submission to the Dept of Planning dated 31 July 2015
regarding draft Metropolitan Peel Sub-regional
Planning Framework

31 July 2015

Project Manager
Perth and [Peel@3.5million](#)
Department of Planning
PERTH WA 6001

By email: 3.5million@planning.wa.gov.au

Submission in Response to the draft Metropolitan Peel Sub-regional Planning Framework Document dated May 2015 (“the Document”)

HOPP has only today become aware of the significance of the Document to future planning processes in regard to the proposed Mangles Bay Marina (MBM), and of today’s deadline for submissions.

On close inspection of the maps on page 17 and page 21, the Document shows the land subject to the MBM proposal as “urban expansion”. However it is noteworthy that at page 20, where specific areas of proposed urban expansion are listed, no mention is made of the MBM proposal land at Point Peron. Also, to add to the confusion and potentially mislead the reader, the map at page 45 shows the MBM land as “Open Space – Nature / Passive Recreation”.

The proposal to change the status of this land to “urban expansion” is in stark contrast to its current status as, for the most part, public open space comprising a portion of the ‘bush forever’ located in the Rockingham Lakes Regional Park. This is a fundamental change to a sub regional structure plan that the government (as the MBM development proponent) and the WA Planning Commission / Dept of Planning appear to be seeking to bring about by stealth.

To compound this failure of the Document to highlight and state unambiguously the proposed change for the benefit of readers, the WAPC and Dept of Planning have not taken reasonable steps to raise awareness about the significance of the Document to this issue, nor about today’s deadline. Consequently the public submission process is fatally flawed.

So far as we are aware, there have been no public forums held in the Rockingham area to help Rockingham people understand the significance of the Document to future planning processes for the highly controversial Mangles Bay Marina development proposal and no reasonable efforts have been made to draw the public's attention to the deadline for making submissions.

We understand, based on comments made today by Neil Fox, an officer at the Dept of Planning, that consultations about the Document have been held with 'big stakeholders' such as industry, the property sector, local government and others, but that no public forums have been held to his knowledge. Unfortunately it appears that the Dept of Planning does not regard the general public as a stakeholder of the same importance as these.

Nor has the City of Rockingham been proactive in this regard. A search of the City of Rockingham's website today reveals only one reference to the Document and the submission process, in relation to the Karnup District Structure Plan. No mention of it is made in regard to the Mangles Bay Marina. The only comment about the MBM is that "City of Rockingham Mayor, Barry Sammels today confirmed that preliminary work has commenced on the assessment of the Mangles Bay Marina Local Structure Plan". Questions about the MBM and the planning processes associated with it have been raised at numerous City of Rockingham Council meetings, the latest on 28 July 2015, however to the best of our knowledge neither the mayor nor other councillors nor staff present have ever referred to the Document and its significance for the future planning decision making regarding the MBM proposal land.

In view of advice received today from Mr Fox at the Dept of Planning that there have been consultations about the Document with the local governments affected, it appears that the City of Rockingham has either deliberately or negligently failed to inform the people of Rockingham about the Document and its significance to future planning decisions regarding the Mangles Bay Marina proposal. This, in conjunction with the WAPC / Dept of Planning's own failings in this regard, further reinforces the need for the WA government to take steps to facilitate a fresh process and period for public submissions after the public has been properly informed and after a fair and appropriate process has been established for this purpose.

Furthermore the proponent LandCorp and its so-called 'private sector partner' Cedar Woods have been conspicuously silent in relation to informing the public about the significance of the Document

and of submissions in relation to it. Only a few days ago they published¹ another large advertisement in the local papers which made no reference to it, instead giving the impression that the key planning processes and opportunities for public comment would occur later this year, after the City of Rockingham advertises the Local Structure Plan for the Mangles Bay Marina. This misleading (by omission) conduct, when taken with other aspects of the proponent's conduct that time does not permit to be detailed here, is all the more serious from an ethical point of view given that LandCorp is an arm of the government and would have been well aware of the significance of the Document for future planning decisions regarding the MBM proposal.

We understand, based on discussion with the Dept of Planning², that there is no statutory framework or any other set of guidelines setting out the process by which the WAPC and the Dept of Planning considers and deals with submissions in relation to the Document, including whether there will be opportunities to make oral submissions and provide supplementary written submissions. This lack of a clear process and procedure is entirely unsatisfactory from the point of view of transparency, consistency of approach, procedural fairness and the avoidance of an apprehension of bias on the part of the WAPC and the Dept of Planning, referred to below.

Our concerns about the process are all the more serious because of the potential conflict of interest, perception of bias and probity issues that arise due to the fact that the WA Government is itself, through its land development arm LandCorp (aka the WA Land Authority) the lead proponent of the MBM development. LandCorp's role has occurred with express support and approval from the Premier and Cabinet³. LandCorp in turn has entered into a legally enforceable Development Agreement with private sector developer Cedar Woods⁴, under which Cedar Woods stands to gain a large profit from the subdivision and sale of the MBM proposal land for housing and other

¹ Weekend Courier 24 July 2015 @ page 9

² per Neil Fox

³ See Development Agreement between LandCorp, Cranford Pty Ltd, Cedar Woods Properties Limited and Cedar Woods Properties Management Pty Ltd dated 5 October 2011, which states (Background paragraph B) that "the Western Australian Cabinet has approved expenditure to progress Phase 2 which will involve undertaking statutory investigation and seeking necessary regulatory approvals and instructed LandCorp to report back to Cabinet at the end of that process." Refer also to comments made to the Legislative Assembly Estimates Committee by the Hon DT Redman, Minister for Lands, and by Mr F Marra, CEO of LandCorp, on 9 June 2015 (Hansard 9 June 2015 at pages E143-4)

⁴ See Development Agreement between LandCorp, Cranford Pty Ltd, Cedar Woods Properties Limited and Cedar Woods Properties Management Pty Ltd dated 5 October 2011

purposes⁵. Furthermore, under this agreement⁶ LandCorp has agreed with Cedar Woods to “produce Lots for sale as soon as possible”. This places the WAPC and the Dept of Planning in a position where they have a key regulatory and advisory role to play but are not at arm’s length from the developer, in a situation where the government is itself constrained by contractual arrangements already entered into by the government’s land development arm.

Furthermore, it is on the parliamentary record (Hansard 7 August 2013) that the WA Planning Commission contributed \$250 000 to fund the Cape Peron Tourist Precinct Steering Committee which was charged with coordinating the community consultation, due diligence, planning and environmental studies in relation the MBM proposal⁷. This means that the WAPC appears to itself have a preconceived view and vested interest in the MBM proposal being implemented, in addition to the “Caesar judging Caesar” factors already referred to above.

Furthermore, no basis has been set out in the Document for justifying this major change to the status and future use of the MBM proposal land. It appears that the WAPC / Dept of Planning has reached the view that it is a good idea for this land to be developed as “urban”, but has not provided its reasons for this view. This does not allow any fair and reasonable opportunity for the public to make submissions focused on the basis or reasoning upon which the WAPC / Dept of Planning considers the change has merit.

We understand that no duly diligent analysis has been carried out to compare the environmental, economic, social and cultural costs and benefits of (a) retaining the land as public open space capable of being integrated into a world-class coastal park covering Cape Peron and Lake Richmond with (b) the proposed MBM development, the nature of which is in flux and uncertain, as discussed below. In the current circumstances this failure is inexcusable and contrary to sound planning principles, and provides further evidence of the government’s failure to handle the matter diligently, objectively and even-handedly to date.

Proposing that the MBM proposal land be changed to “urban expansion”, in the absence of a diligent comparative analysis, is especially irresponsible in view of the fact that the MBM proposal

⁵ Said by the CEO of LandCorp to be “Depending on the revenue component of it...50 per cent of the revenue that can be generated” (Hansard 9 June 2015 at page E143)

⁶ At paragraph 18.1

⁷ Known at that time as the Cape Peron Tourist Precinct

land (and adjacent land) was transferred by the Commonwealth to the State on the basis that the future use of the land would be “restricted to a reserve for recreation and / or park lands”, with much of it since classified “Bush Forever” by the WA government and incorporated into the Rockingham Lakes Regional Park, and there is now an opportunity and well developed proposal to develop a world class coastal park that would bring in high economic, environmental, social and cultural returns to the region, the city and the state - an opportunity that would be forever lost if the MBM proposal goes ahead.

Furthermore we advise that on 8 May 2015 we sent a letter and series of questions to the Premier, copied to the Minister for Lands, the Treasurer and the Minister for Planning (among others) for their consideration. These questions focused on serious financial, economic and probity issues concerning the MBM proposal and the government’s handling of it, including its handling of planning issues. The Premier referred our correspondence to the Minister for Lands to answer. We have not received a substantive response from the Minister for Planning. To this date (nearly 3 months after our questions were sent) we have not received a response from the Premier, the Minister for Lands or any other minister to any of our questions and none of the addressees have referred us to the Document and today’s deadline. This further undermines the credibility of the state government’s accountability and public engagement processes in regard to the Document in so far as it relates to the MBM proposal land.

Finally, and very significantly, it appears that LandCorp and Cedar Woods have in mind a dramatic change to the proposal that they have promoted in the public arena. The centrepiece and rationale of the proposal has always been for an inland marina and canals on the site, with ancillary tourist attracting and residential development around it. Indeed, as mentioned above, it was at one stage called the “Cape Peron Tourist Precinct” and is still called the Mangles Bay **Marina** proposal (emphasis added). LandCorp and Cedar Woods obtained conditional environment approvals from the state and commonwealth on this basis⁸ and have heavily marketed the proposal to the public on this basis⁹, well aware no doubt that they would have been unlikely to get any support for bulldozing and selling off for housing “bush forever” land in the regional park at Point Peron without the “carrot” of a marina which they claimed was “much needed” in the region. Importantly, they have never said publicly that this marina may not in fact be built due to lack of funding and they continue to rely on

⁸ Including stating in the proponent’s Public Environmental Review document that the construction of the marina would commence in the first stage of the development

⁹ A plethora of marketing materials that demonstrate this can be provided if required.

the promise of a marina to garner support for the proposal, using expressions such as “the marina will...”

However, it is just starting to emerge, by deduction, that LandCorp and Cedar Woods are now seeking to obtain approval to develop and sell off lots for housing and other purposes without the marina and without any guarantee that the marina will ever be built. The state government has made it clear it will not fund the construction of the marina and that the development must be self-funded from the sale of lots¹⁰. Given the extremely high costs and risks associated with the “wet construction method” that would apply to the marina and canals, this means it is looking very unlikely that LandCorp and Cedar Woods will ever have the money to build the marina. And even if they do manage to obtain sufficient finance in future, they would have no incentive to build the marina given that not building it would be far more profitable for them. To date this grave doubt about the proponent’s ability and commitment to build the marina is not known or understood by the general public. This means that the whole basis upon which the MBM proposal has been promoted and premised to date, including during the period of public submissions on the Document, now appears not to be true and correct, or at best unlikely to be true and correct. This taints and invalidates the public consultation process regarding the Document’s application to the MBM proposal land and in itself is sufficient reason why the process is fatally flawed and needs to be revamped and entered into afresh, based on proper public disclosure and sound planning principles.¹¹

The above factors in combination lead to a reasonable apprehension of bias on the part of the WAPC and the Dept of Planning in this process. Our organization, and we suggest the public in general, can have no confidence that the WAPC will apply acceptable standards of objectivity, open mindedness, even handedness and procedural fairness in dealing with the matter.

Time does not permit us to comment here about the substance of the proposal to change the classification of the MBM proposal land to “urban expansion”. Furthermore, our concerns about the

¹⁰ Refer Comments of Mr Marra at page E143 of Hansard, 9 June 2015

¹¹ Should the government, including the WAPC / Dept of Planning, fail to ensure proper public disclosure of the true intentions for the MBM proposal land and put in place diligent “arm’s length” evaluation and planning processes it may well become complicit in what may amount to a major land “scam” in regard to the MBM proposal land, and the sabotage of the wonderful opportunity to create a world class coastal park at Cape Peron, with all the benefits that would bring.

serious flaws in the process outlined above, including apprehension of bias, cause us to have severe reservations about whether it is even appropriate for us to do so at this point.

Suffice to say that we think the proposal is a very bad one, on planning grounds, and has not been justified. Furthermore it appears to be at odds with statements made at the beginning of the Document attributed to the Minister and the Chairman of the WAPC in regard to environmental and economic considerations.

We look forward to being able to elaborate on our concerns at the appropriate time and within an appropriate forum and framework. We request the opportunity to make oral submissions and supplementary written submissions in regard to this matter in due course.



Dawn Jecks

Hands Off Point Peron Inc

Proposed Metropolitan Region Scheme (MRS) Amendment 1280/41

Submission of Hands Off Point Peron Inc. (HOPP)
to the Western Australian Planning Commission (WAPC)
13 November 2015

ATTACHMENT 2

Affidavit of Dawn Jecks affirmed 10 November 2015

**In the matter of proposed Metropolitan Region Scheme Amendment 1280/41
In relation to land at Cape Peron
in the City of Rockingham, Perth, Western Australia**

Affidavit

Affidavit of: **Dawn Jecks**

Address: 17 Montego Close, Safety Bay, Western Australia, 6169

Occupation: Trainer-assessor

Date affirmed:

10 NOV 2015

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I, Dawn Jecks, of 17 Montego Close, Safety Bay, in the State of Western Australia, Trainer-assessor, affirm as follows:

1. Except where otherwise stated the facts deposed to in this affidavit are known to me to be true and correct to my own direct knowledge. Where such facts are not known to me of my own direct knowledge those facts are true and correct to the best of my knowledge, information and belief and I have stated the source of that knowledge, information and belief.



2. I make this affidavit in support of the submission of Hands Off Point Peron Inc. (HOPP) in relation to proposed Metropolitan Region Scheme (MRS) amendment 1280/41.
3. I am a founding member and currently the secretary of HOPP.
4. On 8 May 2015 I wrote to the Premier of Western Australia on behalf of HOPP, seeking information about the proposed Mangles Bay Marina (MBM) development, in particular in regard to concerns held by HOPP about:
 - (a) The apparent lack of viability of the MBM proposal;
 - (b) The failure to make the economic case for the MBM proposal; and
 - (c) The apparent lack of due diligence and probity in relation to the MBM proposal.
5. Attached hereto and marked "DJ1" is a copy of this letter and the set of questions attached to the letter. I also sent a copy of the letter and attached questions to the Treasurer, the Minister for Lands, the Minister for Tourism and the Minister for Planning.
6. On 11 June 2015 Premier Barnett wrote a letter back to me in which he said that the Minister for Regional Development; Lands, the Hon Terry Redman MLA "*will respond to your queries in due course.*" Annexed hereto and marked "DJ2" is a copy of this letter from the Premier.
7. The Treasurer, the Hon Mike Nahan MLA, wrote a letter to me on 24 June 2015 in which he said "*Thank you for bringing your concerns to my attention, and I trust that the information which will be provided by the Minister for Lands will address the concerns you may have with the project.*" Annexed hereto and marked "DJ3" is a copy of this letter.
8. The Minister for Regional Development; Lands, the Hon Terry Redman MLA wrote a letter to me on 2 July 2015 in which he said "*I am currently in the process of reviewing the questions submitted by the HOPP and will respond to you in due course.*" Annexed hereto and marked "DJ4" is a copy of this letter.
9. On 14 July 2015 on behalf of HOPP I wrote a letter back to the Minister for Lands, the Hon Terry Redman MLA. In the letter I stated: "*We would be grateful if you would provide answers to our questions as soon as possible. It is more than 2 months since we submitted our questions and so far we have not received answers to any questions. This is of concern given the gravity of the issues and the urgent need for answers.*" In the letter



HOPP also requested a meeting with the Minister for Lands. Annexed hereto and marked "DJ5" is a copy of this letter.

10. On 14 July 2015 on behalf of HOPP I wrote to the Premier expressing concern about the delay in the response from the Minister for Lands. Annexed hereto and marked "DJ6" is a copy of this letter.
11. On 9 August 2015 on behalf of HOPP I wrote to the Premier expressing serious concerns about the planning process in regard to the MBM proposal and attaching a copy of HOPP's submission in response to the draft South Metropolitan Peel Sub-regional Planning Framework document dated May 2015. Annexed hereto and marked "DJ7" is a copy of this letter and the attached HOPP submission. In the letter HOPP raised several concerns about the conduct of the planning process regarding the MBM proposal, including:
- (a) lack of proper public consultation;
 - (b) conflict of interest and apprehension of bias;
 - (c) lack of due diligence;
 - (d) lack of accountability and transparency; and
 - (e) misleading conduct on the part of LandCorp and Cedar Woods.

HOPP stated in the letter:

"If the government wishes to continue its pursuit of this so-called marina development, then we are calling for:

1. *An independent expert analysis comparing the economic, environmental and social costs and benefits of the two competing proposals for the land subject to the so-called Mangles Bay Marina Proposal – i.e.:*
 - a. *The proposal to integrate the land into a world-class coastal park covering Cape Peron and Lake Richmond and*
 - b. *The so-called Mangles Bay Marina proposal;*
2. *An independent, diligent and impartial planning process, at arm's length from the government proponent; and*
3. *An independent inquiry to investigate the conduct of various parties involved in this matter, with the power to call witnesses, inspect documents and make findings and recommendations.*

Would you please provide your response to these requests and our attached submission.

...



Please note that we have still not received any answers to the questions attached to our letter to you dated 8 May 2015, which you referred to the Minister for Lands to answer."

- 12. Premier Barnett responded by letter dated 5 October 2015. Annexed hereto and marked "DJ8" is a copy of this letter and the attached submission. The letter did not address the substance of the concerns raised in HOPP's letter to the Premier dated 9 August 2015 about the planning process, nor did it address the concern raised about the delay in the Minister for Lands' response to HOPP's questions.
- 13. HOPP has not received any further correspondence from either the Premier or the Minister for Lands in relation to this matter.
- 14. It is now 6 months since HOPP submitted its questions to the Premier and the Minister for Lands. No responses to any of the questions have been received, despite HOPP's repeated requests for answers to be provided. Furthermore, no explanation has been provided for the lack of response.
- 15. The lack of answers to HOPP's questions has had a serious adverse impact on the fairness and transparency of the MRS amendment process because the state government has, in effect, refused HOPP's reasonable request for information about matters of relevance and importance to the MRS planning process and to HOPP's submission about the proposed MRS amendment. In my opinion, based on my understanding of good governance practice, answers should have been provided several months ago and certainly well before 13 November 2015, being the deadline for public submissions in relation to the proposed MRS amendment.

Affirmed by the deponent Dawn Jecks)
 at *Stirling*)
 in the State of Western Australia)
 on this *10th* day of *November* 2015)
 Before me:)

[Signature]

 Signature of deponent

Signature of witness: *[Signature]*
 Name of witness: **LESLIE CHARLES NORRISH**



A Justice of the Peace / a legal practitioner who has held a Practice Certificate for at least 2 years and who holds a current Practice Certificate.

**In the matter of proposed Metropolitan Region Scheme Amendment 1280/41
In relation to land at Cape Peron
in the City of Rockingham, Perth, Western Australia**

Affidavit

Annexure "DJ1"

This is the annexure marked "DJ1" referred to in the
affidavit of Dawn Jecks

Affirmed the 10 day of November 2015

Lorraine K.

HANDS OFF POINT PERON



Hands Off Point Peron Inc.
www.handsoffpointperon.com

PO Box 637
Rockingham WA 6968

8 May 2015

Hon Colin Barnett MLA
Premier of Western Australia
By email: wa-government@dpc.wa.gov.au

Dear Premier,

Questions about the "Mangles Bay Marina" proposal for public land at Point Peron ("MBM proposal")

As you may be aware, we have very serious concerns about the MBM proposal, which appears to be unsound and ill conceived on numerous grounds – environmental, economic, social and cultural.

This letter focuses on questions we have about the probity and finances of the MBM proposal. Based on the information currently available, serious questions have emerged in regard to:

1. **The apparent lack of viability of the MBM proposal.** The extremely high cost of constructing and maintaining the artificial inland marina and canals means that the project appears likely to require massive amounts of taxpayers' funds in order to proceed. Such public subsidy of private interests cannot be justified, all the more so in the current economic and fiscal climate.
2. **The failure to make the economic case for the MBM proposal.** The economic case has not been made out. On the contrary, at face value the economic case appears far stronger for implementing the longstanding plan for Point Peron, which involves establishing (at relatively low cost and at no risk) a high quality recreation and nature-based park over the whole of Point Peron. This would attract tourists from all over Australia and the world and bring in far more net economic benefits than the MBM proposal, which would destroy this golden opportunity forever and be extremely burdensome for taxpayers to fund.
3. **The apparent lack of due diligence and probity in relation to the MBM proposal.** On the evidence currently available there appears to have been a lack of proper evaluation of the financial and economic implications of the MBM proposal and there are serious question marks over LandCorp's decision to engage a so called private sector "partner", its process for selecting that "partner" and the terms of its agreement with such "partner".

Please find attached a list of questions about these and other matters for your response please. In view of the loss of public land and high amount of public expenditure that would ensue if the MBM proposal proceeds we believe the attached questions are fair and reasonable and need to be answered frankly in the interests of government accountability and transparency. Please advise if you need clarification in regard to any of the questions.

We would be grateful if you would respond to the questions within 30 days.

Yours sincerely,



.....
Dawn Jecks

Cc The Treasurer, Minister for Lands, Minister for Tourism, Minister for Planning

**Questions for the Western Australian Government regarding
the “Mangles Bay Marina” project at Point Peron,
Western Australia**

8 May 2015

**Submitted by Hands Off Point Peron Inc. (HOPP) to the Premier of
Western Australia, the Hon Colin Barnett MLA**

Terminology used in the questions below:

- “Cedar Woods” means any or all (as the context determines) of the Cedar Woods companies with which LandCorp has contracted in relation to the MBM project, including Cedar Woods Properties Limited, Cedar Woods Properties Management Pty Ltd and Cranford Pty Ltd
- LandCorp means LandCorp or the Western Australian Land Authority, as the context determines
- “MBM” means the “Mangles Bay Marina” proposal at Point Peron being pursued by LandCorp and Cedar Woods.
- “MBM project” means the Mangles Bay Marina project in all its phases including design, planning, statutory approvals and compliance, construction, subdivision and ongoing maintenance
- “Project” or “project” means MBM project
- “Project land” means the land subject to the MBM project
- “The State” and “the State government” means the Western Australian State government or any arm of it, including but not limited to LandCorp

Basis of decision to pursue the MBM project

1. Has LandCorp received any ministerial directions regarding the MBM project, pursuant to s 24 of the *Western Australian Land Authority Act 1992* (the WALA Act)? If so, please provide details.
2. Who made the decision that LandCorp pursue the MBM project and when was the decision made?
3. On what advice and analysis was the decision for LandCorp to pursue the project based?
4. Who provided such advice and analysis and when?
5. Is the advice available to the public?

6. In view of the increasing economic value of national and international nature-based tourism and the opportunity to establish a world-class coastal park covering all of Point Peron, has a comparative cost / benefit analysis been carried out to compare:
 - a. The implementation of the original plan, based upon the 1964 Commonwealth State Point Peron agreement, to conserve and integrate the MBM project land into an "A" class reserve for recreation and park land covering all of Point Peron; and
 - b. The implementation of the MBM project involving clearing the "bush forever" on the MBM project land, the removal of the MBM project land from Point Peron's public parkland and the construction of a housing subdivision, canals and marina on the MBM project land, in contravention of the terms of the 1964 Commonwealth State Point Peron agreement?
7. If not:
 - a. Why not?
 - b. How can the State government justify abandoning the longstanding plan to integrate the MBM project land into an "A" class coastal park covering all of Point Peron?
8. If so:
 - a. By whom was such comparative analysis conducted, and when?
 - b. Is it available to the public?

Viability and funding

9. Does the State government consider that LandCorp is bound by section 19(c) of the WALA Act in relation to the MBM project?
10. If so, what steps has LandCorp and the Minister taken to assess whether LandCorp's engagement in the Project complies with section 19(c) of the WALA Act? What documentation is available to the public to scrutinize such assessment?
11. If not, why not?
12. Has the Minister or the Cabinet approved any community service obligation payments by Treasury to LandCorp with respect to the project? If so:
 - a. When?
 - b. On what basis?
 - c. For how much?

13. How much money has the State government, including LandCorp, spent in total on the project to date?
14. Has the State government estimated how much more money the State will have to spend on the project?
15. If not why not?
16. If so:
 - a. What is the figure?
 - b. Does the figure include a percentage for contingencies? If so what percentage?
 - c. On what advice and analysis is this figure based?
 - d. Who provided the advice and when?
 - e. Is this advice and analysis available to the public?
17. Has the further funding required from the State for the project been approved and appropriated by the State?
18. If so when?
19. If not, when is it anticipated that such further funding will need to be approved and appropriated?
20. Has a comprehensive independent feasibility study of the MBM project been conducted?
21. If not, why not?
22. If so:
 - a. By whom?
 - b. When was it conducted?
 - c. Is it available for public scrutiny?
23. How much is it estimated it will cost in total to implement the project including all its phases (design, planning, statutory approvals and compliance, construction, subdivision and ongoing maintenance)?
24. How much private capital investment has been secured for the project to date?
25. How much private investment is required for the project to be viable?
26. How much public funding is required for the project to be viable?
27. Has the annual management and maintenance costs of the MBM project waterways been estimated?
28. If not why not?
29. If so:
 - a. What is the figure?
 - b. On what advice and analysis is this figure based?

- c. Who provided the advice and when?
 - d. Is this advice and analysis available to the public?
30. Who will pay for this?
31. Is the State government willing to pay such costs itself?
32. If not why not?
33. Is the State government willing to pass such costs on to the purchasers of the lots in the MBM project area?
34. If not, why not?
35. Is the State government or LandCorp seeking to pass on the cost of the waterways management and maintenance to the City of Rockingham?
36. If so, why?
37. LandCorp has indicated that it will acquire the project land from other government agencies and will then own the project land at all stages up to its sale as subdivided lots. Has the MBM project land been independently valued?
38. If not, why not?
39. If so:
 - a. When?
 - b. By whom?
 - c. What was the valuation?
 - d. Is it available to the public?
40. How much is it proposed that LandCorp would pay for the project land?
41. Has the value of the project land been included in the projected project expenditure?
42. Has the State government estimated how much the sale of all the disposable land in the project area will fetch?
43. If not why not?
44. If so:
 - a. What is the figure?
 - b. On what advice and analysis is this figure based?
 - c. Who provided the advice and analysis, and when?
 - d. Is this advice and analysis available to the public?
45. How many years does the State government estimate the construction of the MBM project will take?
46. When does the State government estimate the construction of the marina and canals would commence?

47. When does the State government estimate the construction of the marina and canals would be completed?
48. Is it contemplated that the construction will be carried out in stages? If so, what are the proposed stages and in what order are they to be carried out?
49. Can the State government assure the public that the construction work on the project would not commence unless and until sufficient funding has been secured to complete the MBM project, including for the construction and ongoing maintenance of the marina and waterways?
50. If not, why not?

LandCorp's dealings with Cedar Woods

51. Why was it considered necessary for LandCorp to appoint a private sector "partner" for the project rather than LandCorp carrying out such functions itself?
52. What are the details of the process that was undertaken to choose LandCorp's private sector "partner"?
53. What were the selection criteria?
54. Is it correct that LandCorp called for expressions of interest?
55. If so:
 - a. On what date?
 - b. What information about the selection criteria, the services required and the level of remuneration payable was provided in order for parties to make an informed decision whether to express interest and about what information to provide in support of any expression of interest?
 - c. How many expressions of interest did LandCorp receive from potential private sector "partners"?
 - d. What additional information was provided to, and sought from, candidates who lodged expressions of interest?
 - e. What further steps were taken by LandCorp to choose between candidates?
56. When was the decision made to appoint Cedar Woods?
57. Which person or people made the decision to appoint Cedar Woods?
58. Upon whose advice and recommendations was the decision made?
59. What were the reasons for choosing Cedar Woods over other candidates?
60. Was there a competitive tendering process? If so, please provide details of the tender specifications, selection criteria and evaluation process.

61. If not, why not?
62. Is it correct that the terms of Cedar Woods' appointment are contained in an agreement dated 5 October 2011 between LandCorp and Cedar Woods entitled "*Development Agreement, Mangles Bay Marina*" (referred to below as the Development Agreement)?
63. Is the Development Agreement available to the public?
64. If not, why not?
65. If not, are the key terms of the Development Agreement regarding the scope of services to be provided by Cedar Woods and the level of remuneration payable to Cedar Woods available to the public?
66. If not, why not?
67. Is it correct that, pursuant to the Development Agreement, Cedar Woods has been appointed LandCorp's agent for the purpose of providing various services to LandCorp, including (among other things) managing the MBM project, securing environmental and planning approvals, and marketing and selling the subdivided MBM land?
68. If not, what is the purpose of Cedar Woods' appointment under the Development Agreement?
69. By letter dated 15 March 2013 LandCorp advised the Office of the Environmental Protection Authority that it agreed to be named as a joint proponent for the MBM project. Why then did LandCorp advise the Office of the Environmental Protection Authority by email dated 9 February 2012 that it was "*not a co-proponent for the Mangles Bay project*" and that "*Cedar Woods is the sole proponent for the project*"?
70. Is it correct that, under the Development Agreement, Cedar Woods receives fees and commissions for its services? If not, what is the nature of the remuneration Cedar Woods receives for its services?
71. Pursuant to the Development Agreement, was Cedar Woods required to pay a "*participation fee*" to LandCorp upon being awarded the contract to provide the services set out in the Development Agreement?
72. If so:
 - a. How much was this fee?
 - b. What was the reason for requiring payment of this fee?
 - c. Who decided the quantum of the fee?
 - d. On what advice was the quantum determined?
 - e. Is this advice available to the public?
 - f. How has the money received for this fee been used by LandCorp?

73. Does Cedar Woods currently have any equity in the MBM project? If so, to what extent?
74. Is it proposed that Cedar Woods would in future have any equity in the MBM project? If so, to what extent?
75. How much money has LandCorp and / or any other arm of the State government paid to Cedar Woods for its services in relation to the MBM project to date?
76. How much (expressed either as a figure or as a formula or both) does Cedar Woods stand to receive from the MBM project if the MBM project is carried out to completion?
77. What is the formula for calculating the amount of money Cedar Woods would receive for each parcel of project land sold?
78. Is it correct that in the 2011 Development Agreement LandCorp and Cedar Woods agreed to produce the MBM project land lots for sale as soon as possible? If so, why did LandCorp make such a commitment given that it legally bound LandCorp / the State government to press ahead hastily with all phases of the project, including construction and subdivision, despite the fact that statutory approvals had not been secured, project feasibility had not been fully assessed, project funding (public and private) had not been secured and the project was fraught with economic and environmental risks and unknown contingencies?

**In the matter of proposed Metropolitan Region Scheme Amendment 1280/41
In relation to land at Cape Peron
in the City of Rockingham, Perth, Western Australia**

Affidavit

Annexure "DJ2"

This is the annexure marked "DJ2" referred to in the
affidavit of Dawn Jecks

Affirmed the 10 day of November 2015

Lagouan R



Premier of Western Australia

Our Ref: 24-543558/JH

Ms Dawn Jecks
Hands Off Point Peron Incorporated
PO Box 637
ROCKINGHAM WA 6968

Dear Ms Jecks

Thank you for your correspondence dated 8 May 2015, informing me of your views and concerns in relation to the Mangles Bay Marina-Based Tourist Precinct.

I understand you have also written to the Minister for Regional Development; Lands, the Hon Terry Redman MLA. The project falls within Minister Redman's portfolio responsibilities. Accordingly, Minister Redman will respond to your queries in due course.

I can assure you that Minister Redman will review your submissions with careful consideration.

Yours sincerely

Colin Barnett MLA
PREMIER

11 JUN 2015

**In the matter of proposed Metropolitan Region Scheme Amendment 1280/41
In relation to land at Cape Peron
in the City of Rockingham, Perth, Western Australia**

Affidavit

Annexure "DJ3"

This is the annexure marked "DJ3" referred to in the
affidavit of Dawn Jecks

Affirmed the 10th day of November 2015

Lorna J.



**Hon Mike Nahan MLA
Treasurer; Minister for Energy;
Citizenship and Multicultural Interests**

Our ref: 48-11258

Ms Dawn Jecks
Founder
Hands Off Point Peron Inc.
PO Box 637
ROCKINGHAM WA 6968
Email: dawnjecks@gmail.com

Dear Ms Jecks

MANGLES BAY MARINA PROJECT

Thank you for your correspondence dated 14 May 2015 in which you requested information on a number of issues pertaining to the Mangles Bay Marina project at Point Peron.

I wish to reconfirm my advice that this matter falls within the portfolio of the Hon Terry Redman MLA, Minister for Lands, and as such this correspondence has been referred to his office for response.

With respect to the funding issues, please note that the Western Australian Land Authority (LandCorp) is funding the project from within its currently approved budget. This is reflected in the 2015-16 State Budget.

Thank you for bringing your concerns to my attention, and I trust that the information which will be provided by the Minister for Lands will address the concerns you may have with the project.

Yours sincerely

**DR MIKE NAHAN MLA
TREASURER**

24 JUN 2015
cc Minister for Lands

**In the matter of proposed Metropolitan Region Scheme Amendment 1280/41
In relation to land at Cape Peron
in the City of Rockingham, Perth, Western Australia**

Affidavit

Affidavit of:

Annexure "DJ4"

This is the annexure marked "DJ4" referred to in the
affidavit of Dawn Jecks
Affirmed the 10th day of November 2015

Liam...



**The Hon Terry Redman MLA
Minister for Regional Development; Lands;
Minister Assisting the Minister for State Development**

Our Ref: 39-30610

Ms Dawn Jecks
Hands Off Point Peron Inc
PO Box 637
ROCKINGHAM WA 6968

Dawn
Dear Ms ~~Jecks~~

MANGLES BAY MARINA-BASED TOURIST PRECINCT

Thank you for your correspondence dated 14 May 2015, informing me of your views and concerns in relation to the proposed Mangles Bay Marina-Based Tourist Precinct.

On 13 May 2015, I toured the site and appreciated the opportunity to meet with representatives from the local authority and key stakeholder group, including a representative from Preserve Point Peron. It is unfortunate that a representative from Hands Off Point Peron (HOPP) was unable to attend.

I am currently in the process of reviewing the questions submitted by the HOPP and will respond to you in due course.

Yours sincerely

HON TERRY REDMAN MLA
MINISTER FOR LANDS

02 JUL 2015

**In the matter of proposed Metropolitan Region Scheme Amendment 1280/41
In relation to land at Cape Peron
in the City of Rockingham, Perth, Western Australia**

Affidavit

Annexure "DJ5"

This is the annexure marked "DJ5" referred to in the
affidavit of Dawn Jecks

Affirmed the *6* . day of November 2015

Loraine H.

HANDS OFF POINT PERON



Hands Off Point Peron Inc.
www.handsoffpointperon.com

PO Box 637
Rockingham WA 6968

14 July 2015

Hon Terry Redman MLA

Minister for Lands

By email: Minister.Redman@dpc.wa.gov.au

Dear Minister,

Mangles Bay Marina-Based tourist Precinct – your ref: 39-30610

I refer to your letter dated 2 July 2015 in response to our correspondence dated 14 May 2015. As you are aware, we originally addressed our questions to the Premier, under cover of letter dated 8 May 2015. However the Premier has written to us advising that you will answer our queries.

We would be grateful if you would provide answers to our questions as soon as possible. It is more than 2 months since we submitted our questions and so far we have not received answers to any questions. This is of concern given the gravity of the issues and the urgent need for answers.

In your letter you mention having come to Rockingham on 13 May 2015 and you express disappointment at not having met with a representative from HOPP on that day. In case you have not been informed, on 8 May 2015 I sent an email to Amy Shapland at LandCorp requesting that she pass on my thanks to Mr Willcock for the offer of a meeting with you and advising that, unfortunately, we were unable to attend on the date proposed. In the email I advised that we would welcome the chance to meet with you in future on a suitable date*.

We remain keen to meet with you at a mutually convenient time. We would prefer to meet with you privately, so that we can speak to you on a confidential basis about our concerns. It would probably make sense to meet after you have provided answers to our questions, rather than before. Would you be agreeable to such a meeting?

Yours sincerely,



.....
Dawn Jecks

* Recent comments by Mr Willcock of LandCorp suggested that he was not aware of this correspondence and that his recollection was that HOPP had simply failed to turn up on the day, to your disappointment. We can assure you that this was not the case and we hope that there is no ongoing misunderstanding about this.

**In the matter of proposed Metropolitan Region Scheme Amendment 1280/41
In relation to land at Cape Peron
in the City of Rockingham, Perth, Western Australia**

Affidavit

Annexure "DJ6"

This is the annexure marked "DJ6" referred to in the
affidavit of Dawn Jecks

Affirmed the *10* day of November 2015

Lorna R.

HANDS OFF POINT PERON



Hands Off Point Peron Inc.
www.handsoffpointperon.com

PO Box 637
Rockingham WA 6968

14 July 2015

Hon Colin Barnett MLA
Premier of Western Australia
By email: wa-government@dpc.wa.gov.au

Dear Premier,

Questions about the “Mangles Bay Marina” proposal for public land at Point Peron (“MBM proposal”) – your reference: 24-5435581JH

I refer to our letter to you dated 8 May 2015 and the set of questions attached to the letter.

Thank you for your response dated 11 June 2015, in which you do not answer our questions but instead advise that you have referred the questions to the Minister for Lands to answer.

On 2 July 2015 the Minister for Lands wrote to us to say that he is in the process of reviewing the questions and will respond in due course.

It is over 2 months since we wrote to you and to the Minister for Lands and as yet we have not received answers to any of our questions. The continuing delay is cause for concern, given the gravity of the issues and the urgent need for answers. We have therefore replied to the Minister for Lands seeking his responses as soon as possible.

Yours sincerely,



.....
Dawn Jecks

**In the matter of proposed Metropolitan Region Scheme Amendment 1280/41
In relation to land at Cape Peron
in the City of Rockingham, Perth, Western Australia**

Affidavit

Annexure "DJ7"

This is the annexure marked "DJ7" referred to in the
affidavit of Dawn Jecks

Affirmed the *10* day of November 2015

Lorun H

9 August 2015

Hon Colin Barnett MLA
Premier of Western Australia
By email: wa-government@dpc.wa.gov.au

Dear Premier,

Concerns and request for action regarding planning process for proposed “Mangles Bay Marina”

Please find attached our submission in response to the draft South Metropolitan Peel Sub-regional Planning Framework Document dated May 2015. As you will see in our submission we have raised a number of serious concerns relating to the government’s planning processes to date, including lack of proper public consultation, conflict of interest and apprehension of bias, lack of due diligence and lack of accountability and transparency. These flaws are exacerbated by the misleading conduct on the part of the proponent, the land development arm of the government (LandCorp) and Cedar Woods. The basis of our concerns is set out in our submission.

Given these concerns and the apprehension of bias, our organisation, and we suggest the public in general, can have no confidence that the WAPC and the Department of Planning will apply acceptable standards of objectivity, open-mindedness, even-handedness and procedural fairness in dealing with the matter.

In view of the nature of our concerns they need to be dealt with externally from the WAPC and the Department of Planning. Hence we are bringing our concerns to your attention, for you to take the appropriate action as Premier.

If the government wishes to continue its pursuit of this so-called marina development, then we are calling for:

1. An independent expert analysis comparing the economic, environmental and social costs and benefits of the two competing proposals for the land subject to the so-called Mangles Bay Marina Proposal – i.e.:
 - a. The proposal to integrate the land into a world-class coastal park covering Cape Peron and Lake Richmond and
 - b. The so-called Mangles Bay Marina proposal;
2. An independent, diligent and impartial planning process, at arm’s length from the government proponent; and
3. An independent inquiry to investigate the conduct of various parties involved in this matter, with the power to call witnesses, inspect documents and make findings and recommendations.

Would you please provide your response to these requests and our attached submission.



Hands Off Point Peron Inc.
www.handsoffpointperon.com

PO Box 637
Rockingham WA 6968

Questions previously submitted to you about the “Mangles Bay Marina” proposal – your reference: 24-5435581JH

Please note that we have still not received any answers to the questions attached to our letter to you dated 8 May 2015, which you referred to the Minister for Lands to answer.

In the circumstances we consider that this delay of 3 months is unacceptable and demonstrates a lack of government accountability, transparency and candour.

Would you please inform us when we can expect to receive an answer to our questions.

Yours sincerely,

A handwritten signature in blue ink, appearing to be "Dawn Jecks".

.....
Dawn Jecks

31 July 2015

Project Manager
Perth and Peel@3.5million
Department of Planning
PERTH WA 6001

By email: 3.5million@planning.wa.gov.au

Submission in Response to the draft Metropolitan Peel Sub-regional Planning Framework Document dated May 2015 (“the Document”)

HOPP has only today become aware of the significance of the Document to future planning processes in regard to the proposed Mangles Bay Marina (MBM), and of today’s deadline for submissions.

On close inspection of the maps on page 17 and page 21, the Document shows the land subject to the MBM proposal as “urban expansion”. However it is noteworthy that at page 20, where specific areas of proposed urban expansion are listed, no mention is made of the MBM proposal land at Point Peron. Also, to add to the confusion and potentially mislead the reader, the map at page 45 shows the MBM land as “Open Space – Nature / Passive Recreation”.

The proposal to change the status of this land to “urban expansion” is in stark contrast to its current status as, for the most part, public open space comprising a portion of the ‘bush forever’ located in the Rockingham Lakes Regional Park. This is a fundamental change to a sub regional structure plan that the government (as the MBM development proponent) and the WA Planning Commission / Dept of Planning appear to be seeking to bring about by stealth.

To compound this failure of the Document to highlight and state unambiguously the proposed change for the benefit of readers, the WAPC and Dept of Planning have not taken reasonable steps to raise awareness about the significance of the Document to this issue, nor about today’s deadline. Consequently the public submission process is fatally flawed.

So far as we are aware, there have been no public forums held in the Rockingham area to help Rockingham people understand the significance of the Document to future planning processes for the highly controversial Mangles Bay Marina development proposal and no reasonable efforts have been made to draw the public's attention to the deadline for making submissions.

We understand, based on comments made today by Neil Fox, an officer at the Dept of Planning, that consultations about the Document have been held with 'big stakeholders' such as industry, the property sector, local government and others, but that no public forums have been held to his knowledge. Unfortunately it appears that the Dept of Planning does not regard the general public as a stakeholder of the same importance as these.

Nor has the City of Rockingham been proactive in this regard. A search of the City of Rockingham's website today reveals only one reference to the Document and the submission process, in relation to the Karnup District Structure Plan. No mention of it is made in regard to the Mangles Bay Marina. The only comment about the MBM is that "City of Rockingham Mayor, Barry Sammels today confirmed that preliminary work has commenced on the assessment of the Mangles Bay Marina Local Structure Plan". Questions about the MBM and the planning processes associated with it have been raised at numerous City of Rockingham Council meetings, the latest on 28 July 2015, however to the best of our knowledge neither the mayor nor other councillors nor staff present have ever referred to the Document and its significance for the future planning decision making regarding the MBM proposal land.

In view of advice received today from Mr Fox at the Dept of Planning that there have been consultations about the Document with the local governments affected, it appears that the City of Rockingham has either deliberately or negligently failed to inform the people of Rockingham about the Document and its significance to future planning decisions regarding the Mangles Bay Marina proposal. This, in conjunction with the WAPC / Dept of Planning's own failings in this regard, further reinforces the need for the WA government to take steps to facilitate a fresh process and period for public submissions after the public has been properly informed and after a fair and appropriate process has been established for this purpose.

Furthermore the proponent LandCorp and its so-called 'private sector partner' Cedar Woods have been conspicuously silent in relation to informing the public about the significance of the Document

and of submissions in relation to it. Only a few days ago they published¹ another large advertisement in the local papers which made no reference to it, instead giving the impression that the key planning processes and opportunities for public comment would occur later this year, after the City of Rockingham advertises the Local Structure Plan for the Mangles Bay Marina. This misleading (by omission) conduct, when taken with other aspects of the proponent's conduct that time does not permit to be detailed here, is all the more serious from an ethical point of view given that LandCorp is an arm of the government and would have been well aware of the significance of the Document for future planning decisions regarding the MBM proposal.

We understand, based on discussion with the Dept of Planning², that there is no statutory framework or any other set of guidelines setting out the process by which the WAPC and the Dept of Planning considers and deals with submissions in relation to the Document, including whether there will be opportunities to make oral submissions and provide supplementary written submissions. This lack of a clear process and procedure is entirely unsatisfactory from the point of view of transparency, consistency of approach, procedural fairness and the avoidance of an apprehension of bias on the part of the WAPC and the Dept of Planning, referred to below.

Our concerns about the process are all the more serious because of the potential conflict of interest, perception of bias and probity issues that arise due to the fact that the WA Government is itself, through its land development arm LandCorp (aka the WA Land Authority) the lead proponent of the MBM development. LandCorp's role has occurred with express support and approval from the Premier and Cabinet³. LandCorp in turn has entered into a legally enforceable Development Agreement with private sector developer Cedar Woods⁴, under which Cedar Woods stands to gain a large profit from the subdivision and sale of the MBM proposal land for housing and other

¹ Weekend Courier 24 July 2015 @ page 9

² per Neil Fox

³ See Development Agreement between LandCorp, Cranford Pty Ltd, Cedar Woods Properties Limited and Cedar Woods Properties Management Pty Ltd dated 5 October 2011, which states (Background paragraph B) that "the Western Australian Cabinet has approved expenditure to progress Phase 2 which will involve undertaking statutory investigation and seeking necessary regulatory approvals and instructed LandCorp to report back to Cabinet at the end of that process." Refer also to comments made to the Legislative Assembly Estimates Committee by the Hon DT Redman, Minister for Lands, and by Mr F Marra, CEO of LandCorp, on 9 June 2015 (Hansard 9 June 2015 at pages E143-4)

⁴ See Development Agreement between LandCorp, Cranford Pty Ltd, Cedar Woods Properties Limited and Cedar Woods Properties Management Pty Ltd dated 5 October 2011

purposes⁵. Furthermore, under this agreement⁶ LandCorp has agreed with Cedar Woods to “produce Lots for sale as soon as possible”. This places the WAPC and the Dept of Planning in a position where they have a key regulatory and advisory role to play but are not at arm’s length from the developer, in a situation where the government is itself constrained by contractual arrangements already entered into by the government’s land development arm.

Furthermore, it is on the parliamentary record (Hansard 7 August 2013) that the WA Planning Commission contributed \$250 000 to fund the Cape Peron Tourist Precinct Steering Committee which was charged with coordinating the community consultation, due diligence, planning and environmental studies in relation the MBM proposal⁷. This means that the WAPC appears to itself have a preconceived view and vested interest in the MBM proposal being implemented, in addition to the “Caesar judging Caesar” factors already referred to above.

Furthermore, no basis has been set out in the Document for justifying this major change to the status and future use of the MBM proposal land. It appears that the WAPC / Dept of Planning has reached the view that it is a good idea for this land to be developed as “urban”, but has not provided its reasons for this view. This does not allow any fair and reasonable opportunity for the public to make submissions focused on the basis or reasoning upon which the WAPC / Dept of Planning considers the change has merit.

We understand that no duly diligent analysis has been carried out to compare the environmental, economic, social and cultural costs and benefits of (a) retaining the land as public open space capable of being integrated into a world-class coastal park covering Cape Peron and Lake Richmond with (b) the proposed MBM development, the nature of which is in flux and uncertain, as discussed below. In the current circumstances this failure is inexcusable and contrary to sound planning principles, and provides further evidence of the government’s failure to handle the matter diligently, objectively and even-handedly to date.

Proposing that the MBM proposal land be changed to “urban expansion”, in the absence of a diligent comparative analysis, is especially irresponsible in view of the fact that the MBM proposal

⁵ Said by the CEO of LandCorp to be “Depending on the revenue component of it...50 per cent of the revenue that can be generated” (Hansard 9 June 2015 at page E143)

⁶ At paragraph 18.1

⁷ Known at that time as the Cape Peron Tourist Precinct

land (and adjacent land) was transferred by the Commonwealth to the State on the basis that the future use of the land would be “restricted to a reserve for recreation and / or park lands”, with much of it since classified “Bush Forever” by the WA government and incorporated into the Rockingham Lakes Regional Park, and there is now an opportunity and well developed proposal to develop a world class coastal park that would bring in high economic, environmental, social and cultural returns to the region, the city and the state - an opportunity that would be forever lost if the MBM proposal goes ahead.

Furthermore we advise that on 8 May 2015 we sent a letter and series of questions to the Premier, copied to the Minister for Lands, the Treasurer and the Minister for Planning (among others) for their consideration. These questions focused on serious financial, economic and probity issues concerning the MBM proposal and the government’s handling of it, including its handling of planning issues. The Premier referred our correspondence to the Minister for Lands to answer. We have not received a substantive response from the Minister for Planning. To this date (nearly 3 months after our questions were sent) we have not received a response from the Premier, the Minister for Lands or any other minister to any of our questions and none of the addressees have referred us to the Document and today’s deadline. This further undermines the credibility of the state government’s accountability and public engagement processes in regard to the Document in so far as it relates to the MBM proposal land.

Finally, and very significantly, it appears that LandCorp and Cedar Woods have in mind a dramatic change to the proposal that they have promoted in the public arena. The centrepiece and rationale of the proposal has always been for an inland marina and canals on the site, with ancillary tourist attracting and residential development around it. Indeed, as mentioned above, it was at one stage called the “Cape Peron Tourist Precinct” and is still called the Mangles Bay **Marina** proposal (emphasis added). LandCorp and Cedar Woods obtained conditional environment approvals from the state and commonwealth on this basis⁸ and have heavily marketed the proposal to the public on this basis⁹, well aware no doubt that they would have been unlikely to get any support for bulldozing and selling off for housing “bush forever” land in the regional park at Point Peron without the “carrot” of a marina which they claimed was “much needed” in the region. Importantly, they have never said publicly that this marina may not in fact be built due to lack of funding and they continue to rely on

⁸ Including stating in the proponent’s Public Environmental Review document that the construction of the marina would commence in the first stage of the development

⁹ A plethora of marketing materials that demonstrate this can be provided if required.

the promise of a marina to garner support for the proposal, using expressions such as “the marina will...”

However, it is just starting to emerge, by deduction, that LandCorp and Cedar Woods are now seeking to obtain approval to develop and sell off lots for housing and other purposes without the marina and without any guarantee that the marina will ever be built. The state government has made it clear it will not fund the construction of the marina and that the development must be self-funded from the sale of lots¹⁰. Given the extremely high costs and risks associated with the “wet construction method” that would apply to the marina and canals, this means it is looking very unlikely that LandCorp and Cedar Woods will ever have the money to build the marina. And even if they do manage to obtain sufficient finance in future, they would have no incentive to build the marina given that not building it would be far more profitable for them. To date this grave doubt about the proponent’s ability and commitment to build the marina is not known or understood by the general public. This means that the whole basis upon which the MBM proposal has been promoted and premised to date, including during the period of public submissions on the Document, now appears not to be true and correct, or at best unlikely to be true and correct. This taints and invalidates the public consultation process regarding the Document’s application to the MBM proposal land and in itself is sufficient reason why the process is fatally flawed and needs to be revamped and entered into afresh, based on proper public disclosure and sound planning principles.¹¹

The above factors in combination lead to a reasonable apprehension of bias on the part of the WAPC and the Dept of Planning in this process. Our organization, and we suggest the public in general, can have no confidence that the WAPC will apply acceptable standards of objectivity, open mindedness, even handedness and procedural fairness in dealing with the matter.

Time does not permit us to comment here about the substance of the proposal to change the classification of the MBM proposal land to “urban expansion”. Furthermore, our concerns about the

¹⁰ Refer Comments of Mr Marra at page E143 of Hansard, 9 June 2015

¹¹ Should the government, including the WAPC / Dept of Planning, fail to ensure proper public disclosure of the true intentions for the MBM proposal land and put in place diligent “arm’s length” evaluation and planning processes it may well become complicit in what may amount to a major land “scam” in regard to the MBM proposal land, and the sabotage of the wonderful opportunity to create a world class coastal park at Cape Peron, with all the benefits that would bring.

HANDS OFF POINT PERON



Hands Off Point Peron Inc.
www.handsoffpointperon.com

PO Box 637
Rockingham WA 6968

serious flaws in the process outlined above, including apprehension of bias, cause us to have severe reservations about whether it is even appropriate for us to do so at this point.

Suffice to say that we think the proposal is a very bad one, on planning grounds, and has not been justified. Furthermore it appears to be at odds with statements made at the beginning of the Document attributed to the Minister and the Chairman of the WAPC in regard to environmental and economic considerations.

We look forward to being able to elaborate on our concerns at the appropriate time and within an appropriate forum and framework. We request the opportunity to make oral submissions and supplementary written submissions in regard to this matter in due course.



Dawn Jecks

Hands Off Point Peron Inc

**In the matter of proposed Metropolitan Region Scheme Amendment 1280/41
In relation to land at Cape Peron
in the City of Rockingham, Perth, Western Australia**

Affidavit

Annexure "DJ8"

This is the annexure marked "DJ8" referred to in the
affidavit of Dawn Jecks

Affirmed the *10th* day of November 2015

L. Hamer



Premier of Western Australia

Our Ref: 24-563942/CG

Ms Dawn Jecks
Hands Off Point Peron Inc.
PO Box 637
ROCKINGHAM WA 6968

Dear Mr Jecks

Thank you for your letter of 9 August 2015 regarding the Perth and Peel@3.5million suite of strategic land use and infrastructure plans to 2050, which includes the draft South Metropolitan Peel Sub-regional Planning Framework (Planning Framework).

The proposed Mangles Bay Marina is proposed as 'Urban Expansion', 'Regional Open Space' and 'Integrator Arterial' in the Planning Framework. The Planning Framework is not a statutory plan and does not change the existing zonings and/or reservations or allow new land uses on any land. Changes to zoning/reservations can only occur after an amendment to the relevant statutory region and local planning schemes.

The Planning Framework is generally consistent with the Metropolitan Region Scheme Amendment No. 1280/41, which is currently being advertised until 13 November 2015. The Amendment is subject to environmental approval (Statement No. 974), and will come into legal effect if approved by Parliament.

Further detailed planning, including an amendment to the local planning scheme and detailed structure planning, will need to be undertaken for the locality. Both processes have further opportunities for public consultation.

I have forwarded your submission on Perth and Peel@3.5million to the Western Australian Planning Commission for its consideration during the assessment of submissions. These submissions, and further targeted consultation, will inform the finalised plan for Perth and Peel.

Thank you for raising this matter with me.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Colin Barnett'.

Colin Barnett MLA
PREMIER

05 OCT 2015

1 Parliament Place, West Perth, Western Australia 6005
Telephone: +61 8 6552 5000 Facsimile: +61 8 6552 5001 Email: WA-Government@dpc.wa.gov.au
www.premier.wa.gov.au

35.

Proposed Metropolitan Region Scheme (MRS) Amendment 1280/41

Submission of Hands Off Point Peron Inc. (HOPP)
to the Western Australian Planning Commission (WAPC)
13 November 2015

ATTACHMENT 3

Affidavit of Ambrose Cummins affirmed 13 November 2015

**In the matter of proposed Metropolitan Region Scheme Amendment 1280/41
In relation to land at Cape Peron
in the City of Rockingham, Perth, Western Australia**

Affidavit

Affidavit of: **Ambrose Cummins**
Address: 13 Ray Street, Rockingham Beach, WA 6168
Occupation: Lawyer
Date affirmed: *13 NOVEMBER 2015*

Contents

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	Affidavit of Ambrose Cummins		1
AC1	Maps of Point Peron	4	7
AC2	Correspondence between the OEPA and Cedar Woods Properties Limited; extract of Development Agreement between LandCorp and Cedar Woods and others	8	10
AC3	Ambrose Cummins' FOI application to the Department of Planning dated 17 July 2015	10	21
AC4	Department of Planning FOI decision dated 21 September 2015 and various documents provided under FOI	11	25
AC5	Ambrose Cummins' letter to the Department of Planning dated 19 October 2015 seeking internal review	12	138
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AC7	LandCorp's letter to Ambrose Cummins dated 9 June 2015	15	148
AC8	Ambrose Cummins' amended FOI application to LandCorp dated 16 July 2015	16	150
AC9	Ambrose Cummins' Complaint to the Information Commissioner dated 2 November 2015	18	158
AC10	Information Commissioner's letter to Ambrose Cummins dated 5 November 2015	19	161




I, Ambrose Cummins of 13 Ray Street, Rockingham Beach, in the State of Western Australia, lawyer, affirm as follows:

1. I make this affidavit in support of the submission of Hands Off Point Peron Inc. (**HOPP**) to the Western Australian Planning Commission (**WAPC**) in relation to the proposed Metropolitan Region Scheme (**MRS**) amendment 1280/41.
2. I have been a resident of Rockingham Beach since 1998 and prior to that I used to visit Rockingham and Point Peron with my parents and brothers and sisters when I was a child.
3. Except where otherwise stated, the facts deposed to in this affidavit are known to me to be true and correct to my own direct knowledge. Where such facts are not known to me of my own direct knowledge those facts are true and correct to the best of my knowledge, information and belief and I have stated the source of that knowledge, information and belief.
4. When I say Point Peron I mean all the land to the west of Safety Bay Road and Hymus Street. A map (courtesy Sea Kayak WA) and an aerial photograph (courtesy Google earth) showing the location of Hymus Street and Safety Bay Road in relation to Point Peron are annexed hereto and marked "**AC1**". In my experience this land has always been commonly referred to as Point Peron, although it is sometimes also referred to as Cape Peron.
5. I have been closely following the state government's "Mangles Bay Marina" (**MBM**) proposal and the statutory approvals process in relation to that proposal, both in my personal capacity as a Rockingham resident and through my involvement with Preserve Point Peron for the People Inc. (**PPP**) and, more recently, with Hands Off Point Peron Inc. (**HOPP**). I am currently a member of HOPP.

Concerns about the planning process and about the probity and finances of the MBM project

6. I have for some time been concerned about the probity and finances of the MBM proposal and about the way the state government has been dealing with it. These matters are relevant to the MRS amendment process.
7. In order to find out more information in relation to these matters I sought various documents under Freedom of Information (**FOI**), as described below.



Office of the Environmental Protection Authority

8. In November 2013 I made an FOI application to the Office of the Environmental Protection Authority (OEPA) for various documents. Annexed hereto and marked "AC2" is a copy of the following documents provided by the OEPA to me in response to my FOI application:
- (a) Letter (edited) from the OEPA to Cedar Wood Properties Limited dated 13 June 2012;
 - (b) Letter (edited) from Cedar Woods Properties Limited to the OEPA dated 25 June 2012; and
 - (c) Extract of the Development Agreement dated 5 October 2011 between the Western Australian Land Authority (LandCorp), Cedar Woods Properties Limited, Cranford Pty Ltd and Cedar Woods Properties Management Pty Ltd.

Department of Planning / WAPC

9. On 17 July 2015 I wrote to the Department of Planning requesting various documents in relation to:
- (a) The WAPC's payment of \$250,000 for the purpose of facilitating the MBM development proposal;
 - (b) Correspondence between the WAPC / Department of Planning and LandCorp and Cedar Woods regarding planning processes for the MBM proposal;
 - (c) Correspondence between the WAPC / Department of Planning and the City of Rockingham regarding planning processes for the MBM proposal; and
 - (d) Minutes of the WAPC in relation to planning processes for the MBM project.
10. Annexed hereto and marked "AC3" is a copy of this letter.
11. Mr David Saunders of the Department of Planning wrote to me on 21 September 2015 setting out his decision regarding my FOI application and attaching various documents, some in edited form. Annexed hereto and marked "AC4" is a copy of this letter, decision and all the documents provided to me.
12. On 19 October 2015 I wrote to the Department of Planning requesting an internal review of the decision, on the grounds that the Department of Planning should also have provided other documents to me and that some of the documents were inappropriately edited. Annexed hereto and marked "AC5" is a copy of this letter. I have just received the Department of Planning's internal review decision but have not had time to consider it prior to finalising this affidavit, due to the need to meet the deadline for public submissions in relation to the proposed MRS amendment.




LandCorp

13. On 8 May 2015 I wrote to LandCorp requesting various documents in relation to:
- (a) LandCorp's decision to pursue the MBM project;
 - (b) The viability and funding of the MBM project; and
 - (c) LandCorp's engagement of a private sector "partner".
14. Annexed hereto and marked "AC6" is a copy of this letter.
15. On 9 June 2015 Landcorp wrote to me stating that they were unwilling to deal with my FOI application because they considered its scope was *"too broad for us to process without diverting a substantial and unreasonable portion of resources away from other operations"*. Annexed hereto and marked "AC7" is a copy of this letter.
16. I was very concerned about LandCorp's refusal to deal with my FOI application. After protracted discussions with LandCorp officers to try and overcome LandCorp's refusal to deal with my FOI application I wrote a letter to LandCorp on 16 July 2015 in which I reduced the scope of my FOI application. Annexed hereto and marked "AC8" is a copy of this letter.
17. To date I have only received a small number of documents from LandCorp. Most of the documents I asked for have not been provided. For example, LandCorp has failed to provide any documents that show:
- a. Why LandCorp chose not to abide by the terms of the 1964 Point Peron agreement between the Commonwealth and the State in relation to the use of the MBM land;
 - b. The economic costs / benefits of the MBM project;
 - c. Why LandCorp chose not to evaluate the economic costs and benefits of the MBM project compared to the economic costs and benefits of maintaining the MBM project land within a larger public reserve for recreation and park lands as stipulated in the 1964 Point Peron agreement;
 - d. The estimated cost of the MBM project;
 - e. The estimation of the amount of additional public funding required for the MBM project to be completed (including construction of the marina);
 - f. The estimation of the amount of project generated funding required for the MBM project to be completed (including construction of the marina);
 - g. The assessment of the business case for the MBM project including the terms of reference and who carried out the assessment;



- h. The evaluation of the MBM project's financial feasibility, including the terms of reference and who carried out the evaluation;
 - i. The estimation of the cost of maintaining and managing the MBM project waterways;
 - j. The valuation of the MBM project land;
 - k. The estimated net revenue from sales of the MBM project land and the basis of the estimate;
 - l. The proposed stages of on-ground implementation of the MBM project and the proposed timetable for each stage, with particular reference to the proposed timing of the construction of the marina, clearing and demolition work, the creation of commercial and residential lots and other components of the MBM project;
 - m. Why LandCorp decided not to conduct a competitive tendering process for the appointment of its so called "private sector partner";
 - n. The Development Agreement between LandCorp and Cedar Woods;
 - o. Details of the participation fee payable by Cedar Woods to LandCorp pursuant to the Development Agreement;
 - p. Why LandCorp wrongly advised the Office of the Environmental Protection Authority by email dated 9 February 2012 that it was "*not a co-proponent for the Mangles Bay project*" and that "*Cedar Woods is the sole proponent for the project*";
 - q. The amount of money or other form of remuneration that Cedar Woods stands to receive from the MBM project if the MBM project is carried out to completion;
 - r. The formula for calculating the amount of money Cedar Woods would receive for each lot of MBM project land sold.
18. Due to my concerns about the way LandCorp responded to my FOI application, on 2 November 2015 I made a complaint to the Freedom of Information Commissioner on the grounds that LandCorp should have provided many other documents to me and that some of the documents provided were inappropriately edited. Annexed hereto and marked "AC9" is a copy of my complaint.
19. On 5 November 2015 Sven Bluemmel, the Information Commissioner, wrote to me to advise that he has decided to deal with my complaint and will conduct an external review of LandCorp's decision. Annexed hereto and marked "AC10" is a copy of Mr Bluemmel's letter.



20. My concerns about the integrity of the planning process, and about the finances and probity of the MBM proposal have been reinforced by my consideration of the responses to my FOI applications referred to above, including by:

- (a) The content of the documents I have received under FOI;
- (b) The apparent failure by LandCorp and the Department of Planning to conduct a duly diligent and objective evaluation of the MBM proposal; and
- (c) The failure of LandCorp and the Department of Planning to provide me with various relevant documents.

Affirmed by the deponent Ambrose Cummins)
 at PERTH)
 in the State of Western Australia)
 on this 13th day of NOVEMBER 2015)
 Before me:

Signature of deponent

Signature of witness

Name of witness: GRAHAM JAMES QUARTERMAIRE

A Justice of the Peace / a legal practitioner who has held a Practice Certificate for at least 2 years and who holds a current Practice Certificate.

**In the matter of proposed Metropolitan Region Scheme Amendment 1280/41
In relation to land at Cape Peron
in the City of Rockingham, Perth, Western Australia**

Affidavit

Annexure "AC1"

This is the annexure marked "AC1" referred to in the
affidavit of Ambrose Cummins
Affirmed the 13th day of November 2015



South side, Point Peron





Google earth

miles
km



**In the matter of proposed Metropolitan Region Scheme Amendment 1280/41
In relation to land at Cape Peron
in the City of Rockingham, Perth, Western Australia**

Affidavit

Annexure "AC2"

This is the annexure marked "AC2" referred to in the
affidavit of Ambrose Cummins
Affirmed the 13th day of November 2015





Office of the Environmental Protection Authority

The Atrium,
Level 8, 168 St Georges Terrace,
Perth, Western Australia 6000.
Telephone: (08) 6467 5600.
Facsimile: (08) 6467 5556.

Postal Address: Locked Bag 33,
Cloisters Square, Perth, Western Australia 6830.
Website: www.epa.wa.gov.au

[REDACTED]
Managing Director
Cedar Wood Properties Limited
PO Box 788
WEST PERTH WA 6872

Our Ref OEPA2010/000458.
Enquiries [REDACTED]
Email [REDACTED]

Dear [REDACTED]

PROPOSAL NAME: MANGLES BAY MARINA BASED TOURIST PRECINCT
ASSESSMENT NO: 1846

I refer to the Environmental Protection Authority's (EPA) assessment of the above proposal and specifically the nominated proponent(s) for proposal under the *Environmental Protection Act 1986* (EP Act).

The EPA, in its letter of 20 September 2010, nominated both LandCorp and Cedar Woods Properties Limited as the proponents responsible for the proposal under the EP Act on the understanding that both these entities are responsible for progressing the proposal as joint venture partners.

However, it is noted in Section 1.2 of the Public Environmental Review document that only Cedar Woods is listed as the proponent. In addition, LandCorp has advised this office that it is not the proponent for the proposal in its email of 9 February 2012.

The Office of the EPA would appreciate being supplied with relevant documentation, including any agreement between the LandCorp and the Cedar Woods to assist with providing advice to the EPA in relation to nominating the correct proponent. The proponent responsible for the proposal will need to demonstrate that it has land access to the proposal site to undertake investigations and to implement the proposal.

Yours sincerely

[REDACTED]
Anthony Sulton
Director
Assessment and Compliance Division

13 June 2012

Office of the Environmental Protection Authority	
File: _____	
27 JUN 2012	
A:	<input type="checkbox"/> For Information
fa:	<input type="checkbox"/> For Discussion
Officer:	<input type="checkbox"/> For Action
<input type="checkbox"/> Dir. AC	Response please:
<input type="checkbox"/> Dir. Bus Ops	<input type="checkbox"/> GM Signature
<input type="checkbox"/> Dir. SPPD	<input type="checkbox"/> Dir for GM (copy to GM)
<input type="checkbox"/> Dir. Strat Sup	<input type="checkbox"/> Dir Signature (copy to GM)
<input type="checkbox"/>	<input type="checkbox"/> Mgr Direct (copy to GM)



Ground Floor, 80 Colin Street
 West Perth, WA 6005
 PO Box 788 West Perth, WA 6872
 T (08) 9480 1600 F (08) 2480 1689
 www.cedarwoods.com.au
 ema2@cedarwoods.com.au
 ABN 47 009 259 081

25 June 2012

Mr Anthony Sutton
 Director
 Assessment and Compliance Division
 Office of Environmental Protection Authority
 Locked Bay 33
 Cloisters Square Perth WA 6850

Dear Mr Sutton,

MANGLES BAY MARINA BASED TOURIST PRECINCT (ASSESSMENT NO: 1846).

I refer to your letter of the 13th June 2012 requesting the relevant documentation between Cedar Woods and LandCorp to assist EPA in being provided the correct Proponents names on the Public Environmental Review (PER).

In April 2010 LandCorp announced Cedar Woods as the preferred Project Proponent and project partner to undertake the design and studies to facilitate the realisation of the project. The tasks to be undertaken by Cedar Woods, appointed as Project Proponent includes:

- Undertaking environmental studies required to finalise the concept plan.
- Environmental assessment through the State and Commonwealth processes.
- Rezoning the land under the Metropolitan Regional Scheme (MRS) and Local Town Planning Scheme (TPS).
- Local Structure Planning (LSP) which satisfies the critical design inputs and Community objectives.

On completion of the above and subject to the business case approval, Cedar Woods will manage the delivery of the project including the detailed design, development approval, construction, title creation and marketing.

The land is owned by the State and LandCorp is responsible for arrangements to have the land available for the project. LandCorp has confirmed there are no items to prevent the land from being used by the project. A letter from Department of Regional and Lands to the Department of Finance and Deregulation is attached advising that the State does not consider the Commonwealth to have any legal interest in relation to the site for the proposed development.

The project partner relationship is detailed within a Development Agreement stating LandCorp appoints Cedar Woods to perform, as agent for LandCorp, the Preliminary Services on the terms and conditions of the agreement. Cedar Woods is directed by the agreement and the Project Committee.

The development agreement sets out the:

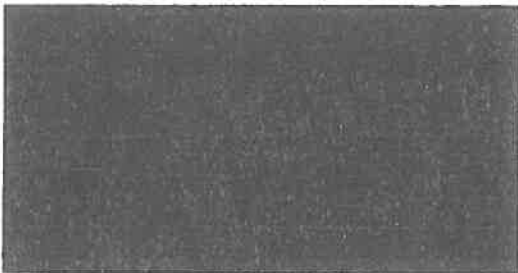
- Process which LandCorp and Cedar Woods undertakes their respective obligations in respect of the planning, development and sale of the Land.
- Process by which LandCorp will acquire the Land.
- Terms on which the Cedar Woods is appointed to provide services to LandCorp in respect of the planning, development and sale of the Land.

Extracts from the Development Agreement between Cedar Woods and LandCorp are attached to assist the Office of EPA providing advice to the EPA in relation to nominating the correct proponent.

In accordance with your request the access agreements to undertake environmental investigations to implement the proposal are also attached.

Should you require any further information please contact on email either [redacted] or [redacted] by phone on [redacted].

Kind regards,



MANAGING DIRECTOR

Attachments

- Attachment 1: [redacted] OUT OF SCOPE
- Attachment 2: Extracts from the Mangles Bay Development Agreement.
- Attachment 3: [redacted] OUT OF SCOPE

5 October 2011

Development Agreement

Mangles Bay Marina

Western Australian Land Authority
Cedar Woods Properties Limited
Cranford Pty Ltd
Cedar Woods Properties Management Pty Ltd

Parties

Western Australian Land Authority ABN 34 868 192 835, a statutory body corporate established under the *Western Australian Land Authority Act 1992*, of Level 3, 40 The Esplanade, Perth, Western Australia (**LandCorp**)

Cranford Pty Ltd ACN 009 373 068 of Level 4, 66 Kings Park Road, West Perth, Western Australia (**Company**) and

Cedar Woods Properties Limited ACN 009 259 081 of Level 4, 66 King's Park Road, West Perth, Western Australia (**Covenantor**) and

Cedar Woods Properties Management Pty Ltd ACN 120 113 135 of Level 4, 66 King's Park Road, West Perth, Western Australia (**Project Manager**)

Background

- A In mid 2005 a study commenced with the aim of developing concept plans for the redevelopment of the Mangles Bay area to provide an optimum balance of community, environmental and economic outcomes. As a consequence a strategic environmental review was prepared and assessed by the EPA as published in its Bulletin 1237. These activities constituted the first phase of the proposed Mangles Bay Marina based tourist project in respect of the Land.
- B The Western Australian Cabinet has approved expenditure to progress Phase 2 which will involve undertaking statutory investigation and seeking necessary regulatory approvals and instructed LandCorp to report back to Cabinet at the end of that process.
- C The Parties have agreed to enter into this agreement in order to facilitate the planning, development and sale of the Land, subsequent to an expression of interest process undertaken by LandCorp, which will constitute Phases 2 and 3.
- D Having regard to the intention of the Parties and the Project set out in this agreement, LandCorp will use its Reasonable Endeavours to assemble the Land which is owned by the Western Australian Government and its agencies.
- E This agreement sets out:
 - the process pursuant to which the Project Parties will undertake each of their respective obligations in respect of the planning, development and sale of the Land;
 - the process by which LandCorp will acquire the Land; and
 - the terms on which the Company is appointed to provide services to LandCorp in respect of the planning, development and sale of the Land.
- F The Company is a wholly owned subsidiary of the Covenantor.

2 Acknowledgement

Phases

- 2.1 This agreement will operate in two Phases, being Phase 2 and Phase 3.

- 2.2 Phase 2 relates to the provision of the Preliminary Services from the Company to LandCorp and is contained in clauses 3 - 14 and **Error! Reference source not found.** - **Error! Reference source not found.**. On signing of this agreement, Phase 2 will immediately take effect.
- 2.3 Phase 3 relates to the development and sale of the Land and is contained in clauses 6, **Error! Reference source not found.**, **Error! Reference source not found.** and 15-**Error! Reference source not found.**. However, whilst Phase 2 and Phase 3 are exclusive of each other, the Company (in order to ensure the efficient implementation of Phase 3) may carry out some of the Phase 3 aspects during Phase 2, before Phase 3 actually comes into effect.

Phase 2 – Preliminary Services

3 Appointment

Appointment

- 3.1 As from the date of execution of this agreement, LandCorp appoints the Company to perform, as agent for LandCorp, the Preliminary Services on the terms and conditions of this agreement.
- 3.2 In order to provide the Preliminary Services, LandCorp directs and authorises the Company to act in accordance with the directions issued by the Management Committee from time to time.
- 3.3 The Company:
- 3.3.1 accepts its appointment under clause 3.1; and
- 3.3.2 acknowledges the direction and authorisation in clause 3.2 and will:
- (a) promptly carry out all notifications and directions of the Management Committee; and
- (b) be subject to the control and act only in accordance with the lawful directions of the Management Committee.

Delegation

- 3.4 The Company (with LandCorp's consent) may delegate the provision of the Preliminary Services to the Project Manager. Where, in respect of Phase 2, this agreement refers to an obligation of the Company, the Company may direct the Project Manager to perform that obligation.
- 3.5 Notwithstanding this delegation and the Company directing the Project Manager to perform any of the Company's obligations, the Company remains solely responsible for the delivery of the Preliminary Services to LandCorp, the conduct of the Project Manager in respect of the Project and the remuneration of the Project Manager.

Procedures to be developed

- 3.6 The Company will develop, in conjunction with the Management Committee, procedures for the delivery of the Preliminary Services for approval by the Management Committee. The Company will only act in accordance with the procedures as approved by the Management Committee from time to time.

Phase 3 works

3.7 The Company, with the approval of the Management Committee, may undertake some of the Project Activities to be undertaken by the Company in Phase 3 before Phase 3 commences (notwithstanding that Phase 3 may never commence). This is to assist with the efficient implementation of Phase 3 (if Phase 3 comes into effect).

Appointment exclusive

3.8 Notwithstanding the delegation in clause 3.4, the appointment by LandCorp referred to in clause 3.1 is exclusive to the Company.

Term

3.9 The Company will perform the Preliminary Services pursuant to this agreement until the earlier of the following:

- 3.9.1 LandCorp acquires the Land; or
- 3.9.2 termination of this agreement.

4 Company as agent

Acknowledgement by LandCorp

4.1 In performing the Preliminary Services assigned to it, the Company will do so as agent for LandCorp.

5 Preliminary Services

Outcomes

5.1 The Company will perform the Preliminary Services in order to achieve certain outcomes.

5.2 For the purposes of clause 5.1, the relevant services and outcomes are:

Consultation, Rezoning and Structure Plan

5.2.1 These services involve the Company:

- (a) engaging in a community consultation process;
- (b) incorporating the Community Objectives into the Structure Plan together with any agreed changes based on the findings from the community consultation process and the detailed design process;
- (c) undertaking additional environmental studies as recommended by the EPA to obtain environmental approval for the Project;
- (d) progressing the Structure Plan through the formal public environmental assessment process; and
- (e) liaising with the Department for Planning and Infrastructure, all other relevant Government Agencies and other key stakeholders.

5.2.2 The outcome is for the Company to:

- (a) initiate and finalise an appropriate amendment to the Local Authority Town Planning Scheme and the Metropolitan Region Scheme; and

- (b) prepare a Structure Plan and obtain approval to this Structure Plan from the relevant local government, the EPA, the WAPC and all other relevant Government Agencies that will enable the Project Parties to deliver the objectives of the Project as set out in this agreement,

before the Phase 2 End Date.

6 Management Committee

Project to have Management Committee

- 6.1 The Project shall have a Management Committee. The Project Parties shall, as soon as reasonably practicable after the date of execution of this agreement, establish the Management Committee.

Functions of the Management Committee

- 6.2 Management and control of Project Activities and other matters affecting the Project shall be vested in the Management Committee.
- 6.3 The Management Committee shall be authorised to make all decisions on the nature and extent of the management of Project Activities.

13 Acquisition by LandCorp

Acknowledgement

- 13.1 Subject to clause **Error! Reference source not found.**, the Parties acknowledge that LandCorp has, under current Government policy and protocols and subject to State Government support, the opportunity to assemble and acquire the Land from its existing owners, being various Government Agencies, and to carry out a marina based development of the Land.

14 Participation by the Company

Grant of offer

- 14.1 If LandCorp intends to proceed with the Acquisition, LandCorp offers the Company the right to participate in the Project by providing the services for Phase 3.

Phase 3 – Development Phase

15 Project

Relationship

- 15.1 With effect on and from the Commencement Date the Project Parties will work together for each of the following purposes:
 - 15.1.1 to undertake the Project; and
 - 15.1.2 to undertake any other matters which the Project Parties, in accordance with the terms of this agreement, determine to be within the purposes of the Project.

Project Vision

15.2 The Company acknowledges that the vision for the Project is to redevelop the Land as:

'A quality and innovative development in harmony with the environment, providing marina, recreational, commercial and residential components for the local and visiting community.'



Community objectives

15.3 As such, the Project Parties will undertake to implement the Project Vision in a manner which delivers all Community Objectives (unless the Government approves otherwise) and which is realistically cost effective and commercially sustainable.

Limitation on Project Activities

2.13 The relationship between the Parties under this agreement is strictly limited to Project Activities.

15.4 Unless otherwise specifically provided in this agreement, nothing in this agreement prevents a Party from carrying on its own business or pursuing any activity that may be in competition with the Project.

15.5 In particular, nothing in this agreement shall preclude a Party from being involved in other land development projects in Perth and elsewhere (including, but not limited to, any land development adjacent to, or in the vicinity of, the Land) and notwithstanding that such developments may increase the supply of residential Lots.

Name of Project

15.6 The Project shall be called the 'Mangles Bay Project' or such other name as the Management Committee may from time to time agree.

16 What the Parties bring to the Project

Land

16.1 The Parties acknowledge that the Land, once Acquisition has been effected, will be owned by LandCorp throughout the life of the Project until subdivided Lots are sold. LandCorp will:

- 16.1.1 make the Land available to the Company to allow the Land to be developed; and
- 16.1.2 grant to the Company all access to, and possession of, the Land necessary to allow the Company to implement the development, marketing and sale of the Land,

LandCorp

16.2 LandCorp will provide for the benefit of the Project the following:

- 16.2.1 all support reasonably necessary to enable the Company to develop the Land in accordance with the Structure Plan set out in clause 5; and
- 16.2.2 subject to its legal obligations, all information in its possession or control relating to the Land that may be required in relation to the Project.

Development Agreement

- 16.3 LandCorp will provide all conveyancing services associated with the sale of Lots the subject of this agreement and will charge a fee for these services in accordance with the *Settlement Agents Regulations 1982 (WA)*.

Company

- 16.4 The Company (in addition to any other obligations under this agreement) will:
- 16.4.1 work in a co-operative manner with LandCorp to ensure the effective delivery of the Project in accordance with the objectives set out in clause 15.
 - 16.4.2 be responsible for the delivery of the project management services and the conduct of the Project Manager under this agreement and the remuneration of the Project Manager.
 - 16.4.3 pay the Participation Fee to LandCorp on acceptance of the offer, subject to receiving a Tax Invoice for that fee from LandCorp.

Project Manager

- 16.5 The Project Manager, in addition to any other obligations under this agreement, will, provided the Company and/or the Management Committee promptly give it all necessary directions and authorise it to do so, use its Reasonable Endeavours to provide services including financial management, reporting, project management and sales and marketing expertise to the Project so that the development and sale of the Land will occur and so that the relevant project objectives of the Project can be fulfilled.

17 Project Management**Appointment**

- 17.1 As of the Commencement Date, LandCorp appoints the Company to carry out the project management services specified as forming part of Phase 3 in this agreement on the terms and conditions in this agreement.

18 Project Programs and Budgets**Project Activities**

- 18.1 The Company shall carry out all Project Activities in accordance with the Project Programs and budgets as approved by, and in accordance with the directions of, the Management Committee from time to time. To this end, unless the Parties otherwise agree in writing, the Parties must produce Lots for sale as soon as possible.

**In the matter of proposed Metropolitan Region Scheme Amendment 1280/41
In relation to land at Cape Peron
in the City of Rockingham, Perth, Western Australia**

Affidavit

Annexure "AC3"

This is the annexure marked "AC3" referred to in the
affidavit of Ambrose Cummins
Affirmed the 13th day of November 2015



Ambrose Cummins
13 Ray Street
Rockingham WA 6168
Phone: 0407 088 076

Email: ambrose.m.cummins@gmail.com

17 July 2015

Freedom of Information Officer
Department of Planning
Gordon Stephenson House
140 William Street
Perth WA 6000

Dear FOI Officer,

Freedom of Information request regarding Mangles Bay Marina (MBM) project

I request that you please provide me with the information set out below. Reference to the WAPC means the Western Australian Planning Commission including any of its committees.

1. According to Hansard (Legislative Council Wednesday 7 August 2013), on 7 August 2013 Hon Ken Baston MLC, Minister for Agriculture and Food, stated *"In 2005, Rockingham community leaders...successfully obtained financial support to fund community consultation and do the due diligence, planning and environmental studies [in relation to the Mangles Bay Marina development. The state government then established the Cape Peron Tourist Precinct Steering Committee to coordinate that work. Funding for that came from interestingly, the commonwealth government, which put in \$220 000. The City of Rockingham also contributed \$100 000, the Western Australian Planning Commission contributed \$250 000 and the Rockingham Kwinana Development Office contributed \$112 000; a grand total of \$689 000"* (emphasis added). Please provide me with the relevant documentation showing:
 - a. The request to the WAPC for such funding, including who made the request and any reasons or supporting documentation provided in support of the request
 - b. The decision made by the WAPC to provide this funding, including who made the decision
 - c. The minutes of the WAPC relating to the decision
 - d. The criteria against which the decision to provide funding was made

- e. Any report, recommendations or other documentation on which the decision maker(s) relied
 - f. The source of such funding
 - g. Any policies and procedures applicable at the time to the provision of funding of this nature by the WAPC
 - h. The conditions imposed by the WAPC in relation to the use of such funding
2. If the WAPC has subsequently provided any further funding for the progression of the MBM project (or its earlier iteration known as the Cape Peron Tourist Precinct), please provide the documentation of the same description as set out in paragraph 1 in relation to such subsequent funding
 3. Correspondence between the WAPC / Department of Planning and the Cape Peron Tourist Precinct Steering Committee in regard to funding provided by the WAPC in relation to the MBM project (or its earlier iteration the Cape Peron Tourist Precinct)
 4. Correspondence between the MBM project proponent (LandCorp and/or Cedar Woods or their agents) and the WAPC / Department of Planning in relation to statutory planning processes for the MBM project (including but not limited to amending the Metropolitan Region Scheme to allow the MBM project to proceed)
 5. Correspondence between the WAPC / Department of Planning and the City of Rockingham in relation to statutory planning processes for the MBM project (including but not limited to amending the Metropolitan Region Scheme to allow the MBM project to proceed)
 6. Minutes of the WAPC in relation to statutory planning processes for the MBM project

Please let me know if you require any clarification regarding the documents sought. I attach a cheque in the sum of \$30 being the prescribed fee for this freedom of information application. Notices and correspondence may be directed to me at my email address set out above.

I look forward to hearing from you.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Ambrose Cummins", written over a dotted line.

Ambrose Cummins

**In the matter of proposed Metropolitan Region Scheme Amendment 1280/41
In relation to land at Cape Peron
in the City of Rockingham, Perth, Western Australia**

Affidavit

Annexure "AC4"

This is the annexure marked "AC4" referred to in the
affidavit of Ambrose Cummins
Affirmed the 13th day of November 2015





Our ref: DP/15/00383 (3122)
Enquiries: Frances Forrest
Telephone: (08) 6551 9393

Mr Ambrose Cummins
13 Ray St
ROCKINGHAM WA 6168

Dear Mr Cummins

FREEDOM OF INFORMATION APPLICATION - NOTICE OF DECISION – (3122)

I refer to your application made under the *Freedom of Information Act 1992* (FOI Act) seeking access to the following:

1. According to Hansard (Legislative Council Wednesday 7 August 2013), on 7 August 2013 Hon Ken Baston MLC, Minister for Agriculture and Food, stated "*In 2005, Rockingham community leaderssuccessfully obtained financial support Funding for that came from interestingly, the commonwealth government, which put in \$220 000. The City of Rockingham also contributed \$100 000, the Western Australian Planning Commission contributed \$250 000a grand total of \$689 000*"
Please provide me with the relevant documentation showing:
 - a. The request to the WAPC for such funding, including who made the request and any reasons or supporting documentation provided in support of the request
 - b. The decision made by the WAPC to provide this funding, including who made the decision
 - c. The minutes of the WAPC relating to the decision
 - d. The criteria against which the decision to provide funding was made
 - e. Any report, recommendations or other documentation on which the decision maker(s) relied
 - f. The source of such funding
 - g. Any policies and procedures applicable at the time to the provision of funding of this nature by the WAPC
 - h. The conditions imposed by the WAPC in relation to the use of such funding
2. If the WAPC has subsequently provided any further funding for the progression of the MBM project (or its earlier iteration known as the Cape Peron Tourist Precinct), please provide the documentation of the same description as set out in paragraph 1 in relation to such subsequent funding
3. Correspondence between the WAPC / Department of Planning and the Cape Peron Tourist Precinct Steering Committee in regard to funding provided by the WAPC in relation to the MBM project (or its earlier iteration the Cape Peron Tourist Precinct)
4. Correspondence between the MBM project proponent (LandCorp and/or Cedar Woods or their agents) and the WAPC / Department of Planning in relation to statutory planning processes for the MBM project (including but not limited to amending the Metropolitan Region Scheme to allow the MBM project to proceed)
5. Correspondence between the WAPC / Department of Planning and the City of Rockingham in relation to statutory planning processes for the MBM project (including but not limited to amending the Metropolitan Region Scheme to allow the MBM project to proceed)
6. Minutes of the WAPC in relation to statutory planning processes for the MB project

I have today made a decision to grant edited access to copies of nineteen (19) documents falling within the scope of your Application. These documents are outlined in the Document Schedule at Appendix 1. Please note that text shaded in grey in these documents has been redacted due to the exemption clauses in the FOI Act while text shaded in yellow has been redacted as it is not within the scope of your FOI application.

I have also made a decision to refuse access to copies of seven (7) documents. These documents are outlined in the Refused Document Schedule at Appendix 2.

The reasons for this decision are stated in the following Notice of Decision.

26

Notice of Decision

1. You have been granted edited access to nineteen (19) documents falling within the ambit of your application, excluding exempt material. That is, section 24 of the FOI Act provides for an agency to give access to copies of documents where exempt matter has been excluded and the decision is to give access in that form. The Department will claim exemptions pursuant to clause 3 Personal Information, Schedule 1 and clause 6 Deliberative Processes, Schedule 1 of the FOI Act.

1.1. *Clause 3 - Personal Information*

Clause 3, Schedule 1 of the FOI provides that matter is exempt if its disclosure would reveal personal information about an individual. A copy of clause 3, Schedule 1 of the FOI Act is enclosed for your information.

The personal information contained within the documents relates to the contact details and signatures of Government Officers. The Department of Planning must protect the privacy of the individual and does not consider that it is in the public interest to release their personal information.

1.2 *Clause 6 - Deliberative Processes*

In the case of the documents at Appendix 2, the Department will claim exemption pursuant to clause 6 - Deliberative Processes which provides that matter is exempt if its disclosure:

- (a) would reveal –
 - (i) any opinion, advice or recommendation that has been obtained, prepared or recorded; or
 - (ii) any consultation or deliberation that has taken place,
 - In the course of, or for the purpose of, the deliberative processes of the Government, a Minister or an agency; and
- (b) would, on balance, be contrary to the public interest.

A copy of the clause 6, Schedule 1 of the Act is enclosed in full for your information.

The deliberative processes of the Government refer to the thinking processes of an agency and involve weighing up and/or evaluating the competing arguments or considerations relating to a particular decision or course of action.¹ In accordance with clause 6(a)(i), the documents listed in Appendix 2 would reveal matters that are subject to decisions in relation to the Metropolitan Region Scheme (MRS) Major Amendment 1280/41 - Mangles Bay Marina.

The Department has the onus of establishing that disclosure of information regarding the deliberative processes of the Government would, on balance, be of detriment to the public interest.² Factors supporting disclosure of the documents in Appendix 2 in the public interest are:

- the right of access to information under the Act;³
- the system of open and accountable Government;⁴ and
- being able to scrutinise the operation of Government agencies, including the means by which Government decisions are made.⁵

¹ *Re Waterford v Department of Treasury (No. 2)* (1984) 5 ALD 588

² *Re Environmental Defender's Office WA (Inc) v Ministry for Planning* [1999] WAICmr 35, [24]; *Re West Australian Newspapers Limited v Western Power* [2006] WAICmr 10, [64]

³ *Yoo v Sir Charles Gardiner Hospital* [2009] WAICmr 10

⁴ *Re Zurich Bay Holdings Pty Ltd v City of Rockingham* [2006] WAICmr 12

⁵ *Re McPhee v Medical Board* [1997] WAICmr 11, *Rogers and Water Corporation and Guppy and KG & GS Nominees Pty Ltd* [2004] WAICmr 8

Factors against disclosure of the documents listed in Appendix 2 due to such disclosure being contrary to the public interest are:

- the information related to the MRS Major Amendment 1280/41 - Mangles Bay Marina is currently being considered and is yet to be determined or decided;
- the documents would reveal deliberations and thinking processes;
- ensuring that the public are not misled or encouraged to engage in misinformed speculation, conjecture and rumour regarding Governmental deliberations;⁶ and
- ensuring that Government Officers are able to freely deliberate and form opinions before deciding a position on a particular matter.

Based on the factors outlined above, the release of the documents will diminish the Government's ability to freely form opinions and consider various options before determining its position in relation to the MRS Major Amendment 1280/41 - Mangles Bay Marina.

On this basis, the seven (7) documents listed in the Document Schedule at Appendix 2 are exempt matter under clause 6, Schedule 1 of the Act.

2. We are unable to meet your request in relation to number 2 and number 3 of your application above as the documents do not exist. Section 26 of the FOI Act allows an agency to refuse access to a document if the document cannot be found or does not exist. Section 26 provides:

(1) The agency may advise the applicant, by written notice, that it is not possible to give access to a document if –

- a. all reasonable steps have been taken to find the document; and
- b. the agency is satisfied that the document –
 - i. is in the agency's possession but cannot be found; or
 - ii. does not exist.

(2) For the purpose of this Act the sending of a notice under subsection (1) in relation to a document is to be regarded as a decision to refuse access to the document, and on a review or appeal under Part 4 the agency may be required to conduct further searches for the document.

In accordance with Section 26(1)(a) and (b)(ii), and following a detailed search of the Department's archived records, record management system and finance system, and in consultation with senior officers from the Financial Services Directorate, no documents were found that fell within the ambit of your request in relation to number 2 and number 3 of your application.

3. An application for internal review may be lodged with this agency within 30 days after being given this written notice of decision and must:

- be in writing;
- provide particulars of the decision to be reviewed; and
- give an address in Australia.

There is no lodgement fee for an application for internal review and there are no charges for dealing with an internal review request.

⁶ *Jeanes and Kalgoorlie Regional Hospital, Re* [1995] WAICmr 3

If an application for internal review is received, it will not be dealt with by the person who made the initial decision or by any person who is subordinate to the original decision maker. The outcome of an application for internal review will result in the initial decision under review being either confirmed, varied or reversed.

Yours sincerely



David Saunders
A/Assistant Director General

21/9/2015

Enc

29

Document Schedule – FOI Application 3122

Document No.	Item No. (your Application)	Type of Document	Document	No. of Pages
A.	1a	Letter	To the Minister for Planning and Infrastructure from the South West Corridor Development & Employment Foundation Inc. (SWCDEF) re Cape Peron Marina Planning Implementation Project – Partnership, dated 1 December 2003	2
B.	1a and 1f	Letter	To Mark McGowan MLA, Member for Rockingham, from Minister for Planning and Infrastructure confirming provision of \$250,000, dated 4 December 2003	1
C.	1b, 1c, 1f and 1h	Meeting Minutes	Executive Finance and Property Committee (EF&P) minutes (unsigned), 16 December 2003	9
D.	1d and 1e	Report	Report for the EF&P re Cape Peron Marina Project dated 16 December 2003 with attached supporting documents	15
E.	1d	Letter	To the Minister for Planning and Infrastructure from the WAPC re Cape Peron Marina Planning Implementation Project, dated 22 December 2003 including attached request from the Minister for Planning and Infrastructure, dated 4 December 2003	3
F.	1h	Letter	To the SWCDEF from the Minister for Planning and Infrastructure regarding Cape Peron Marina Planning Implementation Project Partnership (unsigned), dated December 2003	2
G.	4	Letter	From Landcorp to the WAPC regarding private sector partner and dated 29 September 2009.	1
H.	4	Letter	From Landcorp to the Department of Planning, dated 23 June 2010	1
I.	4	Letter	Letter from LandCorp to the Department, dated 7 July 2010 with attached Briefing Note Cape Peron Tourist Precinct Project – Phase (Formal Approvals)	4
J.	4	Letter	Letter from the Department to Landcorp (unsigned), dated 24 August 2010	2
K.	4	Letter	Letter from LandCorp to the Department regarding Public Environment Review, dated 10 September 2012	2
L.	4	Letter	Letter to LandCorp from WAPC dated 18 September 2013 Please note: this letter refers to a CD that contains a report entitled <i>MRS Amendment Mangles Bay Marina-Based Tourist Precinct</i> prepared for Cedar Woods and LandCorp. This report refused and listed in the Refused Document Schedule at Appendix 2.	1
M.	4	Letter	Letter from Landcorp to the WAPC, dated 29 October 2013	2
N.	4	Letter	Letter from Landcorp to the WAPC, dated 18 November 2013	2
O.	4	Letter	Letter from Landcorp to the Department, dated 29 July 2015	2
P.	5	Letter	Letter from City of Rockingham to the WAPC, dated 3 December 2013	3

Document No.	Item No. (your Application)	Type of Document	Document	No. of Pages
Q.	5	Letter	Letter to the City of Rockingham from the WAPC, dated 18 September 2013 Please note: this letter refers to a CD that contains a report entitled <i>MRS Amendment Mangles Bay Marina-Based Tourist Precinct</i> prepared for Cedar Woods and LandCorp. See document "L" above.	1
R.	6	Meeting Minutes	WAPC Minutes 28 October 2014	24
S.	6	Meeting Minutes	WAPC Minutes 22 July 2014	14
T.	6	Meeting Minutes	WAPC Minutes (unsigned) 31 January 2006	13

Refused Document Schedule – FOI Application 3122

Document No.	Item No. (your Application)	Type of Document	Document	No. of Pages
A.	4	Letter	Letter from Cedar Woods to the Department, dated 8 September 2014	2
B.	4	Email	Email from Cedar Woods to the Department, dated 28 October 2014	2
C.	4	Email	Email from Cedar Woods to the Department, dated 13 October 2014	2
D.	4	Email thread	Exchanged between a third party and the Department, dated 2 July 2014	5
E.	4	Email thread	Exchanged between a third party and the Department, dated 19 May to 9 June 2014	6
F.	4	Email thread	Exchanged between a third party and the Department, dated 6 June 2014	2
G.	4	Report	<i>MRS Amendment Mangles Bay Marina-Based Tourist Precinct</i> report prepared for Cedar Woods and LandCorp, dated August 2013	44

Extracts from the FOI Act (Schedule 1)

3. Personal information

- (1) Matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead).
- (2) Matter is not exempt matter under subclause (1) merely because its disclosure would reveal personal information about the applicant.
- (3) Matter is not exempt matter under subclause (1) merely because its disclosure would reveal, in relation to a person who is or has been an officer of an agency, prescribed details relating to —
 - (a) the person; or
 - (b) the person's position or functions as an officer; or
 - (c) things done by the person in the course of performing functions as an officer.
- (4) Matter is not exempt matter under subclause (1) merely because its disclosure would reveal, in relation to a person who performs, or has performed, services for an agency under a contract for services, prescribed details relating to —
 - (a) the person; or
 - (b) the contract; or
 - (c) things done by the person in performing services under the contract.
- (5) Matter is not exempt matter under subclause (1) if the applicant provides evidence establishing that the individual concerned consents to the disclosure of the matter to the applicant.
- (6) Matter is not exempt matter under subclause (1) if its disclosure would, on balance, be in the public interest.

6. Deliberative processes of Government etc., matter revealing

- (1) Matter is exempt matter if its disclosure —
 - (a) would reveal —
 - (i) any opinion, advice or recommendation that has been obtained, prepared or recorded; or
 - (ii) any consultation or deliberation that has taken place, in the course of, or for the purpose of, the deliberative processes of the Government, a Minister or an agency; and
 - (b) would, on balance, be contrary to the public interest.
- (2) Matter that appears in an internal manual of an agency is not exempt matter under subclause (1).
- (3) Matter that is merely factual or statistical is not exempt matter under subclause (1).
- (4) Matter is not exempt matter under subclause (1) if at least 10 years have passed since the matter came into existence.

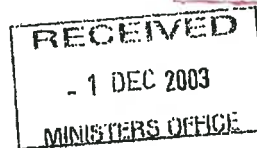
[Clause 6 amended by No. 19 of 2010 s. 59.]

South West Corridor Development & Employment Foundation Inc.

C/- City of Melville, 10 Almondbury Road, Ardross, WA 6153 PO Box 1501 Booragoon, Western Australia 6954
 Telephone (08) 9316 3988 Fax (08) 9316 3788
 ABN 29 057 268 839

FOI Document

Item No: A



1 December 2003

Hon Alannah MacTiernan
 Minister for Planning & Infrastructure
 13th Floor Dumas House
 2 Havelock Street
 West Perth WA 6005

Dear Minister

CAPE PERON MARINA PLANNING IMPLEMENTATION PROJECT – PARTNERSHIP

As you are aware an application has been made to the Commonwealth Department of Transport & Regional Services (DOTARS) for Regional Partnerships funding to undertake a planning implementation project for a Marina at Cape Peron in Mangies Bay, Rockingham. This planning assignment aims to produce an action plan that will address all the necessary project planning, statutory processes and other approvals to conclude the feasibility of the Cape Peron Marina as a commercial venture.

The proponent organisation is the South West Corridor Development & Employment Foundation (SWCDEF), a not for profit grouping of public and private sector organisations that aims to encourage employment opportunities in southwest metropolitan Perth.

The submission and supporting documentation details the broad community support that the project enjoys and clearly demonstrates the many economic and social benefits it would deliver to the Rockingham area and surrounds. Community support is critical to the long-term success of the project and partnerships are a fundamental component of the Regional Partnerships program with collective local, state and commonwealth agency involvement considered favourably in the assessment of projects.

DOTARS have already stated they are enthusiastic, indicating they want to support this planning implementation project. With Commonwealth and Local Government support in place it is State Government involvement, commitment and financial support for the Cape Peron Marina Precinct Implementation Project that is now sought.

Industry Direct

A not-for-profit grouping of public and private sector organisations that aims to encourage employment opportunities in southwest metropolitan Perth
www.industrydirect.com.au

A partnership proposition has been prepared for you Minister, which overviews the project and the nature and extent of proposed Government support listed as outcomes on page twelve of the report.

To assist undertake this planning implementation project the South West Corridor Development & Employment Foundation Inc. and its membership is seeking a \$250,000 contribution from the State Government. This financial support and obvious commitment from the Western Australian Government will in my view result in a recommendation from the Department of Transport and Regional Services Perth Office to the Federal Government to approve and proceed with the project - a regional partnership in every sense with Local, State and Federal Government all engaged. It would produce a coordinated, community oriented solutions approach with all levels of Government facilitating sustainable economic development and employment generation.

The progression of a conclusive study on this essential infrastructure at Cape Peron is a priority for the region, for Rockingham Council, the Premier's Rockingham Taskforce and the community and while there is a considerable amount of documentation and detail to consider I would be happy to address any further issues or questions you may have regarding the application and this request at your convenience.

Yours sincerely



JOHN McILHONE
SWCDEF - Executive
DIRECTOR - South West Group

CC: Mark McGowan MLA
Gary Holland - City of Rockingham



MINISTER FOR PLANNING AND INFRASTRUCTURE

HON ALANNAH MacTIERNAN
BA LLB BJuris JP MLA

- 4 DEC 2003

2-38803-

Mr Mark McGowan MLA
Member for Rockingham
Shop 77
Rockingham City Shopping Centre
ROCKINGHAM WA 6168

Dear Mark

MANGLES BAY MARINA ENVIRONMENTAL STUDY

Further to your frequent representations on this matter and our plans to focus the development opportunities for Rockingham, we will be able to provide \$250,000 assistance through the WA Planning Commission (WAPC) for environmental study into the proposed Mangles Bay Marina.

I have formally written to the WAPC requesting that the money be allocated for the study. I expect confirmation of the allocation by 16 December 2003.

Mark, I strongly commend the work that you have been doing in assisting us develop a focus on Rockingham. It is quite clear that a concerted effort is required to deliver a better integration of land use and transport planning in Rockingham. This in turn will help Rockingham fulfil more properly its role as a strategic sub-regional centre with extraordinary potential. I very much appreciated my visit there the other day with yourself and Hon Kim Beazley MHR, and look forward to moving the Rockingham Revival Project forward.

Yours sincerely



ALANNAH MacTIERNAN MLA
MINISTER FOR PLANNING AND INFRASTRUCTURE

MINUTES OF THE SPECIAL MEETING OF THE EXECUTIVE, FINANCE AND PROPERTY COMMITTEE HELD ON WEDNESDAY, 16 DECEMBER 2003 IN THE FIFTH FLOOR CONFERENCE ROOM AT THE DEPARTMENT FOR PLANNING AND INFRASTRUCTURE, ALBERT FACEY HOUSE, 469 WELLINGTON STREET, PERTH

- CHAIRPERSON:** Mr Terry Martin
- MEMBER:** Mr Paul Frewer
Cr Corinne MacRae
Mr Greg Martin
- IN ATTENDANCE**
- | | |
|---------------------|--|
| Mr Peter Melbin | Secretary, WAPC |
| Mr Tim Hillyard | Manager, WAPC Land Asset Management, DPI |
| Mr Brian Curtis | Director, Revitalisation / Urban Design Projects, DPI (until 4.30 pm) |
| Mr Mike Mouritz | Executive Director, Strategic Policy & Evaluation, DPI (until 4.30 pm) |
| Ms Nanette Pitts | Project Officer, Strategic Policy & Evaluation, DPI (until 4.30 pm) |
| Mr Warren Bellouard | Systems & Finance Officer, Asset Management, DPI (until 4.15 pm) |
- SECRETARY:** Mr Geoff Gardiner Secretariat, DPI

The Chairman opened the special meeting was opened at 2.32 pm.

S.1 APOLOGIES

Nil

S.2 DECLARATION OF MEMBERS INTERESTS

Nil

S.3 BRIEFING – PROGRESS OF WAPC DEVELOPMENT PROJECTS
(Executive Directors invited to attend and address the Committee)

DISCUSSION:

- [REDACTED]
- [REDACTED]

MINUTES - EXECUTIVE FINANCE & PROPERTY COMMITTEE - 16 DEC 2003

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

CONCLUSION/S:

- [Redacted]

S.4 CONFIRMATION OF MINUTES

S.4.1 Minutes of the meeting held on 18 November 2003

DISCUSSION:

- 1) *Corrected* item 204.1 to record apologies submitted by Mr Terry Martin and Cr Corinne MacRae.

RESOLUTION:

MOVED: Cr MacRae

SECONDED: Mr Terry Martin

Subject to the above correction, to confirm the minutes as an accurate record of the proceedings of the meeting held on 18 November 2003.

CARRIED

S.4.2 Minutes of the Meeting held on 2 December 2003

DISCUSSION:

MINUTES - EXECUTIVE FINANCE & PROPERTY COMMITTEE - 16 DEC 2003

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

S.7 GENERAL ITEM/S

[REDACTED]

- [REDACTED]

MINUTES - EXECUTIVE FINANCE & PROPERTY COMMITTEE - 16 DEC 2003

[Redacted]

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MINUTES - EXECUTIVE FINANCE & PROPERTY COMMITTEE - 16 DEC 2003

S.7.3 Cape Peron Marina Planning Implementation Project
 File: ---
 Report: EFP/3506

DISCUSSION:

- 1) *Considered* the basic question of the applicability of MRIF funding to this project, concluding that justification lies in facilitating the determination of the most appropriate use for P&R Reserves.
- 2) *Noted* that while it is not entirely clear which agency will have carriage of the project, the involvement of Landcorp in a major role is a logical expectation. The importance of the City Of Rockingham also having a very close ongoing involvement in the project was likewise acknowledged, as was the likelihood that Council will assume proponency at the planning stage.

Noted that provision for clarification of the proponent status of the marina proposal for environmental assessment purposes, is already covered in the recommendations before the Committee.

- 3) *Noted* the correspondence from the Minister appended to report EFP/3506, advising the Commission that she would appreciate positive consideration of the SW Corridor Development & Employment Foundation's request for funding assistance.

Determined that while agreeing to *consider* the \$250,000 contribution as recommended in the report, the Commission should nevertheless first seek to negotiate a joint funding arrangement with Landcorp, on a dollar for dollar basis, with a view to reducing WAPC's contribution to \$125,000.

RESOLUTION:

MOVED: Cr MacRae

SECONDED: Mr Greg Martin

Acting under delegated authority on behalf of the Western Australian Planning Commission:

1. To note the total cost of studies for the Cape Peron Marina, of \$570,000.
2. To note the potential contribution from the Commonwealth Department of Transport and Regional Services estimated at \$220,000.
3. To agree to consider a \$250,000 contribution towards pre-feasibility studies of the Cape Peron Marina - Mangles Bay, Rockingham, in the first instance on the basis that Landcorp be asked to consider a joint arrangement with WAPC whereby each will contribute \$125,000 - and subject to:
 - (i) Clarification that the studies will facilitate the determination of appropriate usage of Regional Parks and Recreation Reserves.
 - (ii) Clarification of project briefs for the environmental, social and economic feasibility required to implement the marina proposal.

MINUTES - EXECUTIVE FINANCE & PROPERTY COMMITTEE - 16 DEC 2003

- (iii) Clarification of the Commonwealth financial contribution to the project, at present proposed to be \$220,000.
 - (iv) Clarification of the source of the residual \$100,000, noting that the City of Rockingham and South West Corridor Development and Employment Foundation Inc. are proponents of the current submission to DOTARS, and the City of Rockingham has indicated that it will contribute \$100,000.
 - (v) Clarification of proponent status of the marina proposal for the purpose of the environmental assessment.
 - (v) Funding contributions linked to a project plan approved by WAPC linking payments to achievement of key milestones.
4. To note that, as Crown land is involved, appropriate arrangements for proponenty of the project will be considered by the Minister for planning and Infrastructure and are expected to involve Landcorp in a key role.
 5. To require that, should the project proponent achieve planning and environmental approvals to conclude the feasibility of the Cape Peron Marina Implementation as a commercial venture, then the amount contributed by WAPC will be repaid by the proponent.

CARRIED

Mr Frewer and Cr MacRae had to leave the meeting at this point (4.48 pm), to attend other appointments. The meeting continued with Mr Terry Martin and Mr Greg Martin constituting the quorum.

S.8 LAND ASSET MANAGEMENT ITEMS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MINUTES - EXECUTIVE FINANCE & PROPERTY COMMITTEE - 16 DEC 2003

Nil

S.10 DATE OF NEXT MEETING

1. *Noted* that a special meeting is scheduled for Tuesday, 23 December 2003.
2. *Noted* that the next ordinary meeting is scheduled for Tuesday, 20 January 2004.

MEETING CLOSED AT 4.56 pm.

CHAIRMAN _____

DATE _____

Paul
 EFP Decision
 to pass on to
 the appropriate
 officer please.
 Thanks
 [Redacted]
 17/12/03

REPORT TO:	PROPERTY COMMITTEE
TITLE OF REPORT:	REPORT NO.: <i>EFP/3506</i>
CAPE PERON MARINA PROJECT	FILES:

PURPOSE:
 The purpose of this report is to seek the approval of the Executive Finance and Property Committee to the allocation of \$250,000 to undertake a planning implementation project for a Marina at Cape Peron in Mangles Bay, Rockingham.

BACKGROUND:
 The Hon Minister for Planning and Infrastructure has written to the Chairman (Attachment 1) requesting an allocation of \$250,000 towards an environmental assessment for the Cape Peron (Mangles Bay) Marina.

The project aims to produce an action plan that will address all the necessary project planning, statutory processes and the other approvals to conclude the feasibility of the Cape Peron Marina as a commercial venture.

ESTIMATED COST OR REVENUE OF PROPOSAL (FINANCIAL YEARS)	CURRENT YEAR \$250,000 (2003/04)	NEXT YEAR	FOLLOWING YEAR

SOURCE OF FUNDING AND BUDGET PROVISION: MRIF (New Project Allocation)

RECOMMENDATION:

- That the Executive Finance and Property Committee:
1. Notes the total cost of studies for the Cape Peron Marina of \$570,000.
 2. Notes potential contribution from the Commonwealth Department of Transport and Regional Services estimated at \$220,000.
 3. Agrees to consider \$250,000 contribution towards pre-feasibility studies of the Cape Peron Marina – Mangles Bay, Rockingham, subject to:
 - (i) *clarification that the studies will facilitate the determination of appropriate usage of regional Parks and Recreation Reserves.*
 - (ii) *(x)* clarification of project briefs for the environmental, social and economic feasibility required to implement the marina proposal;
 - (iii) *(x)* clarification of Commonwealth financial contribution to the project, at present proposed at \$220,000;

(iv) (iii)	clarification of source of residual \$100,000, noting that the City of Rockingham and South West Corridor Development and Employment Foundation Inc are "proponents" of the current submission to DOTARS and City of Rockingham have indicated that it will contribute \$100,000;
(v) (iv)	clarification of proponent status of the marina proposal for the purpose of the environmental assessment; and
(vi) (v)	funding contributions linked to a project plan approved by WAPC linking payments to achievement of key milestones.
5.4.	Require that, should the project proponent achieve planning and environmental approvals to conclude the feasibility of the Cape Peron Marina Implementation as a commercial venture, then the amount contributed by WAPC will be repaid by the proponent.
IMPLEMENTATION/NEXT ACTION:	
PUBLIC RELATIONS OPPORTUNITY:	YES NO
AUTHORISING AGENCY / EXECUTIVE DIRECTOR:	DATE:

4. Note that, as Crown Land is involved, appropriate arrangements for propriety of the project will be considered by the Minister for Planning & Infrastructure, and are expected to involve Landcorp in a key role.

RECOMMENDATION APPROVED AT EXECUTIVE
FINANCE AND PROPERTY COMMITTEE
MEETING ON 16 December 2003
(as amended — see above)

[Redacted Signature]

17/12/03

REPORT NO.

EXECUTIVE FINANCE AND PROPERTY COMMITTEE

CAPE PERON MARINA PLANNING IMPLEMENTATION PROJECT

1. BACKGROUND

The proposal for a boat harbour at Mangles Bay was promoted during the mid to late 1990s. Mangles Bay is located in the southern part of Cockburn Sound adjacent to Palm Beach, Rockingham. The site of the proposed Marina is reserved for Parks and Recreation in the Metropolitan Region Scheme and includes a number of Crown leases.

A 1992 study prepared by the then State Department of Marine and Harbours revealed that, at the time there was an unsatisfied demand for boat pens of 226, with a growth rate of 4% per year. Subsequent research by LandCorp in 1998, which took into account other marina proposals confirmed that the unsatisfied demand still existed and predicted a growth in demand for these facilities at 3.3% per year for the following 25 years. On this basis, LandCorp estimate that all boat pens in the proposed Rockingham Marina would be taken up in four years. This assumption appeared reasonable as some 300 boats are moored in the bay area opposite the proposed site for a marina (see Attachments 1(a) and 1(b)).

State Cabinet established the Mangles Bay Boat Harbour Steering Committee to guide the formation and evaluation of a concept plan to develop an "inland harbour". This study, the Mangles Bay Harbour Evaluation Report was undertaken by LandCorp and completed in June 1998. A report went to Cabinet but the project did not proceed.

In 2002, the City of Rockingham commissioned DAL Science & Engineering to undertake a further environmental assessment (Executive Summary enclosed) associated with the City's preferred marina concept and design with specific regard to water quality and seagrass. The seagrass issue is a major challenge given the impact of a boat harbour channel and the preservation of seagrass and water quality impacts has been raised on many occasions with assessments of earlier proposals indicative of these concerns (see Attachment 2).

However, the EPA have informally acknowledged the benefits of off-sets that may arise from the reduction and eventual elimination of the 261 swing moorings in Mangles Bay, which will result by the construction of a Marina. They also acknowledge the social and economic factors, which the Government may well consider outweighs the seagrass impact.

There are also other mitigation measures associated with the Marina in Mangles Bay that could enhance the existing coastal area that were not examined in previous studies. The environmental report, executive summary considers these factors in more detail and include restoration and rehabilitation of seagrass meadows.

The progression of a conclusive study on this essential infrastructure at Cape Peron is a priority for the region and for the Council. Rockingham needs safe boating facilities and the employment and tourism opportunities and benefits associated with this type of investment.

The South West Corridor Development and Employment Foundation Inc has written to the Hon Minister for Planning and Infrastructure seeking support to undertake a project that will produce an action plan addressing all the necessary project planning, environmental, social and economic issues in order to achieve approvals to conclude the feasibility of the Cape Peron Marina Implementation as a commercial venture (see Attachment 3(a)).

The Hon Minister for Planning and Infrastructure has written to the Western Australian Planning Commission seeking consideration of this proposal (see Attachment 3(b)).

2. REGIONAL PARTNERSHIPS

Progressing the development of this strategic infrastructure and community asset for Rockingham is a priority for Council. In responding to overwhelming public demand and opinion, the City of Rockingham is of the view that the project should proceed to the Environmental Assessment stage as a minimum.

To achieve this objective, the Rockingham Council has been instrumental in the development and submission of an application to the Commonwealth Department of Transport & Regional Services for Regional Assistance funding to conduct a planning implementation study – the Cape Peron Marina Precinct Implementation Project. Some assistance has been forthcoming from the South West Group of Local Authorities and the South West Corridor & Employment Foundation, (Local Government sponsored community organisation) is the project proponent and funding applicant.


The Peel Area Consultative Committee supports the project and the Department's Perth Office in accordance with program guidelines is currently assessing the application. Some feedback has already been obtained with State Government involvement and support for the Marina Implementation Project questioned, as well as the level of funding being sought from Regional Partnerships vis-à-vis the total project cost (approximately 80% of the \$570,000 total). While acknowledging that the environmental approvals and planning processes are complex and still have to be resolved, a more explicit endorsement from the State Government and a firmer financial commitment have been sought from the Department of Transport & Regional Services as part of the assessment process.

3. RECOMMENDATION

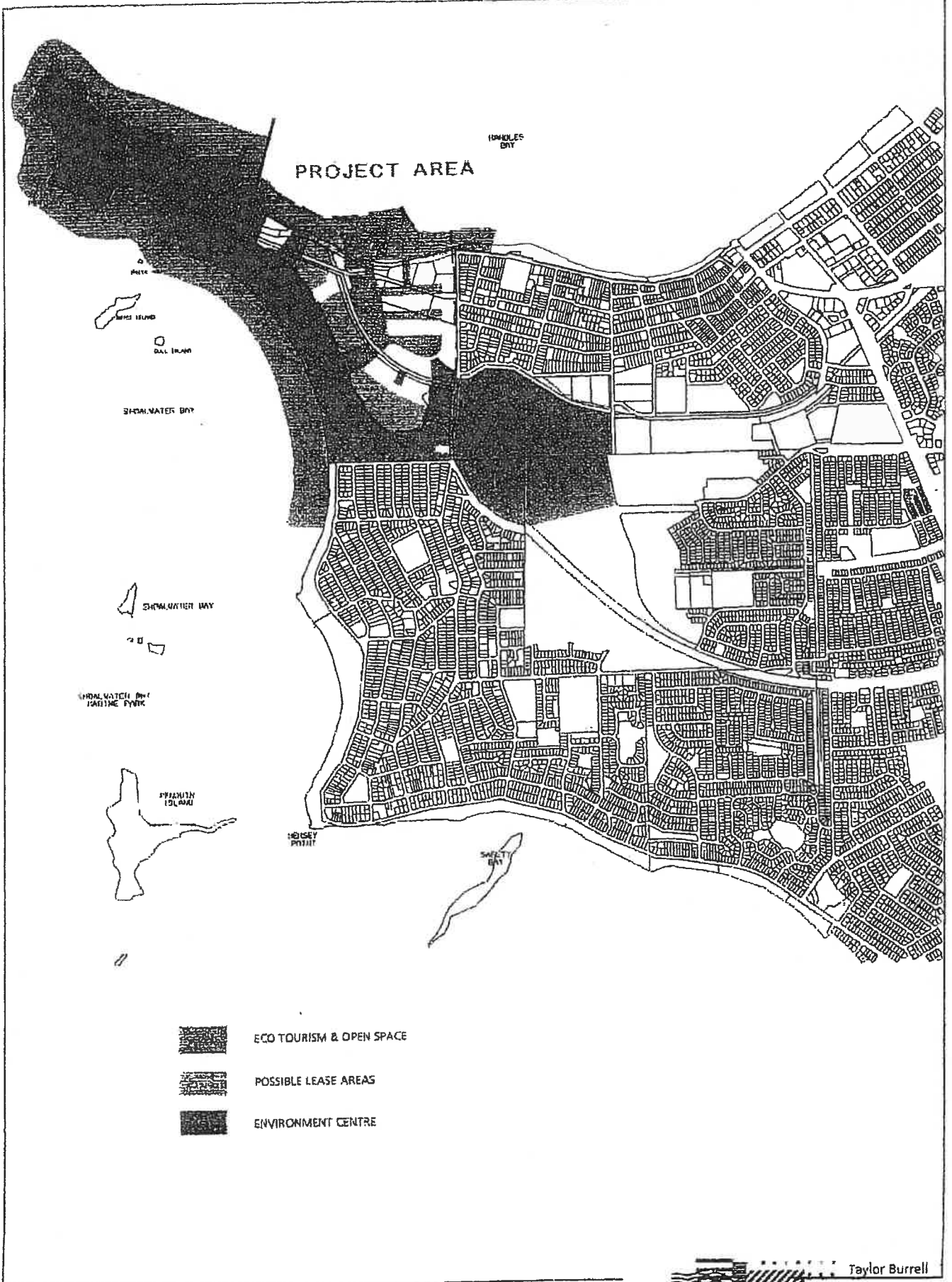
That the Executive Finance and Property Committee:

1. Notes the total cost of studies for the Cape Peron Marina of \$570,000.
2. Notes potential contribution from the Commonwealth Department of Transport and Regional Services estimated at \$220,000.
3. Agrees to consider \$250,000 contribution towards pre-feasibility studies of the Cape Peron Marina – Mangles Bay, Rockingham, subject to:
 - a. clarification of project briefs for the environmental, social and economic feasibility required to implement the marina proposal;
 - b. clarification of Commonwealth financial contribution to the project, at present proposed at \$220,000;

- c. clarification of source of residual \$100,000, noting that the City of Rockingham and South West Corridor Development and Employment Foundation Inc are "proponents" of the current submission to DOTARS and City of Rockingham have initiated that it will contribute \$100,000;
 - d. clarification of budget proponent status of the marina proposal for the purpose of the environmental assessment; and
 - e. funding contributions linked to a project plan approved by WAPC linking payments to achievement of key milestones.
4. Require that, should the project proponent achieve planning and environmental approvals to conclude the feasibility of the Cape Peron Marina Implementation as a commercial venture, then the amount contributed by WAPC will be repaid by the proponent.



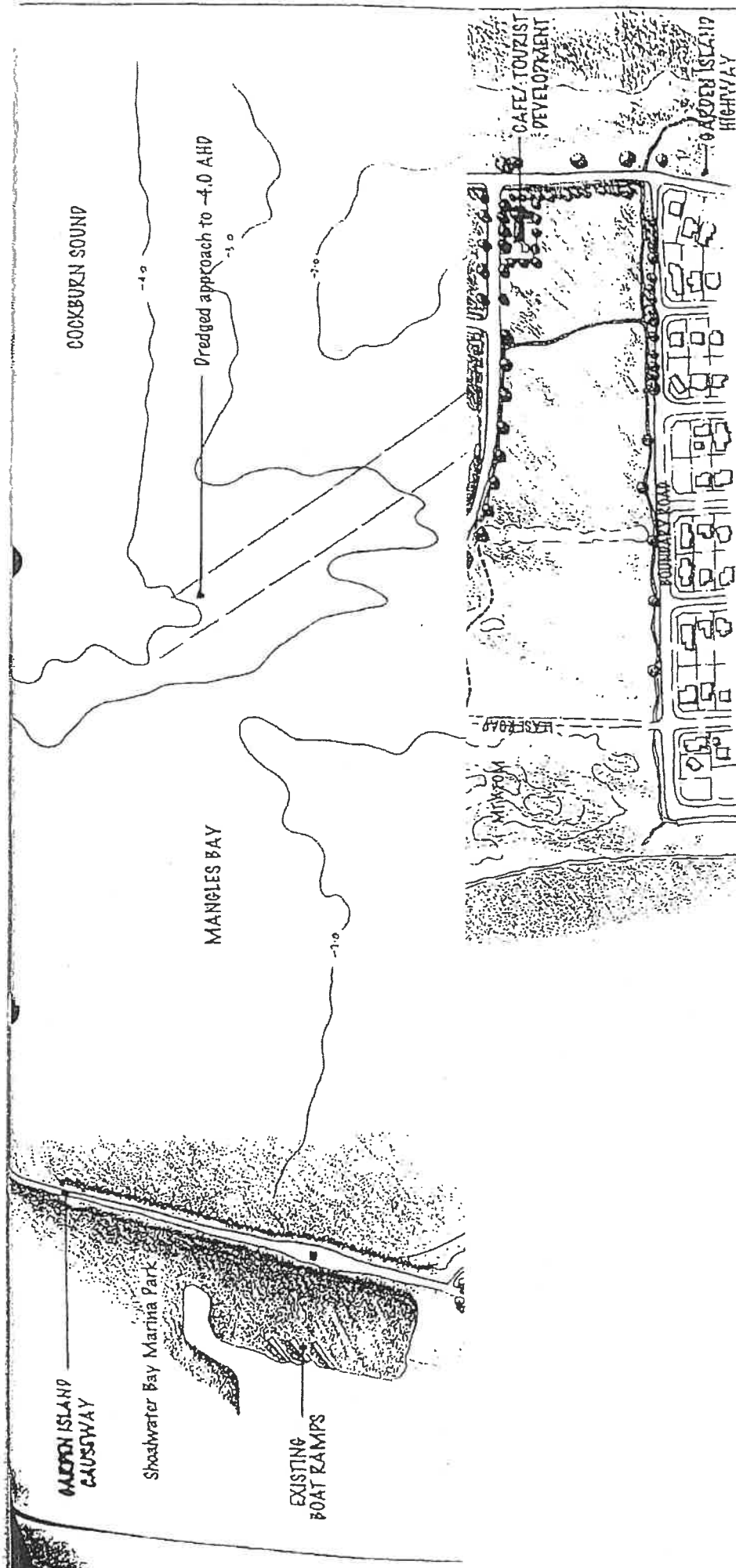
PAUL FREWER
EXECUTIVE DIRECTOR
STRATEGIC PLANNING



MANGLES BAY -
REGIONAL CONTEXT

SCALE 1:10,000
DATE JAN, 1998

Taylor Burrell
157 Sydney Road
Sydney NSW 2000
Tel: (02) 355 1111
Fax: (02) 355 1111



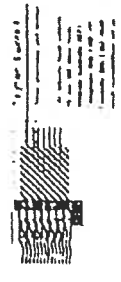
Subject to further investigations, may not be required.

MARINA RETAIL	RESORT	LOTS	
Site area 1.5ha		200m ²	40
2000m ² NLA	MANAGED APARTMENTS	600m ²	12
		450m ²	15
			267

**MANGLES BAY
PRELIMINARY CONCEPT OPTION 5**

PLAN S3.1.1.1

PAGE 22 OF 23



CONFIDENTIAL

**MANGLES BAY MARINA
ENVIRONMENTAL ISSUES
SEAGRASS AND WATER QUALITY**

Prepared for:

CITY OF ROCKINGHAM

Prepared by:



OCTOBER 2003

REPORT NO. 02/260/1

EXECUTIVE SUMMARY

The City of Rockingham (the City) is committed to progressing the concept of constructing a marina facility at Mangles Bay, and is encouraging the involvement of State Government and Federal Government in this endeavour. The design presently being considered by the City is based on the outcome of previous studies undertaken by a Ministerial Task Force. This design is based on the preferred design ('Concept 5') decided by the Task Force, and is a canal-type marina constructed inland from the coast with a water depth of -4 m CD throughout, and includes the construction of an offshore breakwater. Dredging will be required to achieve the required water depth in the marina and approach channel.

A number of previous proposals for a marina at Mangles Bay have been presented to the State Government by various proponents. Assessments of these earlier proposals have indicated that the principal marine environmental issues associated with the marina are:

- Effects on seagrasses; and
- Effects on water quality.

In 2002, the City contracted [REDACTED] to undertake a further assessment of the environmental impacts associated with the Ministerial Task Force's preferred marina design with regard to seagrass and water quality. [REDACTED] was requested to prepare recommendations on the measures available to minimize and mitigate against any environmental impacts identified, to support the development of a formal proposal to develop a 'Marina Facility and Associated Tourist and Recreation Node'.

The marina design that [REDACTED] evaluated is shown below, designated Option 5A, as the channel alignment has been modified from that of Ministerial Task Force's 'Concept 5' to provide the most rapid access to deeper water (-4 m AHD).



Marina configuration option 5A

The direct effects of this marina configuration are:

- The marina covers a total area of 7.1 hectares below AHD. All of this area requires deepening to achieve a water depth of 4m. 6.4 hectares of this area is presently covered by seagrass and would be lost during construction; and
- Water quality within the marina would be lesser than in Mangles Bay. Mangles Bay is within the High Protection Zone for Cockburn Sound, and its present water quality does not meet draft water quality criteria for phytoplankton biomass (in the Revised Draft Environmental Protection Policy for Cockburn Sound). The access channel to the marina will be assessed against High Protection Zone criteria, and so it will not meet the criteria either. The marina is likely to be zoned as a Moderate Protection Zone, and Mangles Bay water quality does meet the criteria for phytoplankton biomass. However, marina waters, being of lesser quality than in Mangles Bay, are still unlikely to meet the Moderate Protection Zone criteria, although this will depend on the final design and management features of the marina.

It is noted that the water quality criteria for Cockburn Sound have been derived to be protective of seagrass: their relevance within the marina (where there is not, and never has been seagrass) is uncertain, although it will be vital for effects on water quality outside the marina (where there is seagrass) to be very carefully examined. It is also noted that water quality in Perth's existing coastal marinas (e.g. Hillarys Boat Harbour, Success Harbour) does not meet the water quality criteria for Moderate Protection Zones either, yet these areas are still very highly valued by the community for recreation. Further to this point, it is noted that the Interim Environmental Management Plan (Interim EMP) for Cockburn Sound and its Catchment provides a framework for recognising and facilitating Multiple Use management of Cockburn Sound and its foreshore. This framework is intended to ensure a mix of uses that optimises the flow of benefits to the community in terms of environmental, social, cultural and economic outcomes in the longer term. Table 9 of the Interim EMP recognises recreational/commercial uses as the primary use (i.e. priority use) of the Rockingham area, and natural/cultural uses as a secondary use (i.e. use compatible with primary use).

As noted earlier, there have been a number of previous marina proposals for Mangles Bay, but the environmental impacts of the marina design described in this report are far less than those of these earlier proposals. There are also many mitigative measures associated with a marina in Mangles Bay that could provide an enhancement of the existing coastal area, that were not considered in previous marina proposals. These include:

- The marina will provide the opportunity to replace the current system of swing moorings in Mangles Bay (known to cause scars within the seagrass meadows) with boat pens available inside the proposed marina, and/or low impact moorings;
- The removal/replacement of the existing swing moorings would allow for the restoration of seagrasses into existing mooring scars outside the marina footprint to encourage dense, confluent seagrass meadows (1.7 ha of area available for rehabilitation in the adjacent area);
- There is the opportunity for the restoration of seagrasses into bare sand patches present in the Mangles Bay region within close proximity of the marina (approximately 2 ha of potential seagrass habitat available);
- There is the potential for some seagrass rehabilitation in the marina access channel (approximately 2.7 ha of potential seagrass habitat available). Although shoot densities of seagrasses rehabilitated in the channel may not be as high as seagrasses at shallower depths, rehabilitation of some seagrasses within the channel would facilitate meadow integrity;

- The presence of the marina will allow the management of regional boat movement to minimise indirect seagrass losses caused by moorings, anchors, propeller wash and boat scour;
- The City of Rockingham, in conjunction with Federal Government Coast and Clean Seas programs, is presently involved in the development and implementation of a strategic drainage management plan to ensure improved quality of low-flow stormwater runoff delivered to Cockburn Sound via the drainage system. This will result in improved water quality of the adjacent coastal areas. There have already been drainage improvements and community awareness programs undertaken under this strategic plan for the Palm Beach drainage outfall; and
- The City of Rockingham, in conjunction with Federal Government Coast and Clean Seas programs, is presently reviewing options for the improvement of stormwater runoff delivered to Mangles Bay via Lake Richmond Drain. This will be achieved by directing stormwater through a vegetated pond before entering Lake Richmond with the purpose of stripping nutrients from stormwaters prior to discharge into Mangles Bay. An improved water quality of drainage from Lake Richmond will be a valuable contribution to maintaining water quality in the proposed marina.

Both the environmental impacts of the marina proposal, and the possible offsets that may be available for mitigating the associated environmental issues are summarised in the table below. The table has been constructed according to the 'Guidelines for Developments Affecting the Shoreline and Seabed' provided in the Interim EMP for Cockburn Sound and its Catchment. These guidelines require proponents to firstly minimize environmental impacts; and where impacts remain, to provide environmental offsets—without trade between social and ecological values—that are appropriately located, enduring and targeted.

Environmental Issue	Steps to minimise impact	Offset option(s)	Environmental benefit of offset
6.4 ha Seagrass Loss	<ul style="list-style-type: none"> • The marina is on what is currently dry land, and thus impacts on seagrass will be minimised • The channel into the marina is oriented so that impacts on seagrass are minimised. • The channel into the marina is located so that the only seagrass impacted is that which swing moorings have already damaged. 	Restoration of mooring scars within the defined area of this study (1.7 ha)	Improve continuity and ecological function of the seagrass meadow.
		Restoration of bare sand areas in the Mangles Bay region, outside the defined study area (approx 2 ha available)	Improve continuity and ecological function of the seagrass meadow.
		Rehabilitation of marina access channel (approx. 2.7 ha available). Note: seagrass density will probably be less than in adjacent (shallower) areas.	Maintain integrity of the seagrass meadow.
		Transplantation of seagrass meadow to another location within Cockburn Sound, previously known to host seagrass habitat (e.g. the Eastern Flats)	Restore lost habitat to this region, and therefore improve the ecological function of this region.
Seagrass Condition and Depth Limit	The construction of the marina will result in improvements of the condition of seagrass currently affected by swing moorings, as the swing moorings will be removed and/or replaced by low impact moorings	Improvement of stormwater quality discharged via the Lake Richmond Drain and other stormwater drains into nearshore waters	Improve condition and depth limit of the seagrass meadow. Currently, the depth limit of seagrasses in the region, and reputedly poor condition of the seagrasses, is attributable to regional water quality.
		Control of areas exposed to boating activity which negatively impacts upon seagrasses (e.g. propeller wash, grounding, shading)	Improve the condition and density of the seagrass meadow.
High Protection Zone: Water Quality Requirements of the Marina Channel		Improvement of stormwater quality discharged via the Lake Richmond Drain and other stormwater drains into nearshore waters	Improve water quality of nearshore waters in Mangles Bay. Available data for this region indicate that nearshore waters do not currently meet the draft High Protection Zone criteria for water quality.

Support for a marina can be strengthened by continued involvement in the management and mitigation measures proposed to demonstrate that the management of stormwater drainage into Cockburn Sound and Palm Beach, enhancing the quality of stormwater outflow from Lake Richmond, as well as seagrass rehabilitation are all feasible.

As is, it is expected that the revised marina proposal would not meet all of the draft proposed environmental quality objectives and water quality criteria for Cockburn Sound: these are not met in Mangles Bay at present. However, when all of the advantages of a marina, including improved boating safety, the provision of a major amenity and other environmental, social, and economic issues are considered, and coupling these to environmental offsets, a strong case can be presented for a marina.

-o0o-

South West Corridor Development & Employment Foundation Inc.

C/- City of Melville, 10 Almondbury Road, Arrows, WA 6153 PO Box 1801 Bonnington, Western Australia 6854
Telephone (08) 9316 3988 Fax (08) 9316 3788
ABN 29 057 268 839

RECEIVED
- 1 DEC 2003
MINISTERS OFFICE

1 December 2003

Hon Alannah MacTiernan
Minister for Planning & Infrastructure
13th Floor Dumas House
2 Havelock Street
West Perth WA 6005

Dear Minister

CAPE PERON MARINA PLANNING IMPLEMENTATION PROJECT - PARTNERSHIP

As you are aware an application has been made to the Commonwealth Department of Transport & Regional Services (DOTARS) for Regional Partnerships funding to undertake a planning implementation project for a Marina at Cape Peron in Mangles Bay, Rockingham. This planning assignment aims to produce an action plan that will address all the necessary project planning, statutory processes and other approvals to conclude the feasibility of the Cape Peron Marina as a commercial venture.

The proponent organisation is the South West Corridor Development & Employment Foundation (SWCDEF), a not for profit grouping of public and private sector organisations that aims to encourage employment opportunities in southwest metropolitan Perth.

The submission and supporting documentation details the broad community support that the project enjoys and clearly demonstrates the many economic and social benefits it would deliver to the Rockingham area and surrounds. Community support is critical to the long-term success of the project and partnerships are a fundamental component of the Regional Partnerships program with collective local, state and commonwealth agency involvement considered favourably in the assessment of projects.

DOTARS have already stated they are enthusiastic, indicating they want to support this planning implementation project. With Commonwealth and Local Government support in place it is State Government involvement, commitment and financial support for the Cape Peron Marina Precinct Implementation Project that is now sought.

Industry Direct

A not-for-profit grouping of public and private sector organisations that aims to encourage employment opportunities in southwest metropolitan Perth
www.industrydirect.com.au

A partnership proposition has been prepared for you Minister, which overviews the project and the nature and extent of proposed Government support listed as outcomes on page twelve of the report.

To assist undertake this planning implementation project the South West Corridor Development & Employment Foundation Inc. and its membership is seeking a \$250,000 contribution from the State Government. This financial support and obvious commitment from the Western Australian Government will in my view result in a recommendation from the Department of Transport and Regional Services Perth Office to the Federal Government to approve and proceed with the project - a regional partnership in every sense with Local, State and Federal Government all engaged. It would produce a coordinated, community oriented solutions approach with all levels of Government facilitating sustainable economic development and employment generation.

The progression of a conclusive study on this essential infrastructure at Cape Peron is a priority for the region, for Rockingham Council, the Premier's Rockingham Taskforce and the community and while there is a considerable amount of documentation and detail to consider I would be happy to address any further issues or questions you may have regarding the application and this request at your convenience.

Yours sincerely



JOHN McILHONE
SWCDEF - Executive
DIRECTOR - South West Group

CC: Mark McGowan MLA
Gary Holland - City of Rockingham



MINISTER FOR PLANNING AND INFRASTRUCTURE

HON ALANNAH MacTIERNAN
BA LLB BJuris JP MLA

- 4 DEC 2003

My Ref: 2-38803

CHAIRMAN
WESTERN AUSTRALIAN PLANNING COMMISSION

Cape Peron Marina Planning Implementation Project - Partnership

I have recently forwarded to your office a project proposal from the South West Corridor Development & Employment Foundation Inc for consideration of funding towards an environmental assessment for the Cape Peron (Mangles Bay) Marina.

As this is a joint funding submission involving Federal, State and Local Government, on Reserved Land, I would appreciate a positive consideration of this funding proposal at the Committee meeting of 16 December 2003.



ALANNAH MacTIERNAN MLA
MINISTER FOR PLANNING AND INFRASTRUCTURE



WESTERN AUSTRALIAN
PLANNING COMMISSION

Enquiries:
Our Ref: 404-2-28-2PV5
Your Ref: 2-38803

MINISTER FOR PLANNING AND INFRASTRUCTURE

CAPE PERON MARINA PLANNING IMPLEMENTATION PROJECT

I refer to your memorandum of 4 December 2003 requesting a positive consideration of funding for an environmental assessment for the Cape Peron (Mangles Bay) Marina.

I can advise that at its 16 December 2003 meeting, the Executive, Finance and Property Committee, acting under delegated authority on behalf of the Western Australian Planning Commission, resolved:

1. To note the total cost of studies for the Cape Peron Marina, of \$570,000;
2. To note the potential contribution from the Commonwealth Department of Transport and Regional Services estimated at \$220,000;
3. To agree to consider a \$250,000 contribution towards pre-feasibility studies of the Cape Peron Marina - Mangles Bay, Rockingham, in the first instance on the basis that LandCorp be asked to consider a joint arrangement with WAPC whereby each will contribute \$125,000 - and subject to:
 - (i) Clarification that the studies will facilitate the determination of appropriate usage of Regional Parks and Recreation Reserves;
 - (ii) Clarification of project briefs for the environmental, social and economic feasibility required to implement the marina proposal;
 - (iii) Clarification of the Commonwealth financial contribution to the project, at present proposed to be \$220,000;
 - (iv) Clarification of the source of the residual \$100,000, noting that the City of Rockingham and South West Corridor Development and Employment Foundation Inc. are proponents of the current submission to DOTARS, and the City of Rockingham has indicated that it will contribute \$100,000;
 - (v) Clarification of proponent status of the marina proposal for the purpose of the environmental assessment; and



- (vi) Funding contributions linked to a project plan approved by WAPC linking payments to achievement of key milestones.
- 4. To note that, as Crown land is involved, appropriate arrangements for proponentcy of the project will be considered by the Minister for Planning and Infrastructure and are expected to involve LandCorp in a key role; and
- 5. To require that, should the project proponent achieve planning and environmental approvals to conclude the feasibility of the Cape Peron Marina Implementation as a commercial venture, then the amount contributed by WAPC will be repaid by the proponent.



Terry Martin
Chairman
Western Australian Planning Commission

22 December 2003



MINISTER FOR PLANNING AND INFRASTRUCTURE

HON ALANNAH MacTIERNAN
BA LLB BJuris JP MLA

- 4 DEC 2003

My Ref: 2-38803

CHAIRMAN
WESTERN AUSTRALIAN PLANNING COMMISSION

Cape Peron Marina Planning Implementation Project - Partnership

I have recently forwarded to your office a project proposal from the South West Corridor Development & Employment Foundation Inc for consideration of funding towards an environmental assessment for the Cape Peron (Mangles Bay) Marina.

As this is a joint funding submission involving Federal, State and Local Government, on Reserved Land, I would appreciate a positive consideration of this funding proposal at the Committee meeting of 16 December 2003.



**ALANNAH MacTIERNAN MLA
MINISTER FOR PLANNING AND INFRASTRUCTURE**

Our ref: 2-38803

Mr John McIlhone
SWCDEF – Executive
Director - South West Group
South West Corridor Development & Employment Foundation Inc
C/- City of Melville
10 Almondbury Road
ARDROSS WA 6153

Dear Mr McIlhone

CAPE PERON MARINA PLANNING IMPLEMENTATION PROJECT - PARTNERSHIP

Thank you for your letter dated 1 December 2003 regarding the above. I understand you had discussions with Paul Frewer from the Department for Planning and Infrastructure on 4 February 2004, regarding the State Government funding for the project. I am pleased to advise that on 16 December 2003, the Western Australian Planning Commission (WAPC) supported in principle, the allocation of \$250,000 to the project. In considering its support for the proposal, the WAPC's recommendations were subject to a number of conditions. These included:-

- (i) Clarification that the studies will facilitate the determination of appropriate usage of Regional Parks and Recreation Reserves;
- (ii) Clarification of project briefs for the environmental, social and economic feasibility required to implement the marina proposal;
- (iii) Clarification of the Commonwealth financial contribution to the project, at present proposed to be \$220,000;
- (iv) Clarification of the source of the residual \$100,000, noting that the City of Rockingham and South West Corridor Development and Employment Foundation Inc are proponents of the current submission to DOTARS, and the City of Rockingham has indicated that it will contribute \$100,000;
- (v) Clarification of proponent status of the marina proposal for the purpose of the environmental assessment; and
- (vi) Funding contributions linked to a project plan approved by WAPC linking payments to achievement of key milestones.

As discussed with Mr Frewer, there is a fundamentally important issue relating to having a proponent for the project. This is referred to in the WAPC's recommendation. There is a need to have a proponent as the project manager and, therefore, a funding and management source which is accountable and able to execute the planning component of the project to the fullest extent.

The second issue is the need for a proponent to be identified under the Environmental Protection Act, which will be required for the environmental study. This is a legal requirement of the EPA Act and the proponent will be subject to the conditions that are set for the marina. This role is one that needs to be discussed further with the EPA and is a significant issue to resolve prior to undertaking any of the planning and environmental studies that are proposed.

Before the study commences, would you please advise the proponent's status for both of the matters raised above.

Yours sincerely

ALANNAH MacTIERNAN MLA
MINISTER FOR PLANNING AND INFRASTRUCTURE

Mr Gary Prattley
Chairman
WAPC
Albert Facey House
469 Wellington Street
PERTH WA 6000

NOTED
CHAIRMAN WAPC
Date 29/10/09



Dear Mr Prattley

RE: Cape Peron Marina Project

LandCorp is pleased to advise that on behalf of the State Government, we will soon be seeking a private sector partner to participate in the proposed Cape Peron marina-based tourist development. This phase calls for interested parties to work with LandCorp to plan and obtain approvals to deliver a modern, family friendly marina in Rockingham.

Detailed investigations would precede a formal public environmental assessment by the Environmental Protection Authority. This is an independent and thorough process that will provide the community with opportunities to have their say.

The project will proceed only if environmental approval is granted.

The project proposal, developed by the Rockingham Kwinana Development Office (RKDO) and the City of Rockingham, envisages a marina precinct that will provide much-needed and long-awaited boating pens and a range of marine services. It is also anticipated that the project will create a range of recreational, tourism and business opportunities, as well as a centre of excellence with a strong educational focus.

LandCorp has extensive and successful experience and achievement in partnering with private developers. This includes the award-winning Mandurah Ocean Marina as well as marinas in Geraldton, Exmouth and Albany. Further to this is the Fremantle South Beach development and redevelopment of the Swanbourne and Hollywood school sites.

Together with the selected partner, we will keep you informed as this process proceeds. We would also welcome your comments. Further information about the Expression of Interest can be found at www.landcorp.com.au/capeperon. Alternatively, please contact our Project Manager Partnering, Ian Ardron on [redacted] or via e-mail [redacted].

Yours sincerely

[Redacted signature area]

Bruce Low
Business Manager Partnering

29 September 2009

DEPARTMENT OF PLANNING
01 OCT 2009
I.G. Prattley
FILE 404-2-28-8P v2
DEPT OF PLANNING
28 OCT 2009
RECEIVED

→ file

DEPARTMENT OF PLANNING

25 JUN 2010

FILE *F. WIMSDEN*2 *404-2-28-3*

Mr Eric Lumsden
 Director General
 Department of Planning
 Albert Facey House
 469 Wellington Street
 PERTH WA 6000

23 June 2010

Dear Mr Lumsden,

Cape Peron Marina-Based Tourist Precinct, Rockingham

I am taking this opportunity to write and inform you that LandCorp recently appointed Cedar Woods Properties Limited as our preferred proponent for the proposed Cape Peron marina-based tourist precinct in Rockingham.

The role of Cedar Woods is to progress the Phase 2 statutory planning and environmental approval process. Subject to the outcome of this process, the aim is to develop a project that will complement the existing Rockingham beachfront. It may provide the community with a range of visitor and boating facilities such as improved beach access, a marina, affordable family accommodation and additional retail and commercial areas. The final concept plan will be finalised during Phase 2 of the statutory planning process.

I wish to assure you that Cedar Woods will be an active participant in seeking further understanding of what the community wants from this project. To this end, they have appointed Marcus Deshon as Project Manager.

Marcus, along with Cedar Woods' State Manager Stuart Duplock, or Managing Director Paul Sadleir, will be making every effort to visit you and begin the process of gaining a deeper understanding of community wishes and concerns. Jenelle Provost, LandCorp's Business Development Manager will be assisting Cedar Woods in its meetings with landowners, major stakeholders and community groups, so that we have a shared understanding of the community's views. The meetings will be arranged over the next few weeks.

In the meantime, please do not hesitate to call Marcus on [REDACTED] or email him at [REDACTED] for further information.

Yours sincerely

[REDACTED]

Luke Willcock
 General Manager Metropolitan



DEPARTMENT OF PLANNING
12 JUL 2010
FILE E. LUMSDEN

2 404-228-3

Enquiries: S A Oosthuizer [redacted]

Mr Eric Lumsden
Director General
Department of Planning
Albert Facey House
469 Wellington Street
PERTH WA 6000

Dear Eric

CAPE PERON MARINA TOURIST BASED PRECINCT

On 7 September 2009, Cabinet approved LandCorp proceeding to seek a private sector development partner to assist in the planning and obtaining required statutory approvals for the proposed Cape Peron Tourist Precinct. Cedar Woods has subsequently been announced as the preferred partner and Phase 2 (environmental and statutory approvals process) of the project has now started.

Subject to obtaining all the necessary approvals it is the State Government's expectation that works commence in the second half of 2012. A program outlining the approvals timeframe has been compiled for the project which indicates to obtain all the necessary statutory approvals for the project is estimated to be up to 2-3 years. The Department of Planning and the Environmental Protection Authority through its officers have advised us that the environmental approvals process (S38) is to be separated from the MRS amendment process (S48).

The most critical aspect that can influence the timeframes of planning and construction of the project is the anticipated Public Environmental Review Process. An across agency approach to determine how the approvals timeframes and processes that can be run concurrently is needed to meet the Government's expectations, without any compromise to the approvals process.

The project falls within the Rockingham Development Office area which reports directly to the Minister for Planning. A copy of a briefing note to the Minister in relation to the approvals process is attached for your attention.

In light of this, LandCorp and Cedar Woods will be meeting with Mr Gary McKeown of your office, to discuss and agree the most appropriate process to progress the statutory planning approvals for the Cape Peron project.

Could I please request your support to help facilitate and prioritise this process within your department to ensure we can try to meet the Premier's timeframe.

Yours sincerely



Frank Marra

ACTING CHIEF EXECUTIVE OFFICER

7 July 2010



**Minister for Regional Development; Lands;
Minister Assisting the Minister for Transport;
Minister Assisting the Minister for State Development**

Our Ref: A165198

MINISTER FOR PLANNING; CULTURE AND ARTS

**CAPE PERON TOURIST PRECINCT PROJECT – PHASE
(FORMAL APPROVALS)**

On 7 September 2009, Cabinet approved LandCorp proceeding to seek a private sector development partner to assist in the planning of and obtain required statutory approvals for the proposed Cape Peron Tourist Precinct. Cedar Woods has subsequently been announced as the preferred partner. Phase 2 (environmental and statutory planning approvals process) of the project has now commenced.

Once all approvals are received, LandCorp will report to Cabinet on the way forward for the project including funding requirements needed to undertake the development.

The Premier has approved the proposed delivery model and has requested the development commence in the second half of 2012, subject to environmental and statutory planning approvals being obtained.

To obtain all necessary statutory approvals for the Cape Peron Tourist Project it is estimated it will take up to two to three years as this is an independent and comprehensive process. This timeframe is extremely tight and it will take a coordinated approach to meet the Premier's request for delivery.

The Department of Planning and the Environmental Protection Authority have been working with LandCorp and advise the environmental approvals (Section 38) process should be separated from the Metropolitan Region Scheme Amendment referral process by the EPA (Section 48).

The most critical aspect that can influence the timeframes of planning and construction of the project is the anticipated Public Environmental Review Process. An agreed across Government approach to determine the approval timeframes and processes that can be run concurrently is needed to meet Government's expectations, without any compromise to the independent approvals process of the regulatory authorities.

To further this approach, LandCorp is proposing to meet with the respective Directors General of the Departments of Planning and Environment and Conservation to discuss the way forward to progress the approvals process to meet Government's expectations within the regulatory framework. I seek your support in progressing this project.

**HON BRENDON GRYLLES MLA
MINISTER FOR REGIONAL DEVELOPMENT; LANDS**



Government of **Western Australia**
Department of **Planning**

FOI Document
Item No: J 156

Your ref: 02704-04
Our ref: 404/2/28/3
Enquiries: Garry McKeown

Mr Frank Marra
A/Chief Executive Officer
LandCorp
Locked Bag 5 Perth Business Centre
PERTH WA 6849

DEPT OF PLANNING
7 SEP 2010
404-2-28-3
RECEIVED

Dear Frank

CAPE PERON MARINA TOURIST BASED PRECINCT

I acknowledge receipt of your letter of 7 July 2010 concerning the above and particularly the potential impact of the planning and environmental assessment processes on the State Government's expected timeframe for delivery.

As the environmental considerations associated with the project are the most critical aspects, I appreciate the approach to have the environmental assessment undertaken pursuant to s38 of the Environmental Protection Act 1986.

Given the statutory approval processes associated with both the planning and environmental assessments and, depending upon the complexities inherent in the project, the assessments can take some time. A coordinated approach to managing these two processes will provide the best means of minimizing the timeframe for the approval processes and for delivery of the project.

In this regard, I am informed that Roman Zagwocki and Marcus Deshon, from Cedar Woods and Susan Oosthuizen from your office, met with Garry McKeown, Judi Bell and Anthony Muscara from this office, on Friday 30 July to discuss the coordination of the planning and environmental assessment processes with a view to minimizing the timeframe. The discussion was based on a draft preliminary program prepared by Cedar Woods, and it was agreed that the program would be updated to reflect the outcome of the discussion.

Definition of the project will be required prior to the environmental assessment and any modifications to the extent of the project, as a result of that assessment, will need to be incorporated to inform the necessary amendments to both the Metropolitan Region Scheme and the City of Rockingham Town Planning Scheme.

The significance of the project to Government and the City is acknowledged and every endeavour will be made to expedite the planning processes accordingly.

Yours sincerely

Eric Lumsden PSM
Director General

1 / 12010

Supported

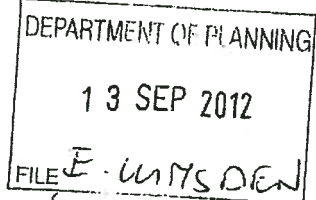


29/8/10



Our Ref 0905408
Enquiries Glenn Biss - [REDACTED]

Mr Eric Lumsden
 Director General
 Department of Planning
 140 William Street
 PERTH WA 6000



1
 2
 604-2-28-3

Dear Eric

Mangles Bay Marina Based Tourist Precinct - Public Environment Review

As an update for your information, the Public Environmental Review (PER) for the Mangles Bay Marina Based Tourist Precinct project (the Project) closed on 23 April 2012. More than 250 responses were received during the ten week period, including a response from your agency, the Department of Planning (DoP).

As a State Government priority project, LandCorp's private sector partner, Cedar Woods Properties Limited, has prepared responses to the PER submissions in order to progress the Project to gain final environmental approval. This has been submitted to Office of the Environmental Protection Authority (OEPA) on 2 August 2012 for their consideration. Furthermore, please note that it is anticipated that the Minister for Environment will make a final determination on whether the Project is approved in the third quarter of 2012.

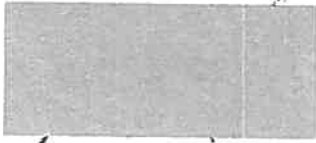
We have informally met with officers from DoP to seek advice if the Project will require a major or minor Metropolitan Region Scheme (MRS) amendment. The advice received was, while a minor MRS amendment was possible, DoP will be recommending a major MRS amendment for the Project. The implication of this recommendation is that it will extend the timeframes for the Project and require a referral to Parliament where anyone can move a motion of disallowance causing the amendment to be debated and possibly rejected on any basis. If this happened, the whole MRS process would need to re-commence from the start.

The PER would have resolved all of the major environmental issues and impacts of the development are now understood and strategies, including offsets are being prepared which relate to the Project due to the preparation of environmental reports. The Projects current program has the major amendment at best being approved May 2014, if no delays are encountered, whilst a minor amendment could conceivably be finalised by January 2014. This will offer significant time savings and will not require a referral to Parliament, minimising the risk of a disallowance.

In order for the Project to progress in a timely fashion as a priority Project for the State Government we seek the support from the DoP to give due consideration to only requiring a minor MRS amendment as a realistic proposition for this Project.

I look forward to our discussions in this regard and continuing our positive working relationship with the Department.

Yours sincerely



Ross Holt
Chief Executive Officer

10 September 2012



Our Ref: 809-2-28-17 (RLS/0389/1)

Your Ref: -

Enquiries: Anthony Muscara [REDACTED]

LandCorp
Locked Bag 5
Perth Business Centre
PERTH WA 6849

Dear Sir/Madam

**PROPOSED MRS AMENDMENT - MANGLES BAY MARINA
REQUEST FOR PRELIMINARY COMMENT**

Please find attached a CD containing a report in support of a proposed amendment for the abovementioned area in the Metropolitan Region Scheme. It would be appreciated if you could provide any preliminary comments your organisation may have on the proposal by Friday 18 October 2013.

Once your comments have been reviewed, a report may be presented to the Western Australian Planning Commission recommending the initiation of an amendment to the Metropolitan Region Scheme. Should an amendment be initiated, we will again contact you seeking your formal comment on the amendment proposal.

If you have any queries regarding the proposed amendment, please email Anthony Muscara - [REDACTED]

Yours sincerely

[REDACTED]
Tim Hillyard
Secretary
Western Australian Planning Commission

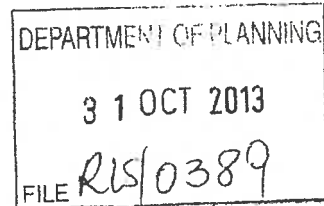
18 September 2013





Your Ref 809-2-28-17
Our Ref A797880
Enquiries Glenn Biss 08 9 [REDACTED]

Attention: Mr A Muscara
 Western Australian Planning Commission
 140 William Street
 PERTH WA 6000



Dear Mr Muscara,

Proposed Metropolitan Region Scheme Amendment- Mangles Bay Marina

I refer to your letter dated 18 September 2013 affording LandCorp the opportunity, to comment on the proposal for a Metropolitan Region Scheme (MRS) amendment for the Mangles Bay Marina Precinct Tourist Based Project.

LandCorp supports the proposal as the precinct aims to provide the community with improved marine, tourist, commercial and recreational facilities, while respecting and repairing the coastal environment.

Extensive community consultation has been undertaken since 2005 with stakeholders, user groups, community lease holders, state agencies and the City of Rockingham.

LandCorp, with our private sector partner, Cedar Woods, is progressing with obtaining the necessary environmental approvals for the project and recently received a recommended conditional approval from the Environmental Protection Authority in April 2013. This conditional approval was subsequently open for public appeals in May 2013 and the appeals convenor is now finalising a report to the Minister for Environment for determination which is expected later this year.

The Department of Planning previously indicated that it will require a major amendment to the MRS in order for the Project to commence; consequently this will further extend the timeframes and will require a referral to parliament. As the PER seeks to resolve all of the major environmental issues relating to the Project, the WAPC may consider a minor amendment as an option.

In order to progress and successfully implement this priority State Government project LandCorp seeks continued support to ensure a whole of government approach is taken to deliver on Government expectations.

We are aware that major services traverse the site and will continue to liaise with state agencies including Water Corp, Western Power and Department of Transport.

As a project partner to Cedar Woods LandCorp supports the MRS amendment.

Please contact me should you wish to discuss.

Yours sincerely

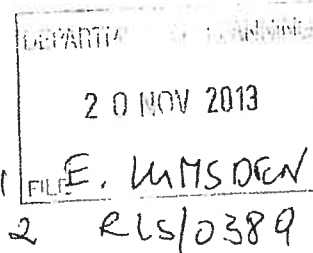


Mario Claudio
Business Manager Urban Developments
29 October 2013



Our Ref A804057
Enquiries Luke Willcock

Eric Lumsden
 Western Australian Planning Commission
 Gordon Stephenson House
 Locked Bag 2506
 PERTH WA 6001



Dear Eric,

**PROPOSED AMENDMENT TO THE METROPOLITAN REGION SCHEME -
 MANGLES BAY MARINA**

On 24 August 2013, the Western Australian Land Authority (LandCorp) and Cranford Pty Ltd (a wholly owned subsidiary of Cedar Woods Properties Ltd) as partners for the Mangles Bay Marina project lodged a proposed Metropolitan Region Scheme (MRS) Amendment with the Department of Planning. The amendment requests the Western Australian Planning Commission (WAPC) initiate an amendment to rezone the subject land (Lots 1, 2, 3, 5, portion of 301, 303, 500, 501, 2055, 2058, 2301, 2328, portion of 2733, 2734 and portions of Waterway, Point Peron Road and Drainage Channel) from 'Parks and Recreation', 'Port Installations' and 'Other Regional Roads' to 'Urban', 'Parks and Recreation' and 'Other Regional Roads' to facilitate the Mangles Bay Marina Based Tourist Project (the Proposal).

As you may be aware, the project team and its consultants met with officers of the Department of Planning in 2010, after being appointed as project partners to seek clarification in relation to a number of matters pertaining to a proposed MRS Amendment. However, rather than pursue an MRS Amendment which would likely require formal review under S.48, officers felt strongly that the project be significantly de-risked by securing environmental approval under S.38 of the Environmental Protection Act, and thereby, streamlining the MRS Amendment process to follow.

A Public Environmental Review of the Proposal was subsequently undertaken culminating in the EPA releasing its Bulletin in April 2013. It is understood that the Minister for the Environment will consider the EPA's report as well as the Appeal Convenor's recommendations in early December 2013, at which time, LandCorp is optimistic the project will receive conditional approval.

Over the last 3 years, the Proposal has undergone substantial community consultation. It has also built on the outcomes of the community and specialised stakeholder input generated during the 2005 – 2006 consultation for the Cape Peron Strategic Environmental Review (SER).

In view of this background, it is considered that the Proposal has been thoroughly consulted upon and given the impending Ministerial approval of the PER, it is considered that there is significant merit in the MRS Amendment being initiated as a 'minor amendment'.

To assist with the WAPC's consideration of this request, the Amendment was lodged with an assessment of the proposal in context with Development Control Policy (DC) 1.9 – Amendment to Region Schemes. Whilst DC1.9 does not provide a checklist from which a conclusive assessment may be drawn as to whether a proposed amendment is minor or major, the WAPC is to have due regard to a number of considerations outlined in DC1.9.

It is considered that this assessment has sufficiently demonstrated that the various considerations set out in DC1.9 and importantly, the issues associated with environmental approval have all been identified. Accordingly, we ask you to support the WAPC initiating the amendment to the MRS as a minor amendment.

We look forward to your favourable consideration of this request and would welcome an opportunity to meet with you and the Department's officers to discuss the proposal further.

Yours sincerely



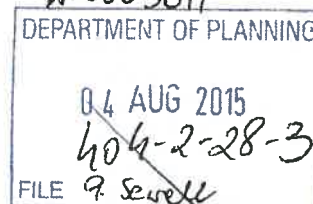
Luke Willcock
General Manager Metropolitan
18 November 2013



LANDCORP

Our Ref: A1235451
Enquiries: Luke Willcock (08 [REDACTED])
Date: 29 July 2015

Ms Gail McGowan
 Director General
 Department of Planning
 Locked Bag 2506
 PERTH WA 6001



Dear Gail

GOVERNMENT APPROVAL — MANGLES BAY MARINA-BASED TOURIST PRECINCT

The Government's consideration of the business case for the Mangles Bay Marina-Based Tourist Precinct is now complete.

I am pleased to advise the Government has approved the business case for the delivery of the project and endorsed the transfer of the land to LandCorp, when the Structure Plan is approved.

As you know, statutory planning phase of the Mangles Bay Marina-Based Tourist Precinct has commenced, including lodgement of the proposed Local Structure Plan with the City of Rockingham. 7

LandCorp and project partner, Cedar Woods Properties, are aware of the explicit requirement of the Western Australian Planning Commission for there to be a Deed of Agreement be in place for a Marina Manager as a zoning prerequisite. Action is being taken to identify a suitable management body.

The project partners are also aware that a detailed traffic impact assessment (TIA) to inform the process for a dual carriageway for Memorial Drive (to the satisfaction of the Department of Defence and Department of Transport) is required prior to the consideration of the amendment for a final determination. The TIA is now complete and been submitted to the City of Rockingham for review as part of it's assessment of the Local Structure Plan for the project.

Pending the City's review and endorsement of the TIA, it will be referred to the Department of Defence and the Department of Transport for comment.

In the meantime, if you have any queries about the project please contact Development Manager, Marcus Deshon, from Cedar Woods Properties on [REDACTED]

I wish to thank you for your time and involvement in the project to-date. We look forward to working with you and your staff throughout the planning approvals process.

Yours sincerely



Frank Marra
Chief Executive Officer

cc Mr Paul Sewell
Director, Perth and Peel Planning
Department of Planning

Mr Paul Sadler
Managing Director
Cedar Woods Properties



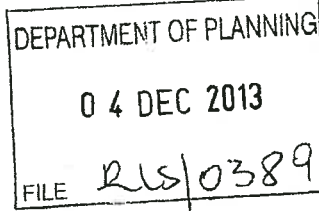
Our Ref: LUP/827-07 - D13/126260

Your Ref: 809-2-28-17 (RSL/0389/1)

Enquiries to: Mr Tristan Fernandes / Mr Jeff Bradbury

3rd December 2013

Secretary
Western Australian Planning Commission
Locked Bag 2506
PERTH WA 6001



Attn: Anthony Muscara

Dear Sir/Madam

Re: Proposed MRS Amendment - Mangles Bay Marina Preliminary Comment

I refer to your correspondence dated 18th September 2013 seeking preliminary comment in respect of a proposed Metropolitan Region Scheme (MRS) Amendment to support the Mangles Bay Marina.

It is noted that the proposal has yet to be determined by the Hon. Minister for Environment following the completion of the Public Environmental Review and advice provided to the Minister by the Office of the Environmental Protection Authority.

Notwithstanding the above, the City has now completed a preliminary review of the MRS Amendment documentation and recommends that the following matters be addressed to the satisfaction of the Western Australian Planning Commission prior to the MRS Amendment being initiated: -

1. Sea Level Rise

Insufficient justification has been provided against the policy requirements set under State Planning Policy 2.6 - State Coastal Planning Policy (SPP 2.6) (amended July 2013) to address potential sea level rise.

The policy requirements of SPP2.6 are required to be applied at the earliest appropriate stage of any planning process. In this regard, SPP 2.6 prescribes the preparation and implementation of a Foreshore Management Plan for this scale of development which has not been prepared.

The proposal provides for a foreshore setback of 20m, which is based upon the following assumptions: -

- (i) Constructing a buried seawall and beach renourishment (from the Point Peron sand trap);
- (ii) Stable shoreline with 0m net erosion trend since 1988 and installation of buried sea wall to protect against erosion; and
- (iii) Sea level rise defence – unspecified coastal defensive structures and active beach management.



In the absence of a risk assessment, the required setback outlined by SPP2.6 is 162m.

The measures proposed do not consider the adaptation framework hierarchy outlined in SPP 2.6 and have not identified how development of the proposed 'Urban' zoned land can respond to the adaptation framework but to only implement protective measures against sea level rise.

Also, the information provided does not outline who is responsible to implement works to protect the development to the effects of sea level rise.

2. Marina Manager

No information is provided regarding any agreement for the future waterways manager for the Mangles Bay Marina. This is not consistent with the requirements of Development Control Policy 1.8 - *Canal Estates and Artificial Waterway Developments*.

3. Zoning

- (i) Without prejudice to the decision of the Minister for Environment for the proposal, the City recommends that the WAPC consider implementing an 'Urban Deferred' zoning in lieu of an 'Urban' zone (as proposed within the Amendment request) in light of the various environmental conditions and monitoring recommended within the PER. An 'Urban Deferred' zoning can provide sufficient certainty for the project whilst permitting any further environmental work being completed prior to any potential development of the site.

Should the WAPC support the implementation of an 'Urban Deferred' zoning, it is the City's request that it be consulted when the WAPC seeks to lift Urban Deferment.

It is the City's view that the feasibility of the marina needs to be guaranteed following the completion any work required through environmental conditions, prior to development commencing. Given the basis of the proposal is to deliver a marina; any associated development of the land based component should be linked to this outcome.

It is also recommended a Deed of Agreement be entered into between the City and the State Government to set the terms for the use of the site for a Marina and tourist based destination.

- (ii) Lot 1786 Hymus Street does not form part of the MRS Amendment and it is recommended that it be considered to be incorporated as part of this Amendment from 'Port Installations' to 'Public Purpose' or 'Special Use' which is consistent with the use of the land. Land abutting the 'Waterways' reservation which is zoned 'Port Installations' is also recommended to be rezoned to 'Parks and Recreation'.

4. Traffic

The Traffic Report does not sufficiently outline the implications of the development to the broader regional and local movement network as the focus of the document relates only to its immediate vicinity.

The City's assessment of the Traffic Report has determined the modelling does not appropriately account for traffic currently using local roads to access Garden Island. The modelling also does not account for growth in employment at HMAS Stirling or further infill development. These factors, combined with the introduction of a marina and tourist based precinct will contribute further to existing congestion to local streets.

Parkin Street and Safety Bay Road are currently performing the role of a regional transport route and it is recommended that the WAPC considers the viability of the Garden Island Highway to be constructed to service the development and traffic accessing Garden Island.

The City is concerned that the section of the 'Other Regional Road' reserve abutting Lake Richmond may not be built in light of the sensitive environmental nature of the land. The implications of not building the Garden Island Highway to the local and regional road network have not been rationalised within the Amendment documentation and this matter is recommended to be carefully considered by the WAPC.

It is also unclear from a regional planning perspective whether key access roads should be considered for reclassification to an 'Other Regional Road' status. This matter should be considered as part of the MRS Amendment as access to Garden Island and the proposed Marina are a linked regional traffic issue. It is recommended this be investigated by the WAPC in consultation with the Department of Transport and the City.

If you wish to discuss the above, please do not hesitate to contact Mr Jeff Bradbury or Mr Tristan Fernandes on [REDACTED]

Yours faithfully

[REDACTED]
R M JEANS
DIRECTOR, PLANNING
& DEVELOPMENT SERVICES



Our Ref: 809-2-28-17 (RLS/0389/1)

Your Ref: -

Enquiries: Anthony Muscara [REDACTED]

Chief Executive Officer
City of Rockingham
PO Box 2142
ROCKINGHAM DC WA 6967

Dear Sir/Madam

**PROPOSED MRS AMENDMENT - MANGLES BAY MARINA
REQUEST FOR PRELIMINARY COMMENT**

Please find attached a CD containing a report in support of a proposed amendment for the abovementioned area in the Metropolitan Region Scheme. It would be appreciated if you could provide any preliminary comments your organisation may have on the proposal by Friday 18 October 2013.

Once your comments have been reviewed, a report may be presented to the Western Australian Planning Commission recommending the initiation of an amendment to the Metropolitan Region Scheme. Should an amendment be initiated, we will again contact you seeking your formal comment on the amendment proposal.

If you have any queries regarding the proposed amendment, please email Anthony Muscara - [REDACTED].

Yours sincerely

[REDACTED]
Tim Hillyard
Secretary
Western Australian Planning Commission

18 September 2013



Western Australian Planning Commission

Minutes

of ordinary meeting 225

held on Tuesday 28 October 2014

Attendance

Members

Ms Maree De Lacey	Director General, Department of Water arrived at 2.25pm - left at 4.25pm
Mr Paul Drechsler	Professions representative
Prof Robert Harvey	Professions representative
Mr Glen Kelly	Indigenous interests representative
Ms Gail McGowan	Director, Department of Planning
Dr Garry Middle	Coastal planning and management representative
Mr Grahame Searle	Director General, Department of Housing
Mr Ross Thornton	Nominee of the Regional Minister
Mr Reece Waldock	Director General, Department of Transport arrived at 2.10 pm - left at 3.00pm
Mayor Henry Zelones	Local government representative – metropolitan (presiding member)

Officers

Ms Victoria Brown	Department of Planning Senior Planning Officer, Perth and Peel Planning
Mr Bryce Bunny	Planning Manager, Infrastructure, Projects, Policy and Research
Ms Sarah Cosstick	Planning Manager, Strategic Environmental Assessment
Ms Kim Davis	Planning Director, Infrastructure, Projects, Policy and Research
Mr Steve Ferguson	Senior Solicitor, Legislative and Legal Services
Mr Tim Hillyard	WAPC Secretary
Ms Cath Meaghan	A/ED Regional Planning and Strategy
Mr Anthony Muscara	Senior Planning Manager, Perth and Peel Planning
Ms Metelda Perera	Executive Officer, Office of the Director General
Mr David Saunders	Executive Support A/Assistant Director General, Strategic Corporate Support
Ms Emma Thunder	Principal Planner, Perth and Peel Planning
Mr Jan-Willem Van Staden	Project Manager Infrastructure, Projects, Policy and Research
Mr Nick Welch	Senior Planning Officer, Regional Planning and Strategy
Ms Wendy Wiley	Committee Support Officer, Office of the Director General
Ms Kylie Woods	Senior Legal Officer, Strategic Corporate Support

Western Australian Planning Commission

Minutes
of ordinary meeting 225
held on Tuesday 28 October 2014

Observers

Mr Darren Foster
Mr Mike Rowe

Director of Strategic Policy and Planning, OEPA
Department of Regional Development

Presenters

[Redacted]

[Redacted]

Ms Sarah Hooper
Mr Simon Taylor
Ms Lisl Van Aarde
Mr Craig Shepherd
Mr Ben Harvey

Department of Premier and Cabinet (Item 6.3)
Department of Premier and Cabinet (Item 6.3)
Department of Planning (Item 6.4)
Department of Planning (Item 6.5)
Department of Planning (Item 6.6)

Committee Support

Ms Leah Carr

Committee Support Officer, Department of
Planning

225.1 Declaration of Opening

Due to the absence of the Chairman and in accordance with clause 3.3 of the Standing Orders 2009, a member was chosen to preside over the meeting.

**Ms McGowan nominated Mayor Zelones.
Mayor Zelones accepted the nomination.**

Resolved

Moved by Ms McGowan, seconded by Professor Harvey

That Mayor Zelones preside over the meeting of the Western Australian Planning Commission in the absence of the Presiding Member.

The motion was put and carried.

The Chairman declared the meeting open at 2.00 pm, acknowledged the traditional owners and custodians of the land on which the meeting is taking place and welcomed the Commission Members.

225.2 Apologies

Mr Jason Banks

Director General, Department of Environment
Regulation

Cr Ronnie Fleay

Local government representative – non
metropolitan

Western Australian Planning Commission

Minutes
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Mr Steve Wood Director General, Department of State
Development

225.3 Members on Leave of Absence and Applications for Leave of Absence

Mr Eric Lumsden has previously been granted leave of absence for the WAPC meeting scheduled for 28 October 2014.

225.4 Disclosure of potential Conflict of Interest

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

225.5 Declaration of due Consideration

No declarations were made.

225.6 Deputations and Presentations

225.6.1 Mangles Bay Marina Based Tourist Precinct – MRS Amendment (refer Item 10.1)

Presenter [REDACTED]

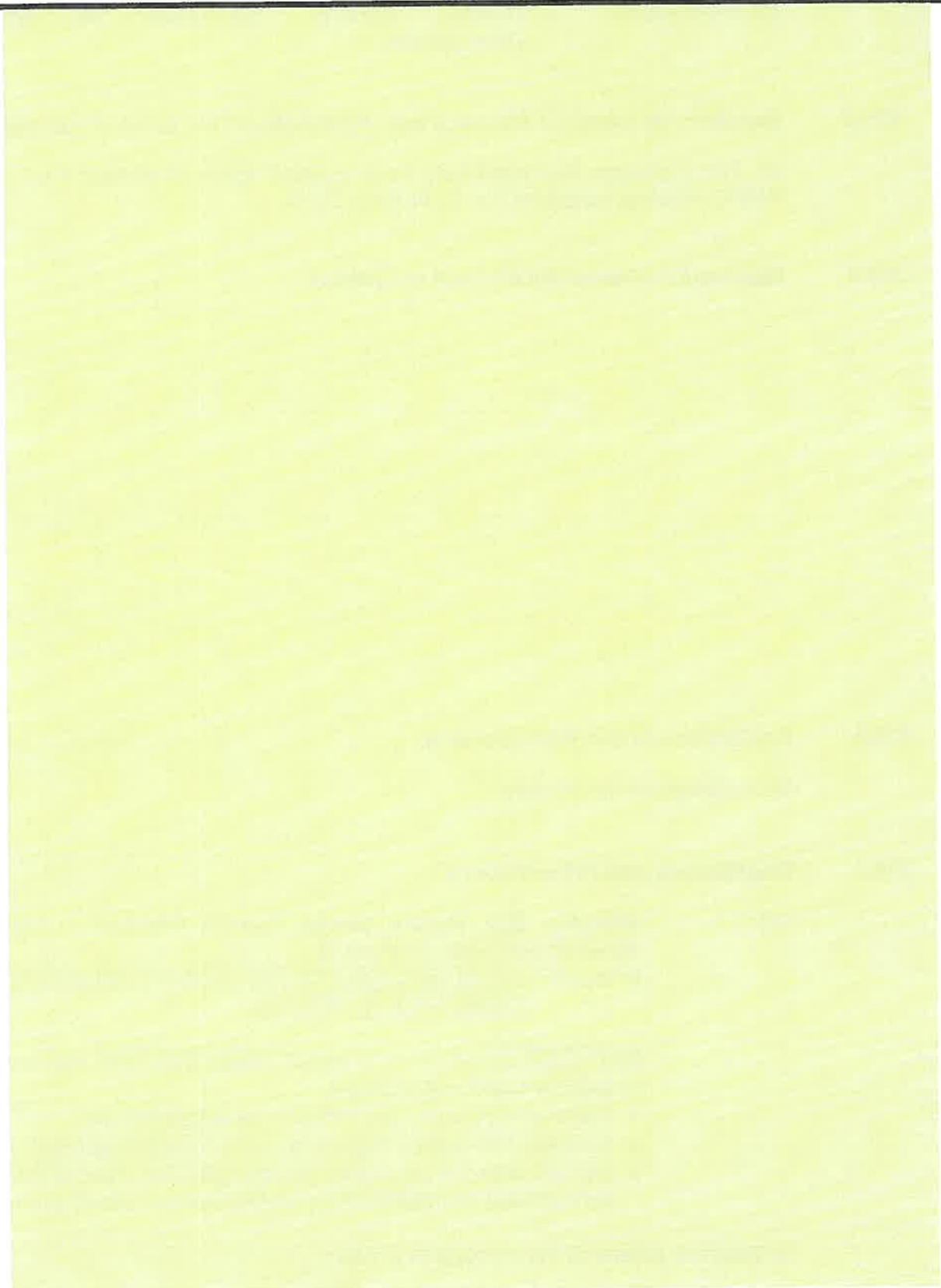
[REDACTED] address on behalf of [REDACTED] and their co-partner LandCorp covered:

- General support for the Officer's recommendation;
- Updated information regarding environmental approval;
- lissues raised in July when the Mangles Bay Marina MRS amendment was deferred for supplementary information.

Mr Waldock arrived at the meeting at 2.10pm.

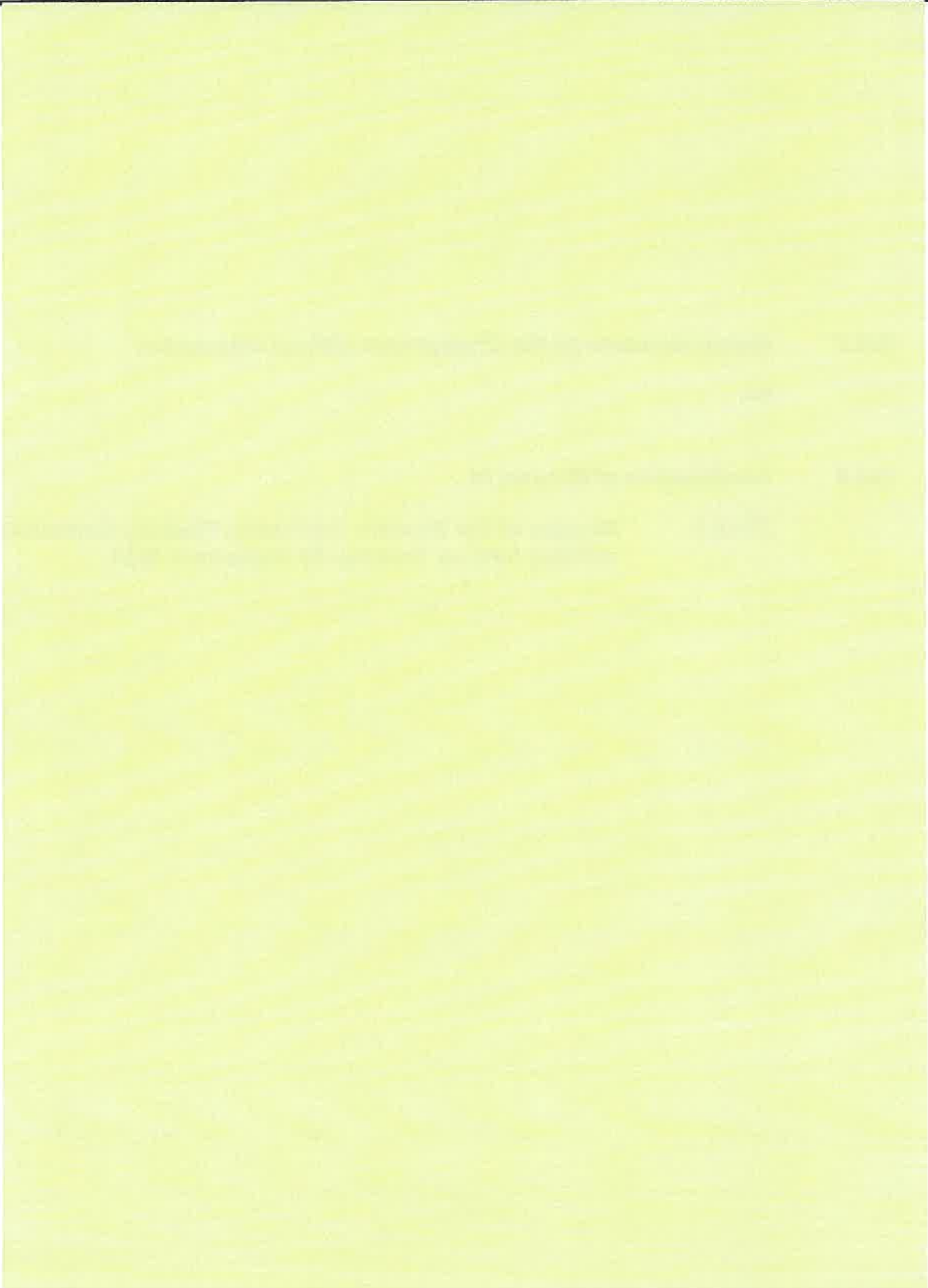
Western Australian Planning Commission

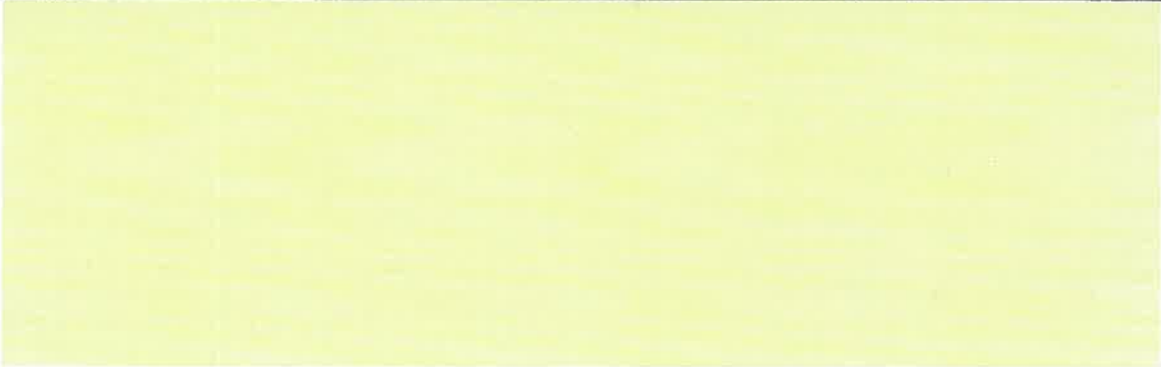
Minutes
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225.7 Announcements by the Chairperson without Discussion

Nil.

225.8 Confirmation of Minutes of

**225.8.1 Minutes of the Western Australian Planning Commission
meeting held on Tuesday 23 September 2014**



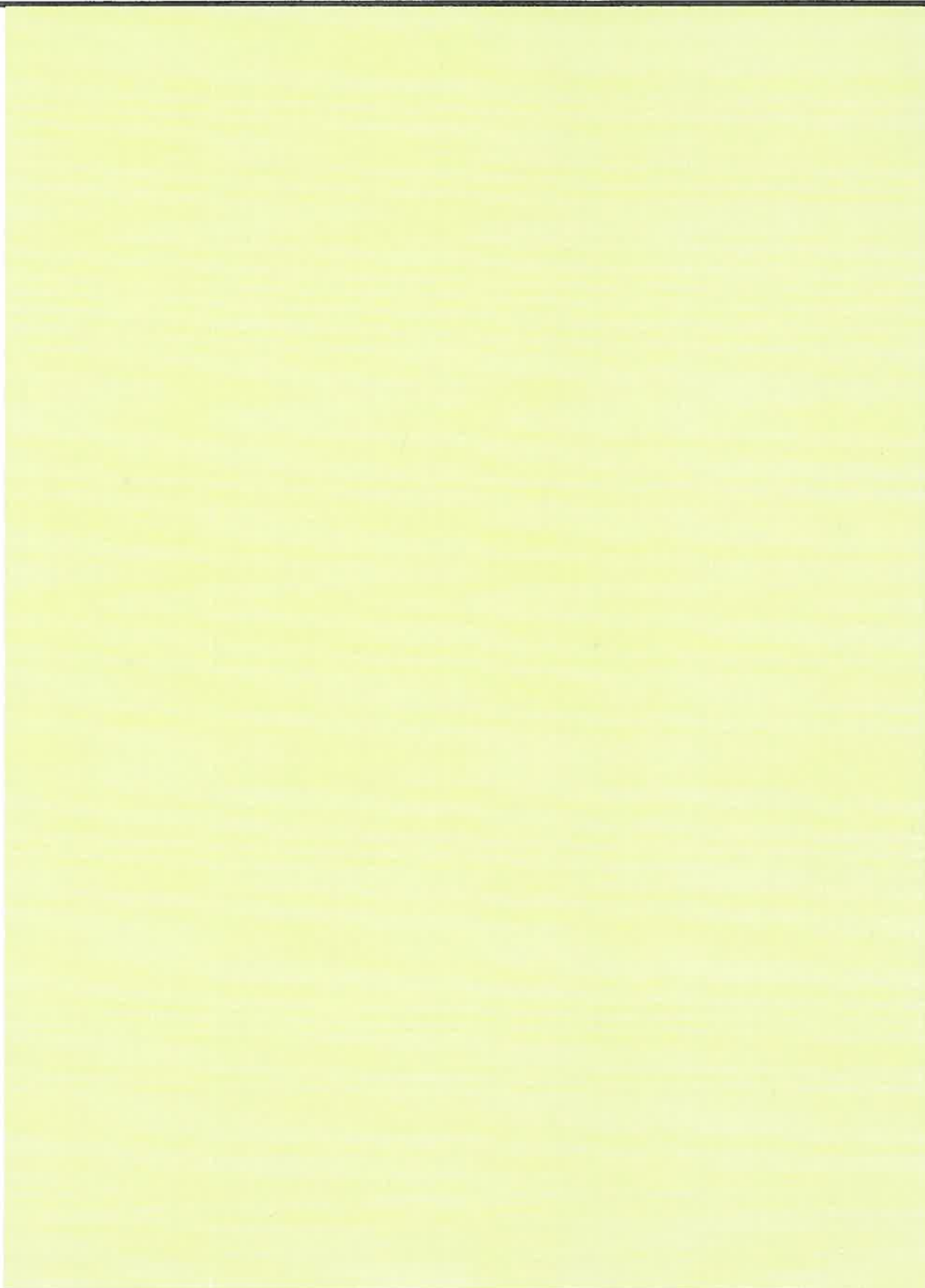
Western Australian Planning Commission

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of ordinary meeting 225
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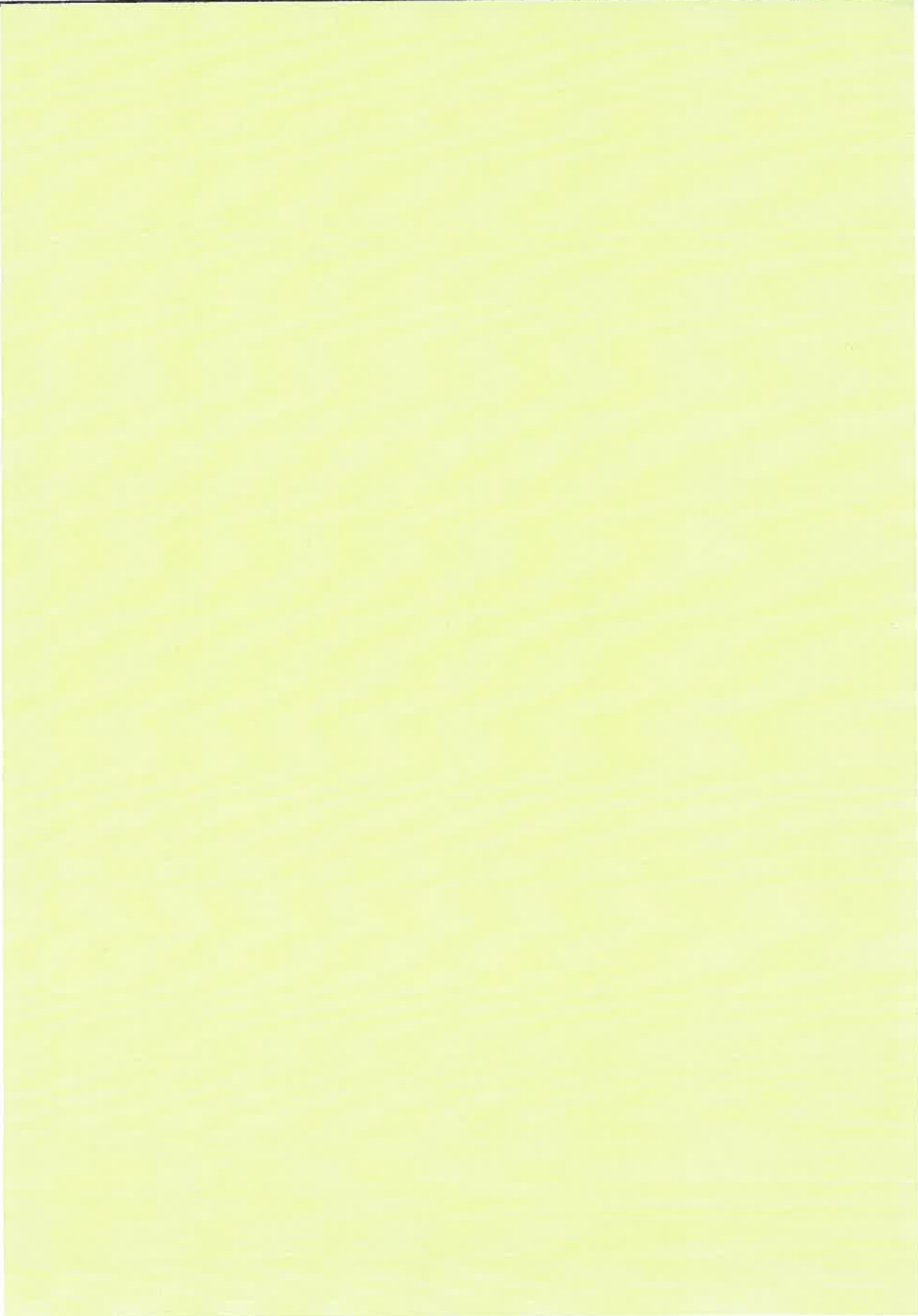


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of ordinary meeting 225
held on Tuesday 28 October 2014

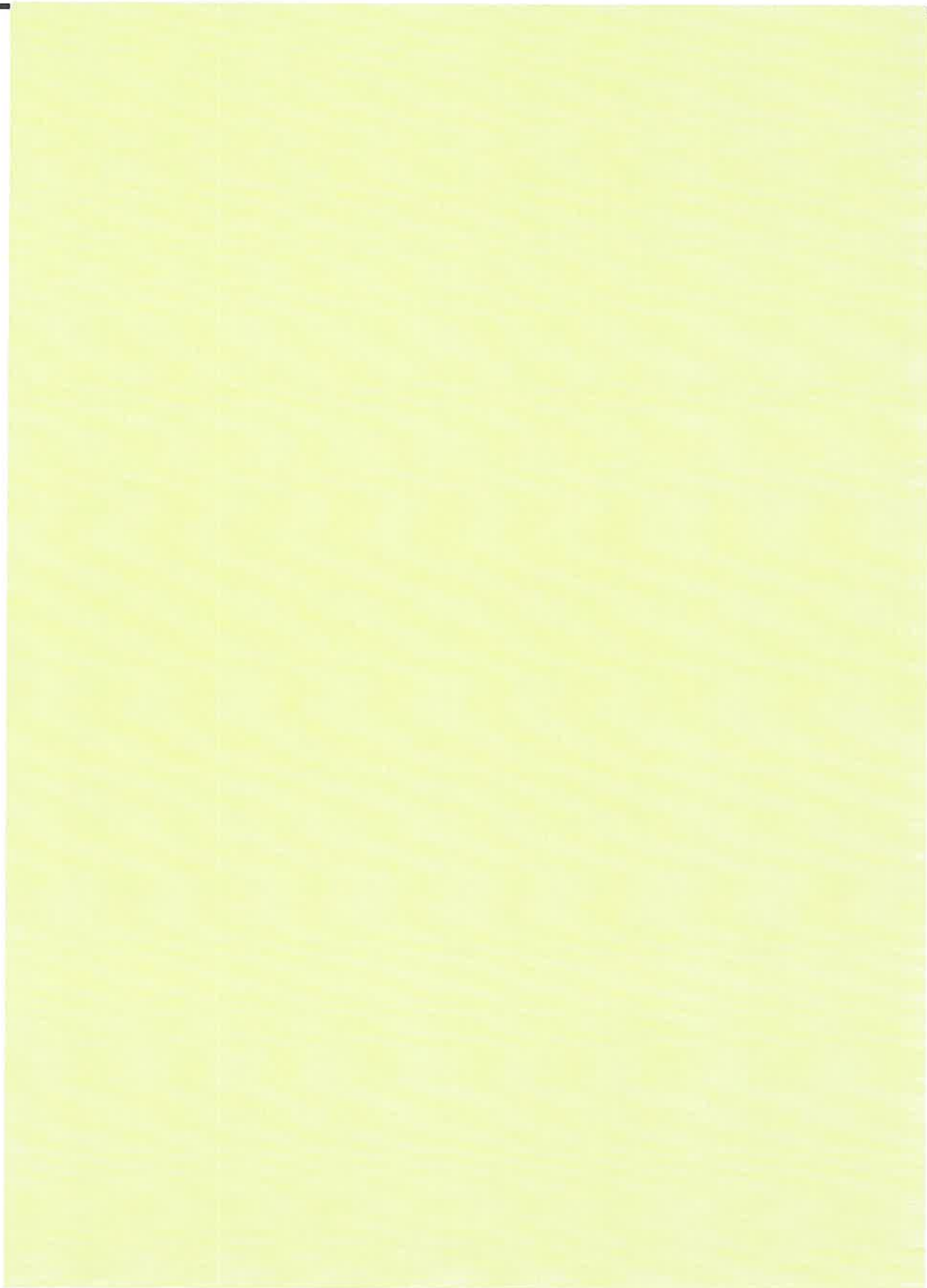


Minutes
of ordinary meeting 225
held on Tuesday 28 October 2014



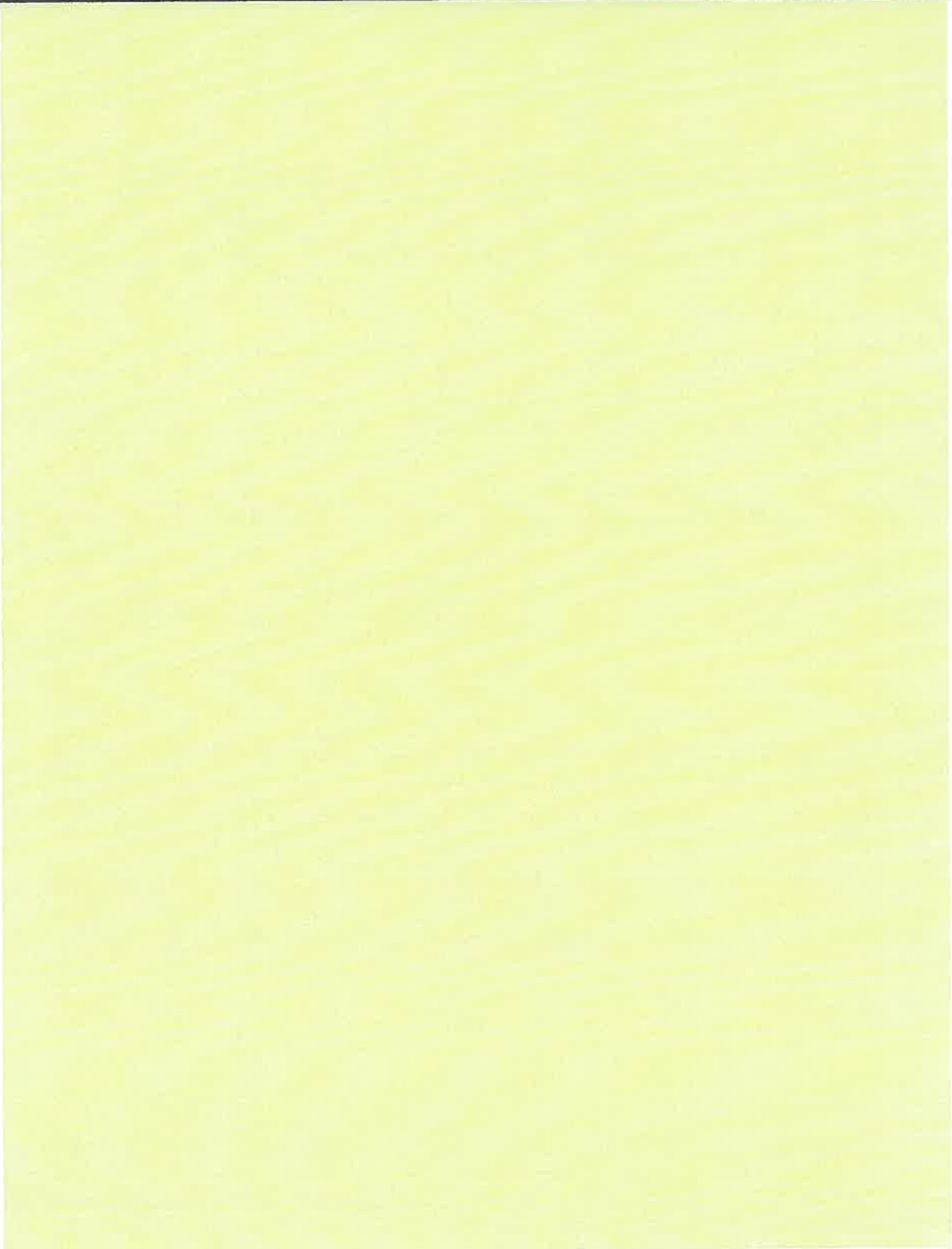
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of ordinary meeting 225
held on Tuesday 28 October 2014



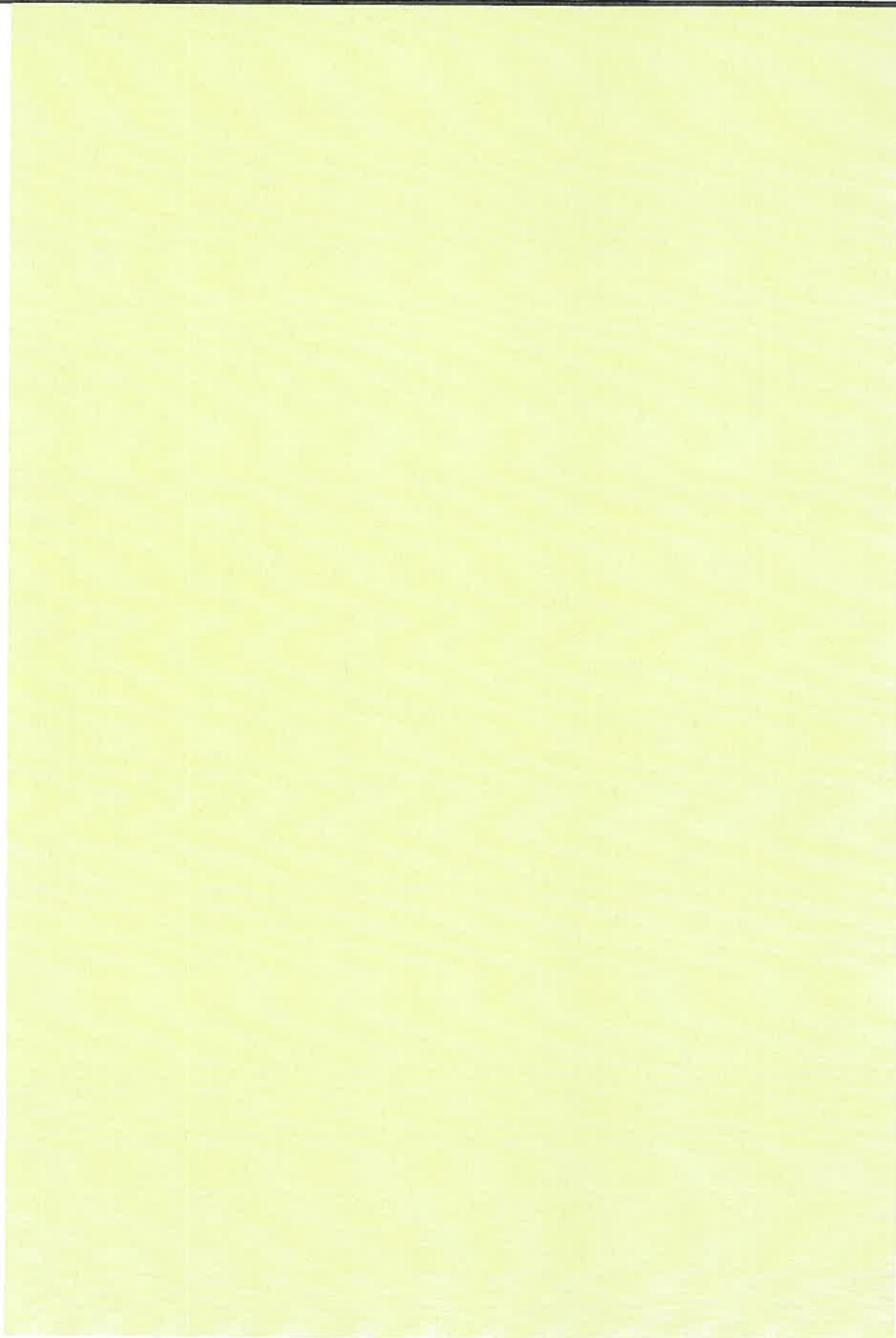
Western Australian Planning Commission

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of ordinary meeting 225
held on Tuesday 28 October 2014



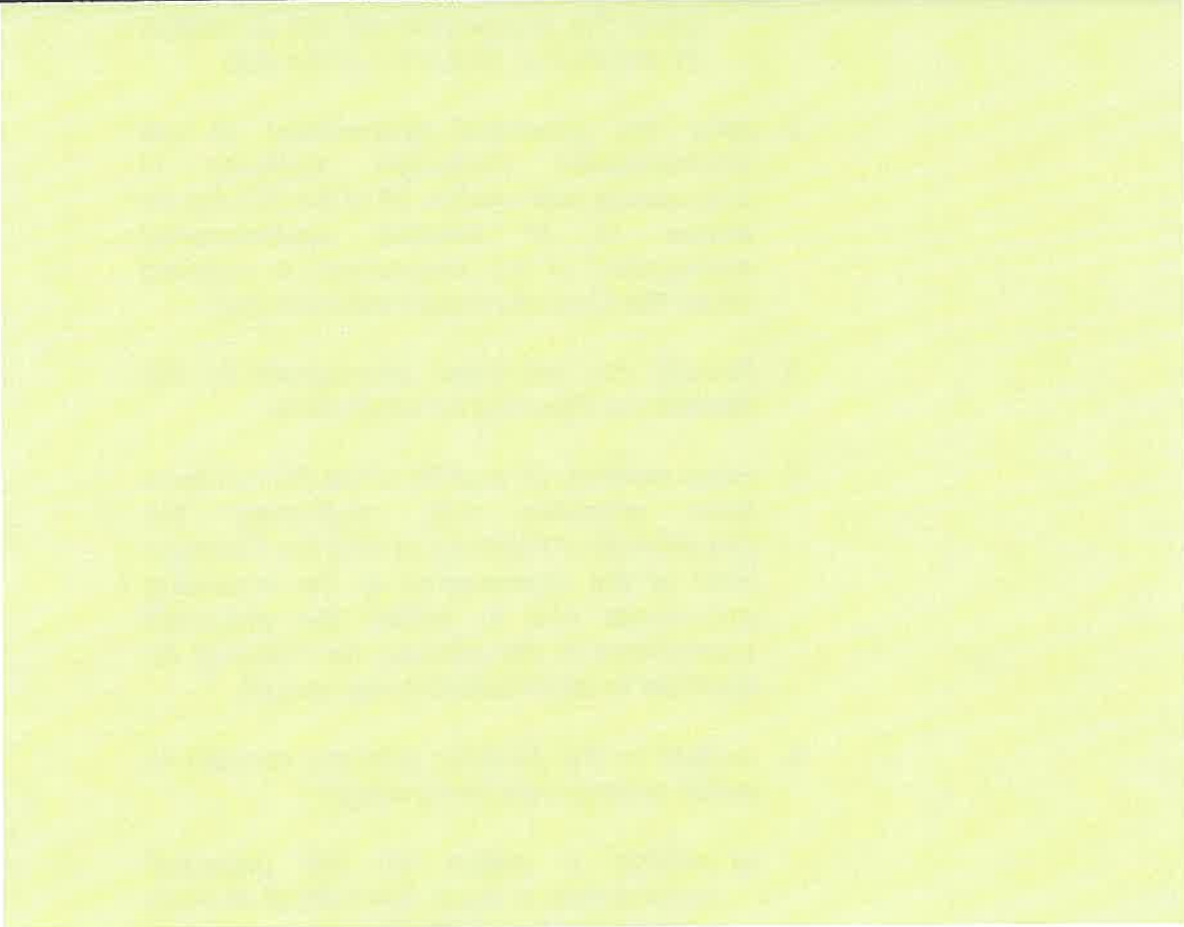
Western Australian Planning Commission

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of ordinary meeting 225
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of ordinary meeting 225
held on Tuesday 28 October 2014

**225.10 Statutory items for decision****225.10.1 Proposed MRS (Major) Amendment - Mangles Bay Marina, Reconsideration of Application**

File RLS/0389/1
Report Number WAPC/1918
Reporting Officer reporting officer:

Resolved

Moved by Dr Middle, seconded by Professor Harvey>

That the Western Australian Planning Commission resolves to:

- 1. process the amendment as a major amendment and amend the Metropolitan Region Scheme under section 35 of the Planning and Development Act 2005 (the Act), and in accordance with the attached Amendment Report and Figure and to*

Western Australian Planning Commission

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of ordinary meeting 225
held on Tuesday 28 October 2014

follow the procedures set out in section 41 and Part 4, Division 3 of the Act;

2. *refer the proposed amendment to the Environmental Protection Authority in accordance with section 38 of the PD Act for advice as to whether environmental assessment of the amendment is required under the Environmental Protection Act;*
3. *forward the proposed amendment to the Minister for Planning for information;*
4. *when sections 38 and 39 of the PD Act have been complied with, authorises the Department of Planning to affix the Common Seal of the Commission to the amending documents and to submit the proposed amendment to the Minister for Planning for approval to submissions being sought.*
5. *subject to the Minister granting consent to public submissions being sought:*
 - a) *publish a notice of the proposed amendment at least three times in each of the following publications:*
 - i) *the Government Gazette;*
 - ii) *The West Australian newspaper;*
 - iii) *The Sunday Times newspaper;*
and
 - iv) *a local community newspaper;*

setting out the purpose and planning objectives of the amendment, where and when the amendment may be inspected, and inviting submissions on the form prescribed by the Commission for a period of not less than three months from the date of publication in the Government Gazette.

- b) *deposit the proposed amendment, and a statement setting out the purpose and planning objectives of the amendment, for public inspection at the following places during ordinary business hours for the duration of the submission period:*

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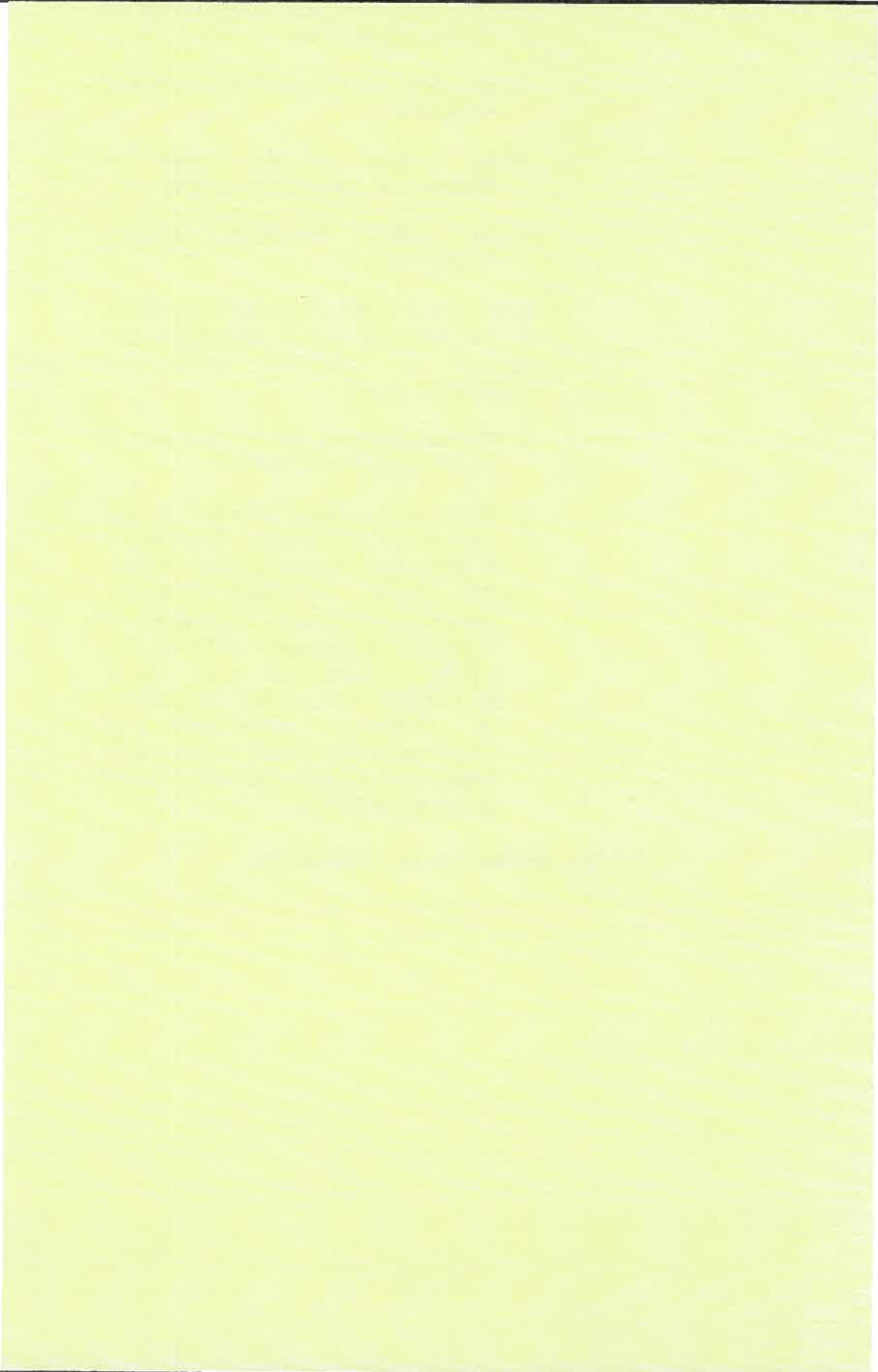
- i) the offices of the Commission in William Street, Perth;*
 - ii) the offices of the Cities of Perth and Fremantle;*
 - iii) the offices of the Cities of Rockingham and Cockburn; and*
 - iv) the State Reference Library, Northbridge;*
- c) refer copies of the proposed amendment to the following public authorities and persons for comment during the submission period:*
- i) the local governments of the Cities of Rockingham and Cockburn;*
 - ii) Water Corporation, Western Power, Department of Transport, Department of Mines and Petroleum, Main Roads WA, Public Transport Authority, Department of Health, Department of Transport, Department of Parks and Wildlife, Department of Lands, Department of Fisheries, Department of Defence, Department of Environment Regulation, Tourism WA, Department of Water and Department of Aboriginal Affairs.*

The motion was put and carried.



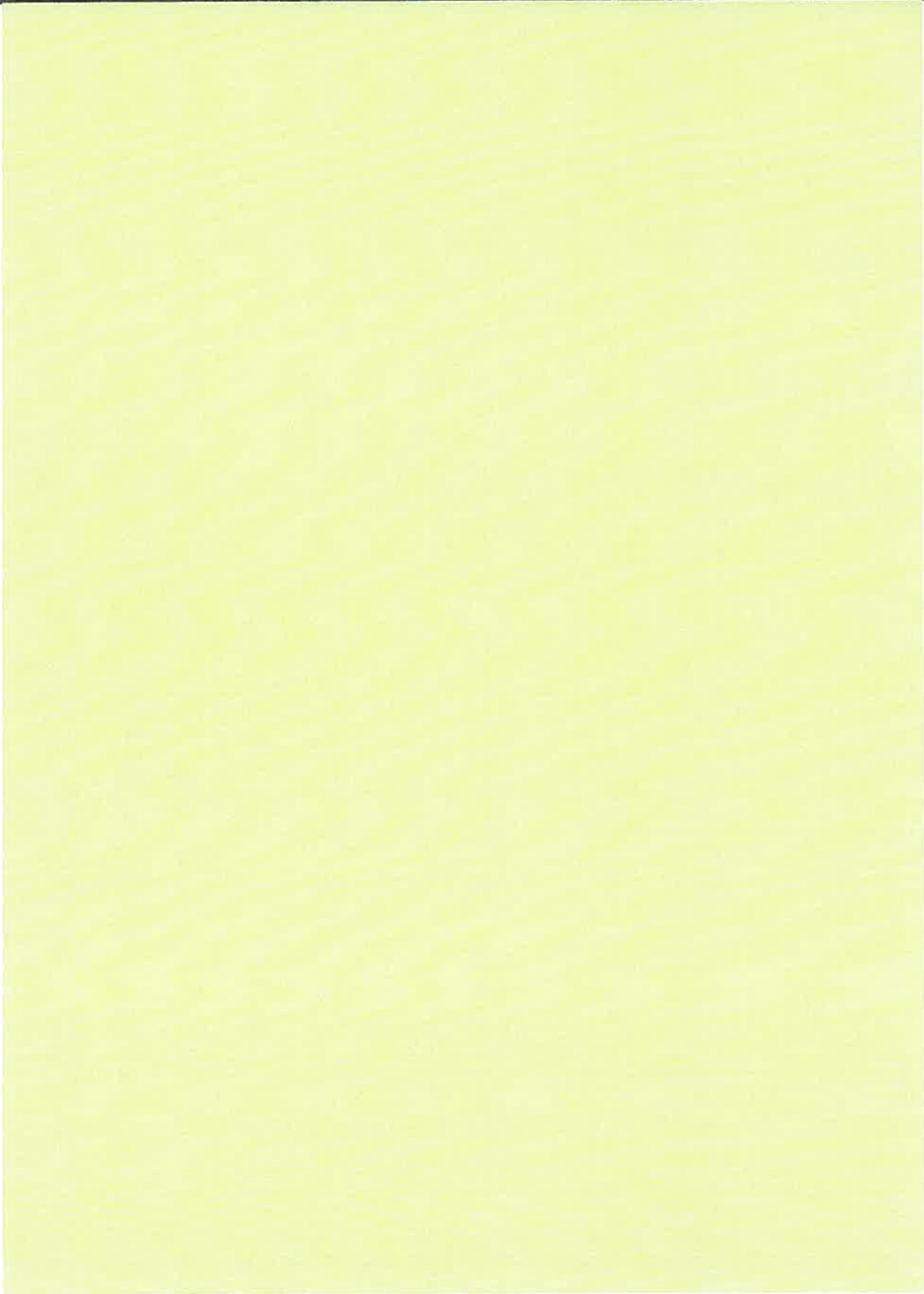
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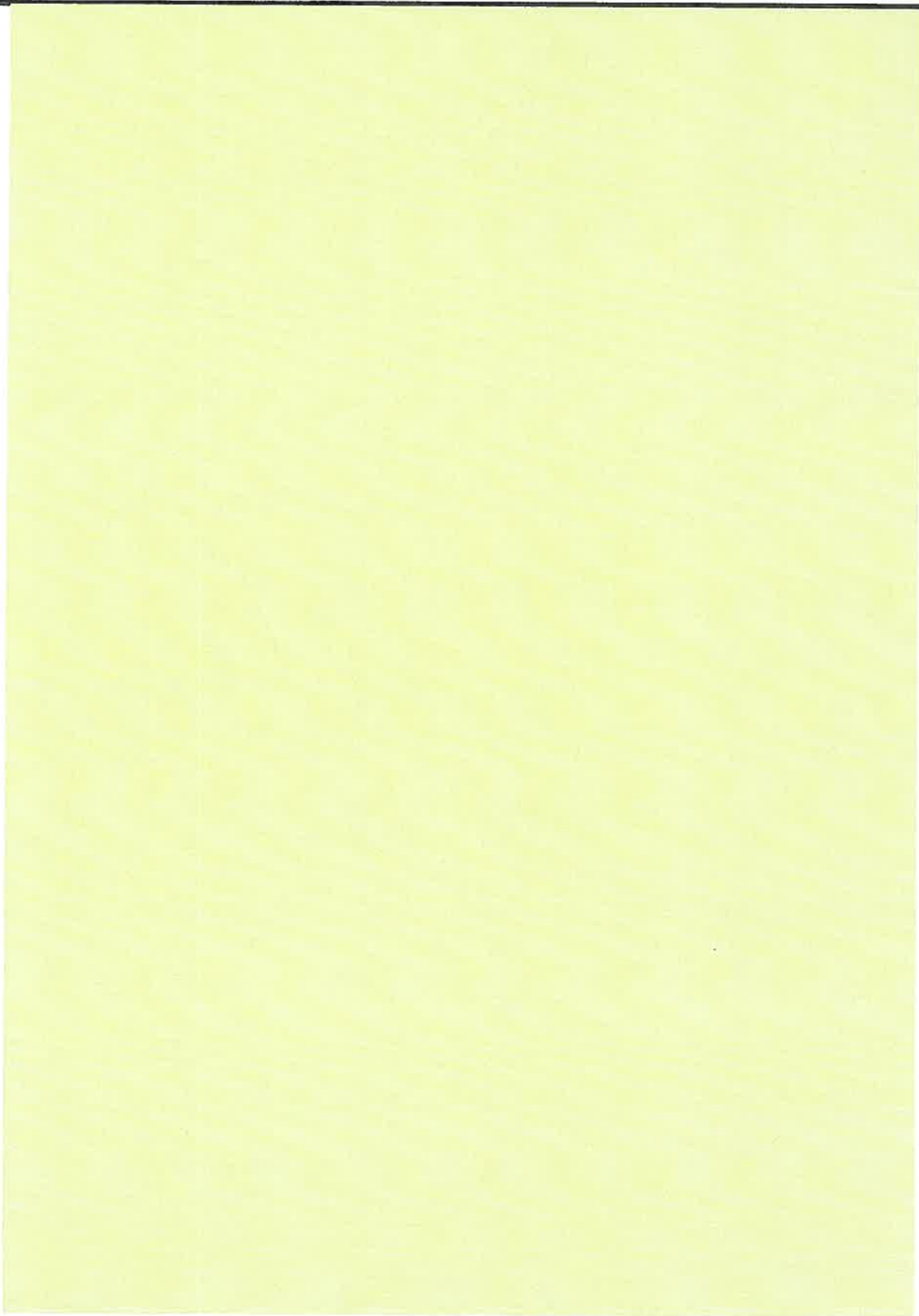
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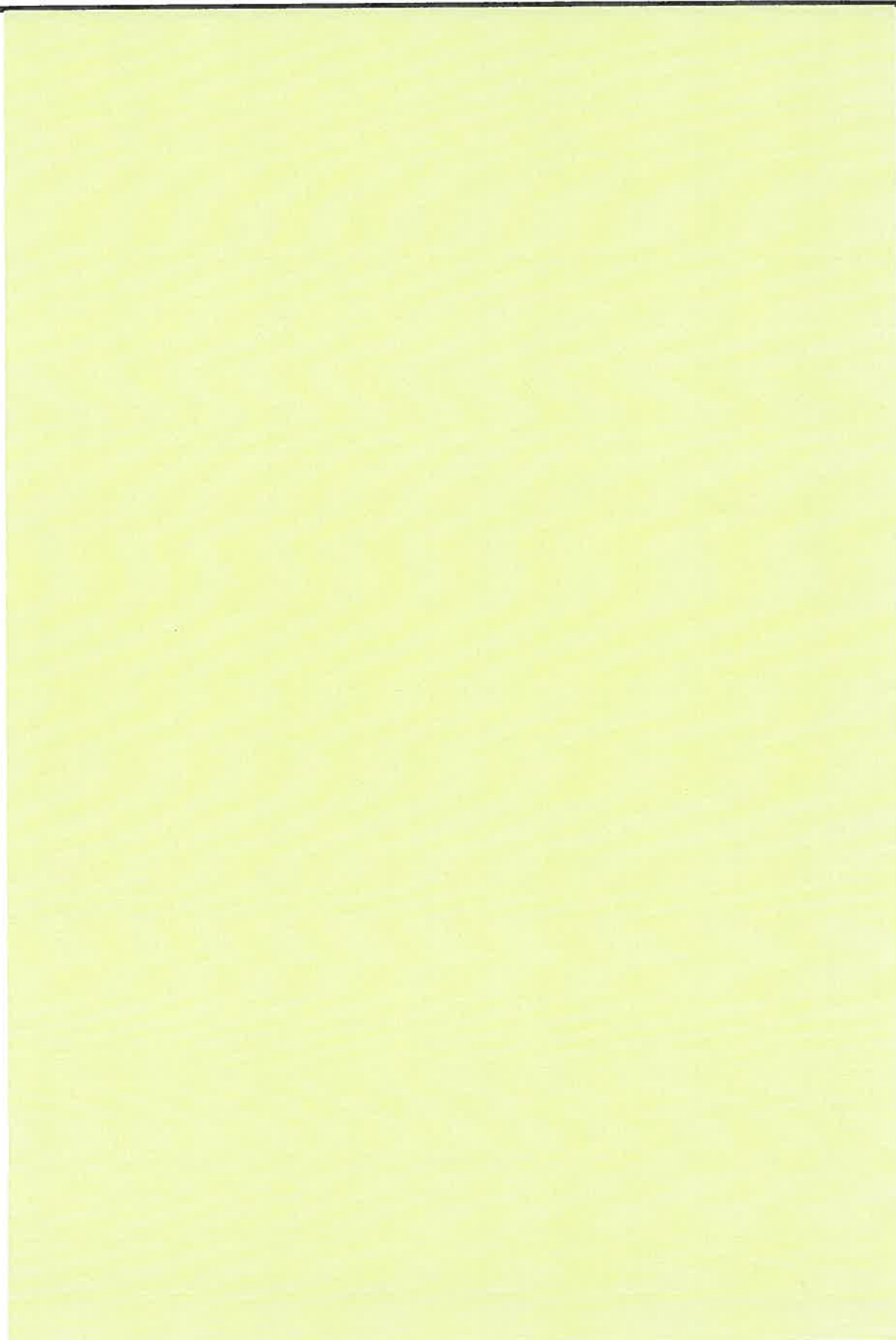
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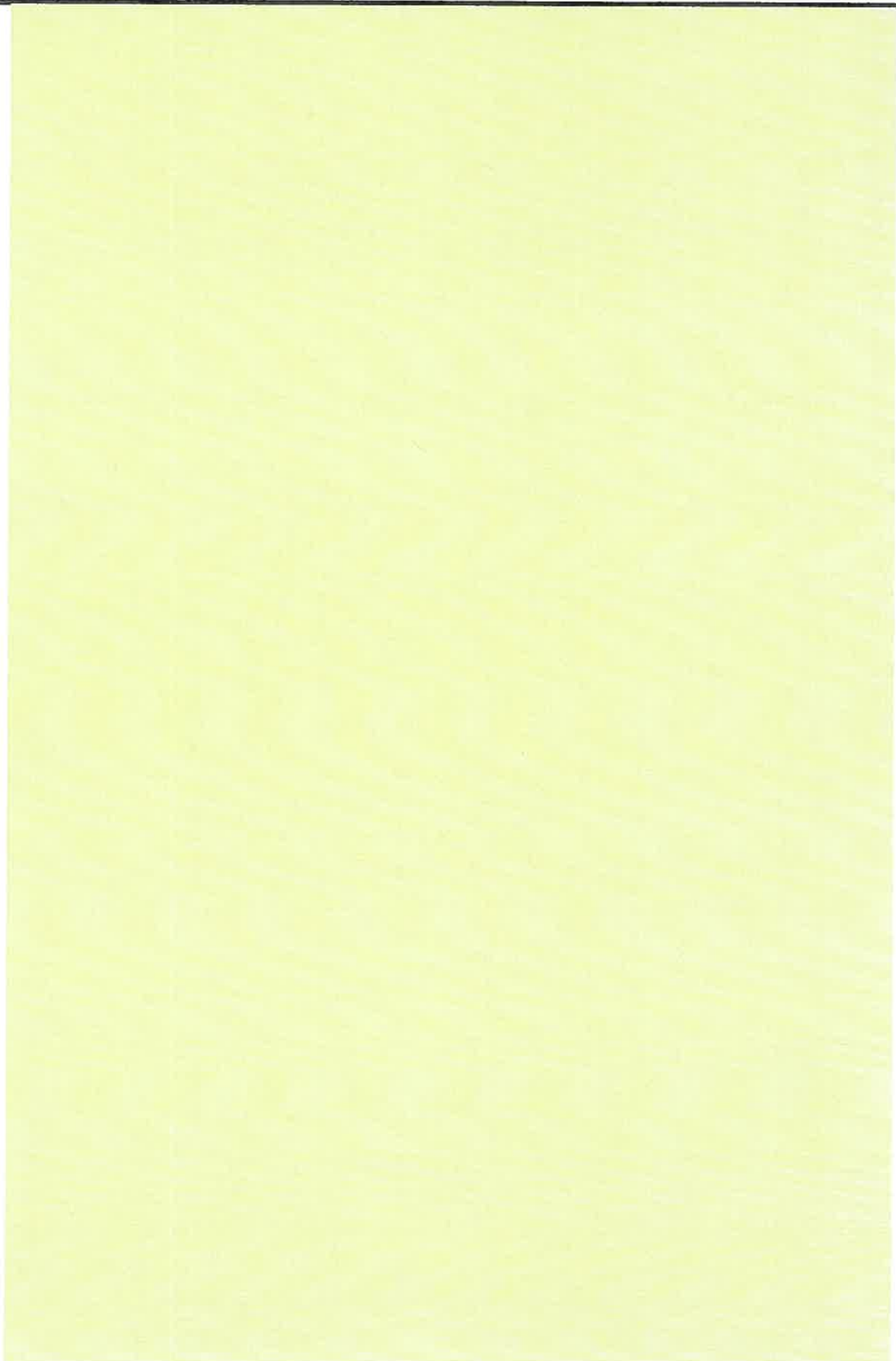
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225.12 Director General Department of Planning Report, Performance Report

Nil.

225.13 Stakeholder Engagement & Site Visits

225.13.1



225.14 Urgent Business

Nil.

225.15 Items for consideration at a future meeting

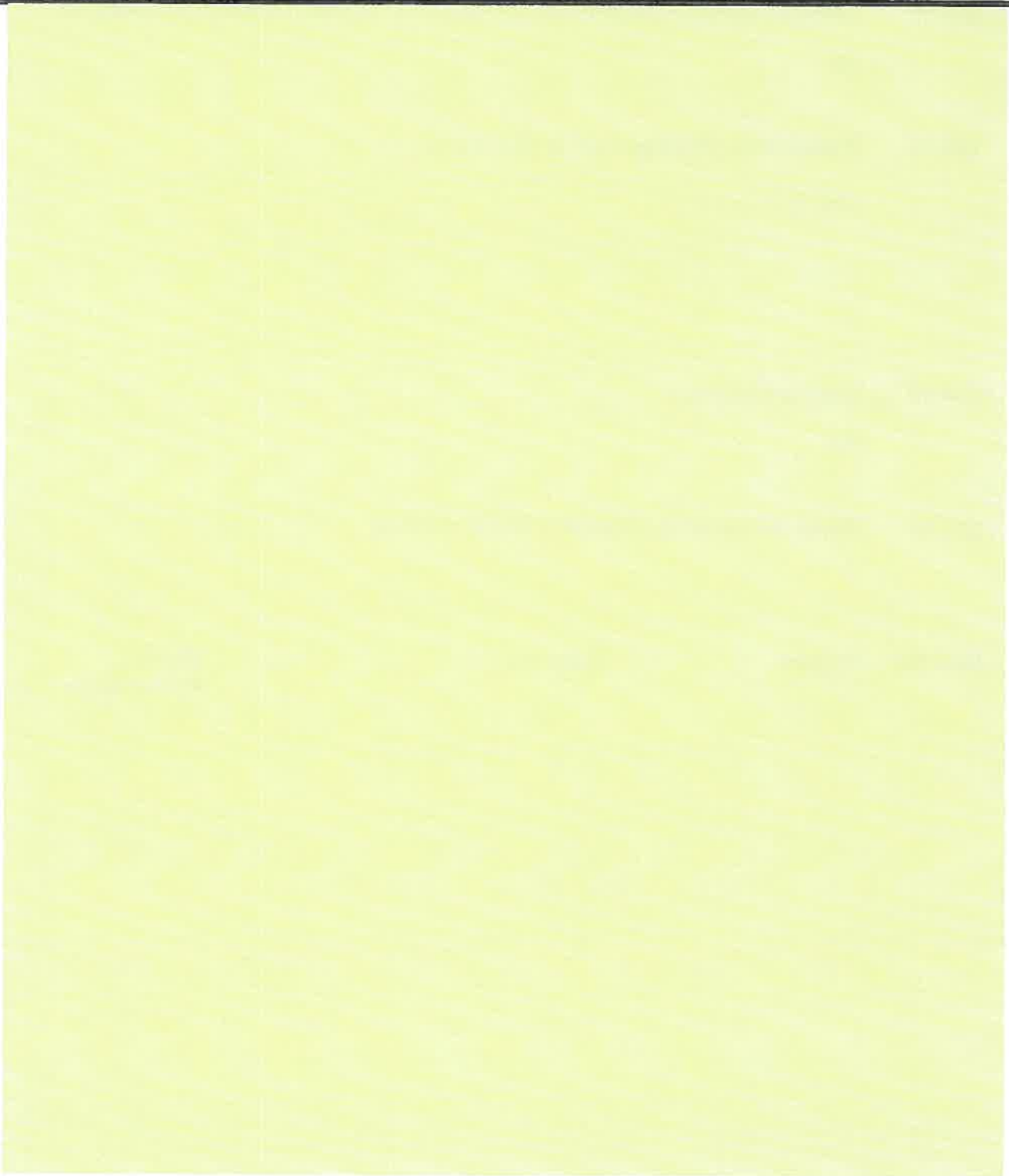


Item No	Report	Request	Report Required by
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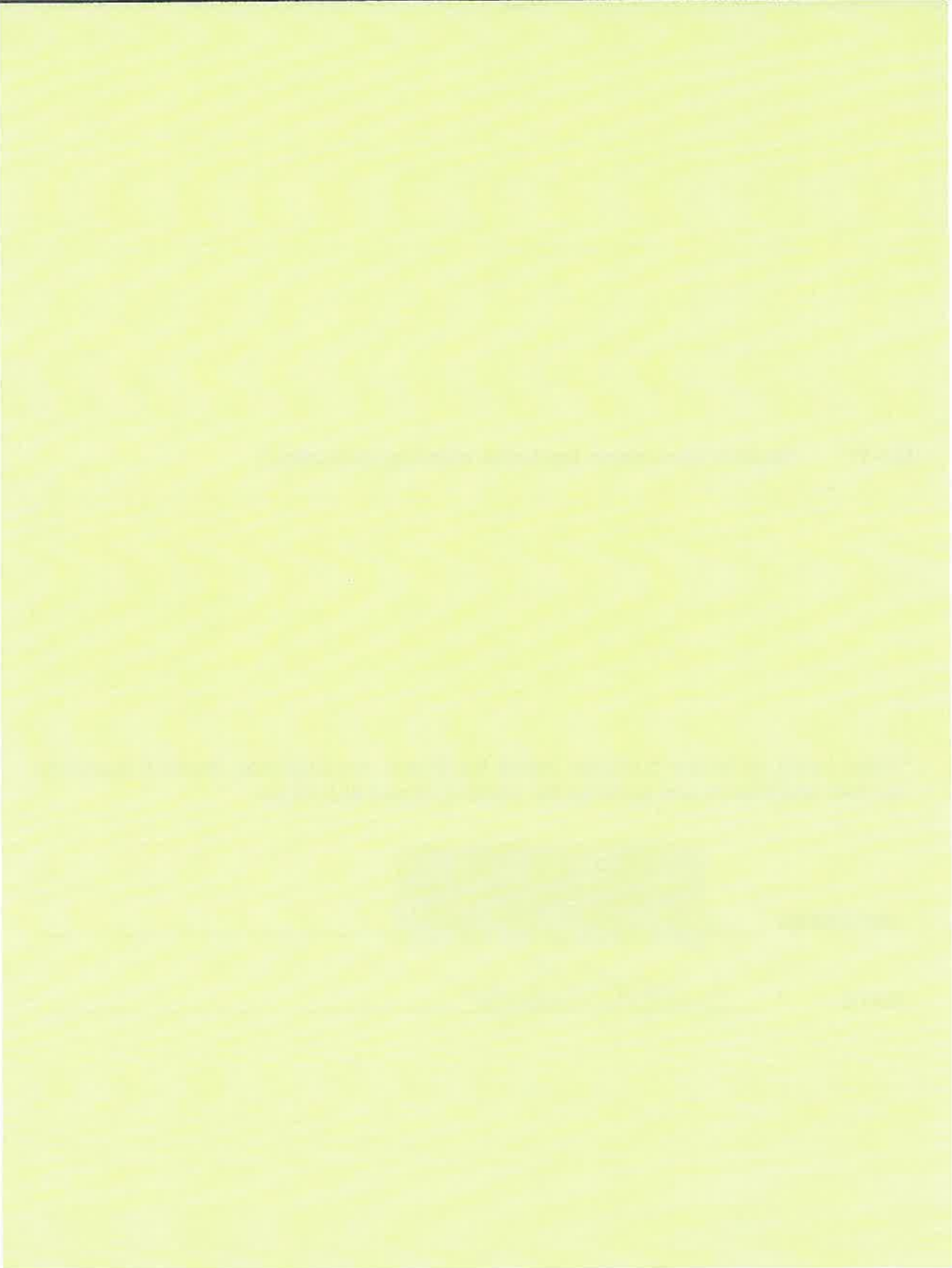
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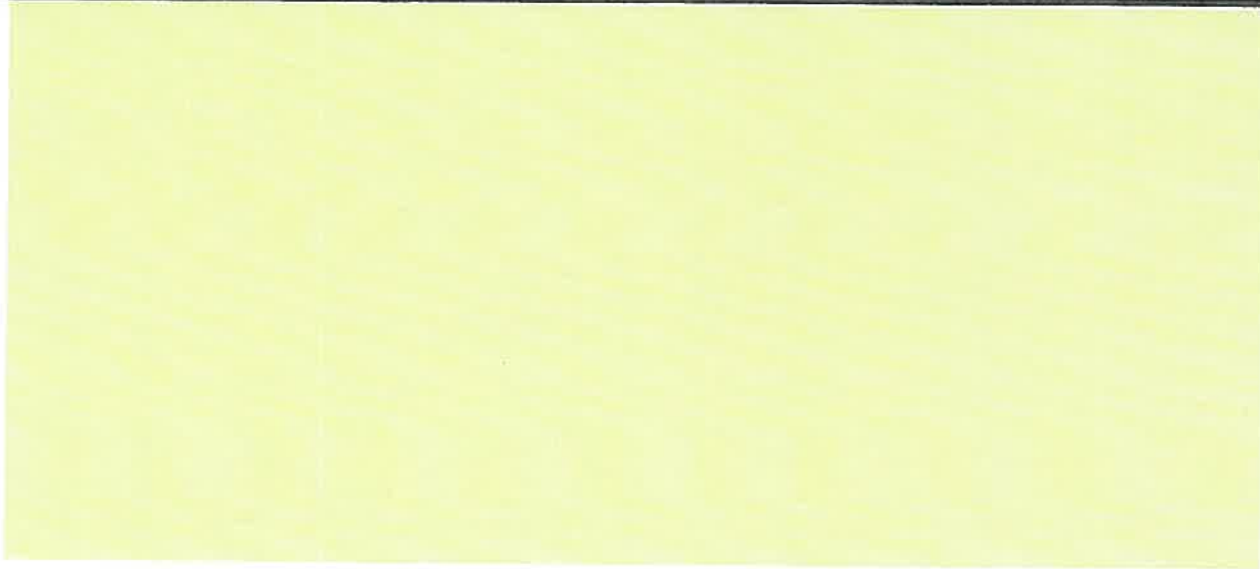
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225.17 Closure Discussion (includes meeting evaluation)



There being no further business before the Board, the Chairman thanked members for their attendance and declared the meeting closed at 5:00 pm.

CHAIRMAN



DATE

25/11/2014

Western Australian Planning Commission

Minutes

of ordinary meeting 222
held on Tuesday 22 July 2014

Attendance

Members

Cr Valerie Ammon

Deputy to Local government representative – non-metropolitan

Ms Maree De Lacey

Director General, Department of Water

Mr Paul Drechsler

Professions representative

Prof Robert Harvey

Professions representative

Dr Garry Middle

Coastal planning and management representative

Ms Gail McGowan

Acting Director, Department of Planning

Mr Grahame Searle

Director General, Department of Housing

arrived 2:30pm

Mr Reece Waldock

Director General, Department of Transport

Mr Steve Wood

Director General, Department of State

Development

Mayor Henry Zelones

Local government representative – metropolitan
(Presiding Member)

Officers

Ms Sue Burrows

Department of Planning

Executive Director Perth and Peel Planning

Mr Tim Hillyard

WAPC Secretary

Mr Richard Reeve

Coordinator Committee Support

Mr Craig Shepherd

Planning Manager, Perth and Peel Planning
(item 10.1)

Ms Victoria Brown

Senior Planning Officer, Perth and Peel Planning
(item 10.1)

Ms Loretta van Gasselt

Planning Manager Infrastructure, Projects, Policy
and Research (items 11.1 and 11.2)

Mr Ben Harvey

Director policy and Research, Infrastructure,
Projects, Policy and Research (Items 11.1 and 11.2)

Observers

Mr Darren Foster

Director of Strategic Policy and Planning, OEPA

Mr Mike Rowe

Acting Director General Department of Regional
Development

Presenters

Mr Luke Willcock

LandCorp

Western Australian Planning Commission

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of ordinary meeting 222
held on Tuesday 22 July 2014

222.5 Declaration of due Consideration

No declarations were made.

222.6 Deputations and Presentations

222.6.1 Proposed MRS (Major) Amendment – Mangles Bay Marina – Request to Initiate Amendment (refer item 10.3)

Presenter

Mr Luke Willcock, LandCorp

– leading the planning team

The presenters' address covered:

- State Government's involvement and where LandCorp fits into this project;
- EPA's assessment and review role from the outset of this project;
- the provisions of the MRS amendment and how this proposal sits within it.

tabled a briefing note addressed to the Environmental Minister requesting a minor amendment to the MRS. A copy of the briefing note has been placed on file.

222.7 Announcements by the Chairperson without Discussion

Nil.

222.8 Confirmation of Minutes

222.8.1 Minutes of the Western Australian Planning Commission meeting held on Tuesday 24 June 2014

Resolved

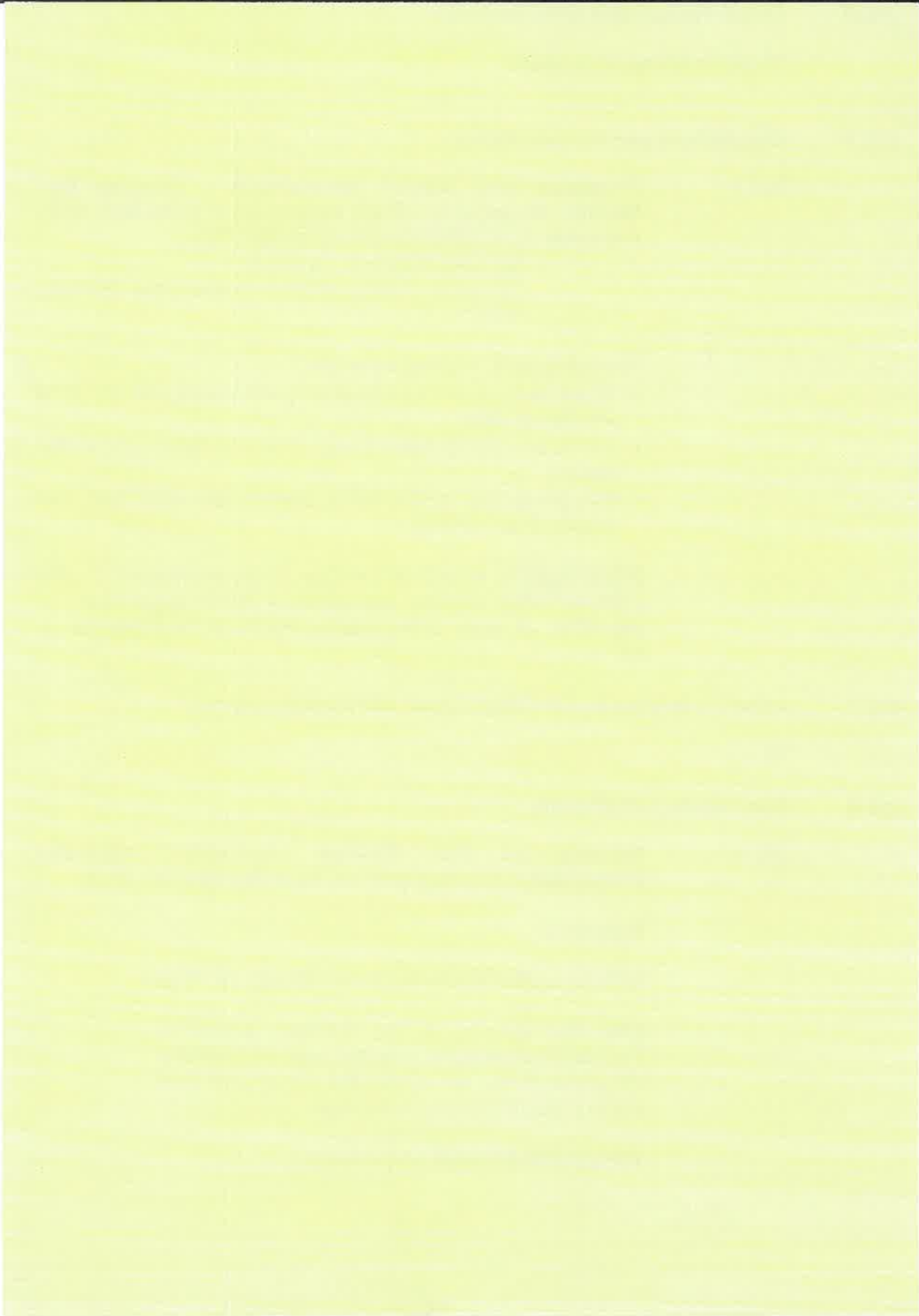
Moved by Mr Drechsler, seconded by Mr Wood

That the minutes of the Western Australian Planning Commission meeting held on Tuesday 24 June 2014, be confirmed as a true and correct record of the proceedings.

The motion was put and carried.

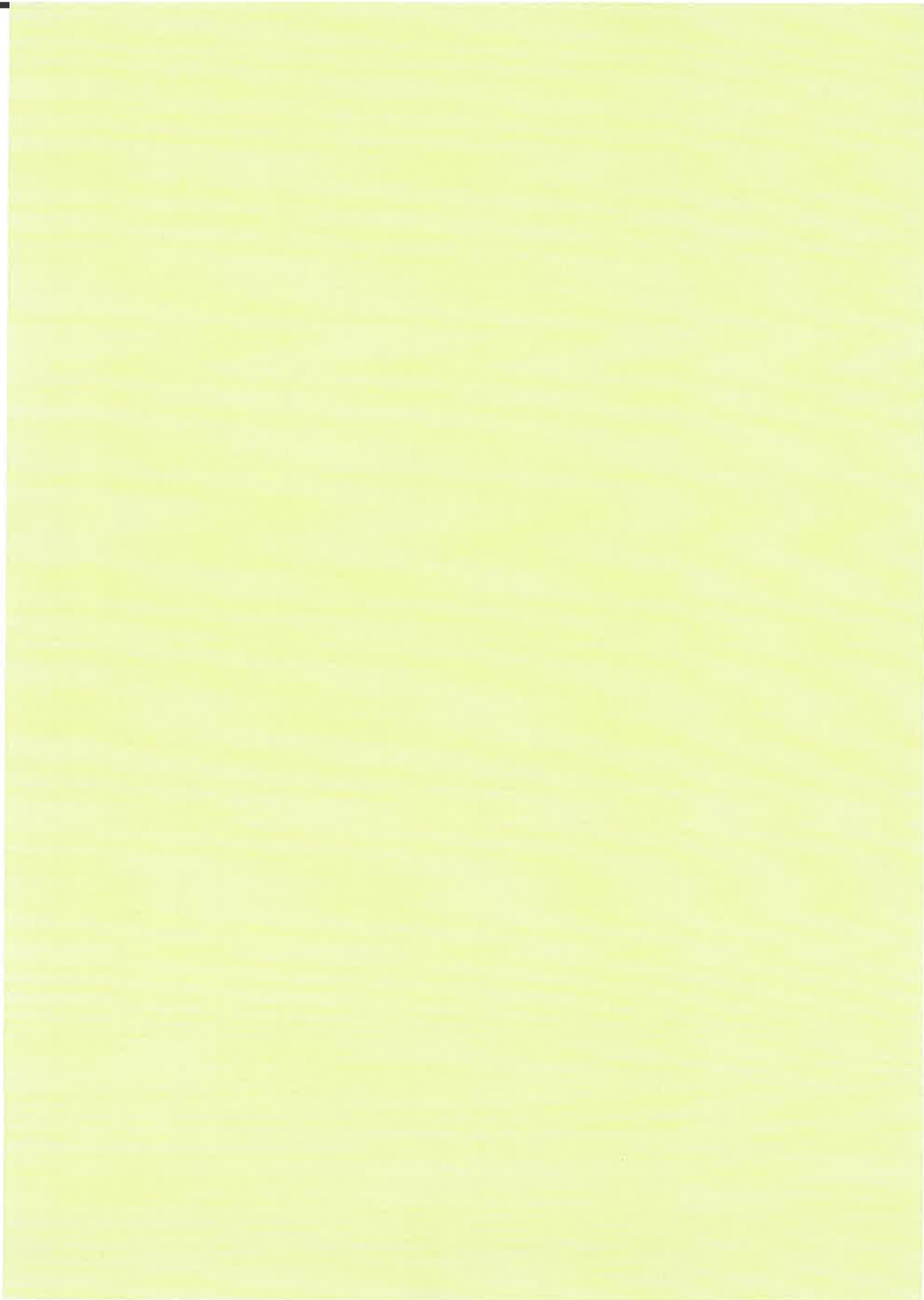
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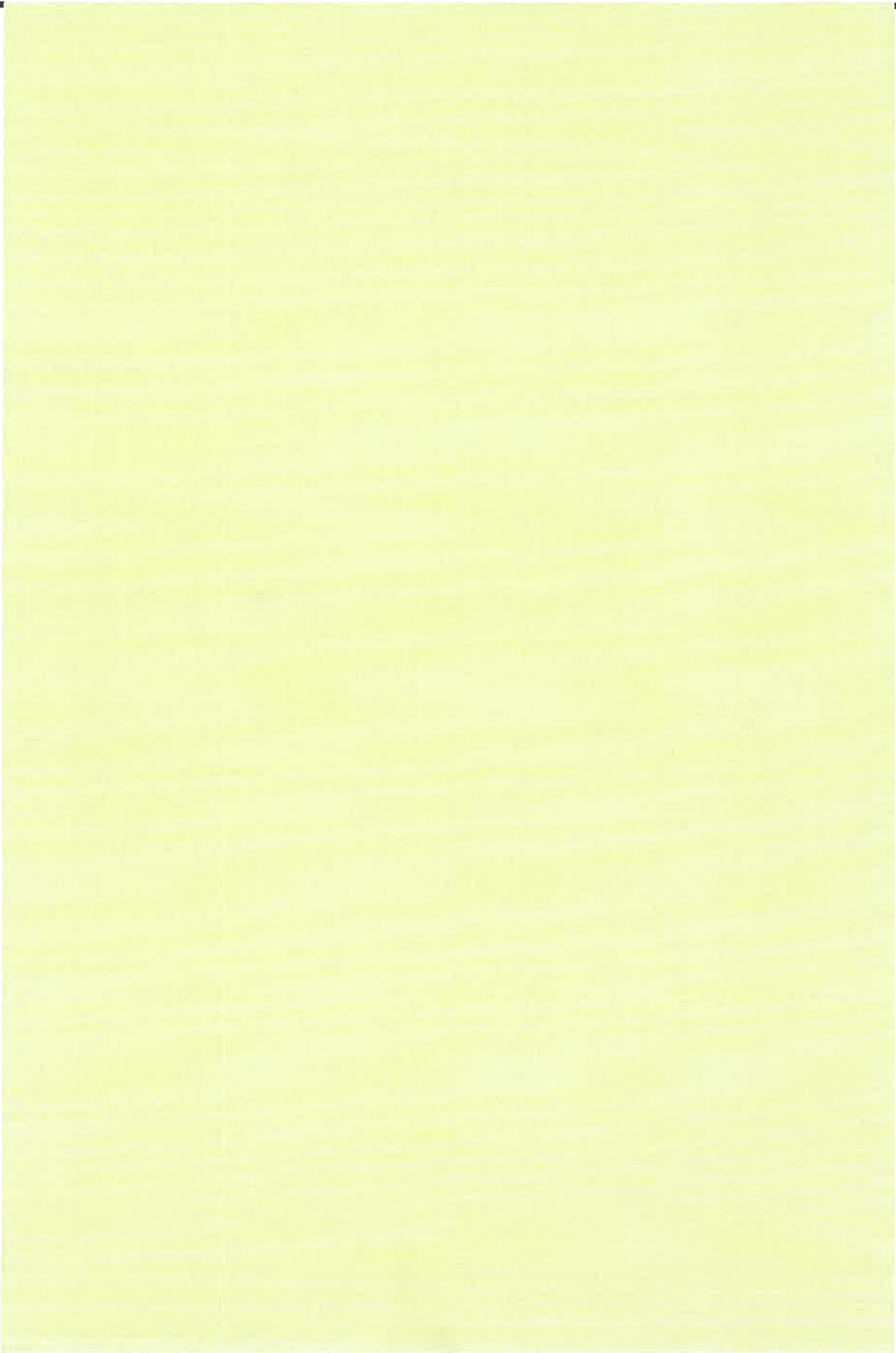
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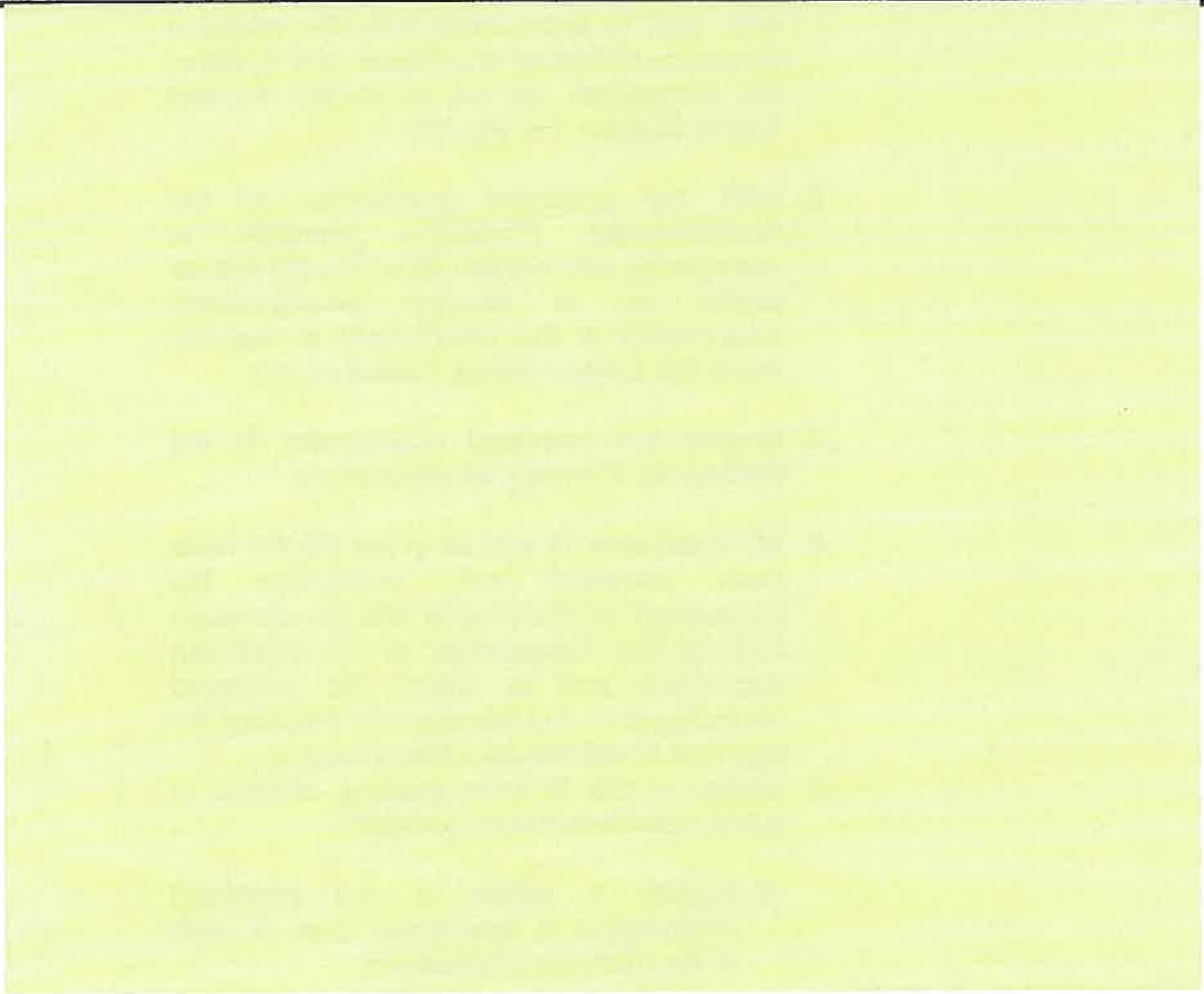
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of ordinary meeting 222
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**222.10.3 Proposed MRS (Major) Amendment - Mangles Bay****Marina - Request to Initiate Amendment**

File RLS/0389/1
Report Number WAPC/1887
Reporting Officer Senior Planning Officer

Professor Harvey disclosed an interest.

Member	Nature of Interest
Prof Harvey	Impartiality

Officer's Recommendation

That the Western Australian Planning Commission resolves to:

1. process the amendment as a major amendment and amend the Metropolitan Region Scheme under section 35 of the Planning and Development Act 2005 (the

Western Australian Planning Commission

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of ordinary meeting 222
held on Tuesday 22 July 2014

Act), and in accordance with the attached Amendment Report and Figure and to follow the procedures set out in section 41 and Part 4, Division 3 of the Act;

2. refer the proposed amendment to the Environmental Protection Authority in accordance with section 38 of the PD Act for advice as to whether environmental assessment of the amendment is required under the Environmental Protection Act;
3. forward the proposed amendment to the Minister for Planning for information;
4. when sections 38 and 39 of the PD Act have been complied with, authorises the Department of Planning to affix the Common Seal of the Commission to the amending documents and to submit the proposed amendment to the Minister for Planning for approval to submissions being sought;
5. subject to the Minister granting consent to public submissions being sought:
 - a) publish a notice of the proposed amendment at least three times in each of the following publications:
 - i) the Government Gazette;
 - ii) The West Australian newspaper;
 - iii) The Sunday Times newspaper; and
 - iv) a local community newspaper;setting out the purpose and planning objectives of the amendment, where and when the amendment may be inspected, and inviting submissions on the form prescribed by the Commission for a period of not less than three months from the date of publication in the Government Gazette.
 - b) deposit the proposed amendment, and a statement setting out the purpose and planning objectives of the amendment, for public inspection at the following places during ordinary business hours for the duration of the submission period:

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-
- i) the offices of the Commission in William Street, Perth;
 - ii) the offices of the Cities of Perth and Fremantle;
 - iii) the offices of the Cities of Rockingham and Cockburn; and
 - iv) the State Reference Library, Northbridge;
- c) refer copies of the proposed amendment to the following public authorities and persons for comment during the submission period:
- i) the local governments of the Cities of Rockingham and Cockburn;
 - ii) Water Corporation, Western Power, Department of Transport, Department of Mines and Petroleum, Main Roads WA, Public Transport Authority, Department of Health, Department of Transport, Department of Parks and Wildlife, Department of Lands, Department of Fisheries, Department of Defence, Department of Environment Regulation, Tourism WA, Department of Water and Department of Aboriginal Affairs.

Members' discussion involved:

1. that the recommendations do not allude to any resolution to traffic/ road issues and that a traffic management plan is required. Members agreed that an additional recommendation should be included to read ***"that the Commission particularly requires these specific issues to be addressed in order to consider progress to the next stage"***.
2. whether this a minor amendment as per LandCorp's presentation or a major amendment as per the Officer's recommendation. That both arguments should be offered to the Commission when the Proponent and the Department are divided on the amendment (minor or major).
3. that management of the Marina, ongoing liabilities/

Western Australian Planning Commission

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- accountabilities and the traffic issues (on both land and sea) support the amendment being a major one;
4. that a Deed of Agreement has to be articulated to ensure responsibility is taken by named proponents and agreement on who signs off on the Deed of Agreement.

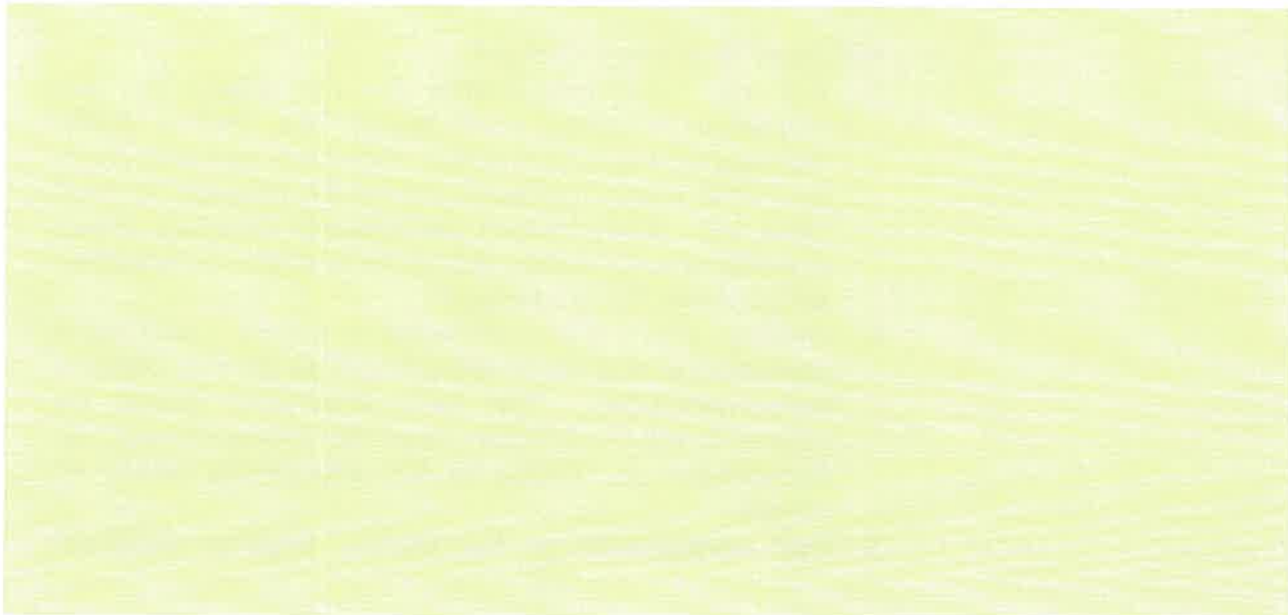
It was recommended that Department of Transport, Department of Planning and Environmental Protection Authority meet to resolve a planning arrangement and to identify a process for responding to these issues.

Members agreed to defer resolving this item to obtain more information and that a supplementary report should accompany this item for the Commission to consider whether it is a minor or major amendment; due to the opposition from the proponent it could be taken to the Supreme Court. -

Resolved***Moved by Mr Wood, seconded by Dr Middle***

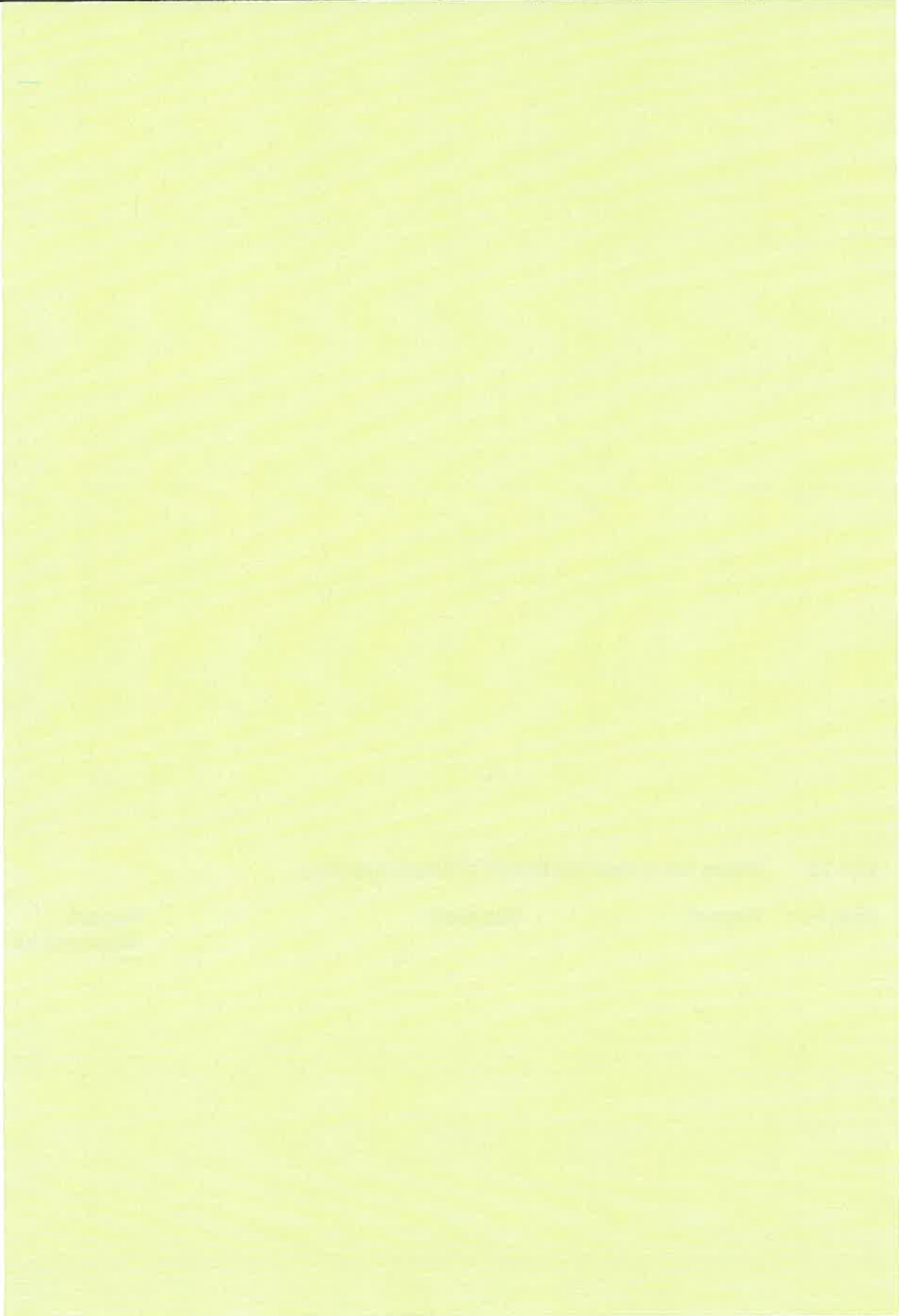
That the Western Australian Planning Commission resolves to defer its decision regarding "Proposed Mrs (Major) Amendment - Mangles Bay Marina - Request to Initiate Amendment" until the August WAPC meeting to enable additional information on transport (both land and sea) and a supplementary report addressing the conditions for a minor or major amendment to be provided.

The motion was put and carried.



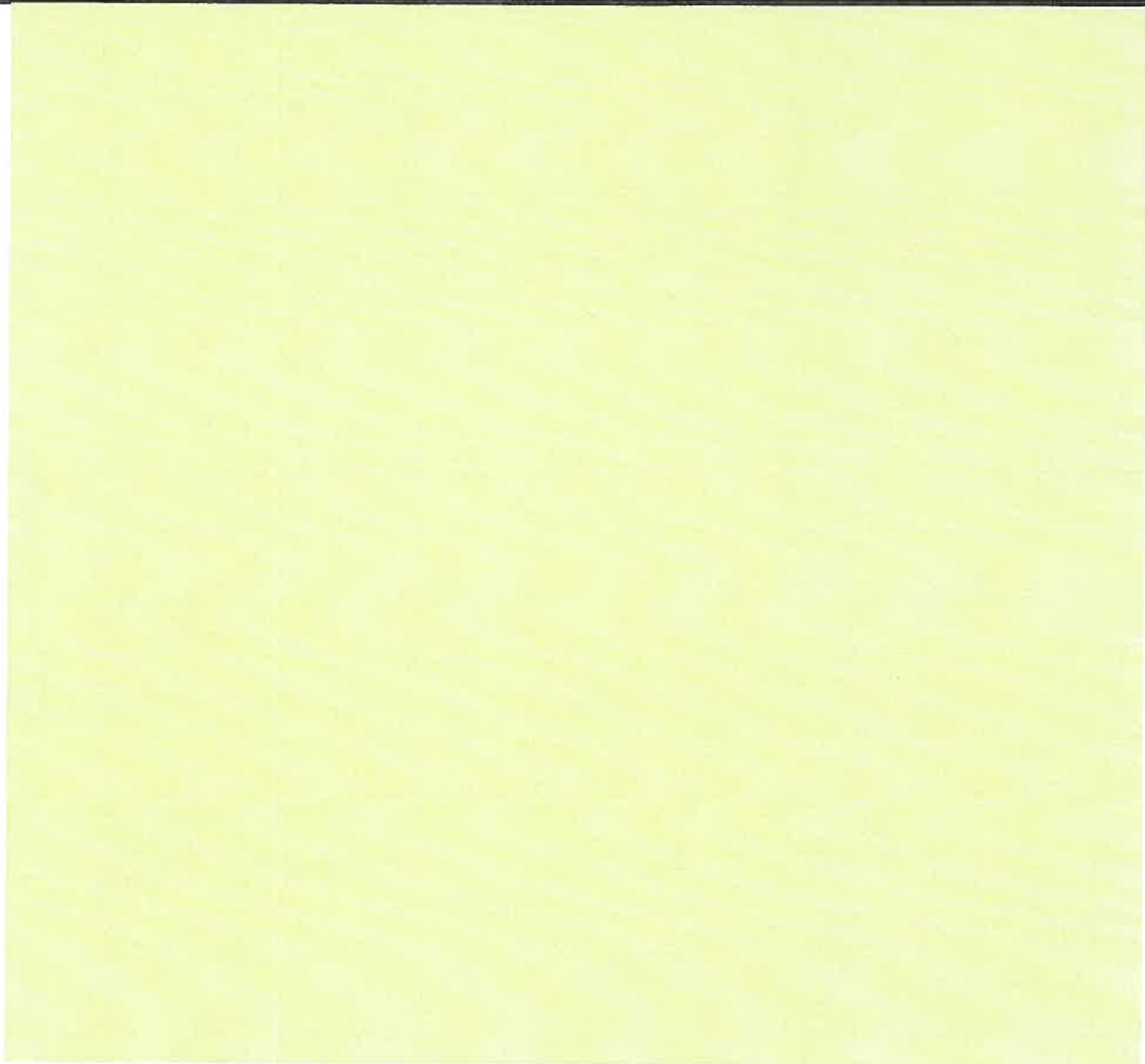
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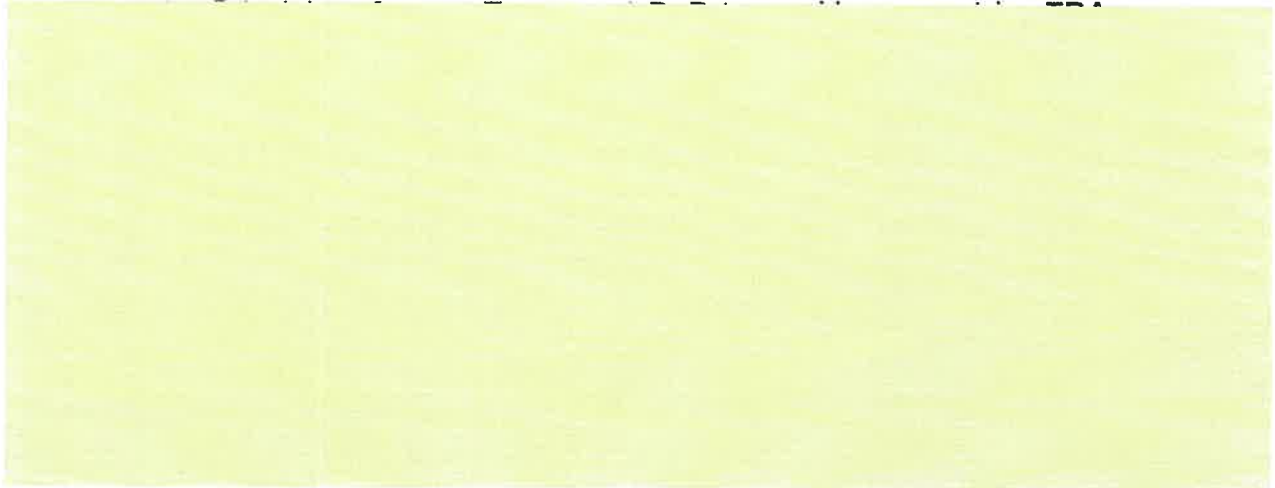
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222.15 **Items for consideration at a future meeting**

Item No	Report	Request	Report Required by
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Western Australian Planning Commission

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- 222.10.3** Proposed (Major) Amendment – Mangles Bay Marina – request to Initiate Amendment MRS Report deferred to allow for a meeting between DoP, DoT and EPA to agree planning arrangements and identify process for responding to variety of issues. **DoP August 2014**

Western Australian Planning Commission

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222.17 Closure Discussion (includes meeting evaluation)

Nil.

There being no further business before the Board, the Chairman thanked members for their attendance and declared the meeting closed at 3:35pm.

CHAIRMAN _____



DATE _____

26th August 2014

MINUTES OF THE 125th ORDINARY MEETING OF THE WESTERN AUSTRALIAN PLANNING COMMISSION HELD ON TUESDAY, 31 JANUARY 2006 IN THE FIFTH FLOOR CONFERENCE ROOM, ALBERT FACEY HOUSE, PERTH

CHAIRMAN:

Mr J Dawkins Western Australian Planning Commission

MEMBERS:

Mr D Carew-Hopkins Department of Environment
 Dr C Curtis Professions/Community Representative
 Mr K Fong Regional Representative
 Cr C MacRae Local Government (metropolitan) Representative
 Mr G Martin Department for Planning and Infrastructure
 Mr L Saraceni Professions/Community Representative (arrived 2.58pm)
 Cr M Smith Deputy Local Government (non-metropolitan) Representative
 Dr D Wood Coastal Planning and Management Representative (arrived 2.15pm)

IN ATTENDANCE:

DPI STAFF

Mr M Allen Executive Director - Statutory Planning
 Mr S Beyer A/Executive Director - Urban Policy
 Mr G McKeown Manager - Urban Policy (Item 125.7.1 only)
 Ms J Molin A/Executive Director - State and Regional Policy
 Dr A Montgomery Program Leader - Urban Growth Management (Item 125.8.3 only)
 Dr M Mouritz Executive Director - Major Urban Innovation Projects
 Ms A Polski Executive Officer - Western Australian Planning Commission
 Mr L Preece A/General Manager - Western Australian Planning Commission
 Ms K Rowcroft A/Manager - Planning Commission Services
 Mr R Stokes Director - Urban Development Coordination (Items 125.7.2, 125.8.1 and 125.8.2 only)
 Mr E Swasbrook Program Director - Spatial Information and Research (Item 125.8.3 only)
 Mr A Wilson Project manager - Urban Growth Management (Item 125.8.2 only)

OTHERS:

Mr B Jeans City of Rockingham (Item 125.7.1 only)
 Mr S Proud LandCorp (Item 125.7.1 only)
 Cr H Zelones Deputy Local Government (metropolitan) Representative

MINUTE SECRETARY:

Mr S Radley Committee Support Officer

The Chairman welcomed those present and declared the meeting open at 2.06pm.

125.1 Apologies

An apology was received from Mr Paul Frewer - Water and Rivers Commission. Mr Luke Saraceni had advised that he would be slightly late.

MINUTES OF THE 125th ORDINARY MEETING OF THE WESTERN AUSTRALIAN PLANNING COMMISSION HELD ON TUESDAY, 31 JANUARY 2006

125.2 Declaration of Members' Interests

[Redacted]

125.3 Confirmation of the Minutes of the Meeting held on 20 December 2005

Moved: Cr Smith

Seconded: Cr MacRae

To confirm the Minutes of the meeting held on Tuesday, 20 December 2005 as an accurate record of discussion.

Carried

125.4 Business Arising from the Minutes

125.4.1

[Redacted]

[Redacted]

[Redacted]

125.4.2

[Redacted]

[Redacted]

125.4.3

[Redacted]

MINUTES OF THE 125th ORDINARY MEETING OF THE WESTERN AUSTRALIAN
PLANNING COMMISSION HELD ON TUESDAY, 31 JANUARY 2006

125.5 Correspondence

There was no correspondence for noting.

125.6 Announcements by Chairman

There were no announcements by the Chairman.

125.7 Special Presentations / Demonstrations

125.7.1 Cape Peron Tourist Precinct Project
Reporting Officer: Garry McKeown
File: 402-2-28-3
Report: WAPC/1053

The Chairman welcomed Mr Bob Jeans - City of Rockingham, Mr Simon Proud - LandCorp and Mr Garry McKeown - Department for Planning and Infrastructure who provided members with an overview of the work undertaken to date on Phase 1 of the Cape Peron Tourist Precinct Project. Points raised in the ensuing discussion included -

- The City of Rockingham is strongly supportive of the feasibility study currently being undertaken and there is strong community support for a marina in the Cape Peron area;
- Concept plans for the Cape Peron Tourist Precinct provides for some 500 boat pens in **Mangles Bay**. Of these 50% will be for the use of the various boating clubs in the area with the remaining 50% being available for lease by the general public;
- It was noted that while the Department of Education and Training were not on the project steering committee, however, they were involved in the Stakeholder Reference Group that developed the concepts plans and have indicated their general support for the project;
- Work on the project has progressed with input from the Environmental Branch of the Department for Planning and Infrastructure. It was noted however, that while this work should have been presented to the Coastal Planning and Coordination Council, to date this has not occurred;
- Preliminary mapping has not shown that this area is subject to acid sulfate soils, however, more detailed work will be required to confirm this; and
- It was noted that a Metropolitan Region Scheme Amendment will be required if the project proceeds to Phase 2.

Moved: Cr MacRae

Seconded: Mr Fong

1. To receive and note the presentation on the progress of the Stage 1 Feasibility Study for the establishment of a new, inland marina based, tourist precinct at Cape Peron; and

MINUTES OF THE 125th ORDINARY MEETING OF THE WESTERN AUSTRALIAN PLANNING COMMISSION HELD ON TUESDAY, 31 JANUARY 2006

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Policy No. 5.1 which applies to areas in the vicinity of Perth Airport.

[REDACTED]

**MINUTES OF THE 125th ORDINARY MEETING OF THE WESTERN AUSTRALIAN
PLANNING COMMISSION HELD ON TUESDAY, 31 JANUARY 2006**

125.9 Strategic Directions

125.10 Advice and Requests

125.10.1 Planning in the Regions

There were no reports/briefings on planning in the regions.

125.10.2 Planning in Perth and Peel

There were no reports/briefings on planning in Perth and Peel.

125.10.3 Strategic Issues Before Committees

There were no reports/briefings on strategic issues before committee of the Western Australian Planning Commission.

125.10.4 Department for Planning and Infrastructure Update

MINUTES OF THE 125th ORDINARY MEETING OF THE WESTERN AUSTRALIAN PLANNING COMMISSION HELD ON TUESDAY, 31 JANUARY 2006

[Redacted]

125.11 Operations

There were no reports on Western Australian Planning Commission operations.

125.12 Information for Noting

125.12.1 Activities of WAPC Committees

[Redacted]

Carried

125.12.2 Schedule of Follow-Up Actions

<u>ITEM NO</u>	<u>REPORT</u>	<u>REQUEST</u>	<u>REPORT REQUIRED BY</u>
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]

MINUTES OF THE 125th ORDINARY MEETING OF THE WESTERN AUSTRALIAN
PLANNING COMMISSION HELD ON TUESDAY, 31 JANUARY 2006

[REDACTED]

MINUTES OF THE 125th ORDINARY MEETING OF THE WESTERN AUSTRALIAN
PLANNING COMMISSION HELD ON TUESDAY, 31 JANUARY 2006

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

MINUTES OF THE 125th ORDINARY MEETING OF THE WESTERN AUSTRALIAN PLANNING COMMISSION HELD ON TUESDAY, 31 JANUARY 2006

[Redacted text block]

125.13 General Business

[Redacted text block]

125.14 Date of Next Meeting

The next ordinary meeting of the Western Australian Planning Commission is scheduled for Tuesday, 28 February 2006.

There being no further business before the Committee, the Chairman thanked members for their attendance and declared the meeting closed at 5.06pm.

CHAIRMAN: _____

DATE: _____

**In the matter of proposed Metropolitan Region Scheme Amendment 1280/41
In relation to land at Cape Peron
in the City of Rockingham, Perth, Western Australia**

Affidavit

Annexure "AC5"

This is the annexure marked "AC5" referred to in the
affidavit of Ambrose Cummins
Affirmed the 13th day of November 2015



Ambrose Cummins
13 Ray Street
Rockingham WA 6168
Phone: 0407 088 076

Email: ambrose.m.cummins@gmail.com

19 October 2015

Freedom of Information Officer
Department of Planning
Gordon Stephenson House
140 William Street
Perth WA 6000

By email

Dear FOI Officer,

Freedom of Information request regarding Mangles Bay Marina (MBM) project – request for internal review of the decision of David Saunders dated 21/9/2015

I refer to previous correspondence in this matter and in particular to the Notice of Decision of Mr David Saunders (the Decision) that formed part of his letter to me dated 21/9/2015. I hereby request an internal review of the Decision, as particularized below.

Documents identified

My understanding is that Mr Saunders formed the conclusion that the documents referred to in the Appendix 1 and Appendix 2 account for all the documents relevant to my FOI application. I request a review of this conclusion and ask that the internal reviewer reviews whether all relevant documents have been identified and, if not, provides the additional documents to me. In this regard I point out that:

1. Documents have been provided to me in relation to the decision of the Executive, Finance and Property Committee of the WAPC at its meeting on 16 December 2003. However that decision was "To agree to consider a \$250,000 contribution....[subject to certain conditions]". It was not a decision to approve or "provide" this funding. Items 1(a) to (h) all relate to documentation relating to the decision "to provide" this funding. No documentation has been identified or provided in relation to this decision. Please identify and provide the relevant documentation to me.
2. By email to the Dept of Planning's FOI officer, Barbara Giles, dated 8 August 2015 I made it clear that the scope of items 4, 5 and 6 of my FOI application

includes correspondence and minutes regarding the draft South Metropolitan Sub-regional Planning Framework document dated May 2015. This was acknowledged in an email to me from Barbara Giles dated 11 August 2015. However, no documents appear to have been listed or provided to me in this regard. This appears to have been an error on the part of Mr Saunders and I request this be reviewed and the relevant documents provided to me as soon as possible.

Edited documents

I request a review in relation to the following:

1. The redaction of signatures from correspondence and documents.
2. The obscuring of part of the first page of document D by what appears to be a 'stick on'. I request a complete copy of this page.
3. The redaction of the identity of information under the words 'prepared by:' on the first page of attachment 2 to document D.
4. The apparent redaction of the date of document F - the Minister for Planning's letter.
5. The redaction of some of the details inserted in the box marked "NOTED" on document G.
6. The redaction of the information under the handwritten word 'supported' at the bottom of document J.
7. The redaction of information contained in document R, namely:
 - a. The identity of some of the presenters, and who they represented, at page 2
 - b. The identity of the presenter, and who he or she represented, at 225.6.1 on page 3
8. The redaction of information contained in document S, namely:
 - a. The identity of some of the presenters, and who they represented, at page 1
 - b. The identity of some of the presenters, and who they represented, at 222.6.1 on page 3
 - c. The identity of the person referred to in the final paragraph of 222.6.1 on page 3
9. The redaction of information contained in document T, namely:
 - a. The identity of some of the people referred to under 'OTHERS', and who they represented, at page 1

- b. The identity of some of the presenters, and who they represented, at 222.6.1 on page 3
- c. The identity of the person referred to in the final paragraph of 222.6.1 on page 3

This information does not appear to fall under clause 3 of schedule 1 to the FOI Act, due to the exclusions of sub clauses 3, 4 and 6 of clause 3. I request that the documents be provided to me without these redactions.

Refused documents

I request a review in relation to the refusal to provide the documents listed at Appendix 2. None of the documents are exempted by clause 6 of schedule 1 of the FOI Act because clause 6(1)(b) has not been satisfied – i.e. it has not been established that the disclosure of the documents (or any of them) would, on balance, be contrary to the public interest. On the contrary, the disclosure of the documents is clearly in the public interest.

Documents L and Q of Appendix 1 indicate that Document G of Appendix 2 was provided to the City of Rockingham and LandCorp. The responses of the City of Rockingham and LandCorp have both been provided. It is clearly in the public interest, and logical, that the document to which the City of Rockingham and LandCorp were responding is disclosed.

Similarly the correspondence to the Department from Cedar Woods (documents A, B and C of Appendix 2) and of the Department with an unnamed 'third party' (documents D, E and F of Appendix 2) should not have been refused. It is obviously in the public interest that correspondence to the Department from Cedar Woods, an agent and co-proponent of LandCorp in relation to the proposed development which the MRS amendment is designed to facilitate, be disclosed. The same applies to correspondence to and from the 'third party'. Refusal to provide these documents raises concerns about the transparency and even-handedness of the planning process and about the nature of the relationship and the communications between the Department and the development proponent and third parties.

With respect, the reasons advanced by Mr Saunders (refer page 2 of the decision) for refusing to provide these documents lack substance and do not justify the decision. The first two dot points merely restate the exemption and don't address the

public interest exclusion. The third and fourth dot points are not applicable or relevant to the disclosure of the documents listed in Appendix 2 in the current context.

Please let me know if you require any clarification regarding my request for a review.

Notices and correspondence may be directed to me at my email address set out above.

I look forward to hearing from you.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Ambrose Cummins', written over a dotted line.

Ambrose Cummins

**In the matter of proposed Metropolitan Region Scheme Amendment 1280/41
In relation to land at Cape Peron
in the City of Rockingham, Perth, Western Australia**

Affidavit

Annexure "AC6"

This is the annexure marked "AC6" referred to in the
affidavit of Ambrose Cummins
Affirmed the 13th day of November 2015



Ambrose Cummins
13 Ray Street
Rockingham WA 6168
Phone: 0407 088 076

Email: ambrose.m.cummins@gmail.com

Ms Janelle Shidders
Freedom of Information Coordinator
LandCorp
Locked Bag 5
Perth Business Centre WA 6849

Dear Ms Shidders,

Freedom of Information request regarding Mangles Bay Marina (MBM) project

I request that you provide me with all relevant documents in relation to (a) LandCorp's decision to pursue the MBM project, (b) the viability and funding of the MBM project and (c) LandCorp's engagement of a private sector "partner" for the MBM project. I set out further particulars below.

Please note the following meanings for various terms I use:

- "Cedar Woods" means any or all (as the context determines) of the Cedar Woods companies with which LandCorp has contracted in relation to the MBM project, including Cedar Woods Properties Limited, Cedar Woods Properties Management Pty Ltd and Cranford Pty Ltd
- LandCorp means LandCorp or the Western Australian Land Authority
- "MBM" means the so-called "Mangles Bay Marina" proposal at Point Peron being pursued by LandCorp and Cedar Woods.
- "MBM project" means the "Mangles Bay Marina" project in all its phases including design, planning, statutory approvals and compliance, construction, subdivision and ongoing maintenance
- "Project" or "project" means MBM project
- "Project land" or "MBM project land" means the land subject to the MBM project
- "The State" and "the State government" means the Western Australian State government or any arm of it, including but not limited to LandCorp

Please let me know if you need any further clarification regarding the information I am seeking.

Particulars of documents requested

(a) The decision for LandCorp to pursue the MBM project

1. Documentation of all ministerial directions given to LandCorp pursuant to section 24 of the *Western Australia Land Authority Act 1992* (WALA Act)
2. All documents in relation to the decision and reasons for LandCorp to pursue the MBM project
3. All documents concerning the decision and reasons not to abide by the terms of the 1964 Point Peron agreement between the Commonwealth and the State in relation to the use of the MBM land
4. All documents concerning the evaluation of the economic costs and benefits of the MBM project
5. All documents concerning the evaluation of the economic costs and benefits of maintaining the MBM project land within a larger reserve for recreation and park lands as stipulated in the 1964 Point Peron agreement

(b) Viability and funding

6. All documents concerning the estimated cost of the MBM project
7. All documents concerning the amount of public funding already expended on the MBM project
8. All documents concerning the estimation of the amount of additional public funding required for the MBM project
9. All documents concerning the estimation of the amount of private funding required for the MBM project
10. All documents in relation to the application of section 19(c) of the WALA Act to the MBM project
11. All documents concerning any Community Service Obligation payments made by the State government to LandCorp in relation to the MBM project
12. All documents concerning the evaluation of the MBM project's financial feasibility
13. All documents concerning the estimation of the cost of maintaining and managing the MBM project waterways and concerning who should bear responsibility for these costs
14. All documents concerning the valuation of the MBM project land
15. All documents concerning the estimated net revenue from sales of the MBM project land
16. All documents concerning the proposed stages and timetable for construction of the marina, canals and commercial and residential lots

(c) LandCorp's engagement of a private sector partner

17. All documents in relation to LandCorp's engagement of a private sector "partner" for the MBM project. This includes, but is not limited to, all documents in relation to:

- a. LandCorp's decision that it would seek to appoint a private sector "partner"
- b. The services that LandCorp wanted the private sector "partner" to perform
- c. LandCorp's determination of the process it would follow in order to choose and appoint the private sector "partner"
- d. LandCorp's call(s) for expressions of interest to play the role of LandCorp's private sector "partner"
- e. LandCorp's decision not to conduct a competitive tendering process for this appointment.
- f. The criteria and process by which LandCorp evaluated the expressions of interest
- g. LandCorp's decision to appoint Cedar Woods as its private sector "partner"
- h. LandCorp's contractual engagement of Cedar Woods as its private sector "partner", including but not limited to:
 - i. The contract between LandCorp and Cedar Woods dated 5 October 2011 (the Development Agreement)
 - ii. Relevant correspondence
 - iii. Details of the services to be provided by Cedar Woods and the remuneration payable to Cedar Woods for such services under the Development Agreement
 - iv. Details of the participation fee payable by Cedar Woods to LandCorp pursuant to the Development Agreement
 - v. Ministerial approval of LandCorp's decision to appoint Cedar Woods and the terms of such appointment
- i. LandCorp's decision to advise the Office of the Environmental Protection Authority by email dated 9 February 2012 that it was "*not a co-proponent for the Mangles Bay project*" and that "*Cedar Woods is the sole proponent for the project*"

- j. The amount of money or other form of remuneration that LandCorp has paid to Cedar Woods for its services in relation to the MBM project to date
- k. The amount of money or other form of remuneration that Cedar Woods stands to receive from the MBM project if the MBM project is carried out to completion
- l. The formula for calculating the amount of money Cedar Woods would receive for each lot of MBM project land sold

Please find attached my cheque in the sum of \$30 being the prescribed fee for this freedom of information application.

Notices and correspondence may be directed to me at my email address set out above.

I look forward to hearing from you.

Yours sincerely,



Ambrose Cummins

8/5/2015

**In the matter of proposed Metropolitan Region Scheme Amendment 1280/41
In relation to land at Cape Peron
in the City of Rockingham, Perth, Western Australia**

Affidavit

Annexure "AC7"

This is the annexure marked "AC7" referred to in the
affidavit of Ambrose Cummins
Affirmed the 13th day of November 2015



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LANDCORP

File Ref: 1501508
Enquiries: 9482 7460
Date: 9 June 2015

Mr A Cummins
13 Ray Street
Rockingham WA 6168

Dear Mr Cummins

Freedom of Information (FOI) Application 137 – Mangles Bay Marina

Since receiving your FOI application, we have been investigating which of our files and documents are relevant to your application. At this stage there appears to be at least 50 files and 1400 documents which may be relevant. Each of these files and documents needs to be examined to determine if it:

- is within the scope of the 34 areas itemized;
- contains exempt matters; and/or
- contains information about third parties that may need to be consulted.

LandCorp's view is that the scope of your request, as it currently stands, is too broad for us to process without diverting a substantial and unreasonable portion of resources away from other operations.

In these circumstances we are required to take reasonable steps to help you change the application to reduce the amount of work needed to deal with it. If you are able to formulate your request in more precise terms, we would be able to reconsider the revised parameters. For example, by being more specific about the documents you are seeking access to or by restricting the request to a particular time period. Please feel free to contact me if I can assist in narrowing the scope of your application.

If we have not heard from you by close of business Monday 15 June 2015, we will proceed to process your request as it currently stands.

Yours sincerely



Janelle Shiners
FOI Coordinator

**In the matter of proposed Metropolitan Region Scheme Amendment 1280/41
In relation to land at Cape Peron
in the City of Rockingham, Perth, Western Australia**

Affidavit

Annexure "AC8"

This is the annexure marked "AC8" referred to in the
affidavit of Ambrose Cummins
Affirmed the 13th day of November 2015



Ambrose Cummins
13 Ray Street
Rockingham WA 6168
Phone: 0407 088 076
Email: ambrose.m.cummins@gmail.com

16 July 2015

Ms Janelle Shinnars
Freedom of Information Coordinator
LandCorp
Locked Bag 5
Perth Business Centre WA 6849

Dear Ms Shinnars,

Amended Freedom of Information request regarding Mangles Bay Marina (MBM) project

I refer to my FOI request dated 8 May 2015 and to subsequent correspondence and discussions in regard to ways to change the application to reduce the amount of work required to attend to my request so that LandCorp is willing to deal with my request.

In light of these discussions and correspondence I have amended my FOI application to substantially reduce its scope and to make it easier for LandCorp to identify the relevant documents. This should greatly reduce the work required by LandCorp to deal with my request. My amended application is set out below. My understanding, based on our correspondence and discussions, is that LandCorp is willing to deal with my application in this amended form.

Please note the following meanings for various terms I use:

- "Cedar Woods" means any or all (as the context determines) of the Cedar Woods companies with which LandCorp has contracted in relation to the MBM project, including Cedar Woods Properties Limited, Cedar Woods Properties Management Pty Ltd and Cranford Pty Ltd
- LandCorp means LandCorp or the Western Australian Land Authority
- "Latest or final", with reference to documentation requested, is an expression agreed upon in discussion with LandCorp. The purpose of this expression is to clarify that earlier documents pertaining to the subject matter are not sought, nor are documents that do not directly address the information sought. If a single "latest or final" document addresses the information sought that is sufficient. However, in some cases the information may not be

contained in a single "latest or final" document, in which case more than one "latest or final" document may be required.

- "MBM" means the so-called "Mangles Bay Marina" proposal at Point Peron being pursued by LandCorp and Cedar Woods.
- "MBM project" means the "Mangles Bay Marina" project in all its phases including design, planning, statutory approvals and compliance, construction, subdivision and ongoing maintenance
- "Phase 1", "Phase 2" and "Phase 3" of the MBM project refer to the particular phases of the MBM Project commonly given that description by LandCorp
- "Project" or "project" means MBM project
- "Project land" or "MBM project land" means the land subject to the MBM project
- "The State" and "the State government" means the Western Australian state government or any arm of it, including but not limited to LandCorp

Particulars of documents requested

(a) The decision for LandCorp to pursue the MBM project

1. The latest or final documentation of all ministerial directions given to LandCorp pursuant to section 24 of the *Western Australia Land Authority Act 1992* (WALA Act)
2. The latest or final documentation of the formal decisions made by LandCorp:
 - a. To undertake Phase 1 of the MBM project, showing who at LandCorp made the decision and any request, report or recommendations on which the decision maker relied.
 - b. To undertake Phase 2 of the MBM project, showing who at LandCorp made the decision and any request, report or recommendations on which the decision maker relied.
 - c. To undertake Phase 3 of the MBM project, showing who at LandCorp made the decision and any request, report or recommendations on which the decision maker relied.
3. The latest or final document (if any) concerning the decision and reasons not to abide by the terms of the 1964 Point Peron agreement between the Commonwealth and the State in relation to the use of the MBM land. [Note that Mr Willcock has advised that no such decision was made]

4. The latest or final of the following documents concerning the evaluation of the economic costs and benefits of the MBM project [Note: Mr Willcock has indicated such evaluation was carried out]:
 - a. the terms of reference for the evaluation
 - b. the evaluation report and
 - c. a document or documents which show which agencies or third parties the evaluation has been provided to so far.
5. The latest or final document concerning the evaluation of the economic costs and benefits of maintaining the MBM project land within a larger public reserve for recreation and park lands as stipulated in the 1964 Point Peron agreement. [Note: Mr Willcock has advised that no such evaluation was carried out. Therefore I only seek the latest or final documentation (if any) that LandCorp relies upon to explain why such evaluation was not carried out, given the perceived need for a comparative analysis of the costs / benefits of the two options.]

(b) Viability and funding

6. The latest or final document showing the estimated cost of the MBM project and the basis of the estimate
7. The latest or final document showing the amount of public funding already expended on the MBM project and a breakdown of this funding
8. The latest or final document showing the estimation of the amount of additional public funding required for the MBM project to be completed (including construction of the marina) and the basis of the estimate
9. The latest or final document showing the estimation of the amount of project generated funding required for the MBM project to be completed (including construction of the marina) and the basis of the estimate
10. The latest or final document in relation to the application of section 19(1)(c) of the WALA Act to the MBM project [note that Mr Willcock has advised that section 19(1)(c) of the WALA Act does apply to the MBM project] or relevant phases of the MBM project which show:
 - a. the process and criteria by which LandCorp assessed the business case of the MBM project and its prospects of achieving the required internal rate of return
 - b. the terms of reference for such assessment(s)
 - c. the date(s) of such assessment(s)

- d. the identity and expertise of the person(s) who carried out the assessment(s)
 - e. the actual assessment(s) of the business case for the MBM project and its prospects of achieving the required internal rate of return and
 - f. the relevant date(s) for ascertaining the minimum rate of internal return applicable to the MBM project and the strategic development plan(s) that specifies the relevant rate of return.
11. The latest or final documentation showing all Community Service Obligations imposed on LandCorp, or Community Service Obligation payments made to LandCorp, by the State government in relation to the MBM project
 12. The latest or final documentation concerning the evaluation of the MBM project's financial feasibility which shows:
 - a. the terms of reference for such evaluation
 - b. the date of the evaluation
 - c. the identity and expertise of the person(s) who carried out the evaluation
 - d. the actual evaluation and
 - e. which agencies or third parties the evaluation has been provided to so far.
 13. The latest or final document showing the estimation of the cost of maintaining and managing the MBM project waterways and the basis of the estimate and concerning who should bear responsibility for these costs
 14. The latest or final document concerning the valuation of the MBM project land [Note: Mr Willcock has advised that the land has not yet been valued so I only seek the latest or final documentation relied on by LandCorp that explains why not]
 15. The latest or final document showing the estimated net revenue from sales of the MBM project land and the basis of the estimate
 16. The latest or final document showing the proposed stages of on-ground implementation of the MBM project and the proposed timetable for each stage, with particular reference to the proposed timing of the construction of the marina, clearing and demolition work, the creation of commercial and residential lots and other components of the MBM project.

(c) LandCorp's engagement of a private sector partner

17. Documentation in relation to LandCorp's engagement of a private sector "partner" for the MBM project as set out below:

- a. The latest or final documentation showing:
 - i. the formal decision made by LandCorp that it would seek to appoint a private sector "partner"
 - ii. who at LandCorp made the decision
 - iii. any request, report or recommendations on which the decision maker relied and
 - iv. LandCorp's policies and procedures applicable at the time to the appointment of private sector "partners".
- b. The latest or final documentation showing:
 - i. LandCorp's decision as to the services that LandCorp wanted the private sector "partner" to perform
 - ii. who at LandCorp made the decision and
 - iii. any request, report or recommendations on which the decision maker relied.
- c. The latest or final documentation showing:
 - i. LandCorp's decision as to the process it would follow in order to choose and appoint the private sector "partner"
 - ii. who at LandCorp made the decision
 - iii. any request, report or recommendations on which the decision maker relied and
 - iv. LandCorp's policies and procedures applicable at the time to the process that LandCorp should follow.
- d. The latest or final documentation showing LandCorp's call(s) for expressions of interest to play the role of LandCorp's private sector "partner", including any notices, advertisements and correspondence with parties who may have wished to express interest.
- e. The latest or final documentation showing:
 - i. LandCorp's decision not to conduct a competitive tendering process for this appointment
 - ii. who at LandCorp made the decision and
 - iii. any request, report or recommendations on which the decision maker relied
- f. The latest or final documentation showing:
 - i. the criteria applied to LandCorp's evaluation of the expressions of interest
 - ii. the process by which LandCorp evaluated the expressions of interest and

- iii. LandCorp's policies and procedures applicable at the time to the evaluation of such expressions of interest.
- g. The latest or final documentation showing:
 - i. LandCorp's formal decision to appoint Cedar Woods as its private sector "partner"
 - ii. who at LandCorp made the decision and
 - iii. any request, report or recommendations on which the decision maker relied.
- h. The latest or final documentation showing LandCorp's contractual engagement of Cedar Woods as its private sector "partner", including:
 - i. The contract between LandCorp and Cedar Woods dated 5 October 2011 (the Development Agreement)
 - ii. Any correspondence or documentation that varies the Development Agreement
 - iii. Details of the services to be provided by Cedar Woods and the remuneration payable to Cedar Woods for such services under the Development Agreement
 - iv. Details of the participation fee payable by Cedar Woods to LandCorp pursuant to the Development Agreement
 - v. Ministerial approval of LandCorp's decision to appoint Cedar Woods and the terms of such appointment
- i. The latest or final documentation, if any, relied on by LandCorp when deciding to advise the Office of the Environmental Protection Authority by email dated 9 February 2012 that it was *"not a co-proponent for the Mangles Bay project"* and that *"Cedar Woods is the sole proponent for the project"*
- j. The latest or final document showing the amount of money or other form of remuneration that LandCorp has paid to Cedar Woods for its services in relation to the MBM project to date
- k. The latest or final document showing the amount of money or other form of remuneration that Cedar Woods stands to receive from the MBM project if the MBM project is carried out to completion
- l. The latest or final document showing the formula for calculating the amount of money Cedar Woods would receive for each lot of MBM project land sold

Notices and correspondence may be directed to me at my email address set out above.

I look forward to hearing from you.

Yours sincerely,



.....
Ambrose Cummins

**In the matter of proposed Metropolitan Region Scheme Amendment 1280/41
In relation to land at Cape Peron
in the City of Rockingham, Perth, Western Australia**

Affidavit

Annexure "AC9"

This is the annexure marked "AC9" referred to in the
affidavit of Ambrose Cummins
Affirmed the 13th day of November 2015



Subject: Complaint regarding the decision of LandCorp in response to FOI request
Date: Monday, 2 November 2015 2:38:38 PM Australian Western Standard Time
From: Ambrose Cummins
To: FOI Commissioner

To: The Information Commissioner, Office of the Information Commissioner

Please find attached:

1. My complaint in relation to the decision made on 2 October 2015 by the Acting CEO of LandCorp in this matter (internal review decision of earlier LandCorp decision);
2. The decision complained of (letter + attachment)
3. Copy of my letter to the CEO of LandCorp dated 13 September 2015 seeking an internal review of LandCorp's original decision. This letter sets out the context of my request for the internal review, and is also relevant to my complaint to you.

Please advise if you require any further information at this stage.

Please note that all correspondence can be directed to me at this email address.

Would you kindly confirm receipt.

Regards,

Ambrose Cummins

Phone: 0407 088 076

Complaint under s 66 of the *Freedom of Information ("FOI") Act 1992 (WA)*

2 November 2015

To: The Office of the Information Commissioner

Re: Ambrose Cummins' FOI Application to LandCorp regarding the Mangles Bay Marina (MBM) Project

Decision complained of (attached): The decision of Kerry Fijac, Acting Chief Executive Officer, LandCorp, made on 2 October 2015, being an internal review of the decision of Luke Willcock made 14 August 2015 to refuse access to documents

Comments

1. I submit that LandCorp failed to deal appropriately with my FOI request in that LandCorp misconstrued my FOI request and misapplied the FOI Act, resulting in LandCorp's failure to provide numerous documents it should have provided, and incorrectly redacting information from various documents that were provided.
2. LandCorp's internal review only resulted in the provision of two additional documents to me, being:
 - a. Extract of minutes of LandCorp Board meeting. Unfortunately the extract is not dated and this information needs to be provided by LandCorp. It may be an extract from the meeting of 14 December 2009, referred to at item 17.a. on the attachment to the review decision.
 - b. Minutes of LandCorp Board Meeting held on 19 October 2009
3. These two additional documents only go a small way towards addressing the issues I raised in my letter to LandCorp requesting an internal review, dated 13 September 2015 (**attached**)
4. I point out also that the internal review upheld my argument regarding item 2.c. and appeared to approve the provision to me of a decision of LandCorp's Board dated 21 October 2013. However LandCorp has not provided this document to me.
5. I would be happy to provide further information if required.



.....
Ambrose Cummins

2 November 2015

Note: Notices can be served on me at 13 Ray Street, Rockingham, 6168 or by email to: ambrose.m.cummins@gmail.com

**In the matter of proposed Metropolitan Region Scheme Amendment 1280/41
In relation to land at Cape Peron
in the City of Rockingham, Perth, Western Australia**

Affidavit

Annexure "AC10"

This is the annexure marked "AC10" referred to in the
affidavit of Ambrose Cummins
Affirmed the 13th day of November 2015





Our Ref: F2015340

5 November 2015

Mr Ambrose Cummins
13 Ray Street
ROCKINGHAM WA 6168

Dear Mr Cummins

**FREEDOM OF INFORMATION ACT 1992
COMPLAINT – WESTERN AUSTRALIAN LAND AUTHORITY (LANDCORP)**

I refer to your email transmission which was received by this office on 2 November 2015.

This letter is to notify you that I have decided to deal with your application for external review as a complaint made under sections 65(1)(b) and (d) of the *Freedom of Information Act 1992* against a decision of the Western Australian Land Authority (LandCorp) (**the agency**) dated 2 October 2015, to give access to edited copies of documents and to refuse access to documents.

The agency has been notified of your complaint and it has been required to produce to this office the agency's FOI file maintained in respect of your access application together with a response to the submissions you made to me at items 1 to 4 of your letter of 2 November 2015.

As soon as the relevant documents and additional information have been produced and examined, your complaint will be assessed further. However, this office is currently dealing with a high number of complaints. This additional workload is placing significant pressure on the limited resources of this office, which is having an adverse impact on the timely resolution of all complaints. Consequently, at this stage, I am unable to give you more specific details about when this matter will be progressed.

In light of this, I consider it appropriate to advise you that it may take longer than usual to resolve your complaint. I am unable to estimate how long that may be. However, this office is making every effort to resolve matters in the shortest period that is practicable.

In the meantime, I understand that my Complaints Coordinator, Mr Tony Pruyn, has discussed this matter with you and requested that you provide further information to this office to clarify the scope of your complaint.

Finally, I enclose a general outline of the procedures adopted by this office in dealing with a complaint. The outline is general in its terms and application, as a certain amount of flexibility in the procedures is required because of the variance in nature and complexity of each complaint received.

Yours sincerely

Sven Bluemmel
INFORMATION COMMISSIONER

Enc.

162 .

Proposed Metropolitan Region Scheme (MRS) Amendment 1280/41

Submission of Hands Off Point Peron Inc. (HOPP)
to the Western Australian Planning Commission (WAPC)
13 November 2015

ATTACHMENT 4

Legislative Assembly Estimates Committee B –
extract from Hansard 9 June 2015

[12.40 pm]

Division 51: Treasury — Item 75, WA Land Authority, \$35 444 000; and Item 86, Royalties for Regions, \$600 177 000 —

Mr N.W. Morton, Chairman.

Mr D.T. Redman, Minister for Regional Development representing the Treasurer.

Mr F. Marra, Chief Executive Officer.

Ms F. Barclay, Chief Financial Officer.

Ms K. Fijac, Executive General Manager Business Development and Marketing.

The CHAIRMAN: This estimates committee will be reported by Hansard. The daily proof *Hansard* will be available the following day.

It is the intention of the Chair to ensure that as many questions as possible are asked and answered and that both questions and answers are short and to the point. The estimates committee's consideration of estimates will be restricted to discussion of those items for which a vote of money is proposed in the consolidated account. Questions must be clearly related to a page number, item, program or amount in the current division. It will greatly assist Hansard if members can give these details in preface to their question.

The minister may agree to provide supplementary information to the committee, rather than asking that the question be put on notice for the next sitting week. I ask the minister to clearly indicate what supplementary information he agrees to provide and I will then allocate a reference number. If supplementary information is to be provided, I seek the minister's cooperation in ensuring that it is delivered to the principal clerk by Friday, 19 June 2015. I caution members that if the minister asks that a matter be put on notice, it is up to the member to lodge the question on notice with the Clerk's office.

[Witnesses introduced.]

The CHAIRMAN: Are there any questions? The member for Gosnells.

Mr C.J. TALLENTIRE: Picking up on my previous question, I am looking at LandCorp's estimated expenditure to 30 June 2015. The budget papers clearly indicate an estimated expenditure of \$1.35 billion, but alongside that is an estimated total expense of \$1.8 billion. I am confused about how the estimated expenditure can be less than the estimated total cost, given, I would have thought, the final point was 30 June 2015.

Mr F. Marra: The budget papers include all historical expenditure that LandCorp has undertaken under that estimated total cost figure and that estimated expenditure of 30 June 2015. I understand that the estimated total cost figure includes all the forward estimate amounts. That is the convention for how the state budget figures are put together. However, in LandCorp's case, each project is undertaken on a project-by-project basis and a summation of individual projects makes up that program. New projects come in and other projects end. That total cost is the total amount LandCorp has spent on that program, which is made up of many different projects since LandCorp's inception in 1992.

Mr C.J. TALLENTIRE: That means that in recent times about \$500 million worth of LandCorp projects account for that difference. Can the minister outline what some of those \$500 million worth of projects might be?

Mr F. Marra: My understanding is that the summation of the forward estimate amounts—we can see there the total cost of the asset investment program, which averages around \$350 million per annum—goes some way to explaining the difference there.

Mr C.J. TALLENTIRE: Can the minister list some of the projects and give an indication of a project of \$200 million or one of \$300 million that I should know about. I am trying to get a picture.

Mr D.T. REDMAN: I am happy to get a response to that but this is the land development arm of government of both industrial and some residential land, both metropolitan and regional, and there is a significant number of developments, right down to the smallest community in regional Western Australia, many of which sit in abeyance for some time until economic activity drives an outcome. We can pick off a few of the main projects that LandCorp has been involved in, but there is a significant number, so we can pick off some of the bigger projects.

Mr F. Marra: For the budget year in question, 2015–16, where the total asset investment program is estimated at \$357.988 million, LandCorp has in excess of 50 projects that go to making up that figure. Some of the noteworthy or larger expenditure items will be, for example, Karratha city centre infrastructure in excess of \$31 million; Karratha city of the north infrastructure, in excess of \$44 million; the Alkimos project done in partnership with Lendlease—LandCorp's contribution is in excess of \$20 million—and the Claremont North East project, in excess of \$22 million for next financial year. A range of projects make up that \$300 million.

Mr D.T. REDMAN: Depending on the maturity of those projects—they are taking some vacant land that needs de-risking; there will be an extension to de-risk it—LandCorp may then put it to market itself and manage the development of it or bring on a partner for a joint venture. Depending on the stage, a level of expenses is committed and/or potential revenue will come late in the project. LandCorp makes the decision about it meeting the hurdle rate early on and that decision is taken by the board, supported by government with its cash flow. Cash flows are a point in time assessment of where all LandCorp's activity is at, some of which can be immature and some of which can be very mature.

Mr M. McGOWAN: I refer to the Mangles Bay development at page 244. What is the budget to be spent on the Mangles Bay development?

The CHAIRMAN: This sounds like a new question, member.

Mr M. McGOWAN: It is LandCorp.

The CHAIRMAN: Continue.

Mr M. McGOWAN: What is the budget to be spent on the Mangles Bay development; will that be recouped from any proceeds of any development; and will it be put into common use infrastructure rather than any housing project?

Mr D.T. REDMAN: While my advisers bring up information on this, the Mangles Bay development is a joint venture with Cedar Woods Properties Ltd, a private company, which the member for Rockingham knows about. It is at very early stages. A decision has been taken to progress it. It has been supported by cabinet at the respective points of the decision-making. It has had both local and conditional approval from our own environmental authorities, plus conditional approval from the federal environmental authorities. The decision to progress it, and LandCorp's involvement, would have essentially occurred when it would not have been triggered by the private sector itself. Part of LandCorp's role is to look at market failure or lack of market drive or capacity to get these projects off the ground. That is why it is a partner. The decision would have been taken early by the board that the financials will stack up over time. We are at a point at which a certain amount of resource would have been committed by both Cedar Woods and LandCorp.

We cannot talk about the long-term financials because some of that is market sensitive, I would have thought.

Mr F. Marra: The minister has indicated that LandCorp has a partnering arrangement with Cedar Woods property group for this project. That partnership arrangement has been established between Cedar Woods and LandCorp jointly sharing 50–50 in the development expenditure for the project. Depending on the revenue component of it, Cedar Woods will then be eligible for a distribution of 50 per cent of the revenue that can be generated. Importantly, the structure plan, which is going through the approval process at the moment, identifies a lot of property and infrastructure elements to the project and, once approved, it will need to be costed and fully developed. Estimates of what they will include are built into the budget. They include the land development component, the waterway development component and the public infrastructure that has been unveiled as part of the master plan for that project. All elements are accounted for within the development. That expenditure is expected to be recovered through development and sales of land in the future.

[12.50 pm]

Mr M. McGOWAN: What is the allocation for that over the forward estimates?

Mr D.T. REDMAN: I think that that is publicly sensitive information. This is technically a commercial development with a private partner who is coming in on a joint venture arrangement. I would have thought that some of the finer grained detail of that is commercially sensitive. LandCorp is a joint venture partner in this, because it probably would not have got up otherwise. Cedar Woods is the other half of that joint venture.

Mr M. McGOWAN: I am aware of all that, but I do not think it is commercially sensitive to tell us what the government is going to spend on infrastructure in someone's electorate. I would have thought it would be publicly available information.

Mr D.T. REDMAN: Mr Marra will provide some expenditure components of the project now.

Mr F. Marra: Just to clarify the initial point, the query was around what appropriation has been made. There is no government appropriation to this project. LandCorp, as an independent statutory authority, is investing on behalf of the state, as the minister has indicated, through its board-approved business plan. LandCorp will be investing its own-source revenues in this project. No separate appropriation has been made, so there is no operating subsidy or equity injection et cetera. On that basis, the estimate over the budget period—the next four years—is in the order of \$25 million for LandCorp's investment. However, it should be pointed out that that covers only the very initial phase of the project. It is yet to have full planning approval. That will take some time this year. By the time the project is into its development phase, the four-year budget period will cover only the initial phase of the project, which will be developed over a 10-year period, so the forward estimates do not pick up all the public expenditure and infrastructure works that will occur over the life of the project.

Mr M. McGOWAN: Will the initial allocation be for the common-user infrastructure of the marina, the boat launching facility, the fishing club, the hotel site or the like, or will it be put towards other land development aspects of the proposal?

Mr F. Marra: Subject to the project receiving planning approval, which is being undertaken at the moment, there is a requirement as part of the environmental approval for a number of years of water monitoring to take place on the site. The water monitoring will necessarily delay LandCorp and its partners undertaking the public infrastructure works on the marina body itself. It is expected that that will not be able to be undertaken for two to three years from now, given the water monitoring that needs to occur. Once the planning approval is through up-front, there is capacity to undertake some of the initial land development functions on the land side, though not on the water side. They will be undertaken as the first stage, but once the environmental condition has been satisfied, LandCorp will be in a position with its partner to undertake the water body public infrastructure works the member is referring to.

Dr G.G. JACOBS: My question refers to page 579 and is about the Western Australian Land Authority investing in the regions. The mission statement of LandCorp talks about creating space for growth. Many people I talk to have the view that it does not create enough space in a timely manner. Can the minister tell us what LandCorp has done in the regions in the industrial and residential land space? What projects can we point to that really show the work in the regions to truly create space for growth?

Mr D.T. REDMAN: I thank the member for Eyre for the question. I do not know whether the member has received a full briefing by LandCorp about its footprint of asset ownership and asset development, but I am happy to provide one if he has not. Not too many towns in regional Western Australia do not have something that LandCorp has some ownership of, particularly as it applies to industrial estates. As I said in answer to the member's earlier question about headworks, some of the constraints to that development are not so much the availability of the land as concerns about headworks costs and first mover charges. Although the land assets are in the control of LandCorp, there are sometimes other reasons for the developments not coming to fruition, which we have already talked about. LandCorp is involved with some significant projects, ranging from the Albany waterfront development and the Geraldton Batavia coast marina to industrial estates in Kalgoorlie, Broome, Northam, and right across the wheatbelt from Bencubbin to Wickiepin, Port Hedland, Burrup, Carnamah, Collie, Carnarvon and Williams.

Dr G.G. JACOBS: Can the minister talk about goldfields–Esperance, please? He is not answering my constituents' criticisms.

Mr D.T. REDMAN: The criticism is around —

Dr G.G. JACOBS: It is about not creating space in a timely manner.

Mr D.T. REDMAN: The availability of industrial land in a timely manner?

Dr G.G. JACOBS: Both.

Mr D.T. REDMAN: Is the member saying that there is a constraint on industrial land in Esperance?

Dr G.G. JACOBS: The minister was talking about projects that have been carried out in certain regions, and I am asking what has been done in my region. I am happy for the minister to take that question on notice.

Mr D.T. REDMAN: I think we will take that question on notice. It drills down to a level of detail that probably goes beyond what I have here about the financial capacity. LandCorp is involved in a plethora of projects. I am happy to provide by way of supplementary information details of LandCorp's industrial and residential activities in the goldfields–Esperance region.

[Supplementary Information No B10.]

Mr C.J. TALLENTIRE: I refer to the Shenton Park health campus redevelopment. What value has been put on that land and what processes are being undertaken to select a development partner if one is deemed necessary?

Mr D.T. REDMAN: As the minister is aware, the Shenton Park site was one of the early sites we put up. In fact, that is where we did the launch of the first 20 asset sales. LandCorp has primacy over that in terms of de-constraining. It is also working through some environmental requirements and a high level of consultation with local communities and the local government to ensure that all the elements of that development meet their requirements. In some cases, there may be some compromise on that, but it has been quite rigorous. I am happy to ask Mr Marra to make some broader comments specifically on the member's question.

Mr F. Marra: LandCorp has been given carriage of taking the project to market. To be able to do that, a level of de-constraining is occurring at the moment, principally involving two elements. The first is around providing planning certainty for the site. The site is currently zoned as public purposes, being for hospital use, and we have commenced a rezoning process by engaging the local authorities and the Western Australian Planning Commission and seeking to establish a development zone on the site. In addition to that, we have been

in significant discussions with the local community, including the school, the neighbours and some of the surrounding community users to determine a master plan for the site, which will provide further specificity about what can ultimately be delivered onto the site. In conjunction with that, we have been working very closely with heritage authorities and understanding the level of contamination on the site. Substantial demolition and decontamination needs to occur, and substantial heritage facilities need to be retained and kept within the project. Once those two elements are able to be established—the constraints around redevelopment and the planning opportunities—we will be in a position to understand the valuation for the site. At that point we will put a recommendation to the board for the best divestment strategy for the site.

The appropriation was recommended.

Meeting suspended from 1.00 to 2.00 pm

Division 32: Western Australia Police, \$1 315 281 000 —

Ms J.M. Freeman, Chairman.

Mrs L.M. Harvey, Minister for Police.

Dr K.J. O'Callaghan, Commissioner of Police.

Mr S.A. Brown, Deputy Commissioner, Operations.

Mr G. Dreibergs, Deputy Commissioner, Specialist Services.

Mr P. Zanetti, Assistant Commissioner, Reform and Business Improvement.

Mr A. Kannis, Executive Director.

Mr L. Bechelli, Acting Director, Business Strategy and Finance.

Ms S. Cardenia, Acting Chief Finance Officer.

Mr I. Clarke, Inspector, State Traffic Command.

Mr S. Higgins, Superintendent, Workforce.

Mr D. Gaunt, Superintendent, Structural Reform.

Mr G. Hamley, Chief of Staff.

The CHAIRMAN: We are in Estimates B for division 32. I now ask the minister to introduce her advisers to the committee.

[Witnesses introduced.]

The CHAIRMAN: This estimates committee will be reported by Hansard. The daily proof *Hansard* will be available the following day. It is the intention of the Chair to ensure that as many questions as possible are asked and answered and that both questions and answers are short and to the point.

The estimates committee consideration of the estimates will be restricted to discussion of those items for which a vote of money is proposed in the consolidated account. Questions must be clearly related to a page number, item, program or amount in the current division. It will greatly assist Hansard if members can give these details in preface to their question.

The minister may agree to provide supplementary information to the committee, rather than asking that the question be put on notice for the next sitting. I ask the minister to clearly indicate what supplementary information she agrees to provide and I will then allocate a reference number. If supplementary information is to be provided, I seek the minister's cooperation in ensuring that it is delivered to the principal clerk by Friday, 19 June 2015.

I caution members that if a minister asks that a matter be put on notice, it is up to the member to lodge the question on notice with the Clerk's office.

Are there any questions? Member for Midland.

Mrs M.H. ROBERTS: Page 361 sets out the summary of portfolio appropriations. I refer to the 2014–15 budget compared with the 2014–15 estimated actual figure. I note under "Capital Appropriation" an estimated actual of just \$35 million compared with the actual budget allocated this time last year of \$69 969 000, which indicates a significant reduction in the capital appropriation that occurred during the year. Can the minister explain what was cut there or what has been delayed? Further to that, I note that even with the delivery of services, there was an estimated actual budget of just \$1.223 billion compared with what was budgeted this time last year of \$1.253 billion, which is about \$40 million less. What was the impetus for spending \$40 million less? Was it an efficiency drive or some request from Treasury, and what services were cut or not delivered that the minister anticipated delivering this time last year?