

<b>CES31/2/07</b>	<b>Item 5.5</b>	<b>Port Kennedy Free Beach</b>
<b>Proponent</b>	City of Rockingham	
<b>Officer/s</b>	Mr J S Green, Executive Officer Governance Mr N D Fimmano, Manager Executive Services	
<b>Date of Report</b>	15 February 2007	
<b>Previously Before Council</b>	28 November 2006	
<b>Disclosure of Interest</b>	Mr C Thompson, Director Engineering and Parks Services, declared an interest affecting impartiality in Item 5.5 – Port Kennedy Free Beach (as detailed within Clause 3.3 of Council’s Code of Conduct and as detailed within regulation 34C of the Local Government (Administration) Regulations 1996) as he is the owner of property in the near vicinity of the Port Kennedy Free Beach, and left the Corporate and Engineering Services Committee meeting.	

**4:23pm – Mr C Thompson, left the Corporate and Engineering Services Committee meeting**

## **PURPOSE OF REPORT**

Council consideration of retaining or closing an area of beach at Port Kennedy as a Free Beach.

## **STRATEGIC PLAN**

Functional Area 3 – Land Use & The Environment – Land Use Control and Environmental Management.

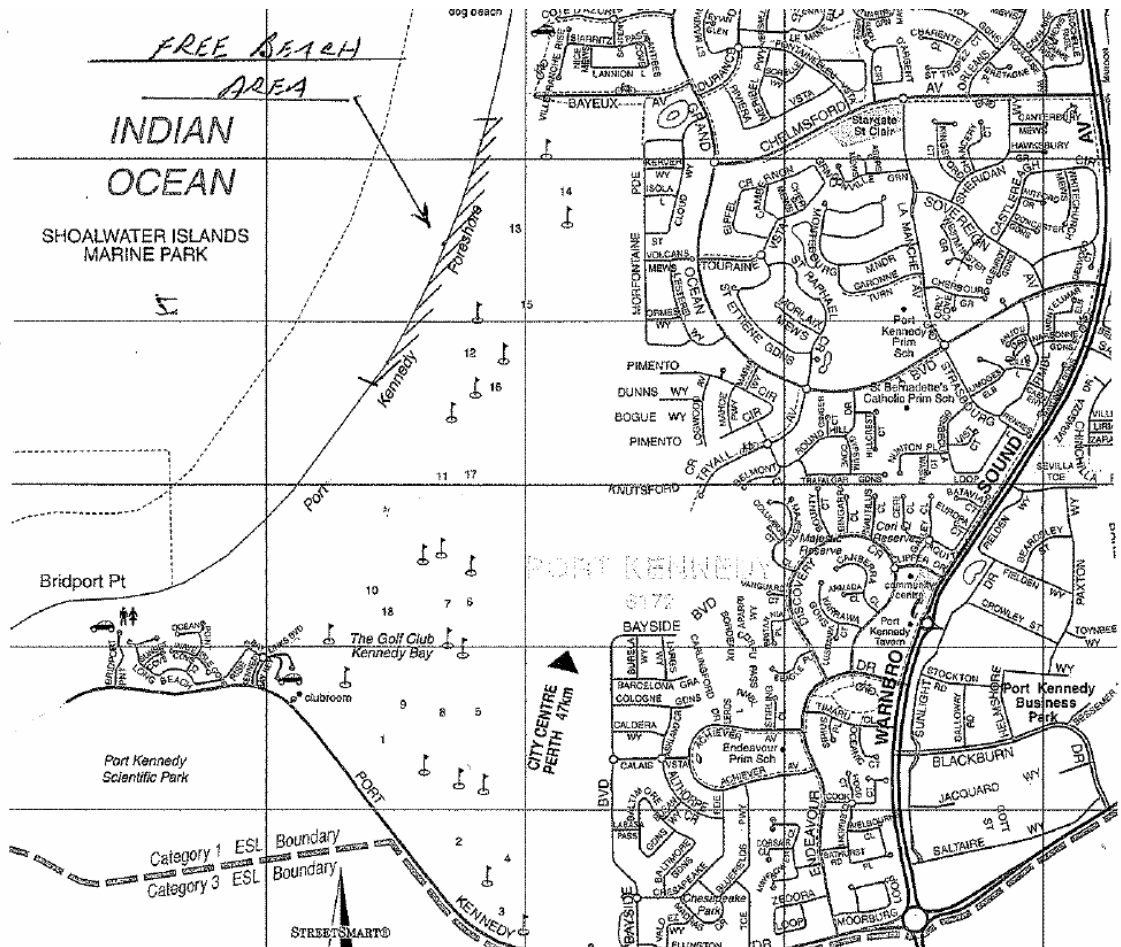
## **INTRODUCTION**

Council resolved at its meeting held on 28 November 2006, to take the following action:

- 1 *Advise the Officer in Charge at the Rockingham Police Station that it has been reported to Council that a photographer has been sighted in the dunes in the vicinity of the Port Kennedy Free Beach and requesting that police undertake patrols of the area.*
- 2 *Upgrade the signage indicating the Free Beach area.*
- 3 *Council officers prepare a comprehensive report on the suitability of the existing Free Beach in Port Kennedy, addressing issues associated with recent complaints and taking into consideration the substantial residential growth adjacent to the area and also the progressive development of the Port Kennedy Estate.*
- 4 *Council officers to consult with the WA Police Department to identify data on wilful exposure and indecent acts that have occurred in that area and include such data in the comprehensive report.*
- 5 *Seek clarification on what is deemed to be lawful as a nudist on Western Australian beaches and if the sand dune area is also a Free Beach area.*
- 6 *Upon completion of the report, Council consider all aspects in relation its retention or closure.*

## **BACKGROUND**

On the 20 December 1988, Council resolved to amend the (then) 'By – Law Relating to Safety, Decency and Comfort in respect of Bathing' to allow for persons to use a specified area of beach at Port Kennedy (900 metres in distance), under the control of Council, to bathe in water exposed to public view and the beach for sun-bathing in the public view without being clothed. The By – Law was amended in October 1993 to provide for the area to be re-located to a position 50 metres south of the original area. (Refer to following map for location).



The By-Law was repealed on the 5 July 2001 with the introduction of the City of Rockingham Local Government Property Local Law 2001. The new Local Law contains a provision that the City may make a determination to set aside specified local government property for the pursuit of a number of activities, which includes the wearing of no clothing. The Local Law also specifies that where a sign erected on local government property has been erected under a previous by-law or local law, then it is to be taken to be and have effect as a determination on and from the commencement of the Local Law. Given that the Free Beach sign was erected under the provisions of the previous By-Law, then by virtue of the provisions of the replacement Local Law the Free Beach became a determination of the City.

Under the provisions of the replacement Local Law, Council may amend or revoke a determination by resolution and it is not necessary to amend the Local Law as was the case with the previous By-Law. Any amendment or revocation requires the giving of local public notice advising of Council's decision.

## DETAILS

Council's resolution of the 28 November 2006 was prompted by a number of complaints that had been received from persons alleging inappropriate behaviour by some patrons of the Free Beach who were outside of the designated area or were on the Free Beach close to the boundary of the designated area. It is claimed by some complainants that there is no segregation between the Free Beach and the family beach.

The following action has been undertaken by Council Officers in relation to the resolution:

- 1 The Officer in Charge at the Rockingham Police Station has been advised of the report of a photographer being sighted in the dunes in the vicinity of the Port Kennedy Free Beach and has been requested to undertake patrols of the area.
- 2 The signage indicating the Free Beach area has been upgraded and additional beach access signs have been installed.
- 3 Data on reported incidents on wilful exposure and indecent acts that have occurred in the vicinity of the Port Kennedy Free Beach was requested from the Officer in Charge at the Rockingham Police Station. A/Senior Sergeant George Osinski advised on the 7 February 2007 that he has checked the Police IMS (Incident Management System) records for the past 6 months and cannot find any incident recorded in the vicinity of the Free Beach. He further advised that most of the indecent act reports have come from Golden Bay and Secret Harbour beaches.
- 4 Clarification has been sought through the internet on what is deemed lawful as a nudist on Western Australian beaches without success. The Collins Australian Dictionary defines nudism as 'the practice of not wearing clothes, for reasons of health'.
- 5 It has been clarified that the sand dune area adjacent to the Port Kennedy Free Beach is a Reserve vested with the National Parks & Nature Conservation Authority under the control of CALM for purposes of Conservation of Flora & Fauna and is not part of the Free Beach area. Council has no control over the activities occurring within this area.

Since the establishment of the Free Beach in 1988, the population of the Port Kennedy area has increased significantly resulting in increased patronage of the local beaches. From statistics available from the Australian Bureau of Census and Statistics, the Port Kennedy area had a population of 2228 in 1996 and 6715 in 2001. Statistics are not yet available for the 2006 census, however estimates would be in the vicinity of 8500 to 9000.

## COMMENT

With the substantial increase in population of the Port Kennedy area since the establishment of the Free Beach, it is timely for Council to review the appropriateness of providing such an amenity in close proximity to a residential area that mainly comprises families. The exclusion of 900 metres of beach in that area specifically for use by a particular group of persons who wish to swim or sun bathe without clothing, deprives those persons within the community with children or who are offended by such behaviour from using this part of the beach. Although people other than nudists may use the beach if they wish, by its very nature a substantial portion of the community would not wish to do so.

Since this matter was raised at the Council meeting held on 28 November 2006, a total of 8 individual submissions and 1 petition containing 95 signatures have been received. Of the 8 individual submissions, 4 were in favour of the Free Beach and 4 were against with the petition being against.

This is only a very small sample of the population and only provides an indication of the feeling within the community of retaining or closing the Free Beach. Council may see benefits in retaining the Free Beach at this time and if so could resolve to take no further action. Alternatively, if it is considered that permission should be withdrawn, then prior to making a decision in this matter, it is recommended that comments be sought from the wider community by way of formal submissions. Following closure of the public comment period Council will be in a position to consider the matter further in light of community expectations.

#### **POLICY IMPLICATIONS**

Nil

#### **FINANCIAL IMPLICATIONS**

Funds are available in the Public Relations account (number 200024) for advertising to seek public comment in this matter.

#### **STATUTORY IMPLICATIONS**

The City of Rockingham Local Government Property Local Law 2001 contains a provision that the City may make a determination to set aside specified local government property for the pursuit of a number of activities, which includes the wearing of no clothing. Council may amend or revoke a determination by resolution.

#### **VOTING REQUIREMENTS**

Normal

#### **OFFICER RECOMMENDATION**

That Council considers one of the following recommendations:

#### **OPTION 1 RECOMMENDATION**

That Council retain the current determination providing for the wearing of no clothing on an area of specified beach at Port Kennedy.

#### **OPTION 2 RECOMMENDATION**

That Council take the following action:

- 1 Agree in principle to the revoking of the determination providing for the wearing of no clothing on a specified area of beach at Port Kennedy.
- 2 Give local public notice of the proposed revoking of the determination inviting submissions in writing within a period of 21 days after the date of publication of the notice.
- 3 Consider that matter further after closure of the submission period.

## **COMMITTEE RECOMMENDATION**

**That this matter be deferred pending community consultation on the suitability of retaining the current determination providing for the wearing of no clothing on an area of specified beach at Port Kennedy.**

Committee Voting – 4/0

**4:27pm – Mr C Thompson returned to the Corporate & Engineering Services Committee meeting.**

The Chairman of the Corporate and Engineering Services Committee meeting advised Mr Thompson of the Committee's recommendation in this matter.