

CES263/7/07 Item 5.62 Port Kennedy Free Beach	
Proponent	City of Rockingham
Officer/s	Mr J S Green, Executive Officer Governance
Date of Report	11 July 2007
Previously Before Council	28 November 2006 & 27 February 2007
Disclosure of Interest at the Council meeting	Mr C Thompson declared an interest affecting impartiality in CES263/7/07 – Item 5.62 – 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 resides within close proximity to the Free Beach, and left the Council meeting.

6:38pm – Mr C Thompson, Director Engineering & Parks Services left the Council meeting

**CONFIRMED AT A COUNCIL MEETING
HELD ON TUESDAY 28 AUGUST 2007**

MAYOR (B W SAMMELS)

PURPOSE OF REPORT

Council consideration of submissions received on the suitability of the current determination, providing for the wearing of no clothing on an area of specified beach at Port Kennedy.

STRATEGIC PLAN

Functional Area 3 – Land use & The Environment –Coastal and Foreshore Management.

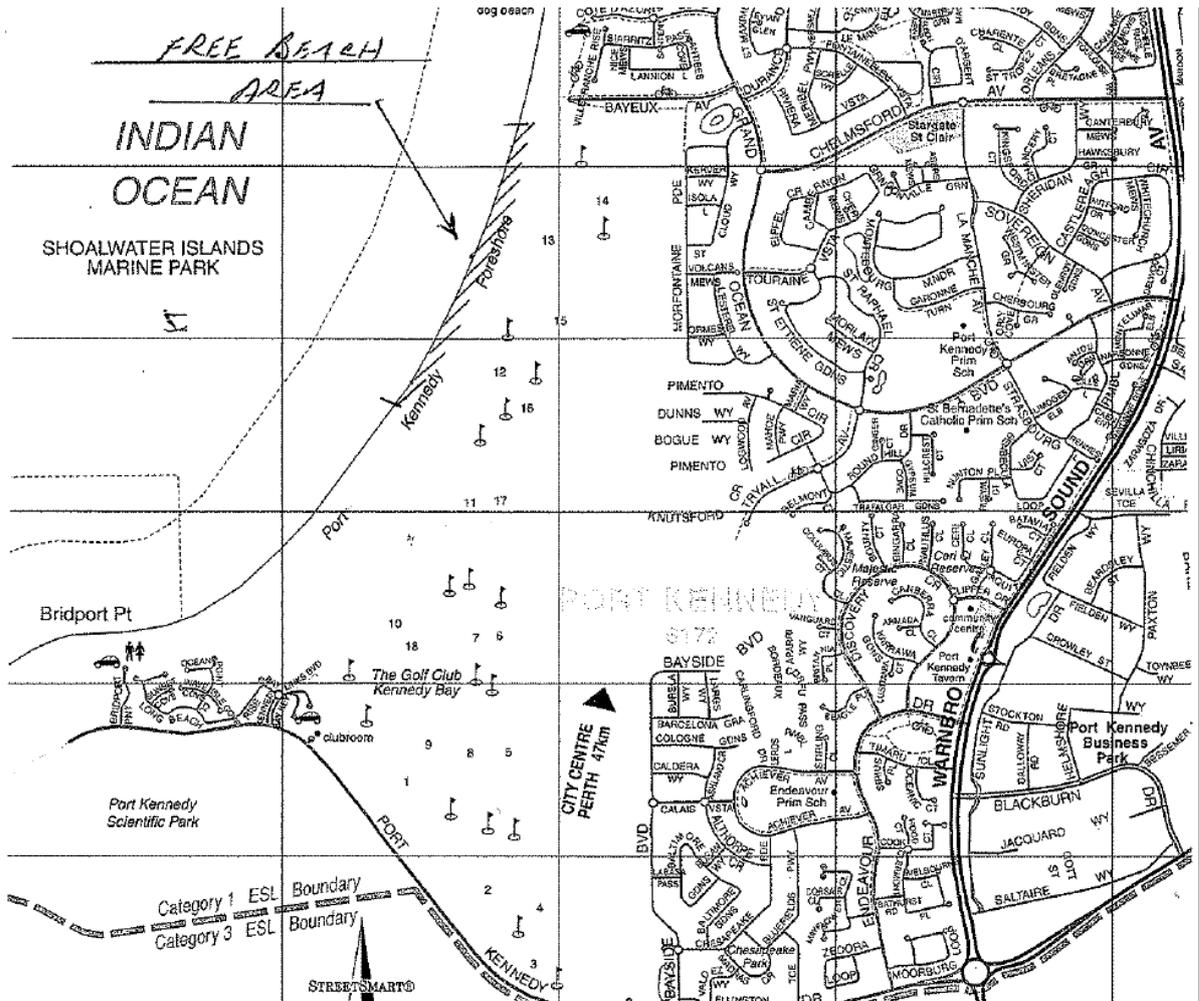
INTRODUCTION

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.

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 was undertaken by Council Officers in relation to the resolution:

- 1 The Officer in Charge at the Rockingham Police Station was advised of the report of a photographer being sighted in the dunes in the vicinity of the Port Kennedy Free Beach and 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 previous 6 months and could not 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 was 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 was 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, 6715 in 2001 and 12,816 in 2006.

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.

Council resolved at its meeting held on 27 February 2007 to defer this matter 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.

DETAILS

Commencing late March 2007, the following advertisement appeared in the West Australian newspaper, the Sound Telegraph newspaper, the Weekend Courier newspaper, on the City's website and on notice boards at the City of Rockingham Administration Centre and all Libraries.

**CITY OF ROCKINGHAM
PORT KENNEDY FREE BEACH (WEARING OF NO CLOTHING)**

The City of Rockingham is reviewing the suitability of retaining the current determination providing for a 'Free Beach' (wearing of no clothing) on an area of specified beach at Port Kennedy. This area of beach has been declared a 'Free Beach' since 1988, which commences 50 metres south of the Bayeux Avenue carpark and extends southwards for a distance of 900 metres.

Written submissions on the suitability of retaining the beach as a 'Free Beach' are invited and are to be submitted to:

Chief Executive Officer, City of Rockingham,
at one of the following addresses:

In Person: *City of Rockingham Administration Centre, Civic Boulevard, Rockingham.*
By Post: *PO Box 2142, Rockingham, WA DC 6967*
By Email: *council@rockingham.wa.gov.au*

By: *Thursday 31 May 2007.*

GARY G HOLLAND
CHIEF EXECUTIVE OFFICER

As at the closing for submissions, a total of 173 submissions and two petitions containing 215 signatures had been received. With some of the submissions representing more than one person, the total individuals for the submissions amounted to 209 and together with the 215 signatures on the two petitions; this results in a total of 424 respondents commenting on the proposal.

The following is a breakdown of those individuals supporting the beach being retained as a Free Beach, those wishing to see the Free Beach closed and those suggesting that the Free Beach should be relocated.

Free Beach being retained	259
Free Beach being closed	145
<u>Free Beach being relocated</u>	<u>20</u>
<u>Total</u>	<u>424</u>

An analysis was undertaken of the residential address of respondents into local (residing within the City of Rockingham) and those residing outside of the City of Rockingham. It was not possible to establish the residential address of some respondents who had lodged by email, due to a residential address not being provided.

This analysis resulted in the following:

Category	Free Beach Being Retained	Free Beach Being Closed	Free Beach Being Relocated	Total
City of Rockingham Residents	98 (66 on submissions and 18 on petition)	128 (42 on submissions and 86 on petition)	16 (16 on submissions)	242
Non – City of Rockingham Residents	148 (46 on submissions and 102 on petition)	9 (9 on petition)	0	157
Address not given (emails)	13 (13 on submissions)	8 (8 on submissions)	4 (4 on submissions)	25
Total	259	145	20	424

Of the 242 respondents residing within the City of Rockingham, 40% (98) supported the Free Beach being retained with 60% (128 plus 16) supporting the Free Beach being closed or relocated.

Of the 157 respondents residing outside of the City of Rockingham, 94% (148) supported the Free Beach being retained with 6% (9) supporting the Free Beach being closed or relocated.

Of the total respondents, 61% (259) supported the Free Beach being retained with 39% (165) supporting the Free Beach being closed or relocated.

The respondents cited a number of reasons for retaining, closing or relocating the Free Beach and the 20 main reasons are summarised as follows.

20 Main Reasons Provided in Submissions for Retention

- 1 Only a small section of the entire coastline of the City of Rockingham is dedicated as a Free Beach and people who do not wish to see naked people can swim at other beaches in the area.
- 2 One of only three beaches in Western Australia that is a Free Beach.
- 3 Moved to Rockingham to be near the Free Beach.
- 4 The Free Beach was established in 1988 and residents that have built in the area since that date would have known of the existence of the Free Beach.
- 5 Opposition to the Free Beach is from a local minority.
- 6 If the Free Beach is closed, local residents would have to travel to Swanbourne to swim at a Free Beach.
- 7 Encourages tourists to the area who like to swim at a Free Beach.
- 8 People who use the Free Beach look after the beach much more than people who use other beaches in the area.
- 9 Health benefits in swimming naked and like having an overall tan.
- 10 The Free Beach backs onto sand dunes and the golf course and is not overlooked by residents and is well signposted.
- 11 Existence of the Free Beach is publicised worldwide and attracts tourists from Western Australia, the eastern states and from overseas.
- 12 Very safe swimming beach, which is accessible and manageable by senior citizens who wish to use the Free Beach.
- 13 No supporting evidence of acts of unlawful and indecent acts.
- 14 People should have the option to go nude on the beach in a designated area as do dog owners in specified areas.
- 15 Pressure for closure is coming from a small group of people.

- 16 Practical convenience of not having to wear bathing costumes that go cold in the sea breeze when out of the water.
- 17 Prohibition will become an added drain on scarce police and ranger resources in having to apprehend and prosecute offenders.
- 18 Civil disobedience in Sydney when a Council tried to ban nude bathing on a dedicated Free Beach.
- 19 Very friendly and sociable place enjoyed by many families including the elderly.
- 20 Majority of people that use the Free Beach are law abiding and friendly.

20 Main Reasons Provided in Submissions for Closure

- 1 Witnessed wilful exposure at the entrance to the Free Beach and in the dunes.
- 2 Perverted characters frequent the Free Beach.
- 3 Risk of sexual assault greater at the Free Beach.
- 4 Encourages male exhibitionism.
- 5 Free Beach is in the middle of a residential area that comprises young families and not appropriate that it be retained as a Free Beach.
- 6 No longer an isolated area as it was when classified as a Free Beach.
- 7 People who like to use the beach, especially families with children, are prevented from using this part of the beach if they do not wish to see naked people.
- 8 Should not be located beside a family beach.
- 9 Local families and the elderly like to walk to their nearest beach and should not be confronted by naked people in the Bayeux Avenue car park, which has the same access as the Free Beach.
- 10 Encourages sexual acts in the sand dunes.
- 11 With the population increase of the local area the Free Beach has had its day.
- 12 Some people would like to walk from Warnbro to Port Kennedy along the beach without having to confront nudists.
- 13 Tourists get a surprise when confronted by nudists if they do not know that it is a Free Beach.
- 14 it is not a beach that is suitable for families or attracts families.
- 15 This area of beach would be used more by the general public if nudism was not permitted.
- 16 The Free Beach is not conducive to the title of Rockingham having the best beaches in WA
- 17 Attracts unsavoury people.
- 18 'Character of the beach' steadily changing for the worse.
- 19 Some property values are affected by having the Free Beach close by.
- 20 Genuine nudists not the problem, but people who frequent the sand dunes for sexual acts.

Main Reasons for Relocation

- 1 Relocate 200 metres further south so that it does not abut the popular family swimming spot at Bayeux Ave.
- 2 Relocate elsewhere as the predominant age of children in the nearby residential estate is 7 years old.
- 3 The Free Beach needs to be moved away from residential areas with no cover behind such as sand dunes for those who would spy and perhaps take an opportunity that would not be there if no hiding places were nearby.
- 4 Witnessed inappropriate sexual behaviour.
- 5 Relocate to 100m further south and keep a buffer zone of 100 metres both sides of the Free Beach to allow people using the parking facilities at Bayeux entering directly onto the beach without concerns.
- 6 Move to the south side of Long Point away from residential area.

COMMENT

Of the total overall submissions received, (City of Rockingham residents and non-City of Rockingham residents) 61% were in favour of the Free Beach being retained in its present location with 39% supporting closure or relocation. The situation is quite different when analysing the respondents who reside within the City of Rockingham only, with 40% in favour of retaining the Free Beach and 60% supporting closure or relocation. The support from residents outside of the City of Rockingham is a significant 94% as opposed to 6% supporting the closure or relocation. This support from people who reside outside the City of Rockingham is understandable as it is people who use the Free Beach that would want to see it retained as opposed to people who live outside the area that have no interest in using a Free Beach and therefore would not be interested in making a submission.

The question for Council to consider is whether the Free Beach is to be retained for an overall 61% of respondents who wish to see it retained or the 60% of local resident respondents who wish to see the beach closed or relocated.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Minimal amount for advertising of Council's decision.

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.

If the Council decides to revoke a determination it is to give local public notice of its intention to revoke the determination and invite submissions.

It should be noted that although Council has sought community consultation on this matter by its resolution of the 27 February 2007, it is different to the requirement under the Local law as a proposal to revoke a determination is to be advertised (as opposed to Council just seeking community consultation to revoke or not to revoke).

VOTING REQUIREMENTS

Normal

OFFICER RECOMMENDATION

That the Corporate and Engineering Services Committee Council considers the following options and recommends one of the options for consideration by Council:

RECOMMENDATION (Option 1)

That Council take the following action:

- 1 Retain the current determination providing for the wearing of no clothing on an area of specified beach at Port Kennedy.

- 2 Advertise locally and on the City's website of Council's decision.

RECOMMENDATION (Option 2)

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 In accordance with the provisions of clauses 2.2 and 2.6 of the *City of Rockingham Local Government Property local Law 2001*, 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 the matter further after closure of the submission period.

RECOMMENDATION (Option 3)

That Council defer this matter further and investigate the feasibility of relocating the Free Beach to an alternative location further south.

COMMITTEE RECOMMENDATION

That Council take the following action:

- 1 Retain the current determination providing for the wearing of no clothing on an area of specified beach at Port Kennedy.
- 2 Advertise locally and on the City's website of Council's decision
- 3 **Upgrade the signage in the area, clearly identifying the location of the free beach.**

Committee Voting – 3/1 (Cr P Edman against)

RECOMMENDED RESOLUTION

Moved Cr P Edman, seconded Cr L Liley That Council defer this matter further and investigate the feasibility of relocating the Free Beach to an alternative location further south.

Motion Lost – 4/5

Crs having voted for the Motion:

Cr P Edman, Cr L Liley, Cr G Kettle, Cr L Dodd

Crs having voted against the Motion:

Cr R Smith, Cr B Warner, Cr A Prince, Cr L Dunkling, Cr B Sammels

COUNCIL RESOLUTION

Moved Cr B Warner, seconded Cr R Smith

That Council take the following action:

- 1 Retain the current determination providing for the wearing of no clothing on an area of specified beach at Port Kennedy.

- 2 Advertise locally and on the City's website of Council's decision
- 3 **Upgrade the signage in the area, clearly identifying the location of the free beach.**

Carried – 5/4

Crs having voted for the Motion:

Cr R Smith, Cr B Warner, Cr A Prince, Cr L Dunkling, Cr B Sammels

Crs having voted against the Motion:

Cr P Edman, Cr L Liley, Cr G Kettle, Cr L Dodd

4:30pm – Three members of the public left the Corporate & Engineering Services Committee meeting

7:03pm – Mr C Thompson, Director Engineering & Parks Services returned to the Council meeting

The Mayor advised Mr C Thompson of Council's decision in item CES263/7/07