City of Rockingham

MINUTES

Planning Services
Standing Committee Meeting

Held on

Monday 18 July 2011

4:00pm

Council Boardroom
Council Administration Building
Civic Boulevard, Rockingham
## CONTENTS

1. Declaration of Opening  
2. Record of Attendance/ Apologies/ Approved Leave of Absence  
3. Responses to Previous Public Questions Taken on Notice  
4. Public Question Time  
5. Confirmation of Minutes of the Previous Meeting  
6. Matters Arising from the Previous Minutes  
7. Announcement by the Presiding Person without Discussion  
8. Declaration of Member’s and Officer’s Interest  
9. Petitions/ Deputations/ Presentations/ Submissions  
10. Matters for which the Meeting may be Closed  
11. Bulletin Items  
   Planning Services Information Bulletin - July 2011  
12. Agenda Items – Planning Services Standing Committee  
   SP-036/11 Final Approval - Scheme Amendment No.98 - Rezoning from ‘Rural’ to ‘Special Rural’  
   SP-037/11 Prostitution Green Bill 2011  
   SP-038/11 Section 40 Liquor Licence Application - Change of Hours - Restricted Club Licence  
   SP-039/11 Proposed Amendments to Planning Policy 3.3.14 - Bicycle Parking and End-of-Trip Facilities  
   SP-040/11 Proposed Development (Estate Marketing) Sign - Golden Bay Housing Estate  
   SP-041/11 Proposed Street Naming Theme - Lot 1507 Eighty Road, Baldivis  
   SP-042/11 Final Approval of Scheme Amendment No.99 - Commercial Communications Antennae  
   SP-043/11 Removal of Rockingham Hotel from the Register of Heritage Places  
13. Reports of Councillors  
14. Addendum Agenda  
15. Motions of which Previous Notice has been given
<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>16.</td>
<td>Notices of Motion for Consideration at the Following Meeting</td>
<td>75</td>
</tr>
<tr>
<td>17.</td>
<td>Urgent Business Approved by the Person Presiding or by Decision of the Committee</td>
<td>75</td>
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<tr>
<td>18.</td>
<td>Matters Behind Closed Doors</td>
<td>75</td>
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<tr>
<td>19.</td>
<td>Date and Time of Next Meeting</td>
<td>75</td>
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<tr>
<td>20.</td>
<td>Closure</td>
<td>75</td>
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</tbody>
</table>
## Declaration of Opening

The Chairman declared the Planning Services Standing Committee Meeting open at 4.00pm and welcomed all present.

## Record of Attendance/ Apologies/ Approved Leave of Absence

<table>
<thead>
<tr>
<th>2.1 Councillors</th>
<th></th>
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<tbody>
<tr>
<td>Cr Richard Smith</td>
<td>Chairperson</td>
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<tr>
<td>Cr Brian Warner</td>
<td></td>
</tr>
<tr>
<td>Cr Ann Prince</td>
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<td>Cr Les Dodd</td>
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<table>
<thead>
<tr>
<th>2.2 Executive</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Mr Andrew Hammond</td>
<td>Chief Executive Officer</td>
</tr>
<tr>
<td>Mr Rod Fielding</td>
<td>A/Director, Planning &amp; Development Services</td>
</tr>
<tr>
<td>Mr Brett Ashby</td>
<td>A/Manager, Strategic Planning &amp; Environment</td>
</tr>
<tr>
<td>Mr Richard Rodgers</td>
<td>Manager, Building Services (until 4.20pm)</td>
</tr>
<tr>
<td>Mr Dave Waller</td>
<td>A/Manager, Statutory Planning</td>
</tr>
<tr>
<td>Mr Erica Jenkin</td>
<td>A/Manager, Health Services (until 4.20pm)</td>
</tr>
<tr>
<td>Ms Melinda Wellburn</td>
<td>Secretary to Director, Planning &amp; Development Services</td>
</tr>
</tbody>
</table>

| Members of the Public:   | 5            |
| Press:                   | 1            |

| 2.3 Apologies:           |               |

| 2.4 Approved Leave of Absence: |     |
3. **Responses to Previous Public Questions Taken on Notice**

Nil

<table>
<thead>
<tr>
<th>4.</th>
<th><strong>Public Question Time</strong></th>
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<tbody>
<tr>
<td><strong>Mr Allan West, President, Totally &amp; Partially Disabled Veterans</strong> asked the following question with respect to Item SP-038/11.</td>
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<tr>
<td>1. &quot;As motorcycles will not be attending the premises and the proposed Section 40 Certificate is for an extension of daytime hours, would the Council give the Association a favourable decision?&quot;</td>
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<tr>
<td>The Chairman thanked Mr West and advised that the matter would be considered later in the meeting.</td>
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<td><strong>Mr Nathaniel Maxwell, 2 Dove Retreat, Baldivis</strong> asked the following questions with respect to Item SP-042/11.</td>
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<tr>
<td>1. &quot;Can the Council ensure that the proposed vegetation screening will be successful?&quot;</td>
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<td>2. &quot;Has there been any consideration to the type of screening required?&quot;</td>
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<td>3. &quot;Does the special condition of Amendment No.99 adequately screen the current antenna or any future proposed antennas?&quot;</td>
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<tr>
<td>The Chairman thanked Mr Maxwell and advised that the matter would be considered later in the meeting.</td>
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<td><strong>Mr John Sparkes, No.335 Eighty Road, Baldivis</strong> made the following comments with respect to Item SP-042/11.</td>
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<tr>
<td>&quot;I have no intention of changing the infrastructure for the existing antenna, or to erect additional antennas. I provide the community with an important service during emergencies, where an antenna radio is the only available option. Visitors to my home don't even notice the antenna.&quot;</td>
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<tr>
<td>The Chairman thanked Mr Sparkes and advised that the matter would be considered later in the meeting.</td>
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</table>

5. **Confirmation of Minutes of the Previous Planning Services Standing Committee Meeting**

Moved Cr Dodd, seconded Cr Prince:

That Council **CONFIRM** the Minutes of the Planning Services Standing Committee Meeting held on 20 June 2011, as a true and accurate record.

Committee Voting - 4/0

6. **Matters Arising from the Previous Planning Services Standing Committee Meeting Minutes**

Nil.

7. **Announcement by the Presiding Person without Discussion**

The Chairman announced to all present that decisions made at Committees of Council are recommendations only and may be adopted in full, amended or deferred when presented for consideration at the next Council meeting.
<table>
<thead>
<tr>
<th>8.</th>
<th>Declarations of Members and Officers Interests</th>
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<tbody>
<tr>
<td>Nil</td>
<td></td>
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<tr>
<td>9.</td>
<td>Petitions/Deputations/Presentations/Submissions</td>
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<tr>
<td>Nil</td>
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<tr>
<td>10.</td>
<td>Matters for which the Meeting may be Closed</td>
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<tr>
<td>Nil</td>
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<tr>
<td>11.</td>
<td>Bulletin Items</td>
</tr>
</tbody>
</table>

**Planning Services Information Bulletin - July 2011**

**Health Services**
1. Health Services Team Overview
2. Human Resource update
3. Project Status Reports
   3.1 FoodSafe
   3.2 Industrial Audits
   3.3 Community Health & Wellbeing Plan
   3.4 Health Promotion
   3.5 North Rockingham Industrial Noise
   3.6 Ocean Water Sampling
4. Information Items
   4.1 Mosquito-Borne Disease Notifications - June 2011
   4.2 Food Recalls - June 2011
   4.3 Statistical Health Information - June 2011
     4.3.1 Food Premises Inspections
     4.3.2 Public Building Inspections
     4.3.3 Outdoor Public Event Approvals - June 2011
     4.3.4 After Hours Noise & Smoke Nuisance Complaint Service
     4.3.5 Complaint – Information
     4.3.6 Building Plan Assessments
     4.3.7 Septic Tank Applications
     4.3.8 Demolitions
     4.3.9 Swimming Pool Sampling
     4.3.10 Rabbit Processing
     4.3.11 Hairdressing & Skin Penetration Premises
     4.3.12 Family Day Care
4.4 Proposed MRS Amendment - Rockingham Strategic Metropolitan Centre - Possible Noise Impacts
4.5 Mosquito Management - Peel Regional Meeting

**Building Services**
1. Building Services Team Overview
2. Human Resource Update
3. Project Status Reports
4. Information Items
   4.1 Prosecutions and Notices
   4.2 Private Swimming Pool and Spa Inspection Program
   4.3 Monthly Building Licence Approvals - (All Building Types)
   4.4 Certificates of Classification
   4.5 Demolition Licence
4.6 Community Sign Licence
4.7 Permanent Sign Licence
4.8 Strata Title Certificate
4.9 Building Approval Certificates for Unauthorised Building Works
4.10 Excavation Licence
4.11 Smoke Alarm Approval
4.12 Monthly Caravan Park Site Approvals

**Strategic Planning and Environment**

1. Strategic Planning and Environment Team Overview
2. Human Resource Update
3. Project Status Reports
   3.1 Policy Manual Review (LUP/1265)
   3.2 Local Planning Strategy (LUP/1352)
   3.3 Visual Landscape Study (LUP/1419)
   3.4 Dixon Road Area Assistance Grant (LUP/516)
   3.5 Developer Contribution Scheme (LUP/909)
   3.6 Local Biodiversity Strategy Review (EVM/22)
   3.7 Karnup District Water Management Strategy (EVM/136)
   3.8 Lake Richmond Water Quality Studies and Integrated Catchment Management Plan (EVM/135)
   3.9 Water Campaign (EVM/56-02)
4. Information Items
   4.1 Peron Naturaliste Partnership - Coastal Adaptation Decision Pathways Project
   4.2 Proposed Structure Plan - Golden Bay (Department of Housing) (LUP/246-10)

**Statutory Planning**

1. Statutory Planning Team Overview
2. Human Resource Update
3. Project Status Reports
   3.1 eDA (Planning Products via the Web)
4. Information Items
   4.1 Land Use - Planning Enforcement
   4.2 Subdivision/Development Approvals and Refusals by the WAPC
   4.3 Notifications & Gazettals
   4.4 Subdivision Clearances
   4.5 Subdivision Survey Approvals
   4.6 Delegated Development Approvals
   4.7 Delegated Development Refusals
   4.8 Delegated Building Envelope Variations
   4.9 Subdivision/Amalgamation Supported
   4.10 Subdivision/Amalgamation Refused
   4.11 Progress of Development on No.432-434 Safety Bay Road, Safety Bay ('Waikiki Hotel Site')

**Director Planning and Development**

1. Director Planning and Development Team Overview
2. Human Resource Update
3. Project Status Reports
   3.1 Administration Building Refurbishment/Fitout
   3.2 Rockingham Strategic Metropolitan Centre – Infrastructure Development Strategy
   3.3 Rockingham Primary Centre Infrastructure - Business Case
   3.4 Smart Village 1 Masterplan
4. Information Items
### Committee Recommendation:
That Councillors acknowledge having read the Planning Services Information Bulletin - July 2011 and the contents be accepted.

Committee Voting - 4/0

### 12. Agenda Items

4.20pm - Mr Richard Rodgers, Manager, Building Services and Mrs Erica Jenkin, A/ Manager, Health Services, left the Planning Services Standing Committee Meeting.
<table>
<thead>
<tr>
<th><strong>Reference No &amp; Subject:</strong></th>
<th>SP-036/11 Final Approval - Scheme Amendment No.98 - Rezoning from ‘Rural’ to ‘Special Rural’</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>File No:</strong></td>
<td>LUP/59-02</td>
</tr>
<tr>
<td><strong>Proponent/s:</strong></td>
<td>Kelvin Oliver Planning Consultant</td>
</tr>
<tr>
<td><strong>Author:</strong></td>
<td>Mr John-Paul MacDonagh, Planning Officer</td>
</tr>
<tr>
<td><strong>Other Contributors:</strong></td>
<td>Mr Dave Waller, Co-ordinator, Statutory Planning</td>
</tr>
<tr>
<td><strong>Date of Committee Meeting:</strong></td>
<td>18th July 2011</td>
</tr>
<tr>
<td><strong>Previously before Council:</strong></td>
<td>May 2010 (PD51/5/10)</td>
</tr>
<tr>
<td><strong>Disclosure of Interest:</strong></td>
<td>Legislative</td>
</tr>
<tr>
<td><strong>Site:</strong></td>
<td>Lot 50 Wilkinson Road, Baldivis</td>
</tr>
<tr>
<td><strong>Lot Area:</strong></td>
<td>23.6016ha</td>
</tr>
<tr>
<td><strong>LA Zoning:</strong></td>
<td>Rural</td>
</tr>
<tr>
<td><strong>MRS Zoning:</strong></td>
<td>Rural</td>
</tr>
<tr>
<td><strong>Attachments:</strong></td>
<td>Location Plan</td>
</tr>
<tr>
<td><strong>Maps/Diagrams:</strong></td>
<td>Location Plan</td>
</tr>
</tbody>
</table>

Fig 1 Location Plan
1. **Purpose of Report**

To consider granting Final Approval to Scheme Amendment No.98 to rezone Lot 50 Wilkinson Road Baldivis, from ‘Rural’ to ‘Special Rural’.

2. **Background**

In May 2010, Council resolved to initiate Amendment No.98 to Town Planning Scheme No.2 (TPS2) to rezone the land from ‘Rural’ to ‘Special Rural’, to facilitate the subdivision of the land into two lots.

Following the decision from the Council, the City requested appropriate documentation which included a Fire Management Plan, Local Water Management Plan, modified Subdivision Guide Plan and modified Scheme Amendment documents, to enable the City to advertise the amendment in accordance with the Town Planning Regulations.

The Scheme Amendment documents were referred to the Western Australian Planning Commission and Environmental Protection Authority on the 16th March 2011. On the 5th April 2011, the EPA advised that formal assessment of the proposal was not required.

3. **Details**

Following completion of the advertising period, the Council’s decision to amend TPS2, to rezone lot 50 Wilkinson Road, Baldivis from ‘Rural’ to ‘Special Rural’, is now required pursuant to the Town Planning Regulations 1967.

4. **Implications to Consider**

a. **Consultation with the Community**

   The Amendment was advertised for public comment in accordance with the requirements of the Town Planning Regulations 1967 for a period of 48 days, ending on the 23rd June 2011, with advertising being undertaken in the following manner:-

   (i) A sign was erected on the property and remained on-site for the duration of the advertising period;

   (ii) An advertisement placed in the Public Notices section of the Weekend Courier newspaper on the 6th May 2011; and

   (iii) Four (4) landowners (three of the landowners own two properties each) were notified in writing of the proposal.

   No submissions were received from the community at the close of the advertising period.

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Fig 2 Advertising Plan

Legend
- Subject Site
- Consulted land
b. Consultation with Government Agencies

The Amendment was referred to the Environmental Protection Authority (EPA) for consideration of the need for assessment under Division 3 of the Environmental Protection Act 1986. The EPA advised that the overall impact of the proposal would not be severe enough to warrant assessment under the Environmental Protection Act.

The following service authorities were also notified in writing of the proposal:-

- Department of Environment and Conservation (DEC)
- Western Power (WP)
- Telstra
- Department of Water (DoW)
- FESA

During the advertising period, a total of three (3) submissions were received from servicing authorities (DEC, WP, and DoW) raising no objection to the proposal. Advice relating to the future servicing of the proposed lots was provided from the authorities. A schedule of submissions is attached to this report.

c. Strategic

Community Plan

This item addresses the Community’s Vision for the future and specifically the following Aspiration contained in the Community Plan 2011:-

Aspiration 11: Planning for population growth to ensure that future development and land-uses contribute to a sustainable City that provided for a genuinely desirable lifestyle.

d. Policy

Rural Land Strategy

Planning Policy No.5.2 - Rural Land Strategy was prepared in accordance with State Planning Policy No.2.5 - Agriculture and Rural Land use Planning (Manual 2001) to guide development and subdivision within the ‘Rural’, ‘Special Rural’ and ‘Special Residential’ zones within the district. The subject land is located within Planning Precinct 6C identified for Rural or Special Rural development. The proposed rezoning complies with the policy provisions of the Rural Land Strategy and is consistent with the ‘Special Rural’ zoning of adjacent properties.

Environment

The subject land has a Conservation Category Wetland (CCW) that crosses the site which is addressed in the Subdivision Guide Plan. The CCW will be protected through the incorporation of a fifty (50) metre buffer in accordance with the Environmental Protection Authority’s Guidance Statement No.33 - Environmental Guidance for Planning and Development.

Vehicle access to the building envelopes will be via an existing fire break and access track.
Fig 3 Subdivision Guide Plan Sheet 1

Fig 4 Subdivision Guide Plan Sheet 2
**Peel-Harvey Catchment Management**

The proposal is consistent with the WAPC’s State Planning Policy 2.1 - The Peel-Harvey Coastal Plan Catchment. The subject land is located within the Serpentine River Floodplain which restricts development within 300 metre from the Floodway (see Figure 4). The Subdivision Guide Plan designates the location of the Building Envelopes outside of the 300 metre buffer.

**Fire Management Plan**

A Fire Management Plan has been provided by the Proponent in accordance with the WAPC guidelines Planning for Bush Fire Protection. The Fire Management Plan meets the requirements of these guidelines.

e. **Financial**

Nil

f. **Legal and Statutory**

In accordance with the Town Planning Regulations 1967, the Council is required to consider all submissions made within 42 days of the publication of the advertisement and submit to the Western Australian Planning Commission, for recommendation to the Minister for Planning, its decision to proceed or not to proceed with the Scheme Amendment.

5. **Comments**

The proposed rezoning and the inclusion of the land within the ‘Special Rural’ zone will allow for development that is consistent with the objectives of the Rural Land Strategy and enable the ongoing protection of environmental values of the locality.

Given no objections were received in relation to the Amendment, it is recommended that Council grant Final Approval to the Scheme Amendment.

6. **Voting Requirements**

Simple Majority

7. **Officer Recommendation**

That Council:

1. **ADOPT** for Final Approval Amendment No.98 to Town Planning Scheme No.2, which seeks to rezone Lot 50 Wilkinson Road Baldivis, from ‘Rural’ to ‘Special Rural’, as follows:-

   (i) Modifying the Scheme Text Schedule 4 Special Rural Zone ‘Portions of Planning Unit 6’ provisions as follows:-

      (a) Include ‘Portion of Lot 50 Wilkinson Road, Baldivis’ within Plan Reference 6(iii) of the location Table in Schedule No.4 applying to Portions of Planning Unit 6 of the Rural Land Strategy; and

      (b) Amend Plan No.4 - Special Rural Zones (North) being amended to show part of Lot 50 Wilkinson Road, Baldivis outlined in black and annotated as 6(iii).

   (ii) Modify the Scheme Maps by rezoning Lot 50 (No.702) Wilkinson Road, Baldivis from ‘Rural’ to ‘Special Rural’.

2. **ADOPT** the Recommendations as contained in the Schedule of Submissions.
8. Committee Recommendation

That Council:

1. **ADOPT** for Final Approval Amendment No.98 to Town Planning Scheme No.2, which seeks to rezone Lot 50 Wilkinson Road Baldivis, from ‘Rural’ to ‘Special Rural’, as follows:-
   
   (i) Modifying the Scheme Text Schedule 4 Special Rural Zone 'Portions of Planning Unit 6' provisions as follows:-

   (a) Include 'Portion of Lot 50 Wilkinson Road, Baldivis' within Plan Reference 6(iii) of the location Table in Schedule No.4 applying to Portions of Planning Unit 6 of the Rural Land Strategy; and

   (b) Amend Plan No.4 - Special Rural Zones (North) being amended to show part of Lot 50 Wilkinson Road, Baldivis outlined in black and annotated as 6(iii).

   (ii) Modify the Scheme Maps by rezoning Lot 50 (No.702) Wilkinson Road, Baldivis from 'Rural' to 'Special Rural'.

3. **ADOPT** the Recommendations as contained in the Schedule of Submissions as follows:-

   **CITY OF ROCKINGHAM**

   **SCHEDULE OF SUBMISSIONS**

   **AMENDMENT NO.98 TO TOWN PLANNING SCHEME NO.2 – PROPOSED REZONING LOT 50 WILKINSON ROAD, BALDIVIS FROM “RURAL” TO SPECIAL RURAL”.

<table>
<thead>
<tr>
<th>SUBMISSION</th>
<th>COMMENT</th>
<th>RECOMMENDATION</th>
</tr>
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<tbody>
<tr>
<td>No. 1 - Western Power, Locked Bay 2520, Perth WA 6000</td>
<td>Western Power wishes to advise the following in respect to the abovementioned proposal. 1. To the best of my knowledge, there are no objections to the changes you propose to carry out for the above-mentioned project. <strong>Please note:</strong> Perth One Call Service (Freecall 1100 or visit dialbeforeyoudig.com.au) must be contacted and location details (of Western Power underground cabling) obtained prior to any excavation commencing. Work Safe requirements must also be observed when excavation work is being undertaken in the vicinity of any Western Power assets. Western Power is obliged to point out that any change to the existing (power) system; if required, is the responsibility of the individual developer.</td>
<td>That the submission be noted.</td>
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<tr>
<td>SUBMISSION</td>
<td>COMMENT</td>
<td>RECOMMENDATION</td>
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<tr>
<td><strong>No. 2 - Department of Water, PO Box 332, Mandurah WA 6171</strong></td>
<td></td>
<td>That the Submission be noted.</td>
</tr>
<tr>
<td>Thank you for your referral received with correspondence dated 5th May 2011, regarding proposed rezoning for the above-mentioned property. The Department of Water (DoW) has reviewed the proposal and wishes to provide the following comments.</td>
<td>A Local Water Management Strategy was prepared in accordance with the DOW requirements.</td>
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<tr>
<td><strong>Urban Water Management</strong></td>
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<tr>
<td>Drainage systems shall be designed and constructed consistent with the Stormwater Management Manual for Western Australia.</td>
<td>Any impacts of future land-uses that would require a bore would be referred to the DoW.</td>
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<tr>
<td><strong>Ground Water</strong></td>
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<tr>
<td>The subject area is located within the Stakehill Groundwater Area as proclaimed under the Rights in Water and Irrigation Act 1914. Any groundwater abstraction in this area for purposes other than those covered by the rights in Water and Irrigation Exemption (Section 26C) Order 2010, is subject to licensing by the Department of Water. For further information regarding Groundwater Licensing requirements in the area, please contact the Mandurah office on 9550 4224.</td>
<td>The subject land is located within the Serpentine River Floodplain which restricts development within 300 metre from the Floodway. The Subdivision Guide Plan designates the location of the Building Envelopes outside of the 300 metre buffer.</td>
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<tr>
<td>Please note that this area has reached its allocation limit and there is no guarantee that any request for allocation will be approved. The proponent is advised to contact the Department’s Water Licensing section in the Mandurah Region on 9550 4224 to discuss water management options.</td>
<td>The City’s Building Services will ensure a minimum FFL of 0.5m above the 100 year flood level.</td>
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<td><strong>Flooding</strong></td>
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<td>The Department of Water, In carrying out its role in floodplain management, provides advice and recommends guidelines for development on floodplains with the object of minimising flood risk and damage. The Serpentine River Flood Study shows that a major portion of the land is affected by major flooding with estimated 100 year ARI flood levels shown on the attached plan. There are no objections to a proposed subdivision with regard to major flooding subject to the following conditions being satisfied:</td>
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<tr>
<td>• No proposed dwellings within 300 meters of the Serpentine River levee bank.</td>
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<tr>
<td>SUBMISSION</td>
<td>COMMENT</td>
<td>RECOMMENDATION</td>
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<tr>
<td>Proposed dwellings have a minimum habitable floor level of 0.50 meter above the adjacent 100 year ARI floor level to ensure adequate flood protection.</td>
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**DEC Issues**

It appears that there is Remnant Native Vegetation on the subject land. For this reason this proposal must be referred to the Land Use Planning section at the Department of Environment and Conservation’s Swan Region (C/- Locked Bag 104, Bentley Delivery Centre, WA 6983).

**Peel Harvey Costal Plain Catchment**

The proponent is advised that the proposal is located within the Peel-Harvey catchment and the provisions of the Environmental Protection (Peel Inlet - Harvey Estuary) Policy 1992 and the Statement of Planning Policy 2.1 - the Peel-Harvey Coastal Plain Catchment (Spp 2.1) Shall apply. In accordance with Provision 6.2.1 of SPP 2.1, the use of conventional on-site effluent disposal systems will only supported where it can be demonstrated that there is at least a 2 meter vertical separation between the base of the leach drain and the highest known groundwater level and a 100m horizontal separation between the disposal system and the nearest water body.

It is recommended that the existing remnant vegetation is retained and clearing should be restricted to the building envelopes only. Animal stocking rates also apply. If you wish to discuss the above further please contact Tom Lerner at the DoW’s Mandurah office on 9550 4230.

The proposal was referred to the DEC which provided advice in the next submission.

The proposal is consistent with the WAPC’s State Planning Policy 2.1 - The Peel-Harvey Coastal Plan Catchment.

**No. 3 - Department of Environment and Conservation, PO Box 1167, Bentley Delivery Centre WA 6983**

The Department of Environment and Conservation (DEC) notes that the proposed scheme amendment was referred to the Environmental Protection Authority (EPA) in accordance with section 81 of the Planning and Development Act (2005), and that the EPA advised it considered the proposed amendment should not be assessed under Part 1V Divisions 3 of the EPA Act 1986 and that it is not necessary to provide any advice or recommendations.
DEC notes that the City’s Statutory Planning report outlines that:
- All existing native vegetation can be retained, and
- It is proposed to protect the conservation category wetland with a 50 meter buffer in accordance with the EPA’s requirements, provide stock proof fencing around the buffer, and to prohibit the construction of lot boundary fencing within the wetland and its buffer.

Thank you for the opportunity to provide comment. Please contact Lyndon Mutter on 9423 2922 if you have any enquiries regarding this advice.

<table>
<thead>
<tr>
<th>SUBMISSION</th>
<th>COMMENT</th>
<th>RECOMMENDATION</th>
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<tbody>
<tr>
<td>Building Envelopes and TPS.2 provisions will provide adequate statutory protection to ensure protection of existing vegetation and the wetland.</td>
<td>That the Submission be noted.</td>
<td></td>
</tr>
</tbody>
</table>

Committee Voting – 4/0

9. **The Committee’s Reason for Varying the Officer’s Recommendation**

Not applicable.

10. **Implications of the Changes to the Officer’s Recommendation**

Not applicable.
1. **Purpose of Report**

To consider the draft Prostitution ‘Green’ Bill 2011 released by the State Government and provide comments to the Department of the Attorney General and the Western Australian Local Government Association (‘WALGA’).

2. **Background**

**History**

In the 1950's the WA Police adopted the Containment Policy, which was an informal policy that allowed brothels to operate in specific locations.
In 2000 the Containment Policy was abandoned by the Commissioner of Police, as it lacked a legislative basis. This left the sex industry largely unregulated. The WA Police has retained a unit that is responsible for liaising with operators and workers at sexual service premises.

Under the Containment Policy, a database of sex workers was maintained and is presently maintained by the Police Unit, with restricted access. Commercial sex work itself is not illegal. Currently under section 190 of the Criminal Code Act Compliance Act 1913, a person who manages premises for the purpose of prostitution, lives wholly or partially off the earnings of prostitution, or procures a person for prostitution, is guilty of an offence.

Following a public submission period, the former State Government introduced a new Prostitution Control Bill 2003, which superseded the 2002 Bill.

**2007 Prostitution Amendment Bill**

The Prostitution Amendment Bill 2007 was introduced into Parliament in August 2007. The Bill proposed a number of changes that include the role of Local Government in regulating the sex industry. The general provisions of the Bill included operators and managers of brothers or escort agencies to be certified, rather than the premises being licensed. Individual sex workers were not required to be registered and issued a certificate. Small owner-operator premises did not require certification.

In February 2008, Council considered the Prostitution Amendment Bill (2007) and resolved to make a submission to the State Government, highlighting various outstanding matters raised in the Planning report and by WALGA, before the Bill was approved by Parliament. For example the 2007 Bill was silent on the locations where sole operators, small-scale operators and brothels could operate. Street workers were also not dealt with in the proposed legislation.

The former Attorney General advised the Council on the 6th May 2008, that a Prostitution Bill was passed by Parliament. It was expected that the new legislation would commence within several months. Only sections 1 & 2 were commenced and became law at the time, and all other major sections were to be proclaimed at a latter stage. The 2007 Bill was never fully enacted.

In May 2008, the Council considered a Planning Report outlining the implications of the legislation on the City's resources, when it was resolved to seek confirmation that under the new laws, where it seemed that brothels with up to two sex workers could operate in residential areas without a licence, but would still require Planning Approval from the City.

In June 2008, the Council considered a Planning Report clarifying the number of sex workers that could operate in residential areas without a licence and to consider the possibility of a Scheme Amendment to Town Planning Scheme No.2 ('TPS2'), to address the implications of the Prostitution Legislation. The Council resolved to investigate the preparation of a Scheme Amendment, to address applications proposing a sexual service business and small owner-operated business, in the context of the planning framework developed by the Western Australian Planning Commission. The City has been awaiting the outcome of legislative changes to the Prostitution Act 2000, to guide its preparation of a Scheme Amendment.

### 3. Details

The proposed prostitution model has been released by the State Government to provide the WA community with the opportunity to provide comment on the new laws before the Bill was debated in State Parliament. The public consultation period is for six weeks, concluding on Friday, 29th July 2011.

The Attorney General has advised as follows:

“The Bill seeks to impose a strong regulatory and enforcement framework on prostitution in Western Australia, and is primarily designed to assist police in responding to public complaints and closing down unlawful prostitution businesses in residential areas.”
Model Framework

The 2011 Bill provides a legal framework for prostitution that deals with public health, protects sex workers, protects children and deals with the health, safety, development control and enforcement. Prostitution raises a range of moral, social and policing challenges. The Attorney General estimates there are 1700 prostitutes and 38 brothels in Western Australia, 30 of which are in the Perth metropolitan area.

The Prostitution Green Bill 2011 (‘2011 Bill’) is divided into the key areas of:
- Licensing;
- Planning and Development Controls;
- Enforcement;
- Protecting vulnerable people; and
- Health.

Licensing

Under the 2011 Bill the operator, manager and prostitutes within a brothel would be licensed by the Director of the Department of Racing Gaming and Liquor. To combat organised crime, applicants would be required to undergo background checks, including palm printing and finger printing at the discretion of the Director, as follows:
- Individual prostitutes, manager of brothels and operators of brothels must possess a valid licence and conduct business from premises approved for that purpose via local government planning processes.
- Managers, operators and self employed prostitutes will be required to display licences in places from which their business is being conducted.
- Applications for operator’s licences and manager’s licences will be required to be accompanied by documents verifying the applicant’s identity and age, residential and contact addresses, and providing evidence of relevant planning approvals.
- Operators and managers will be required to be at least 18, an Australian citizen or permanent resident, ordinarily resident in Western Australia; have no relevant criminal offences and otherwise be of good standing.
- Applications for a prostitute's licence will be required to be accompanied by documents verifying the applicant's identity and age; and where they propose to conduct business as a self-employed prostitute, be accompanied by evidence of planning approval.
- Stringent probity checks, including palm prints and fingerprints, will apply in relation to all operator and manager license applications, but only where considered reasonably necessary in relation to prostitute's license applications.
- License holders will be required to comply with conditions prescribed or imposed by the Department of Racing, Gaming and Liquor.

Planning and Development Controls

- Licenses will not be granted to prostitution businesses unless they can show that they have been granted planning approval by the relevant local government authority.
- Land in a residential area or special use area will not be permitted to be used for any prostitution business in any circumstance.
- Land in places other than residential areas or special use areas may be used for prostitution business where planning approval is granted by the responsible planning authority.
- Outside of the City of Perth area, land which is not in a residential area but is nevertheless within 100m of a residence, or 200m of a protected place, will not be permitted to be used for any prostitution business in any circumstances.
- Within the City of Perth area, land which is not in a residential area but is nevertheless in an area that contains a significant number of dwellings, or is within 100m of a protected place, or land which comprises a building that contains a dwelling; must not be used for any prostitution business in any circumstance.

- Planning Schemes may not be amended to override these rules, for example, to make prostitution businesses a prohibited use in areas other than residential or special use areas, or permit applications in residential areas.

- Existing inappropriately situated businesses may be permitted to continue to operate for up to 18 months, but only if the Department of Racing Gaming & Liquor is satisfied that the business has not been causing disturbance or interfering with the amenity of the area.

**Enforcement**

The Bill includes a range of mechanisms to enable the WA Police to respond to public complaints about unlawful businesses, rather than placing an onus on local government to seek to take action for contraventions of planning provisions.

- Conducting any form of prostitution business outside the licensed scheme, or, in relation to potential clients, entering or remaining in an unlawful prostitution business without lawful excuse, will be a criminal offence.

- Police will have the power to enter premises, other than residences, which they reasonably suspect are being used to conduct prostitution businesses, without a warrant.

- Police will, upon receipt of complaints, have the power to issue closure notices restricting access to premises which they reasonably suspect are being used for unlawful prostitution, or on their own initiative where serious offences have occurred. These notices will be required to be considered by a court before being made permanent.

- Existing evidentiary presumptions (unlawful) in relation to kerb crawling and street walking will continue to apply.

- Strong evidentiary presumptions (unlawful) will apply that persons are operating or managing a prostitution business where grounds for suspecting such an activity.

- Police will have the power to make barring notices, and prohibition orders similar to those contained in the Liquor Control Act 1988, to deal with dangerous or undesirable persons working in or attending brothels.

- Licence numbers will be required to be displayed in any advertisements for prostitution.

- There will be a strong evidentiary presumption against persons who unlawfully place advertisements which could be reasonably suspected to be for a prostitution business.

- The State Government will possess an absolute discretion to reject a particular license application, or direct that licenses not be issued in relation to particular areas of the state.

**Protecting vulnerable people**

Recognising the dangers of sex trafficking, clients who engage with a person who is being coerced into prostitution would face a penalty of up to two years in jail, irrespective or whether it could be shown they knew the prostitute was coerced. Where they were coerced, penalties of up to 14 years jail will apply, or 20 years of the coerced person was a child.

- A person who engages in an act of prostitution with a person who they knew, or could reasonably be expected to have known was being coerced commits an offence punishable by up to 14 years imprisonment, or, where the prostitute was a child or incapable person, imprisonment for up to 20 years.

- Prostitutes working within the licensed system will have an absolute right to refuse to take part in acts of prostitution, and persons who operate or manage a prostitution business will be required to display information to that effect.

- There will be a positive obligation on persons who operate or manage prostitution businesses to ensure that children do not work within the business, or permit children to be on the premises of the business.
A person who causes, permits or induces a child to act as a prostitute commits a crime punishable by imprisonment of up to 14 years.

The penalty for acting as an unlicensed prostitute is such that infringement notices may be issued for offences pursuant to the Criminal Procedure Act 2004.

The Commissioner of Police will have the power to provide information regarding clients who have been issued with barring notices to operators or managers, if it is considered necessary to minimise the risk of harm or injury to any person.

Protected Place

The 2011 Bill includes the following controls for a ‘Protected Place’.

“Protected place means a hospital or other prescribed place or a place used for education, worship, the care or recreation of children, or for a prescribed purpose.”

76(2) Land in the City of Perth inner zone must not be used for the purposes of a prostitution business if –

(a) the land is in an area that is not a residential area but is in the opinion of the City of Perth, an area that contains a significant number of dwellings; or

(b) the distance between the prostitution business and any protected place, wherever situated, is less than 100m; or

(c) the land comprises a building that contains a dwelling other than a caretaker’s dwelling.”

76(3) Land in a place other than the City of Perth inner zone must not be used for the purposes of a prostitution business if –

(a) the distance between the prostitution business and any residence (other than a caretaker’s dwelling), wherever situated, is less than 100m; or

(b) the distance between the prostitution business and any protected place, wherever situated, is less than 200m.”

The City of Perth inner zone doesn’t include the whole of that local government district, only the Central Business District. The land outside of the City of Perth inner zone appears to include the rest of Western Australia, where clause 76(3) appears to apply to the City of Rockingham.

Health

- It will be an offence for a person to engage in an act of prostitution without using a condom (or other appropriate barrier to STIs).

- There is a positive obligation on operators and managers to issue condoms free of charge to workers, and ensure that their workers do not engage in acts of prostitution without using a condom (or other appropriate barrier to STIs).

- Operators and managers must take all reasonable steps to display health information to clients and workers.

- Advertisements or statements made must not imply that a person is not infected, or is unlikely to be infected with a sexually transmitted infection.

- Possession of condoms cannot be used as evidence in connection with prosecutions for unlicensed prostitution.

Transitional Arrangements

Section 166 of the 2011 Bill includes planning requirements for existing prostitution businesses. This involves the CEO of the Department of Racing Gaming and Liquor (‘RGL’) consulting with the City and the Commissioner for Police with regard resident or worker complaints in the area, the way the business is conducted causes or is likely to cause disturbance to the neighbourhood and whether the business impacts on the amenity of the neighbourhood. The RGL decision on an application for an operators licence is final.
4. Implications to Consider

a. Consultation with the Community
   Being undertaken by the State Government for six (6) weeks, closing 29th July 2011.

b. Consultation with Government Agencies
   Being undertaken by the State Government.

c. Strategic Community Plan
   This item addresses the Community’s Vision for the future and specifically the following Aspiration contained in the Community Plan 2011:-

   **Aspiration 11:** Planning for population growth to ensure that future development and land-uses contribute to a sustainable city that provides for a genuinely desirable lifestyle.

d. Policy
   Nil

e. Financial
   Nil

f. Legal and Statutory
   Planning and Development Controls
   Division 8 of the 2011 Bill includes Planning and Development controls, which are consistent with the direction of the State Government, to rule out prostitution in residential areas. The 2011 Bill provides that a place other than a ‘residential area’ or ‘special use area’ may be used for the purposes of a prostitution business if:

   (a) a development application is made for approval to use the land for that purpose; and

   (b) the responsible planning authority’s decision on the application permits the land to be used for that purpose.

   A ‘residential area’ is defined as follows:

   “residential area means an area, zone or precinct, however described, in which the use of land for residential purposes is permitted by the applicable planning scheme without the need for development approval, as long as any development standards in the scheme that apply to the use are complied with.”

   The blanket prohibition on establishing prostitution businesses within residential areas is a positive approach. Both a licence and planning approval will still be required to lawfully conduct prostitution businesses.

   The City has examined the 2011 Bill against how it could operate together with Town Planning Scheme No.2 (‘TPS2’). The scope of the Bill must still be expanded to prohibit prostitution businesses within similar zones such as mixed use zones, such as the Primary Centre City Centre zone, Waterfront Village zone, Baldivis Town Centre zone, and other similar locations.

   The term ‘residential area’ should be expanded to include ‘Special Residential’ and ‘Special Rural’ zones. A Local Planning Scheme is the most appropriate mechanism to control the geographic location of prostitution business.

   The 2011 Bill is silent on the ability of the City to approve or refuse applications for prostitution businesses under TPS2, when presently TPS2 does not consider this land use. The 2011 Bill needs to recognise the on-going role of Local Planning Schemes to control the appropriate and inappropriate locations for prostitution businesses and include the ability to impose conditions of Planning Approval.
Special Use Area

The Bill defines ‘special use area’ as:

"an area, zone or precinct, however described, in which land may be used only for purposes specified in the applicable planning scheme as 'special use'."

The application of Special Use zones of TPS2 is too restrictive and of little use in controlling the establishment of prostitution businesses. For example, a Special Use zone in TPS2 only applies to existing Caravan Parks and Gold Courses, where prostitution businesses would be prohibited under the 2011 Bill. The 2011 Bill also includes provisions for a protected place, which has a much more useful purpose than the ‘Special Use zone’, because the separation distances would apply regardless of the zoning of land.

Appeals

If the Council refuses to grant planning approval because an application to establish a prostitution business fails to comply with the separation distances to protected places or any provisions of the 2011 Bill, the applicant should not be entitled to lodge an Application for a Review of the Decision (appeal) with the State Administrative Tribunal. This needs to be included in the 2011 Bill, such that the underlying provisions of the legislation are not undermined and for consistency in approach with all local governments.

Licenses

Section 52 of the Bill applying to an application for an operator’s licence for prostitution includes a requirement for the CEO of Racing Gaming and Liquor to be satisfied that -

(a) the Council has given its approval for the prostitution business to be conducted from the place stated in the application; and

(b) the approval is in accordance with the provisions of the Planning and Development Controls of the Bill.

A condition of the licence of every operator and every self employed prostitute that:-

(a) the place used for a prostitution business must not have more than 6 rooms in which persons may take part in acts of prostitution; and

(b) no more than 9 persons act, or are available to act as prostitutes at the place at the same time; and

(c) no more than 13 staff.

Role of Western Australian Planning Commission

The State Government should recognise the role of the Western Australian Planning Commission to provide a planning framework in identifying appropriate locations for prostitution businesses. The WAPC has previously indicated that it will:

- Include standard provisions in the Model Scheme Text (Town Planning Regulations). It is anticipated that consideration will be given to the types of zones where it is appropriate for prostitution business to be located as of right or as a discretionary use; and

- Provide guidance to local government, for instance, in the form of a Planning Bulletin or a State Planning Policy.

Governor’s Powers as to licenses in certain areas and licence applications

The State Government, via the Governor, possesses an absolute discretion to order that licences for prostitution businesses should not be issued by the Department of Racing, Gaming and Liquor. The rationale behind this approach was to forestall any attempts to seek planning approval for prostitution business within the affected area. It was contemplated that submissions from an affected local government could request that such an order be made and this would be influential in any decision to prohibit the issuing of licences in relation to a particular location.
The City is unsure of the need for the Governor's intervention when section 52(4) of the Bill requires that on application for an operator's licence for a prostitution business the CEO may issue an operator's licence if also satisfied that:

(a) the responsible authority has given its approval for the prostitution business to be conducted from the place stated in the application under section 47(3)(b); and 

(b) the approval is in accordance with the provisions of Division 8.

Enforcement

The City is aware that regulating prostitution for law enforcement is difficult to deal with. The 2011 Bill recognises that Local Government is not properly equipped to shut down suburban brothels. The 2011 Bill appears to equip the WA Police with the enforcement powers needed to control the activity of prostitution outside of the licensed scheme, and if applied, this will be an incentive for prostitutes to conform to the licensing requirements. If a police officer suspects that a place may be used for prostitution, a warrant must be obtained.

The control of brothels is important but the City is equally concerned about businesses of one or two prostitutes working from residential areas. A brothel is easier to identify given the number of rooms involved and occupants. A residential dwelling or apartment is more difficult to investigate and prove that it may be used for acts of prostitution or by prostitutes. The Police need to be sufficiently empowered to investigate and act on all complaints from members of the public to shut down unlawful premises used for prostitution.

Text Changes to the 2011 Bill

Section 75 should be also be reworded as follows:

“75(1) Land in a place other than a residential area or special use area must not be commenced or used for the purposes of a prostitution business except where:

(a) a prior development application is made for approval to use the land for that purpose under; and

(b) the responsible planning authority's decision on the development application permits the land to be used for that purpose pursuant to the operative Local Planning Scheme and Metropolitan Region Scheme.”

Protected Place

The heading 'City of Perth provisions' under Section 76 are confusing because this section applies to both land within and outside of the City of Perth but appears also to apply to the rest of Western Australia. It is recommended that it be modified to include provisions that apply to all of Western Australia to afford protection to sensitive land uses outside of the City of Perth.

Transitional Arrangements

The transitional arrangements in section 166 that apply to existing prostitution business include consultation by the CEO of the Department of Racing Gaming and Liquor with the City; however, the Bill should also be amended to include the requirement to obtain retrospective development approval from a Council, under the operative Local Planning Scheme.

5. Comments

Prostitution is a highly polarised issue in the community.

The following submission comments are recommended on the 2011 Bill:

- The ‘legalised’ approach of the proposed legislation is supported.
- Prohibiting brothels and prostitution within residential areas is unequivocally supported.
- The term ‘residential area’ needs more refinement to include ‘Special Residential’ and ‘Special Rural’ zones.
- A Local Planning Scheme is the most appropriate mechanism to control the geographic location of brothels and prostitution, together with the proposed legislation.
- The State Government should recognise the role of the Western Australian Planning Commission to identify through the Model Scheme Text and Policy, appropriate locations for prostitution and achieving a consistent approach for all Local Governments.
- The application of Special Use zones of TPS2 is of little benefit because it only applies to a few locations within the district and of limited use in controlling the location of prostitution businesses.
- An applicant aggrieved by the Council issuing a decision on a development application pursuant to TPS2, must not be entitled to lodge an Application for a Review of the Decision (appeal) with the State Administrative Tribunal.
- It is unclear whether section 76 applies to just the City of Perth or the whole of Western Australia. A separate heading is needed to include provisions that apply to all land outside the City of Perth inner zone which includes all other land within Western Australia. A Map of the City of Perth Inner zone boundary should also be included in the Bill. The City supports the separation distance approach to protected places.
- The 2011 Bill should be amended to enable the Council to expand the prostitution prohibition areas within the mixed use areas of the Primary Centre City Centre zone, Waterfront Village zone and Baldivis Town Centre zone, and consider locations where brothels and prostitution businesses could occur such as within the Light Industry zone and General Industry zone of Town Planning Scheme No.2.
- The role of the Governor in Division 9 seems unnecessary in the context of section 52 of the Bill. Given that a Prostitution Licence can be refused by RGL if planning consent is not granted, the City is not sure why intervention by the Governor would be needed. A copy of the decision on a development application can simply be sent by the responsible authority directly to RGL prior to a decision being made on an application for a Prostitution Licence.
- The role of the WA Police in its enforcement of the legislation is supported. The City is aware of the difficulties faced by the WA Police in their investigation of complaints, and it is believed that local government should not have a role in the enforcement of the proposed legislation.
- The only role the Council should have is to determine applications for development approval and regulate the location of where prostitution is acceptable and where it is unacceptable based on the requirements of the legislation and TPS2.
- The textual changes to section 75 outlined in the report recommendation, which provide a better link and context with an operative Town Planning Scheme.
- While the State Government has advised it will seek to prevent the expansion of the industry and provide options for persons wishing to leave the industry, there are no provisions in the Bill that would achieve this outcome.
- Given the protracted delays in Parliament on prostitution laws, the City believes that it is important for the State of Western Australia to move forward with the proposed legislation in a form that is proposed and for the legislation to be reviewed in twelve months following proclamation.
- In view of the potential for black market operators contravening the proposed new laws and the importance of enforcement generally, it is recommended that the State Government ensures the WA Police are equipped with the resources it requires to respond to complaints regarding prostitution and enforce the new legislation.
- The transitional arrangements of Section 166, should also be amended to include the requirement for retrospective development approval by a Council under the operative Local Planning Scheme, to ensure the City's requirements are met.
6. **Voting Requirements**

Simple Majority

7. **Officer Recommendation**

That Council:

1. **ENDORSE** the following comments on the draft Prostitution Bill 2011:-
   
   (i) The ‘legalised’ approach of the proposed legislation is supported.
   
   (ii) Prohibiting brothels and prostitution within residential areas is unequivocally supported.
   
   (iii) The term 'residential area' needs more refinement to include ‘Special Residential’ and ‘Special Rural’ zones.
   
   (iv) A Local Planning Scheme is the most appropriate mechanism to control the geographic location of brothels and prostitution, together with the proposed legislation.
   
   (v) The State Government should recognise the role of the Western Australian Planning Commission to identify through the Model Scheme Text and Policy, appropriate locations for prostitution and achieving a consistent approach for all Local Governments.
   
   (vi) The application of Special Use zones of TPS2 is of little benefit because it only applies to a few locations within the district and will be of limited use in controlling the location of prostitution businesses.
   
   (vii) An applicant aggrieved by the Council issuing a decision on a development application pursuant to TPS2, should not be entitled to lodge an Application for a Review of the Decision (appeal) with the State Administrative Tribunal.
   
   (viii) While the State Government has advised it will seek to prevent the expansion of the industry and provide options for persons wishing to leave the industry, there are no provisions in the Bill that would achieve this outcome.
   
   (ix) The 2011 Bill should be amended to enable the Council to expand the prostitution prohibition areas within the mixed use areas of the Primary Centre City Centre zone, Waterfront Village zone, Baldivis Town Centre zone and consider locations where brothels and prostitution businesses could occur such as within the Light Industry zone and General Industry zone of Town Planning Scheme No.2.
   
   (x) The role of the Governor in Division 9 seems unnecessary in the context of section 52 of the Bill. Given that a Prostitution Licence can be refused by the Department of Racing Gaming and Liquor (‘RGL’) if planning consent is not granted, the Council is unsure why intervention by the Governor would be needed. A copy of the decision on a development application can simply be sent by the responsible authority directly to RGL prior to a decision being made on an application for a Prostitution Licence.
   
   (xi) The role of the WA Police in its enforcement of the legislation is supported. The City is aware of the difficulties faced by the WA Police in their investigation of complaints, and it is believed that local government should not have a role in the enforcement of the proposed legislation.
   
   (xii) The only role the Council should have, as proposed, is to determine applications for development approval and regulate the location of where prostitution is acceptable and where it is unacceptable based on the requirements of the proposed legislation and TPS2.
   
   (xiii) Section 75 should also be reworded as follows:

   "75(1) Land in a place other than a residential area or special use area must not be commenced or used for the purposes of a prostitution business except where:"
a. a prior development application is made for approval to use the land for that purpose under; and

b. the responsible planning authority’s decision on the development application permits the land to be used for that purpose pursuant to the operative Local Planning Scheme and Metropolitan Region Scheme.”

(xiv) The section 76 heading ‘City of Perth provisions’ are confusing because this section applies to both land within and outside of the City of Perth but appears also to apply to the rest of Western Australia. A separate heading is needed to include provisions that apply to all land outside the City of Perth inner zone and that it includes all other land within Western Australia. A Map of the City of Perth Inner zone boundary should also be included in the Bill. The City supports the separation distance approach to protected places.

(xv) Given the protracted delays in Parliament reaching agreement on prostitution laws, the City believes that it is important for the State of Western Australia to move forward with the proposed legislation subject to the changes included in the Council’s submission, and for the new laws to be reviewed within a period of twelve months following proclamation.

(xvi) In view of the potential for black market operators contravening the proposed new laws and the importance of enforcement generally, it is recommended that the State Government ensures the WA Police are equipped with the resources it requires to respond to complaints regarding prostitution and enforce the new legislation.

(xvii) The transitional arrangements in section 166 that apply to existing prostitution business include consultation by the CEO of the Department of Racing Gaming and Liquor with the City; however, the Bill should also be amended to include the requirement for retrospective development approval by a Council under the operative Local Planning Scheme.

2. **DIRECT** the Chief Executive Officer to write to the Attorney General and Western Australian Local Government Association explaining the City’s position.

### 8. Committee Recommendation

That Council:

3. **ENDORSE** the following comments on the draft Prostitution Bill 2011:-

   (i) The **regulatory** approach of the proposed legislation is supported.

   (ii) Prohibiting brothels and prostitution within residential areas is unequivocally supported.

   (iii) The term ‘residential area’ needs more refinement to include ‘Special Residential’ and ‘Special Rural’ zones.

   (iv) A Local Planning Scheme is the most appropriate mechanism to control the geographic location of brothels and prostitution, together with the proposed legislation.

   (v) The State Government should recognise the role of the Western Australian Planning Commission to identify through the Model Scheme Text and Policy, appropriate locations for prostitution and achieving a consistent approach for all Local Governments.

   (vi) The application of Special Use zones of TPS2 is of little benefit because it only applies to a few locations within the district and will be of limited use in controlling the location of prostitution businesses.

   (vii) An applicant aggrieved by the Council issuing a decision on a development application pursuant to TPS2, should not be entitled to lodge an Application for a Review of the Decision (appeal) with the State Administrative Tribunal.
(viii) While the State Government has advised it will seek to prevent the expansion of the industry and provide options for persons wishing to leave the industry, there are no provisions in the Bill that would achieve this outcome.

(ix) The 2011 Bill should be amended to enable the Council to expand the prostitution prohibition areas within the mixed use areas of the Primary Centre City Centre zone, Waterfront Village zone, Baldivis Town Centre zone and consider locations where brothels and prostitution businesses could occur such as within the Light Industry zone and General Industry zone of Town Planning Scheme No.2.

(x) The role of the Governor in Division 9 seems unnecessary in the context of section 52 of the Bill. Given that a Prostitution Licence can be refused by the Department of Racing Gaming and Liquor ('RGL') if planning consent is not granted, the Council is unsure why intervention by the Governor would be needed. A copy of the decision on a development application can simply be sent by the responsible authority directly to RGL prior to a decision being made on an application for a Prostitution Licence.

(xi) The role of the WA Police in its enforcement of the legislation is supported. The City is aware of the difficulties faced by the WA Police in their investigation of complaints, and it is believed that local government should not have a role in the enforcement of the proposed legislation.

(xii) The only role the Council should have, as proposed, is to determine applications for development approval and regulate the location of where prostitution is acceptable and where it is unacceptable based on the requirements of the proposed legislation and TPS2.

(xiii) Section 75 should be also be reworded as follows:

“75(1) Land in a place other than a residential area or special use area must not be commenced or used for the purposes of a prostitution business except where:

c. a prior development application is made for approval to use the land for that purpose under; and

d. the responsible planning authority’s decision on the development application permits the land to be used for that purpose pursuant to the operative Local Planning Scheme and Metropolitan Region Scheme.”

(xiv) The section 76 heading ‘City of Perth provisions’ are confusing because this section applies to both land within and outside of the City of Perth but appears also to apply to the rest of Western Australia. A separate heading is needed to include provisions that apply to all land outside the City of Perth inner zone and that it includes all other land within Western Australia. A Map of the City of Perth Inner zone boundary should also be included in the Bill. The City supports the separation distance approach to protected places.

(xv) Given the protracted delays in Parliament reaching agreement on prostitution laws, the City believes that it is important for the State of Western Australia to move forward with the proposed legislation subject to the changes included in the Council’s submission, and for the new laws to be reviewed within a period of twelve months following proclamation.

(xvi) In view of the potential for black market operators contravening the proposed new laws and the importance of enforcement generally, it is recommended that the State Government ensures the WA Police are equipped with the resources it requires to respond to complaints regarding prostitution and enforce the new legislation.

(xvii) The transitional arrangements in section 166 that apply to existing prostitution business include consultation by the CEO of the Department of Racing Gaming and Liquor with the City; however, the Bill should also be amended to include the requirement for retrospective development approval by a Council under the operative Local Planning Scheme.
4. **DIRECT** the Chief Executive Officer to write to the Attorney General and Western Australian Local Government Association explaining the City’s position.

   Committee Voting - 4/0

9. **The Committee’s Reason for Varying the Officer’s Recommendation**

   To replace the word 'legalised' in Point (i) to 'regulatory', as the Prostitution Bill has not yet been proclaimed by Parliament.

10. **Implications of the Changes to the Officer’s Recommendation**

    Not applicable.
**Planning Services**  
Statutory Planning Services

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<thead>
<tr>
<th>Reference No &amp; Subject:</th>
<th>SP-038/11 Section 40 Liquor Licence Application - Change of Hours - Restricted Club Licence</th>
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<tr>
<td>File No:</td>
<td>28/1265-05</td>
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<tr>
<td>Proponent/s:</td>
<td>Totally and Partially Disabled Veterans of WA (Inc)</td>
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<tr>
<td>Author:</td>
<td>Miss D Shaw, Planning Officer</td>
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<tr>
<td>Other Contributors:</td>
<td>Mr D Waller, Co-ordinator, Statutory Planning</td>
</tr>
<tr>
<td>Date of Committee Meeting:</td>
<td>18th July 2011</td>
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<tr>
<td>Previously before Council:</td>
<td>October 2008 (PD202/10/08), December 2008 (PD236/12/08)</td>
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<td>Disclosure of Interest:</td>
<td>Tribunal</td>
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<tr>
<td>Nature of Council’s Role in this Matter:</td>
<td>Lot 111 (No.1677) Mandurah Road, Baldivis (Reserve 46970)</td>
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<tr>
<td>Site:</td>
<td>Lot 111 (No.1677) Mandurah Road, Baldivis (Reserve 46970)</td>
</tr>
<tr>
<td>Lot Area:</td>
<td>3.61ha</td>
</tr>
<tr>
<td>LA Zoning:</td>
<td>Rural</td>
</tr>
<tr>
<td>MRS Zoning:</td>
<td>Rural</td>
</tr>
<tr>
<td>Attachments:</td>
<td>4 Submissions</td>
</tr>
<tr>
<td>Maps/Diagrams:</td>
<td>Location Plan</td>
</tr>
</tbody>
</table>
1. **Purpose of Report**

To consider extending and modifying the operating hours of the licensed area for the Totally and Partially Disabled Veterans of WA (Inc) (‘TPVDWA’) at Lot 111 (No.1677) Mandurah Road, Baldivis.

2. **Background**

In May 2005, the Council granted Approval for a Section 40 Certificate of Local Government (‘Section 40 Certificate’) for a Club Restricted Licence to operate from an entertainment/lounge area and an area designated ‘workshop’.

In October 2008, a Section 40 Certificate was issued for the verandah area that adjoins the previously licensed area. This Section 40 Certificate was granted on the basis that the operating hours would remain the same as the existing licensed area.
In December 2008, the Council refused an application to extend the operating hours of the licensed area (verandah and building) from 5:00pm to 11:00pm on Fridays and 11:00am to 6:00pm on Saturdays and advised the TPVDWA that 'the end of year bike event, anniversaries, weddings and/or other events are inconsistent with the lease and cannot be carried out'.

City Officers recently met with TPVDWA representatives to clarify that Club events undertaken by the Patriot Motorcycle Club fell outside the provisions of the lease and were not permitted to be undertaken.

3. Details

The subject land is a Crown Reserve vested in the City of Rockingham for the purposes of 'Veterans Respite Centre' with power to lease. The City currently holds a lease agreement over the subject property with the TPVDWA. Access Housing holds lease agreements with the occupants of the six residential units. Units 1 and 2 are located closest to the licensed area. The courtyard of Unit 1 is located approximately 32m to closest point of the outdoor licensed area and Unit 2 approximately 37 metres.

The TPVDWA seek to extend and modify the Liquor Licence hours as follows:-

<table>
<thead>
<tr>
<th>Current Hours</th>
<th>Proposed Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tuesday 10:00am - 5:00pm</td>
<td>No change</td>
</tr>
<tr>
<td>Thursday 11:30am - 5:00pm</td>
<td>No change</td>
</tr>
<tr>
<td>Friday 6:00pm - 11:00pm</td>
<td>No change</td>
</tr>
<tr>
<td>Saturday 6:00pm - Midnight</td>
<td>Saturday 12 noon - 8.00pm</td>
</tr>
<tr>
<td>Sunday - Nil</td>
<td>Sunday 12 noon - 4:00pm</td>
</tr>
</tbody>
</table>

The proponent has provided the following justification in support of the proposal:-

'I have been to the Department of Racing, Gaming and Liquor to put in our application to which they have said no problem but as lessees of the property at 1677 Mandurah Road, Baldivis the City of Rockingham must also provide a letter of recommendation of approval... We see this as being more flexible for all ages of our members and should help eliminate any late night noise and show respect to the residents on the property.

The TPVDWA needs to have functions to help with the running costs such as electricity, general maintenance and upkeep costs. Hopefully the City of Rockingham will see that this request will be beneficial for our club members and not something that is just an extension of our liquor hours.

4. Implications to Consider

a. Consultation with the Community

The proposal was advertised to the occupiers of the six residential units located on-site and the two neighbours to the north, for a comment period of 14 days, ending on the 4th July 2011.

At the completion of the advertising period four submissions were received. Three objections and one in support. Two objections were received from occupiers of Unit 2 and the adjoining owners/occupiers of No.1673 Mandurah Road. The submission in support was received from the occupier of Unit 6.

The concerns raised in the objections are summarised as follows:-

- Noise impacts would now occur on Sundays as well;
- The potential for noise to be extend over a longer period on Saturdays, as events regularly do not finish within licensed hour times; and
- There are sufficient licensed hours already.
b. Consultation with Government Agencies

Nil

c. Strategic

Community Plan

This item addresses the Community’s Vision for the future and specifically the following Aspirations contained in the Community Plan 2011:-

Aspiration 1: An involved and engaged community enjoying a lifestyle that caters for all residents, including those with specific or special needs.

Aspiration 11: Planning for population growth to ensure that future developments and land-uses that contribute to a sustainable City that provides for a genuinely desirable lifestyle.

d. Policy

Nil

e. Financial

Nil

f. Legal and Statutory

Lease Agreement

Clause 3.6 and 3.11 of the Council’s lease agreement with the TPVDWA sets out a number of obligations for the lessee. Clause 3.11 sets out requirements relating to the use of land as follows:-

‘3.11 Use

Not to:-

use or to permit to be used the Leased Premises for any purpose whatsoever other than for the purposes and objection for which the Reserve was vested in and is held by the Lessor and without limiting the generality of the foregoing not to use of permit to be used the Leased Premises or any part thereof for any purposes other than the use of and related to a respite centre for veterans.

(a) Carry on or suffer to be carried on upon the Leased Premises or any part thereof any noxious noisome or offensive trade act business occupation or calling.

(b) Make, do or suffer upon the Leased Premises any act, matter or thing that may be or become a nuisance or annoyance to the Lessor or to the owners or occupiers of the property on the neighbourhood of the Leased Premises.’

5. Comments

The City has received a number of complaints over recent years regarding noise generated from the activities conducted in association with the licensed area of the TPVDWA. The primary areas of concern are summarised as follows:-

- Noise generated from the motor cycle events;
- Amplified music; and
- Events occurring all night.

These matters are considered relevant to the proposed extension of trading hours, as the extension of operating hours has the potential to impact further on the amenity of the occupants of the six on-site residential dwellings and adjoining properties located to the north, as confirmed through the submissions received.
The City's Environmental Health Services has on a number of occasions responded to noise complaints from the property and advised the proponent/lessee of its obligations to ensure that excessive noise doesn't emanate from the premises. Noise sampling taken at one night time event has shown that Assigned Noise Levels were exceeded given the continued use of amplified music and bands in an outside courtyard area.

The City has been working with TPVDWA with the objective of preparing a Noise Management Plan ('NMP') to address the concerns of residents, however, an acceptable NMP has not been provided to the City. The City has also been working towards clarifying the uses that fall within the definition of 'Respite Centre' under the lease, to specify clearly exactly which activities can be undertaken.

The proponent's argument that the extension of the licensed hours during daylight hours on Saturdays and Sundays will provide flexibility to reduce the frequency of night time is difficult to sustain. It is considered that any increase in licensed hours may instead extend impacts over a greater period of time (i.e. one additional day). Given the difficulties City Officers have had in relation to enforcing activities to comply with the obligations of the lease and noise requirements, any extension of licence hours is likely to have some impacts of occupiers of the units, especially Units 1 and 2, which are the closest units to the licensed area.

It is recommended that the application be refused.

6. **Voting Requirements**

Simple Majority.

7. **Officer Recommendation**

That Council **REFUSE** Application No.69.2011.4 seeking approval for a Section 40 Certificate of Local Government at Lot 111 (No.1677) Mandurah Road, Baldivis (Reserve 46970) for the Totally and Partially Disabled Veterans of WA (Inc) as a Noise Management Plan has not been prepared and implemented.

8. **Committee Recommendation**

That Council **DELEGATE** authority to the Chief Executive Officer to approve a Section 40 Certificate, subject to a Noise Management Plan being prepared and implemented, to the satisfaction of the Manager, Health Services.

Committee Voting - 4/0

9. **The Committee’s Reason for Varying the Officer’s Recommendation**

To enable a Section 40 Certificate to be issued, once a Noise Management Plan is prepared and implemented.

10. **Implications of the Changes to the Officer’s Recommendation**

Not applicable.
1. Purpose of Report

To consider adopting Planning Policy 3.3.14 - Bicycle Parking and End-of-Trip Facilities to reflect the new bicycle parking requirements of the R-Codes and to reflect the footpath clearance requirements of the City’s Health Policy 6.6 - Outdoor Eating Facilities in Public Places.

2. Background

In May 2011, the Council resolved to endorse the publishing of a notice that it has prepared an amendment to Planning Policy 3.3.14 - Bicycle Parking and End-of-Trip Facilities for public inspection for a period of 21 days.
3. **Details**

The proposed amendments to the Policy Planning Policy 3.3.14 - Bicycle Parking and End-of-Trip Facilities are as follows:-

(a) changing the bicycle parking rates to refer directly to State Planning Policy 3.1 - Residential Design Codes for multiple dwellings, and change the rate of short-term bicycle parking for 'lodging house' and 'residential building' from 1 space per 12 lodging rooms to 1 space per 10 lodging rooms to reflect the rate used in the Residential Design Codes; and

(b) require short-term bicycle parking devices to be located so as to provide a minimum clear footpath width of 1.5m directly adjacent to a building when it is built up to a street, except unless otherwise approved by the City, as per Health Policy 6.6 - Outdoor Eating Facilities in Public Places.

4. **Implications to Consider**

a. **Consultation with the Community**

The proposed Policy was advertised in the following manner:-

(i) A notice was published in the Weekend Courier newspaper on the 27th May and 3rd June 2011;

(ii) Details of the proposed amendment were included on the City's website for the duration of the entire advertising period; and

(iii) The City referred the proposed amendments to the Bicycle Transport Alliance.

One submission was received from the Bicycle Transport Alliance:

"In regards to the Minimum Short-term Parking change, increasing this from 1 space per 12 lodging rooms, to 1 space per 10 lodging rooms, this is a positive change and BTA agrees to this change.

In regards to the change relating to short-term parking spaces being provided in the road reserve, additional text being added to 'located so as to provide minimum clear footpath width of 1.5m directly adjacent to the building unless otherwise approved by the City'. BTA agrees to the principle behind the change as this stipulates the clear footpath width required to provide access to/around the building, however, it should not prevent the short-term parking being installed directly adjacent to buildings, where there is sufficient footpath width (ie greater than 3m) to achieve the desired result.

For example, buildings on corner of Railway Tce and Harrison St, Rockingham have footpath areas of around 9m, so why shouldn't short-term bike parking be provided directly adjacent to the building?"

It is not considered appropriate, to provide bicycle parking directly adjoining buildings as it wouldn't provide a straight path of travel for pedestrians and make it difficult for persons with vision impairment. As discussed under the Policy section it would also be inconsistent with the City's Health Policy 6.6 - Outdoor Eating Facilities in Public Places.

b. **Consultation with Government Agencies**

The City referred the proposed amendments to the Department of Planning and Main Roads Western Australia for comment. At the close of the comment period, no submissions has been received.

c. **Strategic**

**Community Plan**

This item addresses the Community's Vision for the future and specifically the following Aspirations contained in the Community Plan 2011:-

**Aspiration 5:** Civic buildings, public places and transport infrastructure of contemporary design, constructed and maintained using best practice principles.
Aspiration 8: Transport systems that facilitate better use of public transport and promote non-car alternatives.

d. Policy

Footpath locations widths are considered in the City's Health Policy 6.6 - Outdoor Eating Facilities in Public Places, as follows:

"2.2 Pedestrian Access

A minimum clear footpath width of 1.5 metres must be provided directly adjacent to the building, running parallel to the street, unless otherwise approved by the Manager Health Services.

In areas of heavy pedestrian traffic, the City may require a wider pedestrian thoroughfare or may prohibit alfresco dining altogether.

Pedestrians must be able to make normal use of the footpath without being obliged to step into the road at any point, or make other unwarranted detours."

The requirements of this Policy have been used as the basis for the requirement for bicycle parking devices to be setback at least 1.5m from the building to ensure unobstructed pedestrian movement. The Policy allows for street furniture and outdoor dining areas to be located outside of this footpath area to encourage active streetscapes.

e. Financial

Nil

f. Legal and Statutory

Under clause 8.9.5 of Town Planning Scheme No.2 (TPS2), after the expiry of the period within which submissions may be made, the Council is to review the proposed amendments in light of any submission received and resolve to adopt the policy with or without modification, or not to proceed with the policy.

If Council resolves to adopt the amendment, it is to publish notice of the amendments once in a newspaper circulating in the district and, if in the City's opinion the policy affects the interests of the Western Australian Planning Commission (WAPC) forward a copy of the policy to the WAPC. The proposed amendments do not affect the interests of the WAPC.

5. Comments

The Alliance's comments should not be upheld as parked bicycles, if located adjoining buildings, may obstruct pedestrian movement and could impact users of outdoor dining areas.

As the proposed changes to Planning Policy 3.3.14 - Bicycle Parking and End-of-Trip Facilities for public are necessary to reflect changes to the R-Codes and footpath clearance requirements of the City's Health Policy 6.6 - Outdoor Eating Facilities in Public Places, it is recommended that Council adopt the amended Policy.

6. Voting Requirements

Simple Majority

7. Officer Recommendation

That Council ADOPT the proposed amendments to Planning Policy 3.3.14 - Bicycle Parking and End-of-Trip Facilities without modification pursuant to clause 8.9.5(b) of Town Planning Scheme No.2.
8. **Committee Recommendation**

That Council **ADOPT** the proposed amendments to Planning Policy 3.3.14 - Bicycle Parking and End-of-Trip Facilities without modification pursuant to clause 8.9.5(b) of Town Planning Scheme No.2, as follows:

**PLANNING POLICY 3.3.14**

**BICYCLE PARKING & END-OF-TRIP FACILITIES**

Red and underlined font means text proposed to be added
Red and strikethrough font means text proposed to be deleted

1. **Introduction**

The City of Rockingham supports the use of sustainable transport and acknowledges the need to provide supportive environments including bicycle parking and end-of-trip facilities. New developments should endeavour to include bicycle parking alongside car parking. Large-scale development will be encouraged to also provide end-of-trip facilities including lockers, change rooms and showers.

Existing development will be encouraged to provide these bicycle parking and end-of-trip facilities when upgrading developments.

The aim of the policy is to facilitate the appropriate provision of secure, well designed and effective on site bicycle parking and end-of-trip facilities to encourage the use of bicycles as a means of transport and access to and within the City. The *Perth Metropolitan Transport Strategy* aims to increase the rate of bicycle trips to 11.5% of all trips by 2029, and this Policy aims to cater for this projected demand for bicycle parking and end-of-trip facilities.

Clause 6.6 of Town Planning Scheme No.2 sets out the matters that the Council, in considering an application for planning approval, is to have due regard to as are in the opinion of the Council relevant to the use or development the subject of the application, and includes:

"(u) whether adequate provision has been made for access for pedestrians and cyclists, and the provision of bicycle parking and end-of-trip facilities."

2. **Policy Application**

This Policy applies to all applications for planning approval, including change-of-use applications where an intensification of land use is proposed.

3. **Policy Objectives**

The objectives of this Planning Policy are as follows:

(a) To ensure the provision of appropriate bicycle parking and end-of-trip facilities in new developments and extensions or intensification of existing developments in the City as outlined in Table 1; and

(b) To provide guidance on the development and design of bicycle parking and end-of-trip facilities.

4. **Policy Statement**

4.1 **Provision of Bicycle Parking Devices**

Bicycle parking devices are installations that allow for the secure and convenient parking of bicycles, and are separated into two different types: long-term parking and short-term parking. Long-term and short-term bicycle parking devices are to be provided at the rates shown on the following table:
### Table 1 - Bicycle Parking Rates

<table>
<thead>
<tr>
<th>Use</th>
<th>Minimum Long-term Parking</th>
<th>Minimum Short-term Parking</th>
</tr>
</thead>
<tbody>
<tr>
<td>Multiple Dwelling Lodging House Residential Building</td>
<td>1 space per 3 dwellings/lodging rooms As per the Residential Design Codes</td>
<td>1 space per 12 dwellings/lodging rooms As per the Residential Design Codes</td>
</tr>
<tr>
<td>Lodging House Residential Building</td>
<td>1 space per 3 lodging rooms</td>
<td>1 space per 10 lodging rooms</td>
</tr>
<tr>
<td>Short Stay Accommodation Hotel (accommodation component only) Motel</td>
<td>1 space per 40 guest bedrooms</td>
<td>none required</td>
</tr>
<tr>
<td>Commercial (^b):-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Local Shops (less than 1,000m(^2) NLA)</td>
<td>1 space per 250m(^2) NLA</td>
<td>1 space per 150m(^2) NLA (minimum 2 spaces)</td>
</tr>
<tr>
<td>- Neighbourhood Centres (between 1,001m(^2) - 4,999m(^2) NLA)</td>
<td>1 space per 500m(^2) NLA (minimum 4 spaces)</td>
<td>1 space per 300m(^2) NLA (minimum 6 spaces)</td>
</tr>
<tr>
<td>- District Centres (greater than 5,000m(^2) NLA)</td>
<td>1 space per 1,500m(^2) NLA (minimum 10 spaces)</td>
<td>1 space per 750m(^2) NLA (minimum 16 spaces)</td>
</tr>
<tr>
<td>Office</td>
<td>1 space per 200m(^2) NLA</td>
<td>1 space per 500m(^2) NLA</td>
</tr>
<tr>
<td>Consulting Rooms Medical Centre</td>
<td>1 space per 8 practitioners</td>
<td>1 space per 4 practitioners</td>
</tr>
<tr>
<td>Hotel (excluding accommodation component) Tavern Small Bar Nightclub</td>
<td>1 space per 100m(^2) of bars and public areas, including lounges, beer gardens and restaurants</td>
<td>1 space per 150m(^2) of bars and public areas, including lounges, beer gardens and restaurants</td>
</tr>
<tr>
<td>Health Studio Private Recreation</td>
<td>1 space per 400m(^2) NLA available to the public, including swimming pools</td>
<td>1 space per 200m(^2) NLA available to the public, including swimming pools</td>
</tr>
<tr>
<td>Community Use Exhibition Centre Public Worship - Place of Club Premises Reception Centre</td>
<td>none required</td>
<td>1 space for every 30 people the building is designed to accommodate</td>
</tr>
<tr>
<td>Showroom</td>
<td>1 space per 750m(^2) NLA for premises greater than 300m(^2)</td>
<td>1 space per 1,000m(^2) NLA</td>
</tr>
<tr>
<td>Industry - Service (^c)</td>
<td>1 space per 800m(^2) NLA for premises greater than 300m(^2) NLA</td>
<td>none required</td>
</tr>
<tr>
<td>Other Industrial Uses</td>
<td>1 space per 1,000m(^2) for premises greater than 300m(^2) NLA</td>
<td>none required</td>
</tr>
</tbody>
</table>

\(^a\) Unless defined elsewhere by this Policy, the uses specified above are defined in Schedule No.1 - Interpretations of the City of Rockingham Town Planning Scheme No.2.

\(^b\) "Commercial" includes a Shop, Bank, Betting Agency, Convenience Store, Fast Food Outlet, Homestore, Lunch Bar, Restaurant, Restricted Premises, Service Station (convenience store component).

\(^c\) "Industry - Service" includes a Dry Cleaning Premises, Funeral Parlour, Landscape Supply Yard, Laundromat, Motor Vehicle and Marine Sales Premises, Motor Vehicle Repair Station, Open Air Display, Plant Nursery, Trade Display.

The Council may approve an application that does not comply with Table 1 or may approve an application for a use that is not listed in Table 1 having regard to:

(i) the Perth Metropolitan Transport Strategy aim of increasing the rate of trips made by bicycle to 11.5% of all trips by 2029;

(ii) Austroads Part 14 - Bicycles;
(iii) the nature of the proposed development;
(iv) the number of employees likely to be employed on site;
(v) the anticipated demand for employee, customer, resident and student parking; and
(vi) the orderly and proper planning of the locality.

4.2 Design of Bicycle Parking Facilities

Long-term bicycle parking facilities should be located in a convenient and secure location for employees/residents and can include the following:

- Locked compounds with communal access using duplicate keys or electronic swipe cards in a secure location and fitted with bicycle parking devices; or
- Fully-enclosed individual lockers; or
- Devices to which the bicycle frame and wheels can be locked positioned close to and directly visible from inside the place of employment.

Short-term bicycle parking facilities includes devices to which the bicycle frame and wheels can be locked, and should be located in a convenient and secure position close to the entrance of the premises.

Regardless of the type of bicycle parking, bicycle parking devices should be designed in accordance with AS 2890.3 - Bicycle Parking Facilities and Austroads Part 14 - Bicycles, must be convenient and secure, and should comply with the following criteria:

- enable wheels and frame to be locked to the device without damaging the bicycle;
- be placed in public view (i.e. where they can be viewed by passers-by, shopkeepers, station attendants, teachers or fellow workers);
- be located outside pedestrian movement paths;
- be easily accessible from the road;
- be arranged so that parking and unparking manoeuvres will not damage adjacent bicycles;
- be protected from manoeuvring motor vehicles and opening car doors;
- be as close as possible to the cyclist’s ultimate destination;
- be well lit by appropriate existing or new lighting;
- be protected from the weather; and
- be designed to fit in harmony with the surrounding environment.

Where the building is built up to the front boundary, the City will accept short-term parking spaces being provided in the road reserve adjacent to the building located so as to provide a minimum clear footpath width of 1.5m directly adjacent to the building unless otherwise approved by the City, subject to the standards defined in AS 2890.3 being met. Long-term parking must be provided on site.

Signs should be provided to direct cyclists to parking devices where their purpose is not immediately apparent or are not readily visible.

4.3 Provision of End-of-Trip Facilities

End-of-trip facilities include destination facilities provided for bicycle commuters such as showers, change rooms and lockers.

Where long-term bicycle parking spaces are provided, showers must be provided at the following rate:-
Table 2 - Provision of showers

<table>
<thead>
<tr>
<th>Number provided of long-term parking spaces</th>
<th>Number of showers required</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-2</td>
<td>0</td>
</tr>
<tr>
<td>3-5</td>
<td>1</td>
</tr>
<tr>
<td>6-10</td>
<td>2 (one male, one female)</td>
</tr>
<tr>
<td>11-20</td>
<td>4 (two male, two female)</td>
</tr>
<tr>
<td>more than 20</td>
<td>4 (two male, two female) plus additional showers at the rate of 2 showers (one male, one female) for every 10 long-term parking spaces after 20 provided thereafter</td>
</tr>
</tbody>
</table>

Where it can be demonstrated that staff of a development work predominately part-time, casual or varied hours, the requirement to provide for shower facilities may be reduced where shower facilities are used at different hours.

Where showers are required, change rooms must also be provided. They must be provided as either:
- a combined shower and change cubicle; or
- one communal change room for each gender, directly accessible from the showers for that gender without passing through a public space.

Shower and change facilities must be located so that users and their belongings have a high level of security.

All showers provided are to dispense both hot and cold water. Cold-only showers must not be counted towards the requirements of this section.

Clothing lockers encourage cycling by providing secure storage for cycling clothes, footwear and towels. Clothing lockers should be:
- provided at a minimum rate of one clothing locker for each long-term bicycle parking space;
- of suitable volume and dimensions to allow storage of clothing, towels, cycling helmets and footwear;
- well ventilated, secure and lockable; and
- located close to shower and change facilities.

Where possible, showers and clothing lockers should be located close to long-term bicycle parking facilities. Where bicycle parking lockers are provided, clothing may be stored within the bicycle parking locker provided there is adequate space and hangers.

5. Authority

This Planning Policy has been adopted by the Council under clause 8.9 of Town Planning Scheme No.2 and whilst it is not part of the Scheme and does not bind the Council in respect of any application for planning approval, the Council is to have due regard to the provisions of the Policy and the objectives which the Policy is designed to achieve before making its determination.

6. Interpretations

For the purposes of this Planning Policy, the following terms shall have the same meaning as in Town Planning Scheme No. 2:-

Council means the Council of the City of Rockingham.

Net Lettable Area (NLA) means the area of all floors within the internal finished surfaces of permanent walls but excludes the following areas:-
(a) all stairs, toilets, cleaners cupboards, lift shafts and motor rooms, escalators, tea rooms and plant rooms, and other service areas;
(b) lobbies between lifts facing other lifts serving the same floor;
(c) areas set aside as public space or thoroughfares and not for the exclusive use of occupiers of the floor or building;

(d) areas set aside for the provision of facilities or services to the floor or building where such facilities are not for the exclusive use of occupiers of the floor or building.

Residential Design Codes means State Planning Policy 3.1, Residential Design Codes as amended from time to time.

For the purposes of this Planning Policy, the following terms shall have the following meaning:-

Device means a thing to or in which one or more bicycle frame(s) and wheels can be locked, and includes rails, bicycle lockers and bicycle compounds.

Long-term parking includes day parking for employees, residents’ parking at apartments and student parking at educational establishments.

Short-term parking includes parking for shoppers and visitors to a premises.

Space means parking for one bicycle.

7. Delegation

Applications for planning approval that comply in all respects with the objectives and provisions of this Planning Policy will be dealt with under delegated authority, pursuant to clause 8.10 of Town Planning Scheme No.2 and Planning Procedure 1.1 - Delegated Authority, unless otherwise required under Town Planning Scheme No.2 or a planning policy under the Scheme.

8. Adoption

This Planning Policy was adopted by the Council at its ordinary Meeting held on the 28th April 2009, and amended by Council at its ordinary Meeting held on the 26th July 2011.

Committee Voting - 4/0

9. The Committee’s Reason for Varying the Officer’s Recommendation

Not applicable.

10. Implications of the Changes to the Officer’s Recommendation

Not applicable.
<table>
<thead>
<tr>
<th>Reference No &amp; Subject:</th>
<th>SP-040/11 Proposed Development (Estate Marketing) Sign - Golden Bay Housing Estate</th>
</tr>
</thead>
<tbody>
<tr>
<td>File No:</td>
<td>28/6286</td>
</tr>
<tr>
<td>Proponent/s:</td>
<td>Chappell Lambert Everett on behalf of the Department of Housing</td>
</tr>
<tr>
<td>Author:</td>
<td>Mr Tristan Fernandes, Senior Planning Officer</td>
</tr>
<tr>
<td>Other Contributors:</td>
<td>Mr Dave Waller, Co-ordinator, Statutory Planning</td>
</tr>
<tr>
<td>Date of Committee Meeting:</td>
<td>18th July 2011</td>
</tr>
<tr>
<td>Previously before Council:</td>
<td></td>
</tr>
<tr>
<td>Disclosure of Interest:</td>
<td>Tribunal</td>
</tr>
<tr>
<td>Nature of Council's Role in this Matter:</td>
<td>Tribunal</td>
</tr>
<tr>
<td>Site:</td>
<td>Lot 551 Amarillo Drive, Keralup</td>
</tr>
<tr>
<td>Lot Area:</td>
<td>991.0076ha</td>
</tr>
<tr>
<td>LA Zoning:</td>
<td>Rural</td>
</tr>
<tr>
<td>MRS Zoning:</td>
<td>Rural</td>
</tr>
<tr>
<td>Attachments:</td>
<td>Proposed Development Sign</td>
</tr>
<tr>
<td>Maps/Diagrams:</td>
<td>Proposed Development Sign</td>
</tr>
<tr>
<td></td>
<td>Location Plan</td>
</tr>
<tr>
<td></td>
<td>Site Plan</td>
</tr>
</tbody>
</table>
1. **Purpose of Report**

To consider an application seeking Planning Approval to erect a Development (Estate Marketing) Sign, adjacent to the Kwinana Freeway on Lot 551 Amarillo Drive, Keralup for the Golden Bay Housing Estate being developed by the Department of Housing.

2. **Background**

In November 2010, the City granted Planning Approval for two Development (Estate Marketing) Signs advertising the Golden Bay Estate, within the Estate, adjoining Warnbro Sound Avenue.

3. **Details**

The Proponent seeks Planning Approval for a third Development (Estate Marketing) Sign to be erected on Department of Housing land in Keralup, 500m north of the Paganoni Road off ramp, directed to vehicles travelling south along the Kwinana Freeway, for the purposes of advertising the Golden Bay Estate.

The sign is proposed to be elevated 1m off the ground with a dimension of 10m in length and 5m in height. The proponent is also seeking a temporary two year approval.

4. **Implications to Consider**

a. **Consultation with the Community**

Nil

b. **Consultation with Government Agencies**

In accordance with the delegation power from the WAPC to the Council, for development on or adjoining the Kwinana Freeway (Category 1 road reservation - Primary Regional Road) the proposal was referred to the Main Roads WA (‘MRWA’) for comment.

MRWA advised that signage should not be located within or near any merging points including on and off ramps. MRWA requested that the sign be relocated at least 120m further south of the commencement of the off ramp, providing it is not within 120m of any Main Roads direction sign so as not to be a distraction to drivers.

MRWA advised that Council will need to approve additional signage directing motorists to the final location, as the sign is not installed on the property being developed. MRWA also raised concerned that this signage will set an unfavourable precedent for other developers to provide signage in a similar manner.

Notwithstanding this advice, MRWA raised no objection to the installation of the advertising sign subject to the following conditions:

- The sign will be approved for 1 year, with an option for a renewal for another year 1 year, or when 80% of blocks are sold (whichever occurs first);
- The sign and sign structure is to be placed on private property and shall not over hang or encroach upon the road reserve (as shown);
- Main Roads agreement is to be obtained prior to any modifications;
- The device shall not contain fluorescent, reflective or retro reflective colours or materials;
- The type of sign and location must comply with all relevant by-laws and planning schemes made by Council; and
- No other unauthorised signage is to be displayed.”
c. **Strategic**

Community Plan

This item addresses the Community's Vision for the future and specifically the following Aspirations contained in the Community Plan 2011:-

**Aspiration 2:** A safe community where residents feel secure, relaxed and comfortable within their home, work and social environments.

**Aspiration 11:** Planning for population growth to ensure that future development and land-uses contribute to a sustainable city that provides for a genuinely desirable lifestyle.

d. **Policy**

Planning Policy No.3.3.1 - Control of Advertisements provides guidance and specific requirements and objectives for each type of advertisement displayed within the district.

From the information provided as part of the application, the proposed signage falls within the category of Development (Estate Marketing) Signs within the City's Policy. The Policy permits a maximum of two signs of this nature, with a maximum dimension of 10m in length and 4.5m in height. The Golden Bay Estate already has two Development (Estate Marketing) Signs located adjoining Warnbro Sound Avenue.

In relation to this application, it is considered that the appropriateness and proliferation of signage have not been met, as explained below.

**Appropriateness**

The proposal fails to comply with the first Policy Objective which is to ensure that advertisements are appropriate to its location. The Policy specifies that Development (Estate Marketing) signs shall be situated on the land being subdivided, unless the land being subdivided is isolated from direct frontage to a Primary Regional Road (i.e. Kwinana Freeway) or 'Other Regional Road' (i.e. Warnbro Sound Avenue).

The Department of Housing land for the Golden Bay estate has frontage to Warnbro Sound Avenue, which is an 'Other Regional Road'. The Golden Bay Estate is not isolated to passing road traffic and the location of proposed sign adjoining the Kwinana Freeway is considered inconsistent with the policy requirements.

Given the indirect route motorists are required to navigate to the Golden Bay estate from the Paganoni Road exit on the Kwinana Freeway, there is concern additional signage is required along other local and 'Primary Regional Roads' which is not accounted for within the proposal.

**Proliferation**

If the Council grants Planning Approval to the proposal it is likely to be interpreted by the Proponent and other signage companies as a ‘green light’ to other similar types of advertisements along the Kwinana Freeway, contrary to the City's Policy. The proposal is outside of the City's planning framework which applies controls on advertising devices appropriate to the location of the subdivision and is likely to create an undesirable precedent for further sign applications along 'Primary' and 'Other Regional Roads' within the district.

It is also noted, that MRWA share concerns regarding the potential proliferation of signage that could occur as a result of an approval for the signage.

e. **Financial**

Nil
f. Legal and Statutory

Metropolitan Region Scheme

It is reasonable to assume the subject site will be developed for future urban purposes for Karnup (now known as Keralup) given the State Government's MRS amendment request and the planning objectives outlined in the City's Rural Land Strategy and Directions 2031 Draft Outer Metropolitan Perth and Peel Sub-Regional Strategy.

Town Planning Scheme No.2

Clause 5.3 of Town Planning Scheme No.2 (TPS2) sets out the requirements for the consideration of applications for the Control of Advertisements. Council, in considering the appropriateness of the signage, must have due regard of the objectives of the 'Rural' zone, the character and amenity of the locality within which it is to be displayed (including historic landscape significance) and potential traffic implications.

Clause 4.11.2(a) of TPS2 requires a 10m setback to the Kwinana Freeway. The proposal provides for a 5m setback to the Kwinana Freeway, contrary to the Scheme.

5. Comments

The proposed signage is not considered appropriate, given its substantial distance from the Golden Bay Estate and on the basis that Golden Bay estate is already being served by two existing Estate Marketing signs that adjoin Warnbro Sound Avenue, an 'Other Regional Road'.

Given the proposed signage is inconsistent with the objectives and provisions of Planning Policy 3.3.1 - Control of Advertisements as it would set a precedent and may lead to further proliferation of this type of signage, it is recommended that the application be refused.

6. Voting Requirements

Simple Majority

7. Officer Recommendation

The Council **REFUSE** Planning Approval for a proposed Development (Estate Marketing) Sign on Lot 551 Amarillo Drive, Keralup for the following reasons: -

1. The proposed signage is inconsistent with the following objectives of Planning Policy No.3.3.1 - Control of Advertisements: -
   (i) "(a) Ensure that advertisements are appropriate for their location";
   (ii) "(b) Minimise the proliferation of advertisements"; and
   (iii) "(h) Ensure advertisements are generally erected on land where the advertised business, sale of goods or service is being carried out".

2. The proposed signage is inconsistent with clause 4.3.3 of Planning Policy No.3.3.1 - Control of Advertisements as the sign is proposed to abut a Primary Regional Road where there is existing frontage to an 'Other Regional Road'.

3. Approval of the proposed sign could result in similar applications to the City to erect signage along the Kwinana Freeway that would collectively negate the planning objectives outlined in Planning Policy No.3.3.1 - Control of Advertisements.

4. The setback of the proposed sign is inconsistent with clause 4.11.2(a) of Town planning Scheme No.2.

8. Committee Recommendation

The Council **REFUSE** Planning Approval for a proposed Development (Estate Marketing) Sign on Lot 551 Amarillo Drive, Keralup for the following reasons: -
1. The proposed signage is inconsistent with the following objectives of Planning Policy No.3.3.1 - Control of Advertisements:

   (i) "(a) Ensure that advertisements are appropriate for their location";
   (ii) "(b) Minimise the proliferation of advertisements"; and
   (iii) "(h) Ensure advertisements are generally erected on land where the advertised business, sale of goods or service is being carried out".

2. The proposed signage is inconsistent with clause 4.3.3 of Planning Policy No.3.3.1 - Control of Advertisements as the sign is proposed to abut a Primary Regional Road where there is existing frontage to an 'Other Regional Road'.

3. Approval of the proposed sign could result in similar applications to the City to erect signage along the Kwinana Freeway that would collectively negate the planning objectives outlined in Planning Policy No.3.3.1 - Control of Advertisements.

4. The setback of the proposed sign is inconsistent with clause 4.11.2(a) of Town planning Scheme No.2.

Committee Voting – 4/0

9. The Committee's Reason for Varying the Officer's Recommendation

   Not applicable.

10. Implications of the Changes to the Officer's Recommendation

   Not applicable.
## Planning Services
### Statutory Planning Services

<table>
<thead>
<tr>
<th>Reference No. &amp; Subject:</th>
<th>SP-041/11 Proposed Street Naming Theme - Lot 1507 Eighty Road, Baldivis</th>
</tr>
</thead>
<tbody>
<tr>
<td>File No:</td>
<td>LUP/866-03</td>
</tr>
<tr>
<td>Proponent/s:</td>
<td>Dynamic Planning and Developments</td>
</tr>
<tr>
<td>Author:</td>
<td>Ms Nicole D'Alessandro, Planning Administration Officer</td>
</tr>
<tr>
<td>Other Contributors:</td>
<td>Mr Dave Waller, Co-ordinator, Statutory Planning</td>
</tr>
<tr>
<td>Date of Committee Meeting:</td>
<td>18th July 2011</td>
</tr>
<tr>
<td>Previously before Council:</td>
<td></td>
</tr>
<tr>
<td>Disclosure of Interest:</td>
<td>Legislative</td>
</tr>
<tr>
<td>Nature of Council’s Role in this Matter:</td>
<td></td>
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<tr>
<td>Site:</td>
<td>Lot 1507 Eighty Road, Baldivis</td>
</tr>
<tr>
<td>Lot Area:</td>
<td>120.824 ha</td>
</tr>
<tr>
<td>LA Zoning:</td>
<td>Development</td>
</tr>
<tr>
<td>MRS Zoning:</td>
<td>Urban</td>
</tr>
<tr>
<td>Attachments:</td>
<td>Location Plan, Street Name Plan</td>
</tr>
<tr>
<td>Maps/Diagrams:</td>
<td></td>
</tr>
</tbody>
</table>
1. **Purpose of Report**

To consider an application seeking approval for a street naming theme based on 'Parks of the World' for the Parkland Heights Estate located at Lot 1507 Eighty Road, Baldivis.

2. **Background**

A Local Structure Plan for the site was adopted by the Council and the Western Australian Planning Commission (WAPC) for the western side of Lot 1507 on the 27th November 2002 with a minor change adopted on the 21st March 2011.

Conditional subdivision approval has been granted by the WAPC for Stages 1 and 2.

3. **Details**

The street names within the 'Parkland Heights' Estate are proposed to be based on a theme of parks, gardens, common or public squares from international cities of the World.

The proposed street names for Stages 1 and 2 are derived from parks, gardens and commons found in London and Edinburgh. It is proposed that names for future stages of the Parkland Heights development may be taken from other world cities.

An example of the proposed street names are as follows:-

- Furnivall Gate
- Pymmes Junction
- Ruskin Brace
- Camley Fairway
- Elsinga Link
- Wandle Lane
- Mayesbrook Entrance
- Danson Lane
- Wandsworth Circuit
- Pierhead Way
- Duppas Brace
- Ravenscourt Road
- Lamorbey Way
- Incholm Road
- Ladbroke Link
- Corstophine Brace

4. **Implications to Consider**

a. **Consultation with the Community**

   Nil

b. **Consultation with Government agencies**

   Consultation with the Geographic Names Committee is required following the Council's decision.
c. **Strategic**

**Community Plan**

This item addresses the Community's Vision for the future and specifically the following Aspiration contained in the Community Plan 2011:-

*Aspiration 15: Governance systems that ensure decision making and resource allocation is accountable, participative, legally and ethically compliant.*

d. **Policy**

In accordance with Planning Procedure 1.4 - Street Names and Their Themes the preferred source of names include names identified with the general area, pioneers of the state or citizens who have made a significant community contribution.

e. **Financial**

Nil

f. **Legal and Statutory**

The responsibility for approving street names rests with the Geographic Names Committee.

The proposed Theme is in accordance with Geographic Names Committee principles, procedures and guidelines which outlines names that are 'descriptive names appropriate to the features' as one of the preferred sources of street names.

5. **Comments**

It is considered that many existing street naming themes based on 'locally significant' items or persons have been largely utilised within portions of the City and therefore the use of roads names based on the theme 'Parks of the world' is appropriate for future residents and visitors.

It is recommended that the Council support the street naming theme based on 'Parks of the World' for the Parkland Heights Estate, Baldivis.

6. **Voting Requirements**

Simply Majority

7. **Officer Recommendation**

That Council **ENDORSE** the proposed street naming theme of 'Parks of the World' for use within the Parkland Heights Estate located at Lot 1507 Eighty Road, Baldivis.

8. **Committee Recommendation**

That Council **ENDORSE** the proposed street naming theme of 'Parks of the World' for use within the Parkland Heights Estate located at Lot 1507 Eighty Road, Baldivis.

Committee Voting – 4/0

9. **The Committee’s Reason for Varying the Officer’s Recommendation**

Not applicable.

10. **Implications of the Changes to the Officer’s Recommendation**

Not applicable.
Planning Services
Statutory Planning Services

**Reference No & Subject:**

<table>
<thead>
<tr>
<th>SP-042/11</th>
<th>Final Approval of Scheme Amendment No.99 - Commercial Communications Antennae</th>
</tr>
</thead>
</table>

**File No:**

LUP/1453-02

**Proponent/s:**

Mr J Sparkes

**Author:**

Mr Ross Underwood, Senior Planning Officer

**Other Contributors:**

Mr Dave Waller, A/Manager, Statutory Planning

**Date of Committee Meeting:**

18th July 2011

**Previously before Council:**

June 2010 (PD59/6/10), February 2011 (SP-001/11), June 2011 (SP-029/11)

**Disclosure of Interest:**

Legislative

**Site:**

Lot 48 (No.335) Eighty Road, Baldivis

**Lot Area:**

2,340m²

**LA Zoning:**

Special Residential

**MRS Zoning:**

Rural

**Attachments:**

Maps/Diagrams:

- Fig 1 - Zoning and Location Plan
- Fig 2 - Advertising Plan (1st round)
- Fig 3 - Advertising Plan (2nd round)
- Fig 4 - Views to antenna
- Fig 5 - View of antenna from the rear yard of 333 Eighty Road
1. **Purpose of Report**

To reconsider for Final Approval for Amendment No.99 to *Town Planning Scheme No.2 (TPS2)*, for an Additional Use of 'communications antennae - commercial' for Lot 48 (No.335) Eighty Road, Baldivis.

2. **Background**

In October 2009, the City received a complaint that a communications antenna was erected on the subject site. The complainant considered that the antenna was an 'eyesore' and was concerned about the possible health effects. The City advised the owner that 'communications antennae - commercial' was a prohibited use in the 'Special Residential' zone and instructed the owner to remove the antenna. The TPS2 interpretation is:

"Communications antennae - commercial: means any mast, antennae, aerial, satellite dish and other associated equipment used for the reception or transmission of television or radio signals or for other electronic communication where its vertical or horizontal dimensions exceed two metres but does not include telecommunications infrastructure."

Following further discussions with City Officers, the owner proposed an amendment to TPS2 to permit the development of a 'communications antennae - commercial' on the subject site. The applicant provided letters of support from the owners of Lot 41 (No.9) Chandler Ramble and Lot 49 (No.337) Eighty Road, Baldivis.

The matter was considered by the Council in June 2010 when it resolved to adopt (initiate) Amendment No.99 to TPS2 by:

"(i) Amending the Scheme Text by inserting a new Additional Use No.29 into Schedule No.2 as follows:

<table>
<thead>
<tr>
<th>No.</th>
<th>Site Description</th>
<th>Additional Use</th>
<th>Special Conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>29</td>
<td>Lot 48 (No.335) Eighty Road, Baldivis</td>
<td>Communications Antennae - Commercial</td>
<td>The antennae is to have a maximum height of 18 metres</td>
</tr>
</tbody>
</table>

(ii) Modifying the Scheme Maps to show a broken black border around Lot 48 (No.335) Eighty Road, Baldivis and an identification number of 'A29':"

The Environmental Protection Authority advised that the proposed Amendment should not be assessed under the *Environmental Protection Act 1986*. The Amendment was subsequently advertised for public comment from the 22nd October 2010 to the 29th November 2010.
At the close of the comment period, a total of five submissions were received, comprising:

- one submission from Western Power providing no objection;
- one submission from the Department of Environment and Conservation providing no objection;
- one submission from a nearby resident (Mr K & Mrs S Robinson, No.5 Basile Street, Baldivis) providing no objection so long as there is no interference with electrical equipment; and
- two submissions from nearby residents (Mr P Crowe, No.333 Eighty Road and Mr N & Mrs C Maxwell, No.2 Dove Retreat, Baldivis) objecting for the following reasons:-
  - The antenna is visually intrusive, particularly as the estate was set up to minimise intrusions into the landscape;
  - The antenna is not screened by trees and is visible from the area;
  - The applicant should have been aware that the antennae is prohibited under TPS2;
  - Adoption of this amendment would set a precedent, allowing other operators to install antennae;
  - The antenna is not incidental to the predominate use of the land;
  - The applicant has not demonstrated that health, soil resistivity, electrical interference, structural stability and risk implications have been addressed by technical studies;
  - The antennae impacts on televisions and air conditioners in the area;
  - The antenna could potentially lower property values;
  - The antenna's ability to enable the applicant to walk around his property is an imposition on nearby residents;
  - The applicant's objection to overhead power lines in the area contradicts his support for the antenna; and
  - The antenna is unlikely to assist people in emergency situations.

The matter was considered by the Council in February 2011 when it resolved to adopt the Amendment for Final Approval, subject to the Amendment being modified to include an additional Special Condition requiring the planting of screening vegetation to minimise the visual impact of the antennae from adjoining properties. The Amendment was forwarded to the Western Australian Planning Commission ('WAPC') for adoption.
The WAPC advised that as the Amendment was not advertised for the required 42 days, further advertising was required to be undertaken for a period of 21 days. Readvertising commenced on the 6th May 2011 and closed on the 31st May 2011. The readvertising included a note stating that:

"submissions received within the previous advertising period will be considered when Council meet to reconsider the proposal. Persons who have already made a submission need not submit a further submission."

At the close of the readvertising period, four submissions had been received comprising:-

- one submission from Western Power providing no objection;
- one submission from the Department of Environment and Conservation providing no objection;
- one submission from a resident (Mr K & Mrs S Robinson, No.5 Basile Street, Baldivis) supporting the proposal; and
- one submission from a resident (Mr I Elliott, No.5 Chandler Ramble, Baldivis) objecting to the proposal on the grounds that it would set a precedent allowing other operators to install antennae.

Details of three submissions were included in a Schedule of Submissions, the submission from the Department of Environment and Conservation was not included in the Schedule. In June 2011, the Council resolved to adopt the Amendment for Final Approval, inclusive of the modifications inserted by Council in February 2011 (Special Condition requiring vegetation screening).

### 3. Details

The CEO was unable to implement the Council's decision, because the Officer's report did not include all submissions received, including the submissions received during the first round of public consultation. The Council's decision is invalid as a result, and this matter must be resubmitted to Council for consideration.
4. Implications to Consider

a. Consultation with the Community

The Amendment to TPS2 has undergone two periods of public consultation, including a 39-day period in October and November 2010, and a 25-day period in May 2011. The comment of 13 owners was sought, from which the City received three letters of objection from three different properties, and two letters of support from one property.

The reasons for objection were described in the 'Background' section above and the issues raised are dealt with in the 'Comments' section below.

b. Consultation with Government Agencies

Comment was sought from Western Power, the Department of Environment and Conservation and Telstra. Western Power owns Lot 780 Eighty Road, located 40m southwest of the subject site.

Letters of no objection were provided by Western Power (twice) and the Department of Environment and Conservation (twice).

c. Strategic Community Plan

This item addresses the Community’s Vision for the future and specifically the following Aspiration contained in the Community Plan 2011:-

**Aspiration 11:** Planning for population growth to ensure that future development and land-uses contribute to a sustainable City that provides for a genuinely desirable lifestyle.

d. Policy

State Planning Policy 3.1, *Residential Design Codes* provides that new development should meet the following criterion:

“6.10.2 P2: External fixtures that do not detract from the streetscape or the visual amenity of residents or neighbouring properties.”

This criteria is addressed further below in the ‘Comments’ section of this report.

e. Financial

Nil

f. Legal and Statutory

The procedures for considering submissions made to and adopting an amendment to TPS2 are set out in the *Town Planning Regulations 1967*, which requires the City to consider all submissions to the amendment and in respect of each submission shall consider whether the amendment should be modified accordingly or whether that submission should be rejected.

After considering the submissions made the City is required to pass a resolution either:-

(a) that the amendment be adopted with or without modification; or

(b) that it does not wish to proceed with the amendment.

In making such a decision, the City must provide the WAPC with a 'schedule of submissions', together with the Council's recommendations made in respect to those submissions, to the WAPC.

If the City resolves not to proceed with the amendment, the Minister for Planning may, notwithstanding the City's decision, approve the amendment with or without modifications.
5. Comments

The proposed Amendment to TPS2 has now been progressed in accordance with the procedural requirements of the *Planning and Development Act 2005* and the *Town Planning Regulations 1967*, including advertising for a period of at least 42 days. All submissions received during the advertising period have been considered, and are included in the Schedule of Submissions within the ‘Officer Recommendation’ of this report. The City can now make a valid decision on this matter.

An inspection of the locality conducted on the 1st July 2011 has confirmed that the antenna is not visually distinguishable from any of the streets or public spaces in the area, due to the limited number of places from which the antenna can be viewed and the presence of mature trees in the area. The following pictures show the antenna as viewed from different locations:-
CONFIRMED AT A PLANNING SERVICES MEETING
HELD ON MONDAY, 15 AUGUST 2011

Antenna not visible

Antenna partially visible
Fig 4 - Views to antenna

Antenna partially visible
The trees screen the antenna to such an extent that it is not considered to be visually intrusive from a street or any public place. The antenna is, however, much more visible when viewed from the rear garden of Lot 47 (No.333) Eighty Road, immediately northeast of the antenna, as shown in the following photo:-

![Fig 5 - View of antenna from the rear yard of 333 Eighty Road](image)

The antenna is considered to be visually intrusive from the rear garden of 333 Eighty Road, as the antenna tower and array is located within 20m of the garden and the view of the antenna is unobscured. The antenna is less visible from other properties because of the existence of mature trees in the area.

The applicant has advised he is willing to plant vegetation along the boundary to screen the antenna from view from the rear garden of 333 Eighty Road. The extent of vegetation required to achieve the screening of the antenna is not considered sufficient to address the issues of visual amenity, as the vegetation would need to be approximately 10m high and of sufficient depth between the canopy and the ground to achieve screening. The vegetation would change over time and may result in a non-permanent visual screen. The City would have difficulty in wording a condition of approval that sufficiently addresses the requirement for screening vegetation, and such a condition would be difficult for any person to comply with. The period of time to achieve compliance is also of concern.
The amenity of the adjoining property cannot reasonably be protected through this Amendment for the above reason, and on this basis it is recommended that the City not proceed with Final Approval of the Amendment.

The other comments raised by the submissioners are rejected for the reasons contained in the Schedule of Submissions included in 'Officer Recommendation' of this report, and are not relevant to the City's decision on whether or not to adopt the Amendment.

If the Minister for Planning decides not to approve the Amendment, the City will direct the owner to remove the antenna. If the Minister for Planning approves the Amendment, the City will direct the applicant to make a retrospective application for planning approval in the normal manner, which will include details of proposed screening vegetation.

It is recommended that Council not proceed with the proposed Amendment No.99 to TPS2.

6. Voting Requirements

Simple Majority

7. Officer Recommendation

That Council:

1. **NOT PROCEED** with Amendment No.99 to Town Planning Scheme No.2 to include 'communications antennae - commercial' as an Additional Use for Lot 48 (No.335) Eighty Road, Baldivis, for the following reasons:
   
   (i) The antenna the subject of this Amendment will detract from the visual amenity of a neighbouring property, being the rear garden of Lot 47 (No.333) Eighty Road, Baldivis, and is therefore inconsistent with the Specific Objective of clause 1.6.2(b) of Town Planning Scheme No.2 and Performance Criteria 6.10.2 P2 of State Planning Policy 3.1 - Residential Design Codes.

   (ii) The visual amenity of the rear garden of Lot 47 (No.333) Eighty Road, Baldivis cannot be reasonably and satisfactorily addressed through the planting of screening vegetation, given the height and depth of screening vegetation required to screen the antenna and the difficulty in maintaining such vegetation to a suitable standard over time.

2. **ADOPT** the recommendations contained within the Schedule of Submissions.

8. Committee Recommendation

That Council:

1. **NOT PROCEED** with Amendment No.99 to Town Planning Scheme No.2 to include 'communications antennae - commercial' as an Additional Use for Lot 48 (No.335) Eighty Road, Baldivis, for the following reasons:

   (i) The antenna the subject of this Amendment will detract from the visual amenity of a neighbouring property, being the rear garden of Lot 47 (No.333) Eighty Road, Baldivis, and is therefore inconsistent with the Specific Objective of clause 1.6.2(b) of Town Planning Scheme No.2 and Performance Criteria 6.10.2 P2 of State Planning Policy 3.1 - Residential Design Codes.

   (ii) The visual amenity of the rear garden of Lot 47 (No.333) Eighty Road, Baldivis cannot be reasonably and satisfactorily addressed through the planting of screening vegetation, given the height and depth of screening vegetation required to screen the antenna and the difficulty in maintaining such vegetation to a suitable standard over time.

2. **ADOPT** the recommendations contained within the following Schedule of Submissions:
<table>
<thead>
<tr>
<th>Submission</th>
<th>Comments</th>
<th>Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>No.1 - Mr P &amp; Mrs J Crowe, 333 Eighty Road, Baldivis WA 6171</strong></td>
<td><strong>1. Property Value</strong></td>
<td>That this comment be</td>
</tr>
<tr>
<td>Should the antenna adversely affect our property value or the ability for</td>
<td>Any impact that the amendment</td>
<td>rejected.</td>
</tr>
<tr>
<td>us to sell our property who will then be responsible for compensation?</td>
<td>might have on property values is not a valid consideration.</td>
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<tr>
<td>When we purchased the property in August 2006, there was not an</td>
<td><strong>2. Special Residential Zone</strong></td>
<td></td>
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<tr>
<td>Antenna present and we were informed by the real estate agent and</td>
<td>The antenna is not visually</td>
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<td>previous owner that strict guidelines exist as to what can be erected/built</td>
<td>distinguishable from any of the</td>
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<td>on a persons property.</td>
<td>roads or public spaces in the</td>
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<td>area, due to the limited number</td>
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<td>of places from which the antenna</td>
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<td>can be viewed and the presence</td>
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<td>of mature trees in the area.</td>
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<td>**As we understand special permission has to be obtained by the Shire</td>
<td>That this comment be</td>
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<td>of removal of mature trees in the area, so that the Special Residential</td>
<td>rejected.</td>
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<tr>
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<td>character of Woodleigh Grove is maintained. The power lines are also</td>
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<td>underground so that they do not detract from the special rural</td>
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<td>character of the estate. It is therefore</td>
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<td>contradictory to erect a 17 metre antenna</td>
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<td>amongst this setting that is to remain as natural as possible.</td>
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<td></td>
<td>As noted in the Sound Telegraph paper recently, the Rockingham Council</td>
<td></td>
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<td></td>
<td>has been spending a large amount of funds on the removal of overhead</td>
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<td>power lines in the Palm Beach area. The council made the comment that</td>
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<td>the Palm Beach area is enhanced visually through the removal of</td>
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<td>unsightly cables and powerlines - why then would you impose on us and</td>
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<td></td>
<td>the residents of Woodleigh Grove and Settlers Hills cables and a 17</td>
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<td></td>
<td>metre antennae that benefits no one but Mr Sparkes and his amateur</td>
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<td></td>
<td>radio hobby?</td>
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<td></td>
<td>Mr Sparkes and I were present at the Community meeting for the Baldivis</td>
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<td></td>
<td>Sub-Station previously proposed to be built on Eighty Road. Mr Sparkes</td>
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<td></td>
<td>was greatly concerned that the overhead lines and cables would have an</td>
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<td>adverse affect on the character of the estate and negatively affect</td>
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<td>property values in the area. He was also concerned about the interferences</td>
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<td>to electrical devices that he and his family moved to Baldivis for the</td>
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<td></td>
<td>trees and natural outlook of the Estate and not powerlines and cables.</td>
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<td></td>
<td>The impact of antennae on electrical and communication equipment is not</td>
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<td>regulated by the City, and such issues should be addressed by the</td>
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<td></td>
<td>Australian Communications and Media Authority which is responsible for</td>
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<td>regulating suspected interference under the Radiocommunications</td>
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<td></td>
<td>That this comment be</td>
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<td></td>
<td>rejected.</td>
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<td>Submission</td>
<td>Comments</td>
<td>Recommendations</td>
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</tr>
<tr>
<td>We have the same concerns living next door to his property based on the following: -</td>
<td>Any impact that the amendment might have on property values is not a valid consideration.</td>
<td>That this comment be rejected.</td>
</tr>
<tr>
<td>- The operation of our air conditioning has been affected by his antenna - confirmed by our air conditioning technician as we required it to be reprogrammed.</td>
<td>The antenna is considered to be visually intrusive from the rear garden of 333 Eighty Road, as the antenna tower and array is located within 20m of the garden and the view of the antenna is unobscured. The antenna is less visible from other properties because of the existence of mature trees in the area.</td>
<td>That the City not proceed with Amendment No.99 to Town Planning Scheme No.2 to include 'communications antennae - commercial' as an Additional Use for Lot 48 (No.335) Eighty Road, Baldivis, for the following reasons: (i) The antenna the subject of this amendment will detract from the visual amenity of a neighbouring property, being the rear garden of Lot 47 (No.333) Eighty Road, Baldivis, and is therefore inconsistent with the Specific Objective of clause 1.6.2(b) of Town Planning Scheme No.2 and Performance Criteria 6.10.2 P2 of State Planning Policy 3.1 - Residential Design Codes.</td>
</tr>
<tr>
<td>- Our television operation has also been affected - confirmed by our television technician.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Should Mr Sparkes wish to sell his property he is able to remove the antenna to avoid any adverse effects on his sale price - we are not able to remove the antenna should we wish to sell.</td>
<td></td>
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</tr>
<tr>
<td>- Contrary to Mr Sparkes previous statement to the Council the Tuart Trees do not camouflage the antenna - it is plainly visible from our background, across the street and as you make your way through Woodleigh Grove and Settlers Hills.</td>
<td></td>
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</tr>
</tbody>
</table>
3. Hobby

Mr Sparkes states that he has been an "active radio operator since 1975": prior to erecting this unsightly antenna Mr Sparkes has confirmed to us that he serviced his hobby through the other various forms of antenna that he had strewn all over his property - although these are not desirable either they are by no means as imposing as the 17m antenna.

Mr Sparkes has also confirmed to us that he can easily service his hobby through the Internet but prefers to be able to walk around his property whilst listening into other peoples conversations which is the added ability that his antenna gives him. This is quite an imposition on us and the Estate's residents just to enable him to "walk around" as he stated to us.

Mr Sparkes also stated that he could be of service in an emergency - surely should an unfortunate occasion occur he would be able to then be of service anywhere else within the WA region ie Fire stations, police stations etc and co ordinate in a control centre should the need arise. We should not have a commercial grade antenna next door to us for a "just in case" situation.

<table>
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<tr>
<th>Submission</th>
<th>Comments</th>
<th>Recommendations</th>
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<tbody>
<tr>
<td>(ii) The visual amenity of the rear garden of Lot 47 (No.333) Eighty Road, Baldivis cannot be reasonably and satisfactorily addressed through the planting of screening vegetation, given the height and depth of screening vegetation required to screen the antenna and the difficulty in maintaining such vegetation to a suitable standard over time.</td>
<td>The comment is noted.</td>
<td>That this comment be noted.</td>
</tr>
<tr>
<td>The applicant's right to enjoy his property by walking on it is not relevant to this application.</td>
<td></td>
<td>That this comment be rejected.</td>
</tr>
<tr>
<td>Whether or not the antenna could assist people in emergencies is not relevant to the proposed amendment.</td>
<td></td>
<td>That this comment be rejected.</td>
</tr>
</tbody>
</table>
Mr Sparkes also states that hobby is incidental to the predominant use of the site and yet we put it to the Council that the antenna construction takes up a very large area of his backyard.

<table>
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<tr>
<th>Submission</th>
<th>Comments</th>
<th>Recommendations</th>
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<tbody>
<tr>
<td>The subject site is primarily used for habitation, and the antenna is</td>
<td>If the Council resolves to adopt the amendment and it is approved by the Minister for Planning, the applicant will be required to make a retrospective application for planning approval. If the Council resolves to not proceed with the amendment or the Minister for Planning refuses to approve the amendment, the City will direct the applicant to remove the antenna.</td>
<td>That this comment be rejected.</td>
</tr>
<tr>
<td>used for hobby purposes by the resident of the house. The antenna is</td>
<td></td>
<td>That the submissioner be advised that once the City has been advised of the Minister for Planning's decision in relation to this amendment, if the Minister does not approve the Amendment the City will direct the owner to remove the antenna; if the Minister approves the Amendment the City will direct the owner to make an application for retrospective planning approval.</td>
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<tr>
<td>therefore incidental to the predominate use of the land, and not a major use in its own right.</td>
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</table>

4. TPS 2

From my understanding and investigations, TPS2 is about the different types of Antennas that transmit or receive television or radio signals. Mr Sparkes' antenna clearly transmits and receives radio signals for it to operate, thus it should not be more than 2 metres vertically or horizontally. The fact that it is used for a hobby is irrelevant, the Council is here to administer the law based on the equipment/antenna being utilised - not to judge what is a valid hobby or use of antennae.

Woodleigh Grove is a domestic area and therefore we should not have commercial equipment erected that is visible outside of the residents home.

We are requesting that the Council applies the law as it is written and given that the 2 metre height limit has been specified for TPS2 in the Council laws it should be upheld and therefore Mr Sparkes antenna should be removed.

5. Council

I have asked Mr Gordon Bukur on three occasions to call at my property to discuss the following concerns we have;

- Visual impact
- Effect on health of my family
- Property valuation
- Interference with electrical devices
- Structural stability of the Antenna

The preparation of technical studies to address health, soil resistivity, electrical interference, structural stability or risk issues is not warranted as the City does not need to take these matters into account under TPS2. In terms of structural stability and risk, the antenna is setback at least its own height from adjoining properties and therefore does not present a risk to adjoining properties.

That this comment be rejected.
<table>
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<tr>
<th>Submission</th>
<th>Comments</th>
<th>Recommendations</th>
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<tbody>
<tr>
<td>Mr Bukur has never called at our property or telephones. It is understood that he has been able to call Mr Sparkes' property so why not ours to discuss our concerns? We are still waiting to see the test results relating to health, soil resistivity, electrical interference and structural stability - surely the Council or Mr Sparkes would have conducted these tests and have the appropriate documentation to show us.</td>
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<td></td>
<td>The comment is noted.</td>
<td>That this comment be noted.</td>
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<tr>
<td>6. Conclusion</td>
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<td>Mr Sparkes is able to utilise a number of other avenues for his hobby whilst we cannot escape from the eyesore that his antenna is.</td>
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<tr>
<td>We ask the council to apply the law as it is written and uphold the <em>domestic</em> nature of the estate rather than inflicting <em>commercial</em> type constructions on the residents.</td>
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<td>We also ask that the Council be consistent in its approach to keeping the area as natural and visually appealing by rejecting the application for this amendment to the Town Planning Scheme.</td>
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<td>No.2 - Mr I Elliott, 5 Chandler Ramble, Baldivis WA 6171</td>
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<tr>
<td>Whilst the aerial is largely obscured by large trees I am concerned at the possibility of a precedent being set by the proposed Amendment No.99</td>
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<td></td>
<td>All future proposals for antennae, or proposals to amend TPS2 to facilitate the installation of antennae, will be considered on the respective merits of each application, and the City's support for each proposal will be dependant on meeting visual amenity concerns.</td>
<td></td>
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<td></td>
<td>The failure, or alleged failure, of the applicant to make necessary enquiries as to the permissibility of the antenna prior to installing it is not a relevant consideration to this amendment to TPS2.</td>
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<td></td>
<td>That the submission be rejected.</td>
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<tr>
<td>Submission</td>
<td>Comments</td>
<td>Recommendations</td>
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<tr>
<td>If the proposed Amendment is granted then it will potentially effect all &quot;Special Residential Zones&quot; within WA by creating a precedent.</td>
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</tbody>
</table>
| **No.3 - Mr K & Mrs S Robinson, 5 Basile Street, Baldivis WA 6171**  
We have no objections as long as it does not interfere with our household electrical and communications equipment. | The impact of antennae on electrical and communication equipment is be addressed by the Australian Communications and Media Authority who are responsible for regulating suspected interference under the Radiocommunications Act 1992. | That the submission be rejected. |
| **No.4 - Mr K and Mrs S Robinson, 5 Basile Street, Baldivis WA 6171**  
We Keith and Sandra Robinson “support” the received proposal for the said Antenna on Lot 48 Eight Road, Baldivis.  
We have no objections and understand as subject matter experts in regards to Antenna's and frequency management through ACA the implications of allowing Mr J. Sparkes to retain the Antenna as currently exists. | The submission is noted. | That the submission be noted. |
| **No.5 - Mr N & Mrs C Maxwell, 2 Dove Retreat, Baldivis WA 6171**  
We would like to express our objection to the proposed Additional Use No.29 'Communications Antenna - Commercial' for Lot 48 (No.335) Eighty Road, Baldivis. Reasons for our objection include the following:  
As a property owner, this commercial installation detracts from the Special Rural zoning of the estate and it not in harmony of the area.  
If the radio operator is suitably qualified/experienced, he/she would have known the type of installation installed was not of a hobby nature but one of a commercial type installation, therefore has contravened Special Rural zoning of the estate in the first instance. | The antenna is not visually distinguishable from any of the streets or public spaces in the area, due to the limited number of places from which the antenna can be viewed and the presence of mature trees in the area. The trees screen the antenna to such an extent that it is not considered to be visually intrusive from a street or any public place. | That this comment be rejected. |

The comment is noted  
That this comment be noted.
<table>
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<tr>
<th>Submission</th>
<th>Comments</th>
<th>Recommendations</th>
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<tbody>
<tr>
<td>I request soil resistivity data for review.</td>
<td>The preparation of technical studies to address soil resistivity issues is not warranted as the City does not need to take these matters into account under TPS2.</td>
<td>That this comment be rejected.</td>
</tr>
<tr>
<td>If council approves this commercial radio installation, this gives the opportunity for other property owners in the estate to install similar installations.</td>
<td>All future proposals for antennae, or proposals to amend TPS2 to facilitate the installation of antennae, will be considered on the respective merits of each application, and the City's support for each proposal will be dependant on meeting visual amenity concerns.</td>
<td>That this comment be rejected.</td>
</tr>
<tr>
<td>Request an independent risk assessment be performed by a suitably qualified expert.</td>
<td>The preparation of technical studies to address risk issues is not warranted as the City does not need to take these matters into account under TPS2. Furthermore, the antenna is setback at least its own height from adjoining properties and therefore does not present a risk to adjoining properties.</td>
<td>That this comment be rejected.</td>
</tr>
<tr>
<td>I disagree that the installation is incidental to the predominant use of the site.</td>
<td>The subject site is primarily used for habitation, and the antenna is used for hobby purposes by the resident of the house. The antenna is therefore incidental to the predominate use of the land, and not a major use in its own right.</td>
<td>That this comment be rejected.</td>
</tr>
<tr>
<td>Aerials, cabling, tie wires etc are in view. This type of installation depicts the type found in a commercial area within the City of Rockingham ie - Sea Rescue, Gov't Utility radio transmitters etc.</td>
<td>The comments are noted.</td>
<td>That the comment be noted.</td>
</tr>
<tr>
<td><strong>No.6 - Western Power, Locked Bag 2520, Perth WA 6001</strong></td>
<td>The submission is noted.</td>
<td>That the submission be noted.</td>
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<tr>
<td>Submission</td>
<td>Comments</td>
<td>Recommendations</td>
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<tr>
<td>1. To the best of my knowledge, there are no objections to the changes you propose to carry out for the above-mentioned project.</td>
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<tr>
<td>Please note: Perth One Call Service (Freecall 1100 or visit dialbeforeyoudig.com.au) must be contacted and location details (of Western Power underground cabling) obtained prior to any excavation commencing.</td>
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<td>Work Safe requirements must also be observed when excavation work is being undertaken in the vicinity of any Western Power assets.</td>
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<td>Western Power is obliged to point out that any change to the existing (power) system; if required, is the responsibility of the individual developer.</td>
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<tr>
<td><strong>No.7 - Western Power, Locked Bag 2520, Perth WA 6001</strong></td>
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<tr>
<td>Western Power wishes to advise the following in respect to the above mentioned proposal.</td>
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<tr>
<td>1. To the best of my knowledge, there are no objections to the changes you propose to carry out for the above-mentioned project.</td>
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<tr>
<td>Please note: Perth One Call Service (Freecall 1100 or visit dialbeforeyoudig.com.au) must be contacted and location details (of Western Power underground cabling) obtained prior to any excavation commencing.</td>
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<td>Work Safe requirements must also be observed when excavation work is being undertaken in the vicinity of any Western Power assets.</td>
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<tr>
<td>Western Power is obliged to point out that any change to the existing (power) system; if required, is the responsibility of the individual developer.</td>
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<td>No.8 – Department of Environment &amp; Conservation, PO Box 1167, Bentley WA 6983</td>
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<tr>
<td>The Department of Environment and Conservation Swan Region has no comments on this proposal.</td>
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<td>The submission is noted.</td>
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<td>That the submission be noted.</td>
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</table>
### Submission

| No.9 - Department of Environment & Conservation, PO Box 1167, Bentley WA 6983 |
|---|---|---|
| The Department of Environment and Conservation Swan Region has no comments on this proposal. | The submission is noted. | That the submission be noted. |

**Committee Voting – 4/0**

### 9. The Committee’s Reason for Varying the Officer’s Recommendation

Not applicable.

### 10. Implications of the Changes to the Officer’s Recommendation

Not applicable.
1. **Purpose of Report**

To inform the Council of the Minister for Heritage's decision to remove the Rockingham Hotel (on Lot 99 Kent Street, Rockingham) from the Register of Heritage Places and consider further action.

2. **Background**

In June 2007, the City received advice from the Heritage Council of Western Australia ('Heritage Council') that the proposed entry of the Rockingham Hotel onto the Register of Heritage Places ('Register') under the Heritage of Western Australia Act 1990 ('Act') on an interim basis was being considered at a meeting of the Heritage Council's Register Committee. In August 2007, the Council resolved to advise the Heritage Council that it supports the entry of the Rockingham Hotel (including walls and trees) in the Register of Heritage Places on an interim basis.
In August 2007, Mayor Sammels attended a meeting of the Register Committee to convey Council's advice. The Register Committee agreed with the City's position that the curtilage (heritage area) should only encompass the Rockingham Hotel, the walls of the former beer garden and the Norfolk Island pines. The Register Committee's recommendation was forwarded to the Minister for Heritage for consideration of the Interim Registration.

In May 2008, the Rockingham Hotel was entered onto the Register on an interim basis. The City's advice was sought on the permanent entry of the Rockingham Hotel onto the Register, and in June 2008 the Council resolved to support the proposed registration of the Rockingham Hotel on a permanent basis.

### 3. Details

The Heritage Council has advised that the Rockingham Hotel has been removed from the Register in accordance with section 52 of the Act, pursuant to a direction from the Minister for Heritage. Notice of this decision was published in the *Government Gazette* on the 7th June 2011.

### 4. Implications to Consider

a. **Consultation with the Community**

   Consultation with the community is undertaken by the Heritage Council under the Act.

b. **Consultation with Government Agencies**

   The City can provide comment on recommendations to include places on the Heritage List, through various stages of the process of registration, including decisions of the Heritage Council to include the Rockingham Hotel on the Register on both an interim and permanent basis - see the 'Background' section above.

   The City was not consulted prior to the decision being made not to enter the Rockingham Hotel on the Register. Consultation is only required under certain circumstances, and this is discussed in more detail in the 'Legal and Statutory' subsection below.

c. **Strategic**

   Community Plan

   This proposal addresses the Community's Vision for the future and specifically the following Aspiration contained in the Community Plan March 2011:-

   *Aspiration 15: Governance systems that ensure decision making and resource allocation is accountable, participative, legally and ethically compliant.*

d. **Policy**

   Nil

e. **Financial**

   Nil

f. **Legal and Statutory**

   State Register

   Entry of a place onto the Register, whether interim or permanent, has the effect that any application for planning approval, a building licence or demolition licence must be forwarded to the Heritage Council for comment under the Act. Any decision made by the City on such an application must be consistent with the Heritage Council's advice.

   A place is considered to be entered on the Register on an interim registration following the publication of a notice that the place is proposed to be entered in the Register or where the Minister directs that immediate protection is required of any place. Once a place is entered on the Register on an interim registration, there are two ways in which the place can be removed from the Register and not entered permanently, as follows.
Section 52 of the Act - Where the Minister for Heritage directs that the place or any portion of the place should not be entered permanently in the Register, a notice is to be published that permanent entry will not be made and invite submissions to be made for a period of not less than 3 weeks form the date of the notice. The notice can be withdrawn by the Minister for Heritage following the receipt of submissions. The place remains in the Register until both Houses of Parliament pass motions permitting the removal.

Section 53 of the Act - Where a period of 12 months has elapsed since the place was entered onto the Register and the place has not been entered permanently, the place is removed from the Register. The Act allows this 12 month period to be extended with agreement of the owner or by regulation of the Governor.

Once a place has been removed from the Register under either of the above circumstances, no further consideration can be given to entering the place for a period of five years except with the leave of the Supreme Court.

It is understood by the City that the removal of the Rockingham Hotel from the Register was in accordance with section 53 of the Act, after the expiry of the 12 month period (as extended) on the 1st June 2011, and not section 52 as specified in the Heritage Council's notice.

The manner in which the Rockingham Hotel has been removed from the Register raises concern given that it has not occurred in accordance with the Act. Had the removal of the Hotel been undertaken in accordance with section 52 of the Act, as indicated in the notice, the Minister for Heritage would have been required to follow the procedures set out under this section of the Act, requiring notice of the right to make a submission on the proposal being given and both houses of Parliament to pass motions permitting the removal.

City of Rockingham Register

The Rockingham Hotel is entered on the City's Heritage List under clause 5.4.2 of Town Planning Scheme No.2 with a Management Category of 'A', affording it the highest level of protection at the local level. It is not afforded the same protection that is provided if listed on the State Register.

5. Comments

The decision to remove the Rockingham Hotel from the Register without undergoing any of the requirements of Section 52 of the Act, as detailed in the 'Legal and Statutory' section above, is disappointing due to the decision-making process not having been transparent and lacking in accountability.

It is recommended that this matter should be considered as part of the Heritage Council's review of the Act, and in this regard Section 53, which allows for the removal of a place from the Register if a decision has not been made in 12 months, should be deleted.

6. Voting Requirements

Simple majority

7. Officer Recommendation

That Council:

1. EXPRESS its disappointment that the Minister for Heritage has deleted the Rockingham Hotel from the Register of Heritage Places, pursuant to section 52 of the Heritage of Western Australia Act 1990, without seeking submissions or obtaining motions from both houses of Parliament permitting the decision, as required by the Act.

2. RECOMMEND the Heritage Council of Western Australia delete Section 53 of the Heritage of Western Australia Act 1990 as it lacks procedural fairness and accountability.

3. DIRECT the Chief Executive Officer to write to the Minister for Heritage and Heritage Council of WA explaining the Council's position.
8. Committee Recommendation

That Council:

1. **EXPRESS** its disappointment that the Minister for Heritage has deleted the Rockingham Hotel from the Register of Heritage Places, pursuant to section 52 of the Heritage of Western Australia Act 1990, without seeking submissions or obtaining motions from both houses of Parliament permitting the decision, as required by the Act.

2. **RECOMMEND** the Heritage Council of Western Australia delete Section 53 of the Heritage of Western Australia Act 1990 as it lacks procedural fairness and accountability.

3. **DIRECT** the Chief Executive Officer to write to the Minister for Heritage and Heritage Council of WA explaining the Council’s position.

Committee Voting - 4/0

9. The Committee’s Reason for Varying the Officer’s Recommendation

Not applicable.

10. Implications of the Changes to the Officer’s Recommendation

Not applicable.
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<td>13.</td>
<td><strong>Reports of Councillors</strong></td>
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<td>Nil</td>
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<td>14.</td>
<td><strong>Addendum Agenda</strong></td>
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<td>15.</td>
<td><strong>Motions of which Previous Notice has been given</strong></td>
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<td>Nil</td>
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<td>16.</td>
<td><strong>Notices of Motion for Consideration at the Following Meeting</strong></td>
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<td>Nil</td>
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<td>17.</td>
<td><strong>Urgent Business Approved by the Person Presiding or by Decision of the Committee</strong></td>
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<td>Nil</td>
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<td>18.</td>
<td><strong>Matters Behind Closed Doors</strong></td>
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<td></td>
<td>Nil</td>
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<td>19.</td>
<td><strong>Date and Time of Next Meeting</strong></td>
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<td></td>
<td>The next Planning Services Standing Committee Meeting will be held on <strong>Monday, 15 August 2011</strong> in the Council Boardroom, Council Administration Building, Civic Boulevard, Rockingham. The meeting will commence at 4.00pm.</td>
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<tr>
<td>20.</td>
<td><strong>Closure</strong></td>
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<td>There being no further business, the Chairman thanked those persons present for attending the Planning Services Standing Committee meeting, and declared the meeting closed at 4.55pm.</td>
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<td>21.</td>
<td><strong>Attachments</strong></td>
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<td>Nil</td>
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