MINUTES
Planning Services Committee Meeting
Held on Monday 15 April 2013 at 4:00pm
City of Rockingham Boardroom
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<td>15.</td>
<td>Motions of which Previous Notice has been given</td>
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<td>Notices of Motion for Consideration at the Following Meeting</td>
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<td>Urgent Business Approved by the Person Presiding or by Decision of the Committee</td>
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<td>Matters Behind Closed Doors</td>
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<td>Closure</td>
<td>106</td>
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1. Declaration of Opening

The Chairperson declared the Planning Services Committee Meeting open at 4.05pm, welcomed all present.

2. Record of Attendance/Apologies/Approved Leave of Absence

2.1 Councillors
- Cr Richard Smith
- Cr Chris Elliott
- Cr Leigh Liley (arrived 4.07pm)
- Cr Allan Hill

2.2 Executive
- Mr Andrew Hammond - Chief Executive Officer (until 4.40pm)
- Mr Mike Ross - A/Director Planning and Development Services
- Mr John Woodhouse - Director Legal Services and General Counsel
- Mr Peter Ricci - Project Manager Keralup
- Mr Jeff Bradbury - A/Manager Strategic Planning and Environment
- Mr Richard Rodgers - Manager Building Services (until 4.37pm)
- Mr Rod Fielding - Manager Health Services (until 4.37pm)
- Ms Melinda Wellburn - PA to Director Planning and Development Services

2.3 Members of the Gallery: 10

2.4 Apologies: Nil

2.5 Approved Leave of Absence: Nil

3. Responses to Previous Public Questions Taken on Notice

Nil

4. Public Question Time

4.05pm The Chairperson invited members of the Public Gallery to ask questions.

4.1 Mr Ben Doyle, Planning Solutions - SP-017/13 - Proposed Scheme Amendment No.132 to TPS2 - Changes to Additional Use 22 - The Spud Shed

The Chairperson invited Mr Doyle to present his questions to the Planning Services Committee.

4.07pm Cr Leigh Liley arrived at the Planning Services Committee meeting.

Mr Doyle began by making reference to the amended Officer's Recommendation and requested deferral of the application pending the preparation of an Integrated Development Guide Plan. Discussion ensued between Committee members and Mr Doyle.
| **4.2** | **Mrs Sharon Digby, Digby Property Holdings Pty Ltd - SP019/13 - Reconsideration of Fencing Condition - Child Care Centre**  
The Chairperson invited Mrs Digby to present her questions to the Planning Services Committee. Mrs Digby asked the following questions:  
1. Where exactly is the public realm mentioned in the Report?  
2. A Child Care Centre is not a public building, so why should people be able to see children into the play area?  
3. Throughout the numerous discussions with City officers, why was she not once told about the fencing requirement and integration with active street frontages?  
The Chairperson advised that this is an item contained in tonight’s Committee agenda and will be considered later in the meeting.  |

| **4.33pm** | There being no further questions the Chairperson closed Public Question Time. |

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| **5.** | **Confirmation of Minutes of the Previous Meeting**  
Moved Cr Liley, seconded Cr Hill:  
That Council **CONFIRM** the Minutes of the Planning Services Committee Meeting held on 18 March 2013, as a true and accurate record.  
Committee Voting – 4/0 |

| **6.** | **Matters Arising from the Previous Minutes**  
Nil |

| **7.** | **Announcement by the Presiding Person without Discussion**  
4.35pm The Chairperson 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. |

| **8.** | **Declarations of Members and Officers Interests**  
4.35pm The Chairperson asked if there were any interests to declare.  
There were none. |

| **9.** | **Petitions/Deputations/Presentations/Submissions**  
Nil |

| **10.** | **Matters for which the Meeting may be Closed**  
Nil |

| **11.** | **Bulletin Items**  
Planning Services Information Bulletin – April 2013  
Health Services  
1. Health Services Team Overview  
2. Human Resource Update  
3. Project Status Reports |
| 3.1 FoodSafe                                      |
| 3.2 Industrial and Commercial Waste Monitoring   |
| 3.3 Community Health and Wellbeing Plan          |
| 3.4 Healthy Communities Initiative              |
| 3.5 Health Promotion                              |
| 3.6 Mosquito Control Program                      |
| 3.7 Ocean Water and Storm Water Sampling          |

| 4. Information Items                              |
| 4.1 Mosquito-Borne Disease Notifications          |
| 4.2 Food Recalls                                  |
| 4.3 Food Premises Inspections                     |
| 4.4 Public Building Inspections                   |
| 4.5 Outdoor Public Event Approvals                |
| 4.6 After Hours Noise and Smoke Nuisance Complaint Service |
| 4.7 Complaint - Information                        |
| 4.8 Building Plan Assessments                     |
| 4.9 Septic Tank Applications                      |
| 4.10 Demolitions                                 |
| 4.11 Swimming Pool and Drinking Water Samples     |
| 4.12 Rabbit Processing                            |
| 4.13 Hairdressing and Skin Penetration Premises   |
| 4.14 Family Day Care                              |
| 4.15 Update of Zelda’s/Vibe Legal Action          |

**Building Services**

1. Building Services Team Overview
2. Human Resource update
3. Project Status Reports
4. Information Items
   | 4.1 Monthly Building Permit Approvals - (All Building Types) |
   | 4.2 Private Swimming Pool and Spa Inspection Program       |
   | 4.3 Continued Service System – where a Certificate of Design Compliance & Building Permit are produced individually |
   | 4.4 Demolition Permit                                      |
   | 4.5 Permanent Sign Licence                                 |
   | 4.6 Community Sign Approval                                |
   | 4.7 Temporary Sign Licence                                 |
   | 4.8 Street Verandah Approval                               |
   | 4.9 Occupancy Permits                                      |
   | 4.10 Stratas                                               |
   | 4.11 Unauthorised Building Works                           |
   | 4.12 Monthly Caravan Park Site Approvals                   |
   | 4.13 R Code Variations                                     |

**Strategic Planning and Environment**

1. Strategic Planning and Environment Team Overview
2. Human Resource Update
3. Project Status Reports
   | 3.1 Local Planning Strategy (LUP/1352)                      |
   | 3.2 Karnup District Water Management Strategy (EVM/136)    |
   | 3.3 Water Campaign (EVM/56-02)                              |
   | 3.4 Karnup District Structure Plan (LUP/1546)               |
4. Information Items
<p>| 4.1 Amendment No.114 to Town Planning Scheme No.2 – Development Contribution Plan No.2 |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td><strong>4.2</strong></td>
<td>Delegated Final Adoption of Structure Plan</td>
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<tr>
<td><strong>4.3</strong></td>
<td>Delegated Minor Change to Structure Plan</td>
</tr>
</tbody>
</table>

**Statutory Planning**

1. Statutory Planning Team Overview
2. Human Resource Update
3. Project Status Reports
   3.1 CouncilsOnline (Planning Products via the Web) formerly eDA
4. Information Items
   4.1 Land Use – Planning Enforcement
   4.2 Subdivision/Development Approvals and Refusals by the WAPC
   4.3 Notifications and 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 Approved
   4.10 Subdivision/Amalgamation Refused

**Director Planning and Development Services**

1. Director Planning and Development Services Team Overview
2. Human Resource Update
3. Project Status Reports
   3.1 Administration Building Refurbishment/Fitout (LUP/1394-25)
   3.2 Northern Waterfront Sector - Development Policy Plan and Masterplan (LUP/1617)
   3.3 Campus Sector - Development Policy Plan and Masterplan (LUP/1618)
   3.4 Smart Village North Sector - Development Policy Plan and Masterplan (LUP/1595)
4. Information Items
   4.1 Lots 401 and 404 Civic Boulevard, Rockingham (LUP/229 & LUP/227)
   4.2 Study Tour - Infrastructure Planning for Isolated Master Planned Communities

**Committee Recommendation**

That Councillors acknowledge having read the Planning Services Information Bulletin – April 2013 and the contents be accepted.

Committee Voting – 4/0

4.37pm - Mr Richard Rodgers, Manager Building Services and Mr Rod Fielding, Manager Health Services left the Planning Services Committee meeting.
12. Agenda Items

Strategic Planning and Environment

Planning Services
Strategic Planning and Environmental Services

Reference No & Subject: SPE-006/13 Local Planning Strategy - Community Engagement Programme
File No: LUP/1487-03
Proponent/s: Mr Chandran Kizhakke Veetil, Senior Strategic Planning Officer
Author: Mr Jeff Bradbury, A/Manager Strategic Planning and Environment
Other Contributors: 
Date of Committee Meeting: 15 April 2013
Previously before Council: October 2009 (PD116/10/09); July 2010 (PD67/7/10)
Disclosure of Interest: Executive
Nature of Council’s Role in this Matter: Executive
Site: 
Lot Area: 
LA Zoning: 
MRS Zoning: 
Attachments: Community Engagement Programme Outcomes Report
Maps/Diagrams: 

Purpose of Report

This report outlines the process undertaken as part of the Community Engagement Programme (CEP) for the preparation of the Local Planning Strategy (LPS) and documents the outcomes and findings generated from the actions and engagement initiatives.

Background

At its ordinary Meeting held in October 2009, the Council resolved to prepare a new Town Planning Scheme (TPS) which is intended to replace the existing Town Planning Scheme No.2 which was gazetted in November 2004. In this regard, a LPS is required to be prepared which will then provide the rationale for the preparation of the new TPS. The purpose of the LPS is to provide strategic direction to the long-term land use planning and development within the City.
In 2010, the City as a first step engaged Beckwith Environmental Planning Pty Ltd (Beckwith) to develop a Community Engagement Strategy. Beckwith in its report recommended that the City needed to inform, consult, involve, collaborate, and empower the community in order to solicit their views on key strategic land use planning issues and their responses to finding solutions. Moreover, capturing the ideas and input of the community, prior to and during the preparation of the LPS would ensure that the outcomes are soundly based with community support. The CEP was thus designed as an integrated approach to build community awareness and participation with the intention to draw upon local knowledge and thus achieve local ownership of the LPS.

The City engaged ConsultWG, a specialist community engagement consultancy firm, to undertake the CEP in order to seek community values and attitudes to key planning issues related to housing, community health and wellbeing, employment and economic development, heritage and environment, and transport. The LPS project was promoted under the tagline “Rockingham: Our City, Our Future”. This tagline has been consistently used in all the promotional materials used during the CEP. The City has also used the banner “Help Shape our City” in order to encourage the community to participate in the workshops and questionnaire survey. The City’s objectives for community participation during the preparation of the LPS were:

- To provide opportunities for stakeholders and the broader community to participate in the preparation of the LPS;
- To promote and build awareness of the intent and process involved in the preparation of the LPS;
- To identify community values and attitudes to key planning issues and vision for the future; and
- To draw upon local knowledge and thus achieve local ownership of the LPS.

The CEP project broadly included holding four ward-based community workshops and a youth engagement workshop and seeking responses to a survey questionnaire from the residents and ratepayers. The CEP was undertaken over the months of August to November 2012.

**Details**

**Community Engagement Initiatives**

In regards to the engagement activities scheduled for the CEP Project, the City has put in place the following programmes:

1. Advertised four (4) times in the local newspapers:
   - 24 and 31 October 2012 in the Sound Telegraph; and
   - 26 October and 02 Nov 2012 in the Weekend Courier.

2. Advertised in the City’s ‘Council Column’ in the Weekend Courier – 26 October 2012.

3. Two Mayoral press releases on 1 and 16 November 2012.

4. Introduced on the City’s Webpage “Help Shape our City” – 01 November 2012.

5. Introduced on the City’ Facebook page “Help Shape our City” – 01 November 2012.


7. Made available the Survey Questionnaire electronically on the City’s webpage and Facebook page.

8. Letters sent to various Community Groups through the City’s Community Development Department.

9. Postcards sent to all residents and ratepayers of the City through Australia Post.

10. Organised and conducted four ward-based workshops:
    - 7 November 2012 - Singleton Hall (Coastal Ward);
    - 8 November 2012 - Gary Holland Community Centre (Rockingham Ward);
    - 13 November 2012 - Settlers Hills Community Centre (Baldivis Ward); and
    - 15 November 2012 - Warnbro Community Church (Safety Bay Ward).

12. Organised and conducted a Youth Engagement Workshop in the Council Reception Room on 30 November 2012.

**Engaging with the Internal Stakeholder Groups**

Prior to engaging with the community, two internal stakeholder group workshops (City Officers and Elected Members) were organised to familiarise the participants with the intent of the LPS and seek their views on the key strategic land-use planning issues facing the City. The Officers’ workshop was held on 29 August 2012 and the Elected Members’ workshop was held on 11 September 2012.

The workshops proceedings were framed around refining an internally tested and approved questionnaire prepared by the Planning and Development Services Team and developing the community survey questionnaire.

**Survey Questionnaire and Fact Sheets**

Based on the comments received from the internal stakeholder group workshops, the Project Team modified the Survey Questionnaire to reflect a ‘live, work, and play’ theme. The Survey Questionnaire had 12 multiple choice and five (5) open-ended questions under the headings ‘where we live’, ‘where we work’, ‘where we shop’, ‘where we play’, ‘our environment’, ‘getting around’, and ‘our vision’. The open-ended questions were intended to seek qualitative, bare-all responses from the community.

Supporting Fact Sheets to the Survey Questionnaire were prepared to provide background information to community members, and focused on the following key topics:

- LPS process;
- Where we live;
- Where we work and shop; and
- Where we play and how we move around.

**Community and Youth Engagement Workshops and Survey**

The Workshops and Survey were focussed on the following five broad strategic planning issues and identifying responses from the community:

1. How the City will determine the housing density and types for its community in order to meet the residential and lifestyle needs of the community and cater for population growth.
2. Where the City will allocate the Industrial/Commercial/Busi ness zones to support the creation of local employment and foster development to ensure the future prosperity of the City and the community.
3. How the new planning scheme will respond to the current and future needs of our growing community, providing community facilities and structures that will support the health and wellbeing of our community.
4. How the City will meet its obligations to protect the environment and heritage.
5. How to plan for the transport, traffic, and travel requirements of the community now and in the future in the context of various, competing land uses.

A total of 87 participants attended the community workshops and 19 participants attended the Youth Engagement workshop. The City received 467 Survey Questionnaires filled in through online and as printed copies. The responses from the community in the form of ideas, aspirations, and issues were wide ranging. The key responses were:

**Community Workshops**

- Higher density is generally supported, however, the community would like to see height set back from the foreshore and slightly dispersed.
- Natural bush land corridors and conservation areas should be incorporated into future land use planning.
- Increasing the availability and range of affordable housing to accommodate for all age groups.
- Increased short term accommodation options and supply - the introduction of caravan parks, camping grounds and chalet accommodation is seen as a key method in promoting tourism. The community also would like the planning system to allow for more hotel development within the City.
The community has identified the natural amenity and beaches as one of Rockingham’s major strengths. This should be preserved and also promoted for tourism while all new development should incorporate environmentally friendly design.

The community generally supports smaller scale local shops, bars and taverns.

The majority of participants support the proposed light rail network for Rockingham.

There is a high demand and opportunity for a local entertainment/performing arts/cultural centre.

The introduction of smaller shuttle buses is identified as a major opportunity to improve bus frequencies and access between suburbs, retail and services.

Promote the idea of decentralisation of government agencies to Rockingham.

Youth Engagement Workshop

Current lack of housing diversity, high costs of apartments and the loss of native vegetation for new residential areas.

There is a lack in retail diversity.

Participants were aware and commented that there is currently limited accommodation for tourists.

Participants feel as though there is not enough environmental protection in regards to development.

Promoting energy efficient technologies in residential development.

Better access to existing educational facilities while also encouraging more universities to Rockingham.

Introduce designated bus lanes while increasing the availability of cycle paths.

Businesses to promote work experience and internship opportunities for the youth.

Increase the number and type of recreational activities available including festivals, theme parks, night clubs, bars and restaurants to attract tourism.

Recreational activities targeted at the youth such as allowing for graffiti wall/zones, establishment of an arts centre, gaming centre, skate parks, youth centres, and outdoor gym equipment.

Introduce public Wi-Fi areas.

Restoration of older buildings and better access to heritage information and learning programs.

Participants identified a gap between education and employment. There are not enough high schools and also a lack of employment diversity and opportunities.

There are not enough bus stops and the local area has poor transport accessibility especially between Warnbro and Mandurah. Participants also note the under-utilisation of the car parks surrounding the train station.

Anti-social behaviour in the evening around shopping centres is a problem.

There are not enough skate parks and suitable amenities at existing parks.

There is a severe shortage in available entertainment for teenagers under the age of 18.

Survey Questionnaire

Felt that a combination of strategies would be the best way to address the State Government’s housing density target.

Support the redevelopment of areas that have small older style homes on big blocks.

Felt it was very important to work in Rockingham, be able to walk or cycle to work, for residents to be able to access public transport, both within the City of Rockingham and to work places outside the City.

Preferred to shop at the major shopping centre in Rockingham or other large centres within Rockingham.
• Thought there was an adequate supply of large centres (54.8 per cent), suburban centres (65.6 per cent) and local shops (64.6 per cent), however, the availability of corner shops was thought to be poor (50.6 per cent).

• Preferred to access shopping centres by car (85.9 per cent), however, several people commented that they would be likely to use public transport if it was available or if it was more reliable.

• Felt that the development of Rockingham must coincide with the protection of the natural environment.

• Would like to see public open space that combines parks with natural areas and bushland.

• Socialise in venues or places around Rockingham.

• Felt that public transport was a very important issue when planning for the future.

Rockingham Community Fair

The ‘Our City, Our Future’ project was showcased in the Rockingham Community Fair on 18 November 2012. Overall, 300 individuals passed through the stall and provided comments and feedback to the Project Team.

The Community Engagement Programme Outcomes Report is appended as per Attachment. This report, on adoption, will be made available on the City’s website.

Implications to Consider

a. Consultation with the Community

The comments received from the community during the CEP were varied and were not limited to strategic land use planning issues per se. Other comments received during the workshops, which are listed below, require responses and actions from various Departments within the City:

• There is a high demand and opportunity for a local entertainment/performing arts/cultural centre.

• The introduction of smaller shuttle buses is identified as a major opportunity to improve bus frequencies and access between suburbs, retail and services.

• Promote the idea of decentralisation of government agencies to Rockingham.

• A need for adequate youth entertainment.

• There is a current lack of local employment opportunities.

• There is a lack in access to the public transport system, especially regarding the bus network.

• Anti-social behaviour relating to night clubs a cause for concern amongst residents.

• The course availability at Murdoch University is restricted.

• Promoting energy efficient technologies in residential development.

• Better access to existing educational facilities while also encouraging more universities to Rockingham.

• Introduce designated bus lanes while increasing the availability of cycle paths.

• Businesses to promote work experience and internship opportunities for the youth.

• Increase the number and type of recreational activities available including festivals, theme parks, night clubs, bars and restaurants to attract tourism.

• Recreational activities targeted at the youth such as allowing for graffiti wall/zones, establishment of an arts centre, gaming centre, skate parks, youth centres, and outdoor gym equipment.

• Introduce public Wi-Fi areas.

• Restoration of older buildings and better access to heritage information and learning programs.

• Participants identify a gap between education and employment. There are not enough high schools and also a lack of employment diversity and opportunities.
• There are not enough bus stops and the local area has poor transport accessibility especially between Warnbro and Mandurah. Participants also note the under-utilisation of the car parks surrounding the train station.

• Anti-social behaviour in the evening around shopping centres is a problem.

• There are not enough skate parks and suitable amenities at existing parks.

• There is a severe shortage in available entertainment for teenagers under the age of 18.

Similarly, the three open-ended questions under “our vision” in the Survey Questionnaire received numerous responses from the community and require a coordinated approach from the Departments within the City. The questions were:

Q1. What do you like about Rockingham that should be kept or improved as the City grows?
Q2. What don’t you like about Rockingham that should be changed?
Q3. What is missing in Rockingham that we will need to plan for?

Refer to pages 24 to 28 of the Appendix M of the attached Community Engagement Programme Outcomes Report for the details.

b. Consultation with Government Agencies

The Government agencies were not consulted at this early stage of the LPS preparation, however, the City will be engaging with relevant external stakeholder groups at the time of preparing the individual planning strategies. Refer to Section 5 ‘Comments’ for more details.

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: Land-use and Development Control - 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

There were no statutory obligations to consult with the community at this initial stage of the preparation of the LPS, however, the City has taken a proactive approach to reach out to each and every resident and ratepayer of the City during the CEP project.

The Directions 2031 and Beyond – Metropolitan Planning beyond the Horizon (2010) which provides a vision for the future growth of the Metropolitan and Peel region and Liveable Neighbourhoods (2007) which has been prepared to implement the objectives of the State Planning Strategy and State Sustainability Strategy are the two State-level policies that the City should be given credence in the preparation of a local planning strategy. Relevant State, regional, and the City of Rockingham policies and strategies will also be reviewed during the preparation of the LPS.

A section of the Local Planning Manual which is prepared by the Western Australian Planning Commission (WAPC) provides guidance in the preparation of Local Planning Strategies.

e. Financial

Nil

f. Legal and Statutory

Nil

Comments

The City of Rockingham has invited everyone who lives, works or plays in Rockingham to have a say on shaping the City’s future. The City has informed, consulted, involved, collaborated, and empowered the community and solicited their views on key strategic land use planning issues and their responses to finding solutions by inviting them to participate in the Community Engagement Programme.
The findings from this engagement process will be incorporated in the ‘Project Scopes’ for five individual planning strategies, which will be prepared as a precursor to the development of the LPS. The proposed individual planning strategies are:

- Biodiversity and Conservation Areas Strategy;
- Housing and Settlement Strategy;
- Land Use and Transport Strategy;
- Education and Employment Lands Strategy; and
- Planning Strategy for Tourism.

Relevant external stakeholder groups will be identified for each individual planning strategy and based on the requirements an ‘External Reference Group’ will be formed during the preparation of each of these strategies.

The implementation actions for the development of each planning strategy are generally common and will follow in a linear fashion, but are intended to proceed concurrently over several years. These planning strategies will then be presented to the Council individually for its consideration for advertising to invite submissions from the public. Appropriate amendments will be made to these individual planning strategies based on the comments and feedback received from the public, which will then be presented to the Council for adoption.

The outcomes of these individual planning strategies will be used in the preparation of the LPS, which will provide strategic direction to the long-term land use planning and development within the City, and is intended to incorporate short, medium and long-term recommendations to 2030 and beyond. The preparation and adoption of the LPS will guide the direction of the new Town Planning Scheme.

A Specific Purpose Strategy outlining the implementation actions for the preparation of the individual planning strategies and LPS will be prepared and presented to a future meeting of the Council.

### Voting Requirements

Simple Majority

#### Officer Recommendation

That Council **ENDORSE** the Local Planning Strategy - Community Engagement Programme Outcomes Report as the basis for the preparation of the individual planning strategies.

#### Committee Recommendation

That Council **ENDORSE** the Local Planning Strategy - Community Engagement Programme Outcomes Report as the basis for the preparation of the individual planning strategies.

Committee Voting – 4/0

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

Not Applicable

#### 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-010/13 Proposed Reconsideration of Home Occupation (Dog Minding) – State Administrative Tribunal</th>
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<tbody>
<tr>
<td>File No:</td>
<td>DD020.2012.00000162</td>
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<tr>
<td>Proponent/s:</td>
<td>Ms Lucie Bayer</td>
</tr>
<tr>
<td>Author:</td>
<td>Mr Regan Travers, Planning Officer</td>
</tr>
<tr>
<td>Other Contributors:</td>
<td>Mr Dave Waller, Coordinator Statutory Planning</td>
</tr>
<tr>
<td></td>
<td>Mr Mike Ross, Manager Statutory Planning</td>
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<tr>
<td>Date of Committee Meeting:</td>
<td>15 April 2013</td>
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<td>Previously before Council:</td>
<td></td>
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<tr>
<td>Disclosure of Interest:</td>
<td>Tribunal</td>
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<td>Nature of Council’s Role in this Matter:</td>
<td>Tribunal</td>
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<tr>
<td>Site:</td>
<td>Lot 124 (No.3) Westray Court, Warnbro</td>
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<td>MRS Zoning:</td>
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<td>Attachments:</td>
<td>Schedule of Submissions</td>
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<td>Maps/Diagrams:</td>
<td>1. Location Plan</td>
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<td>2. Consultation Plan</td>
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<td>3. Site Photo - Backyard</td>
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4.40pm - Mr Andrew Hammond, Chief Executive Officer left the Planning Services Committee meeting.
Purpose of Report

To re-consider the refusal of a Planning Application for a Home Occupation (Dog Minding) at Lot 124 (No.3) Westray Court, Warnbro, as invited by the State Administrative Tribunal (SAT).

Background

In July 2012, the City received a complaint regarding a Dog Minding business operating at No.3 Westray Court, Warnbro. The Proponent subsequently lodged an application seeking planning approval.

In November 2012, the City refused an application for a Home Occupation (Dog Minding) as the Proponent wanted to keep dogs overnight. The keeping of dogs overnight was considered a ‘Dog Kennel’ under Town Planning Scheme No.2 (TPS2), which is an ‘X’ use (i.e. not permitted) in the Warnbro Dunes Special Residential zone. A Dog Kennel is defined under TPS2 to mean:-

Dog Kennel:

“a premises used for the boarding and breeding of dogs where such premises are licenced or required to be licenced by the Council under the City of Rockingham Local Law Relating to Dogs; and may include the sale of dogs where such use is incidental to the predominant use.”

Details

The Proponent lodged an application for review (appeal) to SAT following the City’s refusal of the Home Occupation. In December 2012 and January 2013 SAT mediation between the Proponent and City occurred. Following mediation SAT issued orders seeking the Council to reconsider its decision pursuant to Section 31(1) of the State Administrative Act 2004 WA. Due to advertising being conducted independent of the SAT mediation, this report is not confidential.

A revised proposal as discussed at mediation on the 1 February 2013, is as follows:-

- No dogs will stay overnight;
- The proposed operating hours are from 7.00am to 6.30pm Monday to Friday;
- A maximum of four (4) dogs on the premises at any one time;
- Two (2) dogs are proposed to me ‘minded’ at any one time;
- Dogs will be kept inside the existing house, with the exception of backyard toilet breaks;
- Dog excrement will be collected daily;
- The backyard will be securely fenced within the Building Envelope, to the satisfaction of the City;
- A current vaccination certificate will be required to be provided to the business operation prior to any dog being left at the premises; and
- All dogs will be checked for fleas upon entry and will not be accepted if they are found to have fleas.

To clarify the number of dogs, the Proponent currently has one dog of her own, however, also regularly takes care of a friend’s dog. The Planning Application is therefore to ‘mind’ two dogs, in addition to the Proponent’s two dogs.

The Proponent lodged a submission during the advertising period that slightly differs from the above, instead proposing operating hours of 6.30am to 6.00pm Monday to Friday and additional operating hours of 8.00am to 6.00pm on Saturday and Sunday. This submission was subsequently withdrawn by the Proponent who advised that the application should be progressed based on the details discussed at mediation.

### Implications to Consider

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<tr>
<th></th>
<th>Consultation with the Community</th>
</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td>In accordance with Planning Policy 3.3.10 – Home Occupations &amp; Home Businesses (‘the Policy’), the application was referred to adjacent and nearby landowners for comment for a period of 14 days.</td>
</tr>
</tbody>
</table>

At close of the advertising period, three submissions of objection were received, with one submission signed by the other two submissioners. The submissioners objected to the proposal for the following reasons:–

(i) Safety of dogs and other people;
(ii) Adverse impact on residential amenity;
(iii) Hygiene; and
(iv) Potential non-compliance with an approval.

The Consultation Plan below shows which residents were consulted and the location of submissioners.
b. **Consultation with Government Agencies**
   Not Applicable

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**
   **Planning Policy 3.3.10 – Home Occupations and Home Businesses**
   Planning Policy 3.3.10 – Home Occupations and Home Businesses (the Policy) sets out policy objectives and provisions which the Council must have regard to in the assessment and determination of applications for planning approval for Home Occupations and Home Businesses.
   The objectives of the Policy are as follows:
   “(a) To promote the orderly and proper development of land by making suitable provisions to guide applicants who wish to operate a Home Occupation or a Home Business from a dwelling;
   (b) To secure the amenity, health and convenience of the neighbourhood through appropriate development requirements; and
   (c) To provide for economic growth and employment opportunities by facilitating the development of home based businesses.”
   The application was assessed against the Policy assessment criteria which include, among other requirements:
   (i) “Method of Operation – The operation of the Home Occupation must not cause injury to or adversely affect the amenity of the neighbourhood.”
   The proposed Home Occupation will operate primarily from a living room within the house, with the exception of backyard toilet breaks for the dogs. The Proponent has advised that doors and windows will be closed restricting noise to within the house and dogs will not be in the backyard for longer than 10 minutes to minimise their impact on neighbours.

e. **Financial**
   Nil

f. **Legal and Statutory**
   The Council has the ability to reconsider its decision pursuant to Section 31(1) of the State Administrative Tribunal Act 2004.
   A Home Occupation is a (‘D’) use that is not permitted in the Special Residential zone, unless the Council has exercised its discretion by granting Planning Approval.
   TPS2 interprets a Home Occupation as follows:
   “means an occupation carried out in a dwelling or on land around a dwelling by an occupier of the dwelling which:-
   (a) does not employ any person not a member of the occupier’s household;
   (b) will not cause injury to or adversely affect the amenity of the neighbourhood;
   (c) does not occupy an area greater than 20 square metres;
   (d) does not display a sign exceeding 0.2 square metres;
   (e) does not involve the retail sale, display or hire of goods of any nature;
in relation to vehicles and parking, does not result in traffic difficulties as a result of the inadequacy of parking or an increase in traffic volumes in the neighbourhood, and does not involve the presence, use or calling of a vehicle more than 2 tonnes tare weight; and does not include provision for the fuelling, repair or maintenance of motor vehicle; and

(g) does not involve the use of an essential service of greater capacity than normally required in the zone”.

The proposed Home Occupation is considered to be generally compliant with the TPS2 interpretation of a Home Occupation.

**Comments**

**Response to Submissions**

With respect to the submissioners concerns, the following comments are provided:

1. **Safety**

Objectors raised concerns that the safety of other dogs and nearby residents would be at risk from dogs escaping the premises or attacking other dogs or people when they are being exercised at a nearby dog beach.

**Comment**

It is unlikely that residents would be at risk from dogs escaping because the dogs will be kept inside the house. When dogs are in the backyard for a short period they will be supervised before being taken back into the house. A fence will also have to be constructed within the Building Envelope.

![](3. Site Photo - Backyard)

The Proponent will be responsible for the dogs actions at all times, whether at the premises or at the nearby dog beach.

A condition of Planning Approval can be included to ensure that secure fencing is installed, along with the dogs being supervised at all times when they are in the backyard.

2. **Adverse Impact on Residential Amenity**

Concerns were raised that the residential amenity of the locality will be compromised due to the establishment of a Dog Minding Home Occupation within a Special Residential zone.
Comment
The keeping of dogs has the potential to adversely impact the residential amenity of neighbours. The concerns from neighbours are based on the ability for the Proponent to have two dogs of her own, in addition to the two dogs being minded as part of the Home Occupation. The City agrees that a total of four dogs appears excessive. It is recommended that the Home Occupation is restricted to two dogs being minded, with a total of three dogs inclusive of the owner's dogs at the premises at any one time. A reduction in the number of dogs can be imposed as a condition of Planning Approval which is enforceable by the City for the duration of the Home Occupation.

3. Hygiene
Concerns were raised regarding the hygiene of the proposed Home Occupation, particularly regarding fleas or diseases carried by visiting dogs and the hygiene associated with having four dogs in a small area of the existing house.

Comment
The Proponent has advised that dog excrement will be picked up daily to ensure the backyard is kept in a tidy condition. The Proponent has also advised that all dogs will be required to be accompanied by a current vaccination certificate on arrival and that dogs will be checked for fleas and other parasites. The above measures are considered to be thorough and will ensure the subject property and its surrounds will remain hygienic.

4. Non-compliance with approval
Concerns were raised that even if the Proponent's measures satisfied Council requirements, what would ensure that management measures were ongoing.

Comment
The Proponent is legally required to operate in accordance with a conditional Planning Approval, should this be granted by the Council. The City considers that the Planning Conditions in the recommendation section of this report are relevant and can be enforced.

Other Comments - Dog Act 1976
Noise from dogs is controlled by the Dog Act 1976, which is enforceable by the City’s Ranger Services. Section 38 (2b) of the Dog Act 1976 states that a dog shall be taken to be a nuisance if:

"...it creates a noise, by barking or otherwise, which persistently occurs or continues to a degree or extent not normally habitual in dogs and has a disturbing effect on the state of reasonable physical, mental or social well-being of a person."

Should issues arise, a complaint can be made to the City’s Ranger Services for persistent barking.

To keep any more than two (2) dogs at a property permanently requires an application to be made with the City’s Ranger Services and failing that, the Proponent will be in breach of the City’s Dogs Local Law 3.2 and can be issued a $100 infringement notice for keeping more than the prescribed number of dogs.

In the circumstances, however, the Proponent is not required to register dogs which will only be visiting the premises for a short period of time. In this case the City is satisfied that a maximum of two (2) dogs associated with the Home Occupation will be acceptable with a total of three dogs at the premises at any one time. Regardless of visiting dogs not being registered at the address, Section 38 of the Dog Act 1976 still applies.

Conclusion
The majority of submissioners objected to the proposal because of the potential safety, amenity and hygiene impacts of the Home Occupation (Dog Minding).

The City considers that management measures can be applied as conditions of Planning Approval to minimise impact on the amenity of the neighbours.

It is recommended that the proposed Home Occupation (Dog Minding) be restricted to three dogs, inclusive of the owner's dogs and being limited to 12 months only to allow for further review.

Voting Requirements

Simple Majority
Officer Recommendation

That Council APPROVE the application for a Home Occupation (Dog Minding) at Lot 124 (No.3) Westray Court, Warnbro subject to the following conditions:-

1. This approval is valid for a period of 12 months only, following which a fresh application for Planning Approval is required.
2. A maximum of three (3) dogs are permitted on the premises at any one time, with a maximum of two (2) dogs to be ‘minded’ at any one time.
3. Dogs are not permitted to stay or board at the premises overnight.
4. The Home Occupation must only operate between the hours of 7.00am to 6.30pm Mondays to Fridays and not at all on Saturdays, Sundays and Public Holidays.
5. The Home Occupation must only operate from inside the existing dwelling, with the exception of backyard toilet breaks of a maximum 10 minutes at a time.
6. Dog excrement is required to be collected daily.
7. The backyard is to be fenced to prevent the escape of dogs within the approved Building Envelope.
8. All clients must park in the driveway. No vehicle parking is permitted on the road pavement and verge area of Westray Court.

Footnote:

(i) In regard to Condition No.1, the approval is valid for a period of 12 months only to enable the City to monitor the impact of the Home Occupation on neighbouring properties. The Proponent is required to submit a fresh application for Planning Approval after this time should the Proponent seek to continue operating the Home Occupation.

Committee Recommendation

That Council APPROVE the application for a Home Occupation (Dog Minding) at Lot 124 (No.3) Westray Court, Warnbro subject to the following conditions:-

1. This approval is valid for a period of 12 months only, following which a fresh application for Planning Approval is required.
2. A maximum of three (3) dogs are permitted on the premises at any one time, with a maximum of two (2) dogs to be ‘minded’ at any one time.
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5. The Home Occupation must only operate from inside the existing dwelling, with the exception of backyard toilet breaks of a maximum 10 minutes at a time.
6. Dog excrement is required to be collected daily.
7. The backyard is to be fenced to prevent the escape of dogs within the approved Building Envelope.
8. All clients must park in the driveway. No vehicle parking is permitted on the road pavement and verge area of Westray Court.

Footnote:

(i) In regard to Condition No.1, the approval is valid for a period of 12 months only to enable the City to monitor the impact of the Home Occupation on neighbouring properties. The Proponent is required to submit a fresh application for Planning Approval after this time should the Proponent seek to continue operating the Home Occupation.

Committee Voting – 3/1

(Cr Liley voted against)
<table>
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<tr>
<th>The Committee's Reason for Varying the Officer's Recommendation</th>
<th>Not Applicable</th>
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<tr>
<td>Implications of the Changes to the Officer's Recommendation</td>
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## Planning Services

### Statutory Planning Services

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<tr>
<th>Reference No &amp; Subject:</th>
<th>Proposed Demolition of a Residence on a Heritage Listed Property</th>
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<tr>
<td>File No:</td>
<td>DD020.2013.00000065.001</td>
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<tr>
<td>Proponent/s:</td>
<td>Mr Ian Saggers</td>
</tr>
<tr>
<td>Author:</td>
<td>Miss Donna Shaw, Planning Officer</td>
</tr>
<tr>
<td>Other Contributors:</td>
<td>Mr Dave Waller, Coordinator Statutory Planning</td>
</tr>
<tr>
<td></td>
<td>Mr Mike Ross, Manager Statutory Planning</td>
</tr>
<tr>
<td>Date of Committee Meeting:</td>
<td>15 April 2013</td>
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<td>Previously before Council:</td>
<td></td>
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<td>Disclosure of Interest:</td>
<td>Tribunal</td>
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<td>Nature of Council’s Role in this Matter:</td>
<td>Tribunal</td>
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<td>Site:</td>
<td>Lots 127 &amp; 128 (No.127-129) Parkin Street, Rockingham</td>
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<tr>
<td>Lot Area:</td>
<td>1,826m²</td>
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<tr>
<td>LA Zoning:</td>
<td>Residential (R30)</td>
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<td>MRS Zoning:</td>
<td>Urban</td>
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<td>Attachments:</td>
<td>1. Location Plan</td>
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<tr>
<td></td>
<td>2. Plan of Subdivision</td>
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<td></td>
<td>3. Scope of Proposed Works</td>
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<td></td>
<td>4. Church (Front View)</td>
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<td></td>
<td>5. Residence (Looking South)</td>
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<td></td>
<td>6. Church and Residence (View from Parkin Street)</td>
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</tbody>
</table>

## Purpose of Report

To consider an application seeking Planning Approval to demolish a Residence (former Manse) on the City’s Municipal Heritage Inventory and Heritage List at Lots 127 and 128 (No.127-129) Parkin Street, Rockingham.

## Background

The subject site is the location of the former Methodist Church (Church), which is listed as a Management Category B building on the City’s Municipal Heritage Inventory and Heritage List. In addition to the Church, the site contained the following:-

- two annexes attached to the Church, a 1946 asbestos and weatherboard addition to the rear of the Church and a flat roofed brick annex (mid-late 1900s); and
- a separate single storey asbestos and tiled roofed Residence, also constructed in the mid 1900’s.
Whilst the asbestos and weatherboard addition to the rear of the Church was originally identified as the Manse, the City previously received advice from its Regional Heritage Advisor that the single storey asbestos and tiled roofed Residence the subject of this report was in fact used as the Manse.

In May 2009, the Western Australian Planning Commission (WAPC) sought the City’s comments on a proposal to subdivide the subject site into 4 lots. Prior to the City providing its response to the WAPC, the Proponent was requested to prepare a Heritage Impact Statement (HIS).

The proposed subdivision facilitates the retention of the Church but would require the demolition of the Residence and annexes attached to the Church. The HIS, prepared on behalf of the Proponent, concluded that the proposed subdivision would not have a detrimental impact on the Church. The HIS was referred to the City’s Heritage Advisor, who advised that the HIS was satisfactory and that the proposed development will have minimal impact on the heritage listed place because it retained the Church.

The City supported the proposed subdivision subject to the owner obtaining the necessary approvals for demolition.

In May 2010, the WAPC granted conditional Subdivision Approval to the proposal. Condition No.5 of this approval required the following:-

“Planning Approval and a Demolition Licence for those buildings or portions of buildings proposed to be demolished in accordance with the Heritage Impact Statement dated 15 March 2010 being obtained prior to demolition.”

The Subdivision Approval expires on the 13th May 2013.

In July 2010, the City granted Planning Approval to demolish the Church annexes as part of modifications to convert the Church into a dwelling. Demolition of the Residence is now also required, as portions of this building extend over future lot boundaries (see Figure 2 below).

2. Plan of Subdivision

In respect to the proposed demolition, the City’s Heritage Advisor advised the following:-

“If, based on this statement, it is determined that demolition is supported, it is recommended that, as a condition of approval, the owner be required to prepare an archival record of the Church and Residence for submission to the local history collection maintained by the Historical Society.”
The proposal was presented to the City’s Heritage Advisory Committee at its Meeting on the 25th March 2013 whereby the Committee did not oppose the demolition of the Residence on the basis of the Church being retained as part of the subdivision.

**Details**

The Proponent has submitted an application to demolish the Residence to comply with Condition No.5 of the Subdivision Approval, to facilitate the creation of the four new lots. Figure 3 below depicts the location of the Residence proposed to be demolished in relation to other buildings on site.

---

Legend:
- Methodist Church
- Annexes (demolished)
- Residence (proposed to be demolished)

3. Scope of Proposed Works
4. Church (Front View)

5. Residence (Looking South)
6. Church and Residence (View from Parkin Street)

**Implications to Consider**

a. **Consultation with the Community**
   
   Not Applicable

b. **Consultation with Government Agencies**
   
   Not Applicable

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 3.5 – Historic Heritage Conservation**
   
   State Planning Policy 3.5 (Historic Heritage Conservation (SP 3.5) states the following:-

   “The weight given to heritage as a consideration will vary, depending on the degree of significance of a place or area, and relevant economic, social or environmental factors that may apply.”

   The merits of the proposal have been balanced against the heritage considerations of the site, which has lead the City to consider the Church should be conserved and support the demolition of the Residence.

   **Planning Policy 3.3.21 – Heritage Conservation and Development**
   
   Planning Policy 3.3.21 – Heritage Conservation and Development (the Policy) sets out Policy objectives and provisions which the Council must have regard to in the assessment or heritage related matters and seeks to apply development control principles to conserve and protect places of cultural heritage significance within the City.

   The objectives of the Policy are as follows:-

   “(i) To conserve and protect places of cultural heritage significance within the City of Rockingham;

   (ii) To ensure that development does not adversely affect the significance of heritage places;

   (iii) To ensure that heritage significance is given due weight in decision making for applications for planning approval; and
(iv) To provide greater certainty to landowners and the community about the planning processes for heritage identification and protection in the City of Rockingham.

The application was assessed against the Policy assessment criteria, which include, among other requirements, the development control policies relating to the demolition or a heritage place (including a place within a heritage area) as follows:-

“(i) Demolition of a heritage place with exceptional or considerable significance is rarely appropriate and should require the strongest justification. Demolition of a heritage place with moderate or low significance should be avoided wherever possible, although there may be circumstances where demolition is justified. The onus rests with the applicant to provide a clear justification.”

There are exceptional circumstances to support demolition because Subdivision Approval has been granted by the WAPC.

“(ii) Demolition approval should not be expected simply because redevelopment is a more attractive economic proposition, or because a building has been neglected. Consideration of a demolition proposal should be based upon the significance of the building or place; the feasibility of restoring or adapting it, or incorporating it into new development; and the extent to which the community would benefit from the proposed redevelopment.”

The Residence was assessed by the City’s former Regional Heritage Advisor as being of some cultural significance. The Proponent has previously received Planning Approval and has undertaken works as part of this approval, to adapt the Church to be used as a dwelling. From this action, it can be seen that whilst demolition of the Residence and thus future subdivision can result in an economic benefit to the Proponent, the Proponent has also taken measures to retain the cultural heritage significance of Church.

City of Rockingham Municipal Heritage Inventory

The City’s Municipal Heritage Inventory (MHI) is a survey of buildings of cultural significance in the City. The management categories contained in the MHI are applied as a guide for Council when making decisions affecting heritage listed places. As previously mentioned, the Church is listed as a Management Category B building on the MHI. The MHI defines Category B as follows:-

“Worthy of a high level of protection. Maximum encouragement to the owner should be provided under the TPS2 to conserve the significance of the place. A detailed Heritage Assessment and Impact Statement should be undertaken before approval is given for any major redevelopment. Incentives to promote heritage conservation should also be considered.”

The Residence is listed on the MHI, because it is on the same site as the Church. The Proponent has provided a HIS which, as previously mentioned, concluded that the proposed demolition of the Residence would not have a detrimental impact on the heritage significance of the Church.

e. Financial

Nil

f. Legal and Statutory

The subject site is zoned ‘Residential (R30)’ in TPS2, which permits the land to be subdivided into 6 lots.

Clause 5.4.7(c) of TPS2 states the following in relation to development on places listed in the Heritage List or contained within a Heritage Area:-

“Notwithstanding any other provision of the Scheme, no person shall commence or carry out any development affecting any building, object, structure or place listed in the Heritage List or contained within a Heritage Area, without first having applied for and obtained the planning approval of the Council pursuant to the provisions of Clause 6.1 of the Scheme.”

As the Church is on the City’s Heritage List, Planning Approval for the demolition of the Residence is required.
Comments

The Proponent provided a HIS which concluded that the proposed demolition of the Residence or proposed subdivision would not have a detrimental impact on the heritage significance of the Church. The City agrees with the findings of the HIS. In accordance with the advice received from the City’s Regional Heritage Advisor, it is recommended that the owner be required to prepare an archival record of the Church and Residence for submission to the local history collection maintained by the Historical Society.

The Proponent has demonstrated, in accordance with the requirements of the Policy, that demolition of the Residence will not have a detrimental impact on the heritage significance of the Church. Given that Subdivision Approval has been granted by the WAPC, demolition is considered acceptable.

Voting Requirements

Simple Majority

Officer Recommendation

That Council APPROVE the planning application seeking the demolition of the Residence at Lot 128 (No.127-129) Parkin Street, Rockingham subject to an archival photographic record of the Residence being provided to the City prior to the demolition works proceeding.

Committee Recommendation

That Council APPROVE the planning application seeking the demolition of the Residence at Lot 128 (No.127-129) Parkin Street, Rockingham subject to an archival photographic record of the Residence being provided to the City prior to the demolition works proceeding.

Committee Voting – 4/0

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

Not Applicable

Implications of the Changes to the Officer’s Recommendation

Not Applicable
### Purpose of Report

To consider, for initiation, an Amendment to Town Planning Scheme No.2 (TPS2) for the purpose of prohibiting ‘Night Clubs’ within the Primary Centre Waterfront Village Zone, the Primary Centre - Urban Village Zone, the District Town Centre Zone, and the Commercial Zone and changing the landuse class from a ‘D’ use to an ‘A’ use in the Primary Centre City Centre Zone.

### Background

The City has, over a long period of time, received complaints regarding the antisocial behaviour occurring in the Waterfront Village Precinct. The antisocial behaviour has been linked to night club patrons.

In 2010, the City conducted a survey to ascertain the views of local residents and businesses on the form and degree of inconvenience, disturbance, undue offence and annoyance experienced. The survey focused on the two nightclubs in the precinct. Amongst other things, the survey identified that almost half the respondents had experienced damage to their property, one third were frequently disturbed in their property (ie. once or twice a week), and just under a third had experienced intoxicated members of the public entering their premises.
The results of this survey reinforce the City’s concerns that a ‘Night Club’ is not compatible with the Planning objective of the Primary Centre - Waterfront Village Zone, being a boutique and family oriented waterfront.

**Details**

Under TPS2, a ‘Night Club’ Land Use is not permitted in the Primary Centre - City Centre Zone, the Primary Centre - Waterfront Village Zone, the Primary Centre - Urban Village Zone, and the District Town Centre Zone, unless the Council has exercised its discretion (‘D’) by granting Planning Approval. It is an ‘A’ use in the Commercial Zone. An ‘A’ use requires mandatory consultation and advertising in accordance with TPS2 requirements.

It is proposed to change the permissibility of ‘Night Club’ to prohibit (‘X’) the use in the Primary Centre - Waterfront Village Zone, the Primary Centre - Urban Village Zone, the District Town Centre Zone and the Commercial Zone. It is also proposed to change the permissibility of the ‘Night Club’ to an ‘A’ use in the Primary Centre - City Centre Zone, to require public comment into the Council’s consideration of Planning applications for Night Clubs.

**Implications to Consider**

a. **Consultation with the Community**

   If the Scheme Amendment is initiated by Council, it is required to be advertised in accordance with the Town Planning Regulations 1967 for a minimum of 42 days from the date of publication of an advertisement in a newspaper circulating in the area.

b. **Consultation with Government Agencies**

   Consultation with Government Agencies will only occur if the Scheme Amendment is initiated by the Council. Referrals can then be undertaken in accordance with Town Planning Regulations 1967.

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**

   **Planning Policy 3.2.5 – Waterfront Village Sector**

   Planning Policy 3.2.5 - Waterfront Village Sector (the Policy) regulates development in accordance with the endorsed Centre Plan for the Rockingham Strategic Metropolitan Centre.

   The Policy has a key principle of promoting land uses which reflect the coastal nature and lifestyle of Rockingham and its community to achieve a centre designed in accordance with recognised townscape principles promoting a high quality public domain. Further objectives give priority to the ‘Main Street’ retail model for commercial centres with an emphasis on land uses which will generate interest and pedestrian activity within the public domain.

   A prohibition on Night Clubs is considered appropriate to protect the amenity of residents within the Primary Centre - Waterfront Village Zone and avoid future land use conflicts in the District Town Centre Zone and Commercial Zone. The Primary Centre - City Centre Zone would be the only location where Night Clubs could be considered by the Council.

   Night clubs within the Primary Centre - Waterfront Village Zone have resulted in poorly activated ground floor tenancies which are closed during day time business hours. This situation is contrary to the Policy objectives of facilitating a retail ‘main street’ model and a high quality public realm.

   A ‘Night Club’ function in a manner contrary to Policy objectives of creating interest and activity in the public domain where the safety and amenity of existing and future business proprietors and residents are reasonably ensured.
Planning Policy 3.3.19 – Licensed Premises

Planning Policy 3.3.19 – Licensed Premises provides guidance in the consideration of liquor license applications and aims to protect the safety and amenity of residents and business proprietors against alcohol related problems such as anti-social behaviour, violence, property damage, and promote the responsible sale and consumption of alcohol. The proposed Scheme Amendment is considered to be consistent with the aims of this Policy.

e. **Financial**

Nil

f. **Legal and Statutory**

TPS2 defines ‘Night Club’ as follows:-

“Night Club means premises-

(a) Used for entertainment with or without eating facilities; and

(b) Licensed under the Liquor Control Act.”

TPS2 Non-conforming Use provisions will apply to existing Night Clubs in the Primary Centre - Waterfront Village Zone. A Non-conforming Use means a use of land which, though lawful immediately before the coming into operation of a Planning Scheme or Amendment to a Planning Scheme, is not in conformity with a provision of that Scheme (ie. zoning or controls applying to the land).

Scheme Amendments are required to be dealt with in accordance with the Town Planning Scheme Regulations 1967 (as amended) which includes a requirement to advertise proposals for public comment over a period of 42 days, prior to Council considering Final Adoption.

**Comments**

In recognition of the existing and potential land use conflicts associated with Night Clubs, it is recommended that Council amend Town Planning Scheme No.2 for conformity with City Policy.

**Voting Requirements**

Simple Majority

**Officer Recommendation**

That Council **ADOPT** (initiate) Amendment No. 134 to Town Planning Scheme No.2, in pursuance of Section 75 of the Planning and Development Act 2005, modifying the Scheme Text, by amending the Zoning Table as follows:-

1. Prohibit (‘X’) the ‘Night Club’ Land Use in the Primary Centre - Waterfront Village Zone, Primary Centre - Urban Village Zone, the District Town Centre Zone, and the Commercial Zone; and

2. Change the Land Use Class of ‘Night Club’ from a ‘D’ use permissibility to an ‘A’ Land Use in the Primary Centre City Centre Zone.

**Committee Recommendation**

That Council **ADOPT** (initiate) Amendment No. 134 to Town Planning Scheme No.2, in pursuance of Section 75 of the Planning and Development Act 2005, modifying the Scheme Text, by amending the Zoning Table as follows:-

1. Prohibit (‘X’) the ‘Night Club’ Land Use in the Primary Centre - Waterfront Village Zone, Primary Centre - Urban Village Zone, the District Town Centre Zone, and the Commercial Zone; and

2. Change the Land Use Class of ‘Night Club’ from a ‘D’ use permissibility to an ‘A’ Land Use in the Primary Centre City Centre Zone.

Committee Voting – 4/0
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<tr>
<td>Disclosure of Interest:</td>
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<tr>
<td>Nature of Council’s Role in this Matter:</td>
</tr>
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| Site:             | Lots 101 & 102 Crystaluna Drive, Golden Bay                        |
| Lot Area:         | 1.7ha                                                               |
| LA Zoning:        | Rural                                                               |
| MRS Zoning:       | Urban                                                               |
| Attachments:      | Landform Analysis, Topography and Waterways Plan                    |
| Maps/Diagrams:   | 1. Location Plan                                                    |
|                  | 2. Town Planning Scheme No.2 Zoning                                |
|                  | 3. View to Site Looking East                                       |
|                  | 4. View to Site Looking North                                      |
|                  | 5. View from Site Looking South West                              |
|                  | 6. Landscape Character Units                                       |
1. Location Plan

2. Town Planning Scheme No.2 Zoning
Purpose of Report

To consider, for initiation, an Amendment to Town Planning Scheme No.2 (TPS2) to rezone Lot 101 and Lot 102 Crystaluna Drive, Golden Bay from ‘Rural’ to ‘Special Residential’.

Background

In May 2008, the City received a request from a Planning Consultant acting for the landowner to rezone Lot 101 and Lot 102 Crystaluna Drive (formerly Lot 501) from Rural to Residential (R10). The proposal included the creation of 12 lots each with an area of approximately 1,000m². The City advised the Proponent that rezoning under the Metropolitan Region Scheme (MRS) was required and that rezoning to a Development zone would be more appropriate to allow for the preparation of a Structure Plan. The City also advised that the following matters were also required to be addressed, prior to the City formally considering the Scheme Amendment:

- The Proponent demonstrating that future development could comply with the requirements of Liveable Neighbourhoods;
- Confirmation that the land could be serviced by the Water Corporation, given the height of the land being above the maximum servicing level; and
- Emergency vehicle and service vehicle access arrangements.

The City received no further correspondence from the Planning Consultant or landowner in regards to this matter.

In September 2010, Council considered MRS Omnibus Amendment No.1193/57, which in part sought to rezone Lot 501 Crystaluna Drive, Golden Bay from Rural to Urban. Council resolved not to support the MRS Amendment because:

- Rezoning the land to facilitate urban development was inconsistent with Planning Policy No.5.2 – Rural Land Strategy (‘the Policy’), which requires the Proponent to demonstrate that the landscape values of the region will not be compromised; and
- The land was also identified as a transition area between the existing and future urban land to the west and Mandurah Road to the east.”

In August 2011, the Minister for Planning granted Final Approval to Amendment 1193/57 to the MRS to rezone Lot 501 Crystaluna Drive (Peelhurst Hill), Golden Bay, from Rural to Urban.

The Department of Planning recently contacted the City seeking advice on when it will be complying, even if retrospectively, with the requirements of s124 of the Planning and Development Act 2005 (P&D Act 2005). If TPS2 is not amended for conformity with the urban zoning in the MRS, under s125 the of P&D Act 2005, the Minister for Planning can direct the Council to prepare a Scheme Amendment. The legal section of this report deals with this matter.

Details

To rezone Lot 101 and Lot 102 Crystaluna Drive, Golden Bay from ‘Rural’ to ‘Special Residential’, for conformity with the MRS.
3. View to Site Looking East

4. View to Site Looking North
Implications to Consider

a. Consultation with the Community

If the Scheme Amendment is initiated by Council, it is required to be advertised in accordance with the Town Planning Regulations 1967, for a minimum period of 42 days from the date of publication of an advertisement in a newspaper circulating in the area.

b. Consultation with Government Agencies

Consultation with relevant Government Agencies will only occur if the Scheme Amendment is initiated by the Council. Referrals can then be undertaken in accordance with the Town Planning Regulations 1967.

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

Development Control Policy 2.5 - Special Residential Zones (DC2.5)

The Western Australian Planning Commission's (WAPC) DC2.5 sets out the requirements of Special Residential zones in terms of location, internal design, servicing and statutory provisions.

The Policy states that Special Residential development should be provided with the type and standard of services typical of normal Residential zones. In particular, reticulated water will be required as a condition of Subdivision approval. It is a requirement of the Special Provisions of TPS2 that all lots be serviced by a reticulated water supply. Given the height of the land, water pressure may need to be boosted to enable supply of reticulated water to the site. Some future lots may be required to be serviced with water under a site-specific Services by Agreement with the Water Corporation or under a scheme agreed to by the Water Corporation. The owner of the land will need to provide information to demonstrate that reticulated water can be made available to the site, prior to subdivision of the land.

The WAPC will normally require the provision of underground power to lots within Special Residential zones. Provisions for power and telephone services are available via Crystaluna Drive.
Planning Policy 3.3.6 – Development Guidelines for Special Residential Zones (PP 3.3.6)

The purpose of PP 3.3.6 is to guide development of those lots within the Special Residential Zones that are affected by steep topography by the implementation of special housing design requirements. The requirements aim to minimise the amount of site earthworks required during development, to protect the landscape character of each lot. The general design principles to be followed prior to development area as follows:-

"(i) If the block slopes basically left to right or right to left, select a narrow frontage housing design with split-levels to suit;
(ii) If the block slopes rear to front or front to rear, select a wide frontage design, again with split-levels to suit;
(iii) Flexible design, such as timber or steel frame, should be used on the steeply sloping and reactive soil type blocks; and
(iv) Avoid cutting into natural soil where possible, and retain as much of the natural vegetation as possible."

These design considerations will need to be considered on lots classed 'S' on the approved Subdivision Guide Plan, when assessing future development.

Planning Policy 3.1.1 - Rural Land Strategy (PP 3.1.1)

The City's PP 3.1.1 provides the basis for land use planning in the rural area of the City. It provides the Council with a framework for the assessment of proposals to rezone, subdivide, manage and develop rural land. The subject site is located within Planning Unit No.3 of PP 3.1.1 and is contained within the Golden Bay Precinct.

The recommendations of the Visual Landscape Evaluation (VLE) are also incorporated into PP 3.1.1. The VLE was adopted by Council to inform the City's consideration of regional and local planning initiatives and proposals. As previously mentioned, the subject land is included in Planning Precinct No.3, which generally comprises of the rural land to the west of Mandurah Road. The objective of PP 3.1.1 in regard to Planning Unit No.3 is as follows:-

"to encourage special rural/residential development which is compatible with the land capability of the Quindalup dune system and that subdivision and development accords with the recommendations of the VLE."

The subject site is located within LCU7: Rural Residential on Remnant Dune, reflected in Figure 6 below.
6. Landscape Character Units

Subject Site
A summary of the Landscape and Visual Management Strategies for LCU7 are as follows:-

<table>
<thead>
<tr>
<th>Landscape Character Unit</th>
<th>Subdivision lot size</th>
<th>Development setbacks</th>
<th>Development footprint and vegetation clearance</th>
<th>Planting schemes</th>
<th>Development height</th>
<th>Development Character</th>
<th>Other Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>LCU7 Rural Residential on Remnant Dune</td>
<td>L1. As per TP22</td>
<td>S1. As per TP22</td>
<td>FF Minimise cut and fill to retain natural landform contours</td>
<td>VC Seek to maintain key areas of dune vegetation – particularly coastal scrub</td>
<td>P1 Avoid planting of non-native vegetation</td>
<td>H2 Maintain height below the dune ridge as viewed from key thoroughfares (distant views)</td>
<td>C1 All buildings and outbuildings are to be sympathetic in design, materials and colour to complement surrounding landscape elements and be sited away from focal points and located where screening or landscaping can be utilised</td>
</tr>
</tbody>
</table>

The landscape of the area is characterised by a steep undulating coastal dune network, coastal vegetation, large Special Residential lots to the east and south and urban and future urban land on the flat lands to the west. The subject site is predominantly occupied by a steep dune (as shown in Figure 3 above), with one dwelling towards to the top of the site adjacent to Peelhurst Hill. The site is visually prominent from the Golden Bay townside and from Mandurah Road and is the highest landform in the locality.

PP 3.3.1 recommends that cut and fill be minimised to retain natural landform contours, areas of dune vegetation, particularly coastal scrub, should be maintained and development height should be maintained below the dune ridge as viewed from key thoroughfares (distant views).

As the site was rezoned Urban under the MRS, rezoning the land to Special Rural development is not possible, however, rezoning the land to ‘Special Residential’ can be considered. PP 3.1.1 provides possible landscape and visual management strategies for the site, including limitations and vetting of development plans to restrict cut/fill levels, restrictions on the siting of the built form so that the roof line falls sufficiently below the ridge line and endemic planting schemes.

Rezoning the site to the ‘Special Residential’ zone and including the land in Schedule 5 Special Residential Zone ‘Portions of Planning Unit 3’ will ensure that Special Provisions can be applied to the land. The Special Provisions will seek to minimise the impact of future subdivision and development on the landscape.

**Rural Concept Plan**

PP 3.1.1 requires that a Rural Concept Plan (RCP) be provided, prior to initiating a Scheme Amendment. The purpose of a RCP is to demonstrate the relationship between the proposal and the surrounding properties, as a means of ensuring orderly subdivision and development. A RCP is unlikely to be requested as the land to the west has already been developed for residential purposes and a Subdivision Guide Plan will be required prior to the subdivision and development of the land.

PP 3.1.1 also recommends a minimum lot size of 1ha in the Golden Bay precinct. One hectare lot sizes are not achievable, as the combined site area is 1.7ha. The landowner will be required to prepare a Subdivision Guide Plan in accordance with the Special Residential lot sizes of between 2000m² and 1ha. Provision will also be made for building envelopes to control the siting of development.

**Planning for Bushfire Protection Guidelines**

A Fire Management Plan (FMP) is required to be provided in accordance with the Planning for Bushfire Protection Guidelines (Edition 2).

Given the subject site and surrounding lands are largely undeveloped, contain coastal vegetation with steep slopes typical of the coastal dune system and has constrained road access from the eastern boundary, the land is considered to be at risk of bush fires. A FMP must be prepared and implemented prior to subdivision and development occurring on the site to protect the future development of the land. A FMP also identifies bushfire attack levels (BAL) for development, emergency access and service vehicle arrangements.
The TPS2 should also be amended for compliance with the Planning for Bushfire Protection Guidelines (Edition 2), to also require building construction being in accordance with AS3959 and Bush Fire Attack levels to protect future houses from the risk of bush fire.

e. Financial

Nil

f. Legal and Statutory

Planning and Development Act 2005

Part 9 Clause 124 (2) of the Planning and Development Act (2005) states that:-

“If a region planning scheme is inconsistent with a local planning scheme, the local government of the district in which the land directly affected is situated is to, not later than 90 days after the day on which the region planning scheme has effect, resolve to prepare:-

(a) a local planning scheme which is consistent with the region planning scheme; or
(b) an amendment to the local planning scheme which renders the local planning scheme consistent with the region planning scheme, and which does not contain or removes, as the case requires, any provision which would be likely to impede the implementation of the region planning scheme.”

As such, the TPS2 is required to be updated to be consistent with the modified MRS.

Town Planning Regulations 1967

In accordance with Regulation 13 of the Town Planning Regulations 1967, the Council is required to resolve to either Adopt the Scheme Amendment or Not Proceed with a Scheme Amendment and notify the WAPC in writing of its decision.

Comments

It is proposed to rezone the site ‘Special Residential’ and include the land in Schedule 5 Special Residential Zone ‘Portions of Planning Unit 3’. Special Provisions in TPS2 can be applied to the land which include the preparation of a SGP, the identification and designation of Building Envelopes, retention of significant vegetation and preparation of a Bushfire Management Plan.

Given the similarities between the subject site and nearby Special Residential land to the east of the site, it is also considered appropriate to include the subject site in Location Plan 3(i) of TPS2.

It is recommended that Council rezone the land to ‘Special Residential’ accordingly.

Voting Requirements

Simple Majority

Officer Recommendation

That Council ADOPT (initiate) Amendment No.135¹ to Town Planning Scheme No.2 to rezone Lot 101 and 102 Crystaluna Drive, Golden Bay from ‘Rural’ to ‘Special Residential’, in pursuance of Section 75 of the Planning and Development Act 2005 as follows:-

1. Modifying the Scheme Text Schedule 5 Special Residential Zone ‘Portions of Planning Unit 3’ provisions as follows:-

   (i) Include ‘Lot 101 and Lot 102 Crystaluna Drive’ within Plan Reference 3(i) of the location table of Schedule 5 of the Scheme Text pertaining to ‘Special Residential’ zones ‘Portions of Planning Unit 3 of the Rural Land Strategy’;

   (ii) Amend Plan No.4 – Special Residential Zones (South) of the Scheme to include Lot 101 and Lot 102 Crystaluna Drive, Golden Bay outlined in black and annotated as 3(i);

2. Modify the Scheme Maps by rezoning Lot 101 and Lot 102 Crystaluna Drive, Golden Bay from ‘Rural’ to ‘Special Residential’;

3. Insert a new Clause 24 into Schedule No.5 Special Residential Zones (Portions of Planning Unit 3) to read as follows:-

¹ Correction of typographical error.
"With respect to Location 3(i), prior to the Council recommending approval of a subdivision or approving development, subdivision and development must be in accordance with the Western Australian Planning Commissions Planning for Bushfire Protection Guidelines, which includes but is not limited to –

(i) identifying appropriate hazard separation zones and building protection zones.
(ii) construction to AS3959 (noting c) below;
(iii) no residential development within the bush fire attack level (BAL) zones BAL-FZ or BAL-40; and
(iv) consideration of ember protection features incorporated in all dwelling design within the precinct."

4. Insert a new Clause 25 into Schedule No.5 Special Residential Zones (Portions of Planning Unit 3) to read as follows:

"Regardless of whether the land has been designated as bush fire prone, any buildings to be erected within Precinct 3 shall comply with the requirements of AS3959."

5. Request the owner address the following matters, prior to advertising the Scheme Amendment as follows:

(i) A Bush Fire Hazard Assessment being prepared in accordance with the Western Australian Planning Commission Planning for Bush Fire Protection Guidelines (Edition 2), to determine the suitability of the site for development and to demonstrate that fire protection requirements can be achieved to the satisfaction of the City.
(ii) An Environmental Assessment of any native vegetation on-site, to determine the existence of any significant flora, fauna or habitats as listed in state or federal legislation, to determine the impacts of the development on such, and provide any measures recommended to mitigate or avoid the impacts.
(iii) A Proposed Subdivision Guide Plan which includes proposed Building Envelopes and Building Protection Zones and the identification of lot sizes based on building envelope locations that do not pose an unacceptable fire risk and unacceptable environmental impacts. Building Protection Zones are to be based on the outcomes of the Bush Fire Hazard Assessment in (i) above.
(iv) Provision of major infrastructure, including drainage, sewerage, reticulated water supply and other key infrastructure services.

Committee Recommendation

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(iv) Provision of major infrastructure, including drainage, sewerage, reticulated water supply and other key infrastructure services.

Committee Voting – 3/1
(Cr Elliott voted against)

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

Not Applicable

Implications of the Changes to the Officer’s Recommendation

Not Applicable
<table>
<thead>
<tr>
<th>Reference No &amp; Subject:</th>
<th>SP-014/13 Proposed Sand Excavation and Earthworks (Sixty Eight Road, Baldivis)</th>
</tr>
</thead>
<tbody>
<tr>
<td>File No:</td>
<td>28/1375-02</td>
</tr>
<tr>
<td>Proponent/s:</td>
<td>ABN Group</td>
</tr>
<tr>
<td>Author:</td>
<td>Mr Regan Travers, Planning Officer</td>
</tr>
<tr>
<td>Other Contributors:</td>
<td>Mr David Waller, Coordinator Statutory Planning</td>
</tr>
<tr>
<td>Date of Committee Meeting:</td>
<td>15 April 2013</td>
</tr>
<tr>
<td>Site:</td>
<td>Lots 569 &amp; 1263 Baldivis Road and Lot 21 Sixty Eight Road, Baldivis</td>
</tr>
<tr>
<td>Lot Area:</td>
<td>44.28ha (16.78ha, 19.18ha, 8.32ha)</td>
</tr>
<tr>
<td>LA Zoning:</td>
<td>Development</td>
</tr>
<tr>
<td>MRS Zoning:</td>
<td>Urban Deferred</td>
</tr>
<tr>
<td>Attachments:</td>
<td>1. Management Plan</td>
</tr>
<tr>
<td></td>
<td>2. Environmental Impact and Management Plan</td>
</tr>
<tr>
<td></td>
<td>3. Existing and Proposed Contour Plan</td>
</tr>
<tr>
<td></td>
<td>4. Schedule of Submissions(^2)</td>
</tr>
<tr>
<td>Maps/Diagrams:</td>
<td>1. Location Plan</td>
</tr>
<tr>
<td></td>
<td>2. Aerial Photo</td>
</tr>
<tr>
<td></td>
<td>3. Council Approved Structure Plan (Pending WAPC Approval)</td>
</tr>
<tr>
<td></td>
<td>4. Table 1 Bulk Earthworks and Sand Excavation Program</td>
</tr>
<tr>
<td></td>
<td>5. Site Photo facing North-West towards Lot 21 Sixty Eight Road</td>
</tr>
<tr>
<td></td>
<td>6. Site Photo facing North-West across Lot 1263 Baldivis Road towards Lot 21 Sixty Eight Road</td>
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<tr>
<td></td>
<td>7. Site Photo Proposed Vehicle Access from Sixty Eight Road</td>
</tr>
<tr>
<td></td>
<td>8. Site Photo Baldivis Road Frontage</td>
</tr>
<tr>
<td></td>
<td>9. Bulk Earthworks Plan</td>
</tr>
<tr>
<td></td>
<td>10. Consultation Plan</td>
</tr>
</tbody>
</table>

\(^2\) Schedule of Submissions was omitted from the Agenda.
Purpose of Report

To consider an application seeking Planning Approval for Sand Excavation and Earthworks on Lots 569 & 1263 Baldivis Road and Lot 21 Sixty Eight Road, Baldivis

1. Location Plan

2. Aerial Photo
Background

In November 1991, Planning Approval was granted for Sand Extraction over Lot 569 and 1263 Baldivis Road.

In September 2007, the City received an application for Planning Approval seeking to extend the Sand Extraction area to incorporate Lot 21 Sixty Eight Road. This application was not progressed, as it was the City’s opinion that further Sand Extraction was premature and could potentially prejudice the future development of the land. The City recommended the proponent prepare a Structure Plan before considering further Sand Extraction.

In September 2012, Council adopted a Structure Plan for Lots 569 & 1263 Baldivis Road and Lot 21 Sixty Eight Road, subject to modifications.

In February 2013, the City forwarded the adopted Structure Plan to the Western Australian Planning Commission (WAPC) for its endorsement. The Structure Plan has not yet been endorsed by the WAPC.

Details

In anticipation of the WAPC endorsing the Structure Plan, the proponent had lodged the application for Planning Approval in order to undertake Bulk Earthworks to facilitate the future subdivision of the land, by distributing sand across the site in order to comply with the finished levels of the adopted Structure Plan.

The Sand Excavation and Earthworks will be undertaken concurrently in two phases. Phase 1 involves extending the existing sand mine into the western portions of Lots 569 and 1263. The second phase involves extending the Bulk Earthworks into Lot 21.

Surplus sand is proposed to be removed off-site with a front end loader and placed directly in the receiving hopper of the portable dry screener to remove organic material.

In support of the proposal, the Proponent has submitted the following information:-

- Bulk Earthworks and Excavation Management Plan.
- Potential Environmental Impact and Management Plan.
• Rare Flora Search and Vegetation Survey (no significant species found).
• Summary report for Black Cockatoo breeding and roosting observations

The proponent has provided Table 1 below to summarise key aspects of the proposal:

<table>
<thead>
<tr>
<th>Table 1: Bulk Earthworks and Sand Excavation Program</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Aspect</strong></td>
</tr>
<tr>
<td>EXCAVATION</td>
</tr>
<tr>
<td>Total Area of Proposed Sand Excavation Area</td>
</tr>
<tr>
<td>Total Area of Bulk Earthworks</td>
</tr>
<tr>
<td>Life of the Bulk Earthworks &amp; Sand Extraction Program</td>
</tr>
<tr>
<td>Dewatering Requirements</td>
</tr>
<tr>
<td>Finished levels</td>
</tr>
<tr>
<td>Native Vegetation to be Cleared</td>
</tr>
<tr>
<td>PROCESSING</td>
</tr>
<tr>
<td>Sand</td>
</tr>
<tr>
<td>Water requirements</td>
</tr>
<tr>
<td>INFRASTRUCTURE</td>
</tr>
<tr>
<td>Fuel Storage</td>
</tr>
<tr>
<td>TRANSPORT</td>
</tr>
<tr>
<td>Truck Movements – sand excavation purposes</td>
</tr>
<tr>
<td>Access</td>
</tr>
</tbody>
</table>

5. Site Photo facing North-West towards Lot 21 Sixty Eight Road
6. Site Photo facing North-West across Lot 1263 Baldivis Road towards Lot 21 Sixty Eight Road

7. Site Photo Proposed Vehicle Access from Sixty Eight Road
The proposal was advertised in accordance with clause 6.3 of TPS2, by its referral to nearby owners and occupiers for comment. At the close of the submission period, two submissions were received, one in objection to the development, the other supporting it. The concerns raised in the objection were regarding the safety of motorists due to heavy haulage trucks and noise from plant machinery and vehicles accessing the site before 7.00am.
10. Consultation Plan

Officers Comments

Safety
The City agrees that ensuring the safety of all road users is essential when considering this application. The proponent originally proposed to access the site directly to Lot 21 Sixty Eight Road. This location was considered unsafe due to the proximity to a bend in Sixty Eight Road, as well as being opposite the intersection to Percival Place. The City advised the proponent that the existing site entry point on Sixty Eight Road as seen in Figure 7 is the most appropriate point of access. This access point ensures that haulage vehicles associated with the Sand Excavation and Earthworks will be travelling at low speeds along Sixty Eight Road when they are entering or exiting the site from Baldivis Road. The proponent has not advised of a specific haulage route, this is believed to be due to the destination of vehicles currently being unknown. A detailed Traffic Management Plan is therefore required.

Noise
The objector has requested that the development comply with fixed start and finish times due to early morning noise from haulage vehicles and plant equipment. The City agrees that noise from the development will have to be appropriately managed, in accordance with the Dust, Noise and Visual Impact Management Plan provided by the proponent, as well as ongoing compliance with the Environmental Protection (Noise) Regulations 1997.

Obervance with this requires that work shall only be carried out between 7am and 7pm Monday to Saturday (excluding public holidays) and in accordance with control of noise practices set out in section 6 of AS2436-1981, Guide to Noise Control on Construction, Maintenance and Demolition Sites. A condition and footnote will be added to the approval in this regard.
The City also recommends that the 20 metre buffer be maintained along Sixty Eight Road to maintain distance between the proposed Sand Excavation and Earthworks and nearby properties, as well as ensuring Tuart Trees are retained along the subject site’s boundary to mitigate dust.

b. Consultation with Government Agencies
The proposal was referred to the Department of Water (DoW) and to the Department of Environment & Conservation (DEC) for comment. The DoW and DEC provided the following advice.

DoW
The DoW raised potential issues such as groundwater allocation availability, contamination due to plant equipment and stormwater. The Department of Water also advised that the proposal is within the Peel Harvey Coastal Plain Catchment.

Officer Comments
Ground water
The proposal does not involve the allocation of groundwater and this element of the Department of Waters submission does not require action. The proponent has advised that water carts will be utilised to manage dust.

Contamination
The proponent has advised that given the 2 metre distance to the water table, water runoff from the site is unlikely. In any event, vehicle refuelling will be conducted in an existing cleared area, with the refuelling plant to be located in a self-contained bund. In the event of a spill impacted soil will be immediately excavated to prevent any contamination of the underlying groundwater.

Peel Harvey Coastal Plain Catchment
This matter is discussed in the Policy Section of this report.

DEC
The DEC advised that clearing of native vegetation in Western Australia is prohibited, unless the clearing is authorised by a clearing permit obtained from DEC, or is of a kind that is exempt in accordance with Schedule 6 of the Environmental Protection Act 1986 or Environmental Protection (Clearing of Native Vegetation) Regulations 2004. As there is not an approved subdivision over the area the proponent is required to apply for a clearing permit from the DEC for the works.

The bushland is mapped as Carnaby's Cockatoo feeding habitat and is close to a Carnaby's Cockatoo roosting site. DEC notes the supporting documentation outlines that Carnaby's Cockatoo habitat surveys have been conducted and that the proposal was referred to the Commonwealth under the Environmental Protection and Biodiversity Conservation Act 1999 and that a determination was made that the proposal is not deemed to be a Controlled Action under the Commonwealth legislation. A copy of the advice from the Commonwealth was not including in the documentation. DEC recommends that the advice from the Commonwealth be sighted by the City of Rockingham to ensure that it applies to the vegetation on Lot 21.

DEC notes that the 1994 Environmental Protection Bulletin 746, which addresses a scheme amendment for an area which included the subject land, outlines that the Environmental Protection Authority (EPA) considered that a decision on the use of bushland areas outside the Systems recommendation areas and conservation areas should be made through the planning process, both at State and local level. The vegetation complex on Lot 21 is the Karrakatta Complex Central and South. Less than 6% of this complex is protected in conservation reserves. DEC recommends that the planning system give consideration to retaining as much of the native vegetation as possible within the proposed urban development.

It is DEC's expectation that the planning system will ensure appropriate separation distances to sensitive receptors.
Officer Comments

During consideration of the Structure Plan over the subject lots, the City thoroughly investigated the potential to retain remnant native vegetation over Lot 21 Sixty Eight Road. Investigations revealed that in order to service future residential development on the site, a significant amount of soil would need to be removed from the highest point of Lot 21 (approximately 8 metres) to allow for the Water Corporation to provide services for the future subdivision. The City also investigated the potential to relocate areas of proposed Public Open Space in order to facilitate the retention of trees. Unfortunately alternative designs created a number of design issues, such as excessive height retaining walls and were not supported. Opportunities for retention of vegetation do exist within the Sixty Eight Road reserve and this area will be identified in future subdivision and development proposals for retention.

The Proponent also prepared a Summary Report for Black Cockatoo breeding and roosting observations at Sixty Eight Road. The report identified potential nesting trees (Tuart, Jarrah and Mouri) with tree hollows. Breeding by Black Cockatoos did not appear to take place that season, however, may have in previous years. The site may be used for foraging.

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 2.4 – Basic Raw Materials (SPP 2.4)

The subject site has been identified in SPP 2.4 as a ‘Priority Resource Location’. Clause 6.3 of SPP 2.4 also sets out relevant considerations in determining Planning Applications, factors to which extractive industry applications should have regard including:-

- providing details of the proposal and management of the site
- buffer distances
- noise and dust management
- water management; and
- rehabilitation.

The proponent has prepared a Management Plan (Attachment 1) and an Environmental Impact and Management Plan (Attachment 2) to address these points. These management plans have been reviewed and are considered acceptable. The proposal is consistent with SPP 2.4 as it represents sequential Sand Extraction which prepares the land for future urban development. It is recommended that conditions of Planning Approval be added to require the preparation of a Dust Management Plan and management measures that are intended to mitigate off-site impacts.

State Planning Policy 2.1 – Peel-Harvey Coastal Plain Catchment (SPP 2.1)

The subject land is located within the Peel-Harvey Coastal Plain Catchment, referred to in Part 5.1 of TPS2, and the land is therefore subject to the provisions of the State Planning Policy. The objectives of the Policy are:-

- to improve the social, economic, ecological, aesthetic and recreational potential of the Peel Harvey Coastal Plain Catchment;
- to ensure that changes to land use within the catchment of the Peel Harvey estuarine system are controlled so as to avoid and to minimise environmental damage;
- To balance environmental protection, with the environmental viability of the primary sector;
- To increase high water using vegetation cover within the Peel Harvey Coastal Plain Catchment; and
- To reflect the environmental objectives in Environmental Protection Policy (Peel Harvey Estuarine Systems) 1992, to prevent land use that is likely to result in excessive nutrient export into the drainage system."

The proposed Bulk Earthworks are generally consistent with the abovementioned objectives, as the proposal is unlikely to result in nutrient export into the groundwater. Most of the site has already been cleared of vegetation and the management measures proposed are expected to mitigate and environmental impact within the Peel-Harvey Coastal Plain Catchment.

e. Financial
Nil

f. Legal and Statutory

The clearing of vegetation, extraction of sand and earthworks constitutes ‘development’ and requires Planning Approval pursuant to clause 6.1.1 of TPS2.

The land is zoned Development under TPS2 and the proposal is considered to be consistent with TPS2 because it facilitates the subdivision and development of the land in accordance with the adopted Structure Plan.

The Proponent advised that an application for the lifting of ‘Urban Deferment’ will be submitted to the WAPC to change the Metropolitan Region Scheme (MRS) zoning to ‘Urban’ in 2013.

Comments

The proposed Sand Excavation and Earthworks are generally consistent with the layout of the approved Structure Plan for Lots 569 & 1263 Baldivis Road and Lot 21 Sixty Eight Road.

The undertaking of Sand Excavation and Earthworks prior to Subdivision Approval from the WAPC will enable the work to be undertaken in winter, so that the dust disturbance is minimised.

Based on the land being zoned Development, the Council’s recent approval of the Lot 569 & 1263 Baldivis Road and Lot 21 Sixty Eight Road Structure Plan and impending subdivision of the land, it is recommended that the Sand Excavation and Earthworks application be approved, subject to conditions that address site management.

Voting Requirements

Simple Majority

Officer Recommendation

That Council APPROVE the application seeking planning approval for Sand Excavation and Earthworks on Lots 569 & 1263 Baldivis Road and Lot 21 Sixty Eight Road, Baldivis Bay subject to the following conditions and advice notes:

1. The Sand Excavation and Earthworks must be carried out in accordance with the ‘Management Plan’ and ‘Environmental Impact and Management Plan’ included in the applicants submission, dated the 1st November 2012, prepared by RPS Environment and Planning.

2. The site and any stockpiling must be progressively stabilised to prevent sand drift, to the satisfaction of the City.

3. A Traffic Management Plan must be prepared to ensure that the movement of haulage vehicles on-site and on public roads can be managed in a safe manner, prior to the commencement of any works and implemented for the duration of works to the satisfaction of the City.

4. A Dust Management Plan must be prepared in accordance with the Department of Environment and Conservation's DRAFT - A Guideline for the Development and Implementation of a Dust Management Program to the satisfaction of the City, prior to the commencement of any work, and must be implemented for the duration of works.
5. A Fauna Relocation Management Plan must be prepared in accordance with the Wildlife Conservation Act 1950 (as amended) and must be implemented to the satisfaction of the City, prior to the clearing/removal of any vegetation.

6. A 20 metre buffer is to be maintained along Sixty Eight Road within which no clearing of vegetation and Bulk Earthworks are permitted.

7. All chemical and fuel storage drums shall be kept within a bunded compound, designed to contain leaks or spills, and to prevent contamination of soil or groundwater.

8. The permitted hours of operation are 7.00am to 7.00pm Monday to Saturday, except on Public Holidays.

9. Haulage vehicles are not to arrive any earlier than 15 minutes prior to the permitted hours of operations, and are not to park or stand along surrounding roads.

10. The applicant is to provide a 24 hour mobile telephone enquiry service to a person that is able to deal with complaints associated with dust and vehicle nuisance being generated during the development and that the telephone number of the enquiry line be displayed in a prominent location on the site and a notice advertising the line be distributed to all adjacent residents.

11. The mine operator responsible for the procurement and supply of sand from the extraction area, is to ensure that all company haulage vehicles are numbered and the mine operators name is clearly shown on fleet haulage vehicles, to enable clear identification of trucks by motorists/residents.

12. All truck access into and from the site must only occur from the existing accessway near the corner of Sixty Eight Road on Lot 1263 Baldivis Road.

13. All haulage vehicles used for carting sand must have covers on trailers, to prevent the spillage of sand onto public roads.

14. If spillage of sand occurs, it must be cleaned from public roads within four (4) hours of the spillage and in all cases where spillage constitutes a road hazard, suitable warning devices must be placed immediately and maintained until the spillage is cleared.

Advice Notes

(i) The earthworks levels approved as part of this application should not be construed as being the final design levels of the site which will be determined by a future subdivision application.

(ii) The development must comply with the Environmental Protection (Clearing of Native Vegetation) Regulations 2004; the proponent should liaise with the Department of Environment and Conservation in this regard.

(iii) The development must comply with the Environmental Protection (Noise) Regulations 1997; observance with this requires that work shall only be carried out between 7am and 7pm Monday to Saturday (excluding public holidays) and in accordance with control of noise practices set out in section 6 of AS2436-1981, Guide to Noise Control on Construction, Maintenance and Demolition Sites.

(iv) The proponent is advised that any groundwater abstraction in this area for purposes other than domestic and/or stock watering taken from the superficial aquifer is subject to licensing by the Department of Water. The issuing of a groundwater licence is not guaranteed but if issued will contain a number of conditions that are binding upon the licensee. 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 of Water’s Licensing section in the Mandurah Region on 9550 4222 to discuss water management options.

Committee Recommendation

That Council APPROVE the application seeking planning approval for Sand Excavation and Earthworks on Lots 569 & 1263 Baldivis Road and Lot 21 Sixty Eight Road, Baldivis Bay subject to the following conditions and advice notes:
1. The Sand Excavation and Earthworks must be carried out in accordance with the 'Management Plan' and 'Environmental Impact and Management Plan' included in the applicants submission, dated the 1st November 2012, prepared by RPS Environment and Planning.

2. The site and any stockpiling must be progressively stabilised to prevent sand drift, to the satisfaction of the City.

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Advice Notes

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The Committee is advised that any groundwater abstraction in this area for purposes other than domestic and/or stock watering taken from the superficial aquifer is subject to licensing by the Department of Water. The issuing of a groundwater licence is not guaranteed but if issued will contain a number of conditions that are binding upon the licensee. 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 of Water’s Licensing section in the Mandurah Region on 9550 4222 to discuss water management options.

Committee Voting – 4/0

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## Planning Services
### Statutory Planning Services

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<th><strong>Reference No &amp; Subject:</strong></th>
<th>SP-015/13</th>
<th><strong>Proposed Scheme Amendment</strong> - ‘Rural’ to ‘Special Rural’</th>
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<td>LUP/1697</td>
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<tr>
<td><strong>Proponent/s:</strong></td>
<td>Mr Doug Smith, Greg Rowe and Associates</td>
<td></td>
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<tr>
<td><strong>Author:</strong></td>
<td>Mr Regan Travers, Planning Officer</td>
<td></td>
</tr>
<tr>
<td><strong>Other Contributors:</strong></td>
<td>Mr Dave Waller, Coordinator Statutory Planning</td>
<td>Mr Mike Ross, Manager Statutory Planning</td>
</tr>
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<tr>
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<td><strong>Lot Area:</strong></td>
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<th><strong>Attachments:</strong></th>
<th>Rural Concept Plan</th>
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<tr>
<th><strong>Maps/Diagrams:</strong></th>
<th>1. Location Plan</th>
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<tr>
<td></td>
<td>2. Aerial Photo</td>
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<tr>
<td></td>
<td>3. Rural Concept Plan</td>
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<td>4. Subdivision Guide Plan</td>
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<td>5. North West view of site</td>
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<td>6. North view of site</td>
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<td>7. North East view of site</td>
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<td></td>
<td>8. East view of site from Doghill Road</td>
</tr>
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</table>
1. Location Plan

2. Aerial Photo

Purpose of Report

To consider a request to initiate a Scheme Amendment to Town Planning Scheme No.2 (TPS2) to rezone Lot 4 Doghill Road, Baldivis from ‘Rural’ to ‘Special Rural’.

Background

Nil
Details

The proponent seeks to rezone the land from ‘Rural’ to ‘Special Rural’, to facilitate the subdivision of the land into three lots ranging from 8ha to 9.8ha, as shown on the proposed Subdivision Guide Plan.

The site features minor improvements such as a roofed structure with two walls and a tank, bore and windmill in the south west corner. A constructed drainage channel runs diagonally south west to north east and severs the property approximately 250 metres east of Doghill Road.

There is an existing 330KW Western Power powerline (including lattice towers and lines).

3. Rural Concept Plan
4. Subdivision Guide Plan

5. North West view of site
6. North view of site

7. North East view of site

8. East view of site from Doghill Road
Implications to Consider

a. **Consultation with the Community**
   If the Scheme Amendment is initiated by Council, it is required to be advertised in accordance with the Town Planning Regulations 1967 for a minimum period of 42 days from the date of publication of an advertisement in a newspaper circulating in the area.

b. **Consultation with Government Agencies**
   Consultation with relevant Government Agencies will only occur if the Scheme Amendment is initiated by the Council. Referrals can then be undertaken in accordance with the Town Planning Regulations 1967.

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**
   **Planning Policy 3.1.1 - Rural Land Strategy**
   Planning Policy 5.2 - Rural Land Strategy (RLS Policy) provides the basis for land use planning in the rural area of the municipality. It provides the City with a framework for the assessment of proposals to rezone, subdivide, manage and develop rural land. The subject site is located within Planning Unit No.6 of the RLS.

   It is proposed to rezone the site ‘Special Rural’ and include the land in Schedule 4 Special Rural Zone ‘Portions of Planning Unit 6c’, to ensure that Special Provisions can be applied to the land. The application of Special Provisions seek to minimise the impact future development on the rural landscape.

   **Rural Concept Plan**
   The RLS requires that a Rural Concept Plan (RCP) and Subdivision Guide Plan (SGP) to be provided, prior to initiating a Scheme Amendment. The purpose of a RCP and SGP is to demonstrate the relationship between the proposal and the surrounding properties, as a means of ensuring orderly subdivision and development. The existing RCP and minor modification to the SGP demonstrate that the proposal will not prejudice future subdivision and development of adjoining properties and achieves a co-ordinated pattern of development through slight modification of the Haines Road alignment.

   The RLS also recommends a minimum lot size of 8ha in Precinct 6c.

   **Protection and Conservation of Areas of Environmental Significance**
   The environmental objectives of the RLS Policy relevant as guidelines for development are:-
   - to protect and conserve significant wetlands;
   - to protect and conserve remnant vegetation and urban bushland;
   - to protect heritage sites; and
   - to protect land reserves.

   A significant portion of the subject land lies within the 100 (ARI) year floodway of the Serpentine River. This is characterised by extremely low gradients including an elevation of 7-8 metres AHD at its western extremity and an elevation of 7-8 metres AHD comprising the eastern third of the land. The site features a constructed drainage reserve, at which an elevation of 6-7 metres AHD is present. It will be necessary to consult with the Department of Water regarding the susceptibility to flooding of the sites above the 1:100 year flood level.

   The land also has a poor land capability for Special Rural, however, this can be managed through the subdivision and development process.
The land is almost completely cleared of vegetation, with the exception of some isolated Jarrah and Marri trees along the Doghill Road frontage.

Planning for Bushfire Protection Guidelines

A Bush Fire Hazard assessment is not required to be provided in accordance with the Western Australian Planning Commission (WAPC) Planning for Bushfire Protection Guidelines (Edition 2)(BF Guidelines) due to the site's classification as Low Risk.

The vegetation type is classifiable as grassland and as therefore no applicable Bushfire Attack Level (BAL) is assigned to the construction of future dwellings. The City is concerned that the land is still susceptible to bushfire risk and as such should the Scheme Amendment proceed, a condition requiring a Fire Management Plan to be prepared and implemented would be recommended by the City upon a subdivision application being submitted.

e. Financial
Nil

f. Legal and Statutory

Planning and Development Act 2005

Part 9 Clause 124 (2) of the Planning and Development Act (2005) states that:-

“If a region planning scheme is inconsistent with a local planning scheme, the local government of the district in which the land directly affected is situated is to, not later than 90 days after the day on which the region planning scheme has effect, resolve to prepare —

(a) a local planning scheme which is consistent with the region planning scheme; or

(b) an amendment to the local planning scheme which renders the local planning scheme consistent with the region planning scheme, and which does not contain or removes, as the case requires, any provision which would be likely to impede the implementation of the region planning scheme.”

As such, the TPS2 is required to be updated to be consistent with the modified MRS.

Town Planning Regulations 1967

In accordance with Regulation 13 of the Town Planning Regulations 1967, the Council is required to resolve to either Adopt the Scheme Amendment or Not Proceed with a Scheme Amendment and notify the WAPC in writing of its decision.

Comments

Zoning

The subject site is currently zoned ‘Rural’ under TPS2. Further to the details in the Policy section of this report, it is proposed to rezone the site ‘Special Rural’ and include the land in Schedule 4 Special Rural Zone ‘Portions of Planning Unit 6’, to ensure that Special Provisions can be applied to the land. The Special Provisions contained within TPS2 include the preparation of a SGP, the identification and designation of Building Envelopes, the retention of significant vegetation and Special Housing design requirements.

Rural Concept Plan

The current Rural Concept Plan indicates alignment of Herman Road within the mapped 100 Year ARI floodway of the Serpentine River. The proposed SGP indicates a realignment of Herman Road. The proponent has advised that re-alignment of the Herman Road extension to the east will allow for it to be constructed outside the 100 Year floodway.

Building Envelopes

Three 2,400m² Building Envelopes have been shown on the proposed SGP. The location of the proposed Building Envelopes is generally acceptable due to the flat topography and lack of remnant vegetation across the site, however, the specific dimensions of the Building Envelopes and setbacks to boundaries has not been provided.

Due to potential ramifications related to Building Hazard and Protection Zones required by the Planning for Bush Fire Guidelines, this information needs to be provided prior to the proposed Scheme Amendment being advertised.
Strategic Implications

The Department of Water is currently undertaking an Arterial Drainage Strategy that will inform work that the WAPC is undertaking in relation to the future Sub-Regional Structure Planning of the area at a regional level. As this regional planning is in the very early phases, there is no certainty in relation to the WAPC’s future intentions for this area. Given the lot sizes proposed of 8ha, it is unlikely to unduly fragment the land. The City needs to undertake further consultation with the Department of Planning in relation to the implications of the Sub-Regional Structure Plan on this proposed Scheme Amendment as part of the advertising requirements under the Regulations.

Conclusion

The proposed Scheme Amendment to rezone the land to ‘Special Rural’ is consistent with the City’s Rural Land Strategy and it is recommended that Council initiate the proposed Scheme Amendment on this basis.

Voting Requirements

Simple Majority

Officer Recommendation

That Council:-

1. **ADOPT** (initiate) Amendment No.130 to Town Planning Scheme No.2 to rezone Lot 4 Doghill Road, Baldivis from ‘Rural’ to ‘Special Rural’, in pursuance of Section 75 of the Planning and Development Act 2005 as follows:-

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

      (a) Include ‘Lot 4 Doghill Road’ within Plan Reference 6(ii) of the location table of Schedule 4 of the Scheme Text pertaining to ‘Special Rural’ zones ‘Portions of Planning Unit 6 of the Rural Land Strategy’;

      (b) Amend Plan No.4 - Special Residential Zones (North) of the Scheme to include Lot 4 Doghill Road, Baldivis outlined in black and annotated as 6(ii); and

   (ii) Modify the Scheme Maps by rezoning Lot 4 Doghill Road, Baldivis from ‘Rural’ to ‘Special Rural’.

2. **DEFER** advertising the Scheme Amendment pending the applicant updating the proposed Subdivision Guide Plan to incorporate Building Envelope setbacks from boundaries, together with Building Hazard and Building Protection Zones required by the Planning for Bush Fire Guidelines (Edition 2) Western Australian Planning Commission.

Committee Recommendation

That Council:-

1. **ADOPT** (initiate) Amendment No.130 to Town Planning Scheme No.2 to rezone Lot 4 Doghill Road, Baldivis from ‘Rural’ to ‘Special Rural’, in pursuance of Section 75 of the Planning and Development Act 2005 as follows:-

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

      (a) Include ‘Lot 4 Doghill Road’ within Plan Reference 6(ii) of the location table of Schedule 4 of the Scheme Text pertaining to ‘Special Rural’ zones ‘Portions of Planning Unit 6 of the Rural Land Strategy’;

      (b) Amend Plan No.4 - Special Residential Zones (North) of the Scheme to include Lot 4 Doghill Road, Baldivis outlined in black and annotated as 6(ii); and

   (ii) Modify the Scheme Maps by rezoning Lot 4 Doghill Road, Baldivis from ‘Rural’ to ‘Special Rural’. 
2. **DEFER** advertising the Scheme Amendment pending the applicant updating the proposed Subdivision Guide Plan to incorporate Building Envelope setbacks from boundaries, together with Building Hazard and Building Protection Zones required by the Planning for Bush Fire Guidelines (Edition 2) Western Australian Planning Commission.

   Committee Voting – 4/0

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## Planning Services
### Statutory Planning Services

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<tr>
<th>Reference No &amp; Subject:</th>
<th>SP-016/13 Proposed Building Envelope Variation (Golden Bay)</th>
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<tr>
<td>File No:</td>
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<tr>
<td>Proponent/s:</td>
<td>Mr K S Leong &amp; Ms Chua</td>
</tr>
<tr>
<td>Author:</td>
<td>Mr Riaan Stassen, Senior Planning Officer</td>
</tr>
<tr>
<td>Other Contributors:</td>
<td>Mr Dave Waller, Coordinator Statutory Planning</td>
</tr>
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<td></td>
<td>Mr Mike Ross, Manager Statutory Planning</td>
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<td>Nature of Council's Role in this Matter:</td>
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### Site:
- Lot 116 (No.2) Lipscombe Close, Golden Bay
- Lot area: 2,011m²
- LA Zoning: Special Residential
- MRS Zoning: Rural

### Attachments:
- Maps/Diagrams:
  1. Location Plan
  2. Aerial View
  3. Current Approved Building Envelope and Proposed Building Envelope
  4. Consultation Plan
Purpose of Report

To consider an application seeking planning approval to amend the approved Building Envelope for Lot 116 (No.2) Lipscombe Close, Golden Bay.

Background

Nil

Details

The Proponent seeks approval to increase the size of the approved Building Envelope from 750m² to 780.5m², to allow for the construction of a 100m² patio along the western side of the existing residence. The applicant also proposes the reduction of the existing approved Building Envelope by 77.7m² along the northern edge of the residence in order to comply with the 10% variation allowed under the Town Planning Scheme No.2 (TPS2). The proposal therefore involves an increase in Building Envelope of only 30.5m².
The reasons provided for the location of the proposed patio along the western side of the dwelling, are to screen the bedrooms against the setting sun and simultaneously provide privacy to the bedrooms.

The area which is to accommodate the proposed patio is currently disturbed with no vegetation. Portions thereof consist of a paved walkway.

3. Approved Building Envelope and Proposed Building Envelope

**Implications to Consider**

a. **Consultation**

In accordance with clause 6.3.3 of Town Planning Scheme No.2 (TPS2) and Planning Policy 3.3.17 - Variations to Building Envelopes, Building Envelopes may be varied at the discretion of the Council, only after consultation with the owners of affected or adjoining properties. The application was referred to four nearby owners and occupiers for comment, for a period of 14 days, as shown on the Consultation Plan.

At the close of the advertising period, no submissions were received.
4. Consultation Plan

b. Consultation with Government Agencies
Not Applicable

c. Community Plan
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
Planning Policy 3.3.17 - Variations to Building Envelopes (the Policy) provides guidance for the consideration of the application. The Policy requires Building Envelopes to be located based upon environmental conditions, landform and vegetation characteristics, the possible form of residential development and the impact of future development on the visual amenity of the locality.

Provisions in Schedule No. 4 and 5 of TPS2 provide the authority to require Building Envelopes and that the location and size of Building Envelopes may be varied at the discretion of the Council.

The Policy also refers to all applications within the Warnbro Dunes Special Residential Zone and the Golden Bay and Singleton Special Rural and Special Residential Zones to be referred to the Council for determination.

In the case of the Golden Bay Special Residential zones, the location of the Building Envelopes were specifically intended to maintain the rural attributes and appearance of the land, looking westward from Mandurah Road and looking to the east from the town sites of Singleton and Golden Bay.

The City’s Environmental Services assessed the proposal and concluded that the area to be developed is currently devoid of vegetation and that the extension to the envelope will not impact on the visual amenity of the land looking westward from Mandurah Road.

The Policy also provides that unless otherwise approved by the Council, only a minor increase to the size of Building Envelopes will be considered, to a maximum of 10% of the area of the original Building Envelope. All Building Envelopes are required to be of a regular shape and comprise a single contiguous area. The Building Envelope is proposed to increase by 30.5m² (4%) and it is irregular in shape. The amended Building Envelope is generally compliant with the Policy criteria.
e. Financial  
Nil  
f. Legal and Statutory  
The proposed Building Envelope variation was assessed against the provisions applying to the Golden Bay Special Residential Zone in TPS2. Provision 7(c) of the Special Residential Zone provisions for Golden Bay, enables the Council to vary Building Envelope locations.

The objective of the Special Residential Zone under TPS2 is to ensure that the rural landscape and amenity is conserved and the natural environment is enhanced. The proposal is compliant with the zoning objectives in TPS2.

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<td>The proposed Building Envelope modification complies with TPS2 and is generally compliant with the Policy. There are no adverse environmental impacts with the proposed Building Envelope. The proposed Building Envelope will facilitate minor improvements to the existing residence that have minimal effect on the amenity of neighbours. No objections were raised to the proposal by adjoining owners. It is recommended that the proposed Building Envelope variation be approved.</td>
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</tbody>
</table>

<table>
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<tr>
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</tr>
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<tbody>
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<table>
<thead>
<tr>
<th>The Committee's Reason for Varying the Officer's Recommendation</th>
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<tbody>
<tr>
<td>Not Applicable</td>
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<table>
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<tr>
<th>Implications of the Changes to the Officer’s Recommendation</th>
</tr>
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<tbody>
<tr>
<td>Not Applicable</td>
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</tbody>
</table>
### Purpose of Report

To consider an application to initiate an amendment to *Town Planning Scheme No.2 (TPS2)* to extend the range of retail goods sold at the premises known as The Spud Shed.

---

3 Correction of typographical error.
Background

The subject property has been the subject of an extensive number of planning proposals since 2000, which are summarised as follows:

Former Town Planning Scheme No.1

In October 2000, the Council initiated an Amendment to former Town Planning Scheme No.1 (former TPS1) to add an Exclusive Use to the Rural zone to facilitate the trading of The Spud Shed from the site, as follows:

\[\text{Nothing in the Scheme shall operate to allow the use of:}\]

(i) Lot 299 Kerosene Lane, Baldivis for any purpose other than:
   (a) any use permitted in the Rural Zone;
   (b) the retail sale of fruit and vegetables; and
   (c) the retail sale of eggs, bread, pastries, milk, cheese, poultry, preserves, confectionary, and non-alcoholic refreshments, as an incidental use to the use referred to in paragraph (i)(b).

(ii) The use of the land for the purposes referred to in paragraph (i) (b) and (c) shall conform to the following requirements:
   (a) the floor area of any building or buildings used for that purpose shall not exceed 234m²; and
   (b) No goods other than those specified in paragraph (i) (b) and (c) shall be sold.

(iii) The use of the land for the purpose referred to in paragraph (i) (b) and (c) shall cease upon the land ceasing to be used for the purpose of a market garden.

The Amendment was gazetted on the 24th May 2002.

On 19 November 2004, TPS2 came into operation which rezoned the land to 'Development'. The Exclusive Use provisions in former TPS1 were included in TPS2 as an Additional Use.

Amendment No.46

In February 2007, the Council considered an application for Planning Approval to expand the retail floor space and range of products offered for sale at The Spud Shed and resolved to refuse the proposal on the following grounds:

\[\text{Nothing in the Scheme shall operate to allow the use of:}\]

(i) The development the subject of the application, namely the sale of meat, frozen goods, groceries and nursery plants, is prohibited by the operation of the City of Rockingham Town Planning Scheme No.2.
(ii) Contrary to the submission of the Proponent, as a matter of law, it is not open to the Council to consider the application under the provisions of clause 4.20.1 of Town Planning Scheme No.2 as the applicant seeks to allow a use which is prohibited, rather than to modify a standard or requirement of the Scheme.”

The owners of the Spud Shed subsequently lodged an application for review (appeal) to the State Administrative Tribunal (SAT) on the basis that they believe Council had the discretion to approve the proposal. The SAT decision was:

“Yes, except for the sale of nursery plants, provided that the retail items additional to those listed in that part of the Additional Use column of Schedule No. 2 of the City of Rockingham Town Planning Scheme No.2 which applies to Lot 299 Kerosene Lane, Baldivis are an incidental use to the retail sale of fruit and vegetables.”

Council was required to reconsider the application in August 2007 and granted Planning Approval subject to the following pertinent standard conditions:

2. “The submitted plan from Planning Solutions, marked as ‘Site (Floor) Plan’, dated 22nd August 2007, being amended by the proponent to define an area of 169m², clearly marked within the Spud Shed, dedicated to isles and the incidental sale of non-fruit and vegetable items listed in Condition No.4.

4. This approval only permits the incidental retailing of eggs, bakery goods, cereals, dairy products, meat, poultry, seafood, condiments preserves, confectionary, and non-alcoholic refreshments within the non-fruit and vegetable sales area that occupies a maximum floor area of 169m² in accordance with Condition 2 and 3.

5. No other goods other than those specified in this proposal shall be sold.

6. The sale of nursery and horticultural products and other household items (i.e. sanitary items and domestic items) is not permitted.”

It should be noted that the proponent is currently in breach of the above standard conditions. The additional goods currently being applied for are already available on the shelves within the Spud Shed.

Amendment 46 was gazetted on the 11th December 2007 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>22.</td>
<td>Lot 299 Kerosene Lane, Baldivis</td>
<td>(a) The retail sale of fresh fruit and fresh vegetables; and (b) The retail sale of eggs, bakery goods, cereals, dairy products, meat, poultry, seafood, condiments preserves, confectionary, and non-alcoholic refreshments, nursery and horticultural products intended for household use, but only as an incidental use to the use referred to in paragraph (a)</td>
<td>1. The Additional Use of the land shall conform to the following requirements: (i) the floor area of any building or buildings used for that purpose shall not exceed 1,130m²; and (ii) no goods other than those specified in the Additional Use shall be sold. 2. The Additional Use shall cease upon the land ceasing to be used for the purpose of a market garden or by 27th February 2013, whichever occurs first. 3. The use of the land for the Additional Use is conditional on the preparation and adherence to a suitable traffic management plan approved by the Council. 4. For the removal of doubt, the Additional Use and the Special Conditions applying to it are not a standard or requirement capable of variation pursuant to clause 4.20.1.</td>
</tr>
</tbody>
</table>
“The Scheme clause linking the Spud Shed to the market garden was specifically included to allow the uses to operate until urban development occurred. It is agreed that the continuation of market gardening activity within a Development Zone surrounded by future residential development could create land use conflicts, e.g. spray drift odours to future residents.

The Spud Shed operation should be limited to a fixed timeframe, rather than relying completely upon the cessation of the market garden. The applicant has clearly indicated that market gardening will continue as long as is needed to maintain the Spud Shed operation. It is recommended that the Spud Shed be limited to an operational period of 5 years after which time the use must cease or upon the market garden ceasing, whichever occurs first. This still gives the operator a reasonable period to continue operating, while ensuring that the business doesn’t adversely impact on planned centres being developed in the locality.”

Structure Plan

In May 2010, the Council considered for advertising a proposed Structure Plan over Lots 14, 15 and 299 Kerosene Lane, which proposed a Neighbourhood Centre in the same location as The Spud Shed.

The Neighbourhood Centre, which included the Spud Shed site, was excluded from the Proposed Structure Plan adopted by the Council to allow the preparation of an amendment to TPS2 to facilitate an appropriate transition of The Spud Shed to a Neighbourhood Centre.

Amendment 105

In July 2010, the Council resolved to initiate an Amendment to TPS2, seeking to add a new clause 4.6A to control the transition of the existing 'Spud Shed' operation and future built form. In this regard, the Scheme Amendment consists of a new clause 4.6A to ensure: -
- An appropriate transition between the current Additional Use and future commercial uses of the land;
- Existing improvements on the land are removed and replaced with development appropriate to the setting; and
- The preparation of an Integrated Development Guide Plan to govern appropriate built form and land use allocation of the Neighbourhood Centre.

Amendment 105 was gazetted on the 7 June 2011.

Amendment 112

In February 2012, Council initiated Amendment 112 to the TPS2 to replace Special Condition 2 of Additional Use 22 in Schedule No.2 with the following Special Condition - The Additional Use shall cease by 30 June 2015.

The proponent was also advised that the time extension should be used constructively to progress an amendment to the Structure Plan to incorporate the Neighbourhood Centre, prepare an Integrated Development Guide Plan (IDGP) for the Neighbourhood Centre and obtain Planning Approval as required under clause 4.6A(d) of TPS2.

Amendment 112 was adopted by Council in August 2012 and Gazetted on the 4th December 2012.

Condition No.6 was replaced with the following:

"6. The approval to use a maximum area of 1130m² of the building for the display and sale of fruit and vegetables, including the maximum area of 169m² for the display and sale of incidental items in accordance with Condition No.3 ("the Additional Use"), shall cease on 30 June 2015.

Details

The proponent seeks an amendment to TPS2 to extend the range of retail goods sold at the Spud Shed to be in line with The Spud Shed outlets elsewhere in Western Australia. A full copy of the proponent’s request is included as Attachment 1 to this report.

The proposal seeks to modify the Additional Use description of Additional Use 22, to include as additional items packaged food, household domestic products (including but not limited to cleaning, washing and sanitary products), toiletries, nappies and wipes.

The proponent states in the application that:-

"the proposal simply seeks to redefine the uses allowable under A22. Importantly, it does not propose to remove the list of items altogether or to reclassify The Spud Shed use as a ‘shop’ or any other use under TPS2. The proposed modifications will not affect the cessation date in the special conditions of A22 nor will it affect the operation of clause 4.6A of TPS2. The proposal will have no impact to the exterior of the building.

Our client has obtained proposals from architects to prepare an IDGP for the future conversion of The Spud Shed into a neighbourhood centre, and expects to appoint a consultant team in the very near future, with a view to progressing the IDGP. We understand the City’s desire for The Spud Shed to be upgraded to a standard suitable for a contemporary neighbourhood centre and this proposed amendment will not alter in any way our client’s intention to ultimately upgrade the site to that of a neighbourhood centre.”

Implications to Consider

a. Consultation

If the Scheme Amendment is initiated by Council, it is required to be advertised in accordance with the Town Planning Regulations 1967 for a minimum period of 42 days from the date of publication of an advertisement in a newspaper circulating in the area.

b. Consultation with Government Agencies

Consultation with relevant Government Agencies will occur if the Scheme Amendment is initiated by the Council. Referrals can then be undertaken in accordance with the Town Planning Regulations 1967.
c. Community Plan

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

In accordance with Regulation 13 of the Town Planning Regulations 1967, the Council is required to resolve to either adopt the Scheme Amendment or not proceed with a Scheme Amendment and notify the WAPC in writing of its decision.

The subject property and current commercial operations (Spud Shed) remain subject to Clauses 4.6A (b - e) of TPS2, which states as follows -

"(b) This clause 4.6A:-

(i) applies to the Applicable Land; and

(ii) comes into effect on the Rezoning Date.

(c) Notwithstanding any other provision of the Scheme, any change of use of the Applicable Land from the Additional Use to any other use, requires planning approval.

(d) Notwithstanding any other provision of the Scheme but subject to clause 4.6A, any planning approval granted after the Rezoning Date, is not to take effect until:-

(i) the use of the Applicable Land for the purpose of the Additional Use ceases; and

(ii) the Existing Improvements are:-

(A) demolished and removed from the Applicable Land; or

(B) altered or redeveloped in accordance with a planning approval granted after the adoption of an Integrated Development Guide Plan under clause 4.6A(i).

(e) Clause 4.6A(d) does not apply to a planning approval insofar as the planning approval authorises the demolition of the Existing Improvements or the alteration or redevelopment of the Existing Improvements referred to in clause 4.6A(d)(ii)(B)."

Comments

The proponent seeks to modify the Additional Use description of Additional Use 22 (CA22) to include additional items, packaged food, household domestic products (including but not limited to cleaning, washing and sanitary products), toiletries, nappies and wipes.

The current description of items permitted to be sold from the Spud Shed under A22 of TPS2 is as follows with the proposed additions in bold:

(a) The retail sale of fresh fruit and vegetables;

(b) The retail sale of eggs, bakery goods, cereals, dairy products, meat, poultry, seafood, packaged food, condiments, preserves, confectionary, non-alcoholic refreshments, household domestic products (including but not limited to cleaning, washing and sanitary products), toiletries, baby products (including but not limited to nappies and wipes), nursery and horticultural products intended for household use, but only as an incidental use to the use referred to in paragraph (a).
The additional items as highlighted above, conflicts with the 2007 conditions of Planning Approval for the Spud Shed. Condition No.6 of Planning Approval (28.3286 - dated 11 September 2007) bares direct reference -

“6. The sale of nursery and horticultural products and other household items (i.e. sanitary items and domestic items) is not permitted.”

Based on the above, the following matters are fundamental to the Council’s consideration not to proceed with a Scheme Amendment:

1. The proposal is inconsistent with clause 4.6A of Town Planning Scheme No.2, as there is no ability for the Council to grant Planning Approval prior to its adoption of an Integrated Development Guide Plan under clause 4.6A (i) and the development being altered or redeveloped in accordance with a Planning Approval granted.

2. An Amendment to Town Planning Scheme No.2 to replace the Additional Use description of Additional Use 22 also requires an amendment to clause 4.6A in order to provide Council with the ability to approve this request for an amendment. The City does not support the expansion of the items offered for sale, because this is in conflict with clause 4.6A of TPS2 which requires the development to either be demolished or altered for conformity with an approved Integrated Development Guide Plan under clause 4.6A of TPS2. Consideration of this ad-hoc planning proposal would diminish the ability of the City to achieve a ‘main street’ development for the site.

3. The proposal would be non-compliant with conditions No. 4, 5 and 6 of Planning Approval dated August 2007 which restricts the sale of items and excludes the sale of household items (ie. sanitary and domestic items).

4. Since the initial Planning Approval in 2000 there have been numerous applications for additions to the originally approved Fruit and Vegetable Store. The initial intension was for the store to be used solely as a retail outlet for the existing market gardens, until such time that the market gardens cease operation.

5. Amendment 46 has been based on the outcomes and recommendations of a SAT process, which clearly precludes household items (sanitary and domestic items) as a condition of Planning Approval.

6. Since the very first Planning Application on this property, the City has requested the compilation of an IDGP. The proponent was advised that the existing time extension should be used to progress an amendment to the Structure Plan to incorporate the Neighbourhood Centre, prepare an integrated Development Guide Plan for the Neighbourhood Centre and obtain planning approval for the Neighbourhood Centre, as required under clause 4.6A(e) of TPS2. The proponent has indicated on numerous occasions that they have engaged a consultant to compile an IDGP, but such a plan is yet to be submitted to the City.

A previous application made by the proponent was for the extension of the time period for when the operation shall cease. This extension was partly given to accommodate further operation linked to the timing of encroaching residential development, and partly to provide sufficient time to prepare, lodge and approve an IDGP for the future Neighbourhood Centre. The land set aside for the future development of the Neighbourhood Centre, is currently excluded from the applicable Structure Plan for this area. The preparation of an Integrated Development Guide Plan to govern appropriate built form and land use allocation within the Neighbourhood Centre, is still awaited in order to finalise the Structure Plan.

It is recommended that the Council not initiate a Scheme Amendment to modify Additional Use No.22 to extend the range of goods retailed. The City will be conducting further compliance action regarding the unauthorised sale of items which are the subject of this report.

Voting Requirements

Simple Majority

Officer Recommendation

That Council NOT SUPPORT Amendment No.132 to Town Planning Scheme No.2 to replace the Additional Use description of Additional Use 22 in Schedule No.2, for the following reasons:
1. The proposal is inconsistent with clause 4.6A of Town Planning Scheme No.2, as there is no ability for the Council to grant Planning Approval prior to its adoption of an Integrated Development Guide Plan under clause 4.6A (i) and the development being either demolished or altered and redeveloped in accordance with a Planning Approval granted. Consideration of this ad-hoc planning proposal would diminish the ability of the City to achieve a ‘main street’ development for the site.

2. The proposal is non-compliant with condition No's 4, 5 and 6 of Planning Approval dated August 2007 which restricts the sale of items and excludes the sale of household items (ie. sanitary and domestic items).

**Amended Officer Recommendation**

That Council NOT SUPPORT Amendment No.132 to Town Planning Scheme No.2 to replace the Additional Use description of Additional Use 22 in Schedule No.2, as the development of the Spud Shed has moved away from selling its own produce to selling food, whether it was grown on the site or not. The retailing of the household items (ie. sanitary and domestic items) is a further move into general retailing, which is closer to a Neighbourhood Centre which is facilitated by clause 4.6A that comes into effect when the Structure Plan for the Spud Shed site is amended to designate the applicable land being within the Commercial Zone of Town Planning Scheme No.2.

**Committee Recommendation**

That Council NOT SUPPORT Amendment No.132 to Town Planning Scheme No.2 to replace the Additional Use description of Additional Use 22 in Schedule No.2, as the development of the Spud Shed has moved away from selling its own produce to selling food, whether it was grown on the site or not. The retailing of the household items (ie. sanitary and domestic items) is a further move into general retailing, which is closer to a Neighbourhood Centre which is facilitated by clause 4.6A that comes into effect when the Structure Plan for the Spud Shed site is amended to designate the applicable land being within the Commercial Zone of Town Planning Scheme No.2.

Committee Voting – 4/0

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

Not Applicable

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

Not Applicable

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4 The Manager Statutory Planning tabled a memo to Committee members with the amended Officer Recommendation.
<table>
<thead>
<tr>
<th>Reference No &amp; Subject:</th>
<th>SP-018/13 Reconsideration of a Grouped Dwelling (Single) – State Administrative Tribunal</th>
</tr>
</thead>
<tbody>
<tr>
<td>File No:</td>
<td>28/4602</td>
</tr>
<tr>
<td>Proponent/s:</td>
<td>Mr &amp; Mrs Chamberlain</td>
</tr>
<tr>
<td>Author:</td>
<td>Mr Regan Travers, Planning Officer</td>
</tr>
<tr>
<td>Other Contributors:</td>
<td>Mr David Waller, Coordinator Statutory Planning</td>
</tr>
<tr>
<td></td>
<td>Mr Mike Ross, Manager Statutory Planning</td>
</tr>
<tr>
<td>Date of Committee Meeting:</td>
<td>15 April 2013</td>
</tr>
<tr>
<td>Previously before Council:</td>
<td>February 2013 (SP-003/13), August 2012 (SP-049/12)</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>Tribunal</td>
</tr>
<tr>
<td>Site:</td>
<td>Strata Lot 3 (Unit 3/No.96) Harrison Street, Rockingham</td>
</tr>
<tr>
<td>Lot Area:</td>
<td>200m²</td>
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<td>LA Zoning:</td>
<td>Primary Centre - Waterfront Village</td>
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<td>MRS Zoning:</td>
<td>Urban</td>
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<td>Attachments:</td>
<td>1. Plans</td>
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<td></td>
<td>2. Schedule of Submissions</td>
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<td>1. Location Plan</td>
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<td>2. Development Site (Aerial)</td>
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<td>3. Development Site Photo</td>
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<td>4. East and West Elevation Plan</td>
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<td>5. Consultation Plan</td>
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<td></td>
<td>6. Boundary Wall Table</td>
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<td>7. Building Setbacks Table</td>
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<td>8. Overshadowing Plan</td>
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<td></td>
<td>9. Photo facing Unit 2/96 Harrison Street</td>
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<td>10. Photo facing No.98B Harrison Street</td>
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<td></td>
<td>11. Photo facing No.94 Harrison Street</td>
</tr>
</tbody>
</table>
1. Location Plan

**Purpose of Report**

To re-consider Council’s refusal decision of August 2012, for a Grouped Dwelling on Strata Lot 3 (Unit 3/No.96) Harrison Street, Rockingham as invited by the State Administrative Tribunal (SAT) following consultation with affected and nearby landowners.

2. Development Site (Aerial)
3. Development Site Photo

**Background**

The subject site has been Strata Titled into three lots. Two Strata lots include Grouped Dwellings. The rear Strata lot the subject of this report is vacant.

**Refusal Decision**

In August 2012 Council refused an application seeking planning approval for a Grouped Dwelling for the following reasons:

1. The development was inconsistent with the objectives of the R-Codes in that the development did not ensure an appropriate standard of amenity for all dwellings or protect the amenity of adjoining residential properties.

2. The proposal failed to meet the Performance Criteria of Clause 6.3.2P of the R-Codes as it had an adverse impact on the amenity of No.98B Harrison Street and Unit 2/No.96 Harrison Street, Rockingham by restricting direct access to sunlight of the major openings to habitable rooms and outdoor living areas.

3. The proposal failed to meet the Performance Criteria of Clause 6.7.1P of the R-Codes as it had an adverse impact on the amenity of Unit 2/No.96 Harrison Street, Rockingham by the restricting direct sun to buildings and adequate daylight to major openings to habitable rooms.

4. The proposal failed to meet the Performance Criteria of Clause 6.7.1P of the R-Codes as it had an adverse impact on the amenity of No.94 Harrison Street, Rockingham, No.98B Harrison Street and Unit 2/No.96 Harrison Street, Rockingham by not assisting in ameliorating building bulk or providing adequate direct sun to buildings and appurtenant spaces.”

The Council in reaching its decision also considered four submissions raising objections to the proposal.
Deferral Decision
In February 2013, Council resolved to defer the application to allow comments from previous submissioners (objectors) and adjoining owners prior to reconsidering its decision following the SAT mediation process.

New Waterfront Village Policy and Zoning Change
At the time of Council’s refusal of the 2012 proposal the land was zoned Residential R40. In September 2012, the subject lot was rezoned to ‘Primary Centre Waterfront Village’ when Planning Policy 3.2.2 Development Policy Plan – Waterfront Village Sector (Policy) came into operation.

The planning framework was changed by introducing new development standards that apply to Multiple Dwellings and Grouped Dwellings, based on a higher density form of residential development.

Details

The Proponent lodged an appeal to SAT following the Council’s refusal of the planning application for a Grouped Dwelling. In November 2012, SAT mediation between the Proponent and City Officers occurred, following which SAT issued orders seeking the Council to reconsider its decision pursuant to Section 31(1) of the State Administrative Act 2004 WA. The matter is no longer confidential as it has been subject to advertising independent to the ongoing mediation.

In January 2013, revised plans were submitted to the City, including further justification for the new Grouped Dwelling based on compliance with the Performance Criteria of the Residential Design Codes (R-Codes) and the City’s Policy.

The 2013 revised plans still includes the following components:-
- Undercroft garage, store, laundry and alfresco;
- First floor balcony, three bedrooms, kitchen, bathroom and family room; open staircase to verandah; and
- Second floor main bedroom and ensuite.

The 2013 proposal includes cutting into the natural slope of the lot, such that the undercroft garage is partially below natural ground level by up to 2.1 metres at the rear of the lot. This has the effect of wall heights exceeding the R-Codes requirements. At the rear, the 2013 proposal is similar in height to a two storey dwelling, but the building frontage (southern elevation) has the appearance of a three storey dwelling.

The proposed R-Code and Policy variations are as follows:-

1. Boundary Walls
The Policy permits boundary walls to two side boundaries subject to a maximum 2/3 length of the boundary, with a maximum height of 3.5 metres and an average length of height of 3 metres.

The Proponent has made some minor modifications to address privacy impacts, however, this has not resulted in compliance with boundary setback requirements of the R-Codes.

The revised plans are partially compliant with the R-Codes. The western first floor wall exceeds the R-Code requirements, but it is lower than the 2012 application, which had a higher western wall height ranging from 3.95 metres to 5.29 metres.

2. Building Setback
The R-Codes standards for boundary setbacks take into account the length, height and major openings.

The Proponent has provided the following justification for setback variations, based on satisfying Performance Criteria 6.3.1P1 of the R-Codes:-
- the garage is designed on the northern rear boundary and will provide adequate direct sun and ventilation to the adjoining lots;
- the house is designed to ameliorate building bulk by cutting level 1 into the site by about 2.1 m lower than the northern Lot;
- level 2 is designed to ameliorate building bulk by providing an articulated eastern side wall;
- the northern façade is designed with screening to assist in protecting the privacy of the northern Lot; and
- level 2 and level 3 are designed with no eastern side facing windows in order to assist in protecting privacy to the eastern Lot.

3. Wall Height
The R-Codes specify that the maximum height for an external wall with the roof above is not to exceed 6 metres above natural ground level.

The Proponent has advised that the wall height variations are consistent with the existing dwellings on either side of the subject lot, at 96b and 98b Harrison Street. Those two houses have been built with third storey lofts which have the following ridge heights:
- 96B Harrison Street: approximately 8.9 metres.
- 98B Harrison Street: approximately 8 metres.

The Proponent has advised that while the proposed three storey house is designed with wall heights that are higher than the wall heights of the neighbours’ two houses, the overall 9.35 metre ridge height of the proposed 3 storey house is similar to neighbouring dwellings, as demonstrated by Figure No.4.

4. East and West Elevation Plan

Implications to Consider

a. Consultation with the Community
The City has advertised the 2013 revised plans advertised in accordance with clause 6.3 of Town Planning Scheme No.2 (TPS2) and clause 4.1 of the R-Codes, by its referral to nearby owners and occupiers for comment. At the close of the submission period, two submissions were received, one in objection to the development, the other noting their previous privacy concern. The submissioner objecting to the proposal raised concerns regarding privacy concerns relating to the 3 metre first floor balcony setback.
5. Consultation Plan

Response to Submissions

Visual Privacy/Overlooking

The 2013 revised plans include privacy screens for major openings and with the exception of the southern first floor balcony, comply with the Acceptable Development provisions of the R-Codes for privacy and overlooking. To address the overlooking concerns due to the southern first floor balcony, a privacy screen should be included as a condition should the Council grant Planning Approval.

b. Consultation with Government Agencies

Not Applicable

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

Planning Policy 3.2.5 – Waterfront Village Sector (Policy)

The Waterfront Village Sector is included within the endorsed Centre Plan for the Rockingham Strategic Metropolitan Centre. The Policy provides a detailed planning vision and policy framework for the Waterfront Village based on the concept of a sustainable, medium to high density urban village arranged around a central, high frequency transit spine. The subject land is located within the Village West Precinct of the Sector.

State Planning Policy 3.1 – Residential Design Codes

The purpose of the R-Codes is to provide a comprehensive basis for the control, through local government, of residential development throughout Western Australia. The R-Codes objectives for residential development include Clause 1.3.1 (e):-

“To protect the amenity of adjoining residential properties”.

The proposed development was assessed against the R-AC0 Code where the default R60 Code standards apply to Grouped Dwellings, as opposed to the R40 Code that previously applied.

The Proponent seeks a number of variations to the Acceptable Development provisions of the R-Codes based on compliance with the Performance Criteria of the R-Codes as follows:-

1. Boundary Walls

The proposed development has nil setback walls to the northern and eastern elevations which comply with the Acceptable Development criteria of the R-Codes, however, the western elevation does not comply with the R-Codes as shown below.

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<thead>
<tr>
<th>Elevation</th>
<th>Maximum</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Western</td>
<td>3.5m</td>
<td>3.72-5.1m</td>
</tr>
</tbody>
</table>

6. Boundary Wall Table

The Performance Criteria of Clause 6.3.2 of the R-Codes for walls on boundaries is as follows:-

“- Make effective use of space; or
- Enhance privacy; or
- Otherwise enhance the amenity of the development;
- Not have any significant adverse effect on the amenity of the adjoining property; and
- Ensure that direct sun to major openings to habitable rooms and outdoor living areas of adjoining properties is not restricted.”

Given that the proposed building height is consistent with the long term intent of land surrounding the proposed development site, the potential to impact on the residential amenity of existing adjoining properties is ameliorated by the provision of privacy screens.

2. Building Setbacks

Most of the setback variations relate to the first floor of the development.

<table>
<thead>
<tr>
<th>Elevation</th>
<th>Required</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>North 1st floor</td>
<td>1.5m</td>
<td>1.24m</td>
</tr>
<tr>
<td>East 1st floor</td>
<td>1.1m</td>
<td>0.6m</td>
</tr>
<tr>
<td>Southern 1st floor</td>
<td>3.8m</td>
<td>3m</td>
</tr>
<tr>
<td>Western 1st floor</td>
<td>1.1m</td>
<td>0-0.75m</td>
</tr>
</tbody>
</table>

7. Building Setbacks Table

The Performance Criteria of the Clause 6.3.1 R-Codes for boundary setbacks is as follows:-

“- provide adequate direct sun and ventilation to the building;
- Ensure adequate direct sun and ventilation being available to adjoining properties;
- Provide adequate direct sun to the building and appurtenant open spaces;
- Assist with protection of access to direct sun for adjoining properties;
- Assist in ameliorating the impacts of building bulk on adjoining properties; and
- Assist in protecting privacy between adjoining properties."

All of the setback variations have been further modified from the 2012 proposal and setbacks are generally closer to complying with R-Codes requirements. The variations proposed demonstrate compliance with the Performance Criteria of the R-Codes by ameliorating building bulk of the second floor and providing privacy screens to major openings.

3. Wall Heights

The R-Codes specify that the maximum height for an external wall is not to exceed 6 metres which is equivalent to a two storey house. Sections of the walls exceed this maximum height, ranging from 6.24m for the western wall, 6.48m for the northern wall, 7.58m for the eastern wall and 8.35m for the southern wall.

The Performance Criteria of the R-Codes in relation to wall height notes that building height should be consistent with the desired height of buildings in the locality, and to recognise the need to protect the amenities of adjoining properties, including, where appropriate:

- Adequate direct sun to buildings and appurtenant open spaces;
- Adequate daylight to major openings to habitable rooms; and
- Access to views of significance.”

The height and scale of the proposed 3 storey house (9.35 metres) is similar to the height of the two existing houses with lofts at No 96B Harrison Street (8.9 metres) and No 98B Harrison Street (8.0 metres) and is demonstrated by Figure No.4. On the basis that the revised proposal is of similar height to surrounding dwellings and new permissible building height for the area under the Policy, the building height is considered acceptable.

Visual Privacy

The proposed dwelling includes a first floor balcony on its southern boundary, set back only 3 metres from the property boundary, in lieu of 7.5 metres required by the R-Codes or less where it includes a vertical screen of 1.6 metres in height.

The applicant has not provided justification for the proposed variation based on the R-Codes Performance Criteria for visual privacy.

As such, the City recommends in accordance with clause 7.4.1 A1(ii) of the R-Codes that the southern balcony include a permanent vertical screen to a height of 1.6 metres. Should screening include perforations, the perforations must not constitute more than 25% of the total service area. A maximum 50mm visual gap is permitted.

Solar access for adjoining sites

The R-Codes specify that development shall be designed that its shadow cast at midday, 21 June onto any other adjoining property does not exceed 50% of the site area.

The proposal overshadows 96b Harrison Street by 24% of the land which is compliant with the extent of overshadowing permitted.
8. Overshadowing Plan

9. Photo facing Unit 2/96 Harrison Street
10. Photo facing No.98b Harrison Street

11. Photo facing No.94 Harrison Street
e. Financial
Nil

f. Legal and Statutory

Town Planning Scheme No.2

In September 2012, the subject land was rezoned from Residential (R40) to Primary Centre Waterfront Village. TPS2 objectives for the Primary Centre Waterfront Village zone are as follows:-

- Encourage residential development within the “Primary Centre Waterfront Village” zone,
- Ensure consistency with the urban design objectives for the precincts set out in the policy,
- Allow the Council to exercise its discretion in respect of R Code provisions.”

In TPS2, the proposed development is classed as a Grouped Dwelling, which is a (‘D’) use that is not permitted in the Primary Centre Waterfront Village Zone, unless the Council has exercised its discretion by granting Planning Approval. The residential density code of the Primary Centre Waterfront Village is R-AC0. Table No.1 of the R-Codes notes that for Single or Grouped Dwellings within an R-AC0 area the R60 development standards apply.

Clause 4.1 of TPS2 requires residential development, unless otherwise provided for in TPS2, to comply with the R-Codes. The Council has discretion to either approve the proposal, with or without conditions, or refuse the application.

Comments

The 2013 revised plans demonstrate that the proposed Grouped Dwelling includes wall height and boundary setback variations, however, these are more consistent with the Performance Criteria of the R-Codes than the 2012 plans. The building scale has been reduced for the proposed third floor due to design changes and increased setbacks.

The adoption of Planning Policy 3.2.5 - Waterfront Village Sector has changed the planning context of the Council’s 2012 refusal decision. The future character of the area now provides for the transition of a predominant two storey development in this location to multiple dwellings with a height of five storeys. It is considered that the 2013 proposal is unlikely to adversely impact the amenity of existing and future residents of the area.

On balance of the R-Code variations proposed and the Policy, the 2013 proposal is considered to be suitable for the site. The submissioners objections can be addressed through the provision of privacy screens as a condition of Planning Approval. It is recommended that Council grant Planning Approval for a Grouped Dwelling.

Voting Requirements

Simple Majority

Officer Recommendation

That Council GRANT Planning Approval, upon review of its decision to permit a Grouped Dwelling on Strata Lot 3 (Unit 3/No.96) Harrison Street, Rockingham, subject to the following conditions:-

1. All stormwater must be contained and disposed of on-site at all times, to the satisfaction of the City.
2. The standard of finish to the wall(s) built up to boundaries must be to the satisfaction of the adjoining owner(s) or, in the case of a dispute, to the satisfaction of the City.
3. Privacy screens shown on the approved plans including a visual privacy screen to the southern first floor balcony, must be designed with permanent vertical screening to a minimum height of 1.6 metres above floor level, prior to applying for a Building Permit, and implemented as such for the duration of the development. Should screening include perforations, the perforations shall not constitute more than 25% of the total surface area. A maximum 50mm visual gap is permitted.
Committee Recommendation

That Council **GRANT** Planning Approval, upon review of its decision to permit a Grouped Dwelling on Strata Lot 3 (Unit 3/No.96) Harrison Street, Rockingham, subject to the following conditions:

1. All stormwater must be contained and disposed of on-site at all times, to the satisfaction of the City.
2. The standard of finish to the wall(s) built up to boundaries must be to the satisfaction of the adjoining owner(s) or, in the case of a dispute, to the satisfaction of the City.
3. Privacy screens shown on the approved plans including a visual privacy screen to the southern first floor balcony, must be designed with permanent vertical screening to a minimum height of 1.6 metres above floor level, prior to applying for a Building Permit, and implemented as such for the duration of the development. Should screening include perforations, the perforations shall not constitute more than 25% of the total surface area. A maximum 50mm visual gap is permitted.

Committee Voting – 4/0

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

Not Applicable

Implications of the Changes to the Officer’s Recommendation

Not Applicable
<table>
<thead>
<tr>
<th><strong>Reference No &amp; Subject:</strong></th>
<th>SP-019/13</th>
<th><strong>Reconsideration of Fencing Condition - Child Care Centre</strong></th>
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<tr>
<td><strong>File No:</strong></td>
<td>DD020.2012.00000278; D13/32069</td>
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<tr>
<td><strong>Proponent/s:</strong></td>
<td>Digby Property Holdings Pty Ltd</td>
<td></td>
</tr>
<tr>
<td><strong>Author:</strong></td>
<td>Ms Erika Barton, Senior Planning Officer</td>
<td></td>
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<tr>
<td><strong>Other Contributors:</strong></td>
<td>Mr Dave Waller, Coordinator Statutory Planning</td>
<td></td>
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<tr>
<td></td>
<td>Mr Mike Ross, Manager Statutory Planning</td>
<td></td>
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<tr>
<td><strong>Date of Committee Meeting:</strong></td>
<td>15 April 2013</td>
<td></td>
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<tr>
<td><strong>Previously before Council:</strong></td>
<td>26 February 2013 (SP-008/13)</td>
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<td><strong>Disclosure of Interest:</strong></td>
<td>Tribunal</td>
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**Site:**
Lot 859 (No.51) Borough Road (corner Smirk Road), Baldivis

**Lot Area:**
2,997m²

**LA Zoning:**
Development

**MRS Zoning:**
Urban

**Attachments:**
1. Proponent's submission
2. Proponent's amended submission

**Maps/Diagrams:**
1. Location Plan
2. Aerial Photo
3. Structure Plan
4. Proposed Fencing Figure 4 Subject Site looking South along Smirk Road
5. Subject Site and adjacent properties looking South along Smirk Road
Purpose of Report

To reconsider Condition No.8 of the Planning Approval for a Child Care Centre on Lot 859 (No.51) Borough Road, Baldivis, relating to visual permeability.

Background

In July 2007, the Western Australian Planning Commission (WAPC) approved the "Lots 4-7, 10-14 Smirk Road" Structure Plan, which designated the site for 'Community Purposes'.

Details

The Council granted Planning Approval for a Child Care Centre on Lot 859 (No.51) Borough Road, Baldivis at its ordinary Meeting on 26 February 2013.

On 28 March 2013, the Proponent met with the City's Senior Planning Officer and Coordinator Statutory Planning to discuss the application. The Proponent reiterated her concerns regarding the safety of the visual permeability of the fencing. The City's officers outlined the rationale for the fencing condition as outlined throughout this report. It was agreed to put the application to the ordinary Meeting of Council for determination of the application on balance of the issues.

The Proponent seeks reconsideration of Condition No.8 of the approval for the Child Care Centre. Condition No.8 states:

"8. Fencing to Borough Road, Regency Avenue and Smirk Road must be 50% visually permeable above 1.2 metres and constructed prior to the occupation of the development, and retained and maintained in good condition at all times."

The Proponent states that such fencing would "pose a threat to the security, safety and privacy of the children in our care". Instead is its proposed to construct a 1.8m Colorbond fence along the boundary of Smirk Road and part of Regency Avenue, with the remainder being visually permeable, as shown in Figure 4.
The Proponent's detailed submission included with this application should be read together with this report (see Attachment 1).

Figure 4. Proposed Fencing

On 2 April 2013 the Proponent requested the application be further amended. She suggested a fence be solid to 1.5m Colorbond fence, with 300mm lattice above. Attachment 2 contains this proposal and an example photo.

**Implications to Consider**

a. **Consultation with the Community**

   Not Applicable

b. **Consultation with Government Agencies**

   Advice was sought from the Department for Communities in relation to fencing requirements for Child Care Centres. The relevant provisions of the *Education and Care Services National Law (WA) Act 2012* (ECSNL Act), *Education and Care Services National Regulations 2012* (ECSN Regulations), and *Guide to Education and Care Services National Law and Education and Care Services National Regulations 2011* (Guide) were provided.

   The Department stated *inter alia*:

   **ECSNL Act**

   "... every reasonable precaution is taken to protect children being educated and cared for by the service from harm and from any hazard likely to cause injury" (s.167).

   **ECSN Regulations**

   "... must ensure that any outdoor space used by children at the education and child care premises is enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it" (r.104).
Guide

"Services should also consider the placement of outdoor play equipment or permanent structures (such as a shed) in relation to the fence or barrier, noting that some equipment may provide potential footholds to scale a fence" (p.72).

"Where possible, fencing should be designed to allow children to view the outside world. This enables children to make connections with the activities of their local community. It also supports the development of long-range vision. The construction of the fence should be appropriate to any additional safety concerns" (p.72).

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

The City's Planning Policy 3.3.5 - Child Care Centres (the Policy) sets out the objectives and policy provisions for the Council to consider in the assessment and determination of application for planning approval for the establishment of Child Care Premises. There are no provisions of the Policy relevant to the reconsideration request.

e. Financial

Nil

f. Legal and Statutory

Town Planning Scheme No.2 (TPS2)
The Community Purposes Zone provisions of TPS2 apply to the land. In considering applications for planning approval in the Community Purposes Zone, the Council must ensure that site planning, scale, built form, elevations and landscaping of the development positively contribute to the streetscape appearance and amenity of the locality.

Clause 6.6 of TPS2 requires the Council to have due regard to a number of matters when considering an application for planning approval. Those relevant to this application are provided below with comments provided in relation to the proposal.

"(o) the preservation of the amenity of the locality;
(p) the relationship of the proposal to development on adjoining land or on other land in the locality including but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the proposal;"

The subject site is a prominent site within the locality and zoned for Community Purposes. Given this, it is important for development on this site to address and contribute to activation of the street frontages.

Whilst the building orientation of the Child Care Centre does not provide for activation of all three streets, the partially permeable fencing, as required by Condition No.8 would assist with achieving the activation of all streets and articulation of the fence.

Further comments are provided below in relation to the proposed solid fencing.

Comments

Safety
The Proponent asserts that the fencing required by Condition No.8 would be unsafe for the children attending the centre. The partially open fencing would enable "the public to see, film, take photos, throw rubbish and other harmful objects through the fence, have contact with children with court orders etc, and pass foodstuffs through the fence that may be harmful to children with allergies."
The new *Education and Care Services National Law (WA) Act 2012* and its associated Regulations and Guidelines do not include any provisions requiring solid fencing. In fact, as outlined above in the response from the Department of Communities, fencing should be designed to allow children to view the outside world.

It is considered that the fencing, as required by Condition No.8, would provide for some privacy by a solid wall to 1.2m and facilitate views to the outside world by being 50% visually permeable above 1.2m.

**Crime Prevention**

Surveillance is one of the five Crime Prevention Through Environmental Design principles (CPTED) recognised by practitioners and educationalists nationwide.

At a Planning Approval level, surveillance principles include the following:

- Ensure clear sightlines to public realm spaces from adjacent buildings;
- Front boundary fencing should be visually permeable.

In this regard, it is considered important to retain some permeability in the road frontage fencing of the site. Condition No.8 provides for the appropriate level of visual permeability to achieve the required surveillance.

The recently proposed 1.5m solid fence and 300mm lattice atop would not provide for visual permeability and therefore would not facilitate the required level of natural surveillance in this location. In this regard, it is not supported.

**Streetscape**

Given the prominence of the site on Smirk Road, being a Neighbourhood Collector Road, being located opposite a Commercial Zone (on Regency Avenue), and fronting residential development on Borough Road, it is considered important that the development addresses and activates all street frontages.

A 1.8m high solid wall on the Smirk Road and Regency Avenue frontages of the site would not be appropriate as it would completely inactivate these street frontages. It is noted that the two dwellings on the western side of Smirk Road are oriented to have their side boundaries fronting Smirk Road and thus have solid fences fronting Smirk Road (which is permitted in accordance with the Residential Design Codes). Mirroring of the solid fencing on the subject site is not considered to be appropriate. The existing fencing is not considered to set a precedent. As outlined above, the subject site is a prominent community site and should address and activate all street frontages.

The 1.5m solid fence and 300mm lattice atop more recently proposed by the Proponent is not considered to provide for an improved streetscape outcome as it would effectively result in a solid fence when viewed from the street. There would be minimal permeability in the fence and in this regard is not supported.
4. Subject Site looking South along Smirk Road

5. Subject Site and adjacent properties looking South along Smirk Road
Conclusion
On balance of the issues, it is felt that neither the solid 1.8m high fence nor the 1.5m solid fence with 300m lattice atop achieves the surveillance or streetscape outcomes required for the site and its location. Condition No.8 provides for an appropriate balance of safety and streetscape outcomes.

Voting Requirements
Simple Majority

Officer Recommendation
That Council **REFUSE** the application for reconsideration of Condition No.8, as the proposed 1.5m high solid fencing with 300mm lattice above does not comply with the Community Purpose Zone provisions of Town Planning Scheme No.2 relating to site planning, built form and elevations which are required to positively contribute to the streetscape appearance and amenity of the locality.

Committee Recommendation
That Council **REFUSE** the application for reconsideration of Condition No.8, as the proposed 1.5m high solid fencing with 300mm lattice above does not comply with the Community Purpose Zone provisions of Town Planning Scheme No.2 relating to site planning, built form and elevations which are required to positively contribute to the streetscape appearance and amenity of the locality.

Committee Voting – 4/0

The Committee’s Reason for Varying the Officer’s Recommendation
Not Applicable

Implications of the Changes to the Officer’s Recommendation
Not Applicable
## Purpose of Report

To consider an application to initiate an amendment to the City’s Planning Policy No. 3.1.2 - *Local Commercial Strategy (LCS)*, to increase the maximum shop / retail floor space for the Warnbro Shopping Centre (Core Area) from 17,840m² Net Lettable Area (NLA) to 19,629m² NLA. This will result in the Warnbro District Centre as a whole to comprise of approximately 22,000m² NLA.
Background

In February 2004, the LCS was adopted by the Council and endorsed by the Western Australian Planning Commission (WAPC) on 7 December 2006.

In February 2011, the City received an application for a proposal for stage 2 of the Warnbro Shopping Centre. In August 2011, Planning Approval was granted for the Shopping Centre (Warnbro Cento) extension. This approval was never implemented.

In February 2013, the City received a Planning Application based on the 2011 Planning Approval, proposing additional retail floor space to accommodate a new operator for a larger Discount Store.

The Proponent opted to separate the Planning Application (Centre extension - Stage 2) from this Application seeking to amend the LCS, to enable the City’s assessment and approval processes to be considered concurrently.

Details

The Proponent seeks approval to increase the maximum allowable NLA for the Warnbro District Centre to be applied to the Shopping Centre (Core Area).

The recommended maximum NLA floor area is indicated as 17,840m² NLA for the Core Area and application is made for an increase to 19,629m² NLA, which is currently the recommended NLA floor space for the Warnbro District Centre as a whole. These are the figures prescribed by the LCS.

In effect the maximum allowable NLA for the Warnbro District Centre is proposed to increase from 19,629m² NLA to approximately 22,000m² NLA.

The application is accompanied by a Retail Sustainability Assessment (RSA). The RSA considers the potential economic and related impacts of the proposed expansion of the centre on the surrounding network of centres, addressing the overall costs and benefits of the proposal from a community viewpoint.

The RSA states that Centro Warnbro is a main food and grocery shopping destination for surrounding residents, with its role to be enhanced to genuine District Centre status following its proposed expansion through the provision of a Discount Department Store. The Rockingham Shopping Centre will still remain the predominant regional hub for non-food and comparison shopping.
**Implications to Consider**

a. **Consultation**

Under Town Planning Scheme No. 2, if Council resolves to amend a Planning Policy, the Council:

(a) is to publish a notice of the proposed Policy once a week for 2 consecutive weeks in a newspaper circulating in the Scheme area, giving details of:-

(i) where the draft Policy may be inspected;
(ii) the subject and nature of the draft Policy; and
(iii) in what form and during what period (being not less than 21 days from the day the notice is published) submissions may be made.

(b) may publish notice of the proposed Policy in such other manner and carry out such other consultation as the Council considers appropriate.

b. **Consultation with Government Agencies**

Consultation with the Western Australian Planning Commission (WAPC) will occur during advertising in relation to the proposal the subject of this report and the implications raised under SPP 4.2 in the Policy section below.

c. **Community Plan**

**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**

The size and function of commercial centres are guided by the City’s Planning Policy 3.1.2 - Local Commercial Strategy (LCS) and the WAPC’s State Planning Policy 4.2 - Activity Centres for Perth and Peel.

**Planning Policy 3.1.2 - Local Commercial Strategy (LCS)**

With respect to proposals to provide shop/retail floor space above the maximum floor space set out in the LCS, it is stated:

"Wherever a new centre or expansion of an existing centre is proposed beyond the shop/retail floor areas which are recommended in the Strategy, it should be in accordance with an approved Centre Plan as contemplated in Section 5.6 and Appendices 1.1.3 and 1.1.4 of the Metropolitan Centres Policy (2000). The onus should be on the proponent to demonstrate to the Council’s satisfaction, that the proposal to increase beyond the recommended floor areas would not have a significant adverse impact on any other existing or planned centre."

The LCS allocates maximum retail floor space recommendations for the various commercial centres within the City.

The LCS recommends the Rockingham City Centre as the Strategic Regional Centre serving the whole City; four district shopping centres located at Rockingham Beach, Warnbro, Secret Harbour and Baldivis; and a network of smaller neighbourhood and local centres serving their perspective local catchments.

Within the District Centre precinct Federation Centres (former Centro Group) owns Lot 909 (existing shopping centre), together with Lot 910 (liquor store) and Lot 911 (petrol station), which in combination have a total retail floor space allocation of 17,840m² NLA under the LCS. The total retail floor space allocated for the designated Warnbro District Centre is 19,962m² under the LCS.

The City has undertaken an assessment of the proposal and considers that the proposed increase in retail NLA can be justified on the following planning grounds:-
(a) The retail floor space 'caps' have been removed from State Planning Policy 4.2 - Activity Centres for Perth and Peel (SPP4.2);
(b) The retail floorspace increase represents a minor increase and would result in built form outcomes, role and function that are consistent with its classification as a District Centre;
(c) The additional retail floor space will assist in ‘rounding off’ the development of the site; and
(d) The City’s assessment of the current Planning Application to expand the Warnbro Shopping Centre involves the preparation of a separate Development Assessment Panel Report.

State Planning Policy 4.2 - Activity Centres for Perth and Peel (SPP 4.2)

State Planning Policy 4.2 - Activity Centres for Perth and Peel was adopted by the WAPC in August 2010.

SPP4.2 focuses strongly on the function and urban form of a centre, with reduced emphasis on maximum shop/retail floor space of a centre. Expansion of centres is dealt with by requiring proponents to prepare a Retail Sustainability Assessment (RSA) prior to major development (a building more than 10,000m² or extension more than 5,000m²) and prior to a neighbourhood centre exceeding 6,000m² or expanding by 3,000m². A RSA assesses the potential economic and related effects of a significant retail expansion on the network of activity centres in a locality.

The requirements of SPP4.2 are implemented via amendments to the City's Local Commercial Strategy.

Part 6.5 of SPP 4.2 outlines the requirements for the RSA. An RSA outlines the potential economic and related effects of a significant retail expansion (expansion greater than 5,000m² NLA) on the network of activity centres in a locality. It addresses such effects from a local community access or benefit perspective, and is limited to considering potential loss of services, and any associated determent caused by a proposed development. Competition between businesses of itself is not considered a relevant planning consideration.

The RSA shall assess potential effects of the sustainable future provision of shopping by existing and planned centres in the locality taking into account:
- the supportive shop/retail floor space for an appropriate service population, based on normative primary service (trade) areas in Table 3.
- the Commission's Guidelines for Retail Sustainability Assessments (NB: these guidelines have not been prepared by the Department of Planning at the time of assessing the proposal and at the time of preparing this Report); and
- an assessment of costs imposed on public authorities by the proposed development, including implications for and optimal use of public infrastructure and services provided or planning in a locality.

The following Table shows the proposal’s consistency with the typical characteristics of District Centres as depicted in SPP4.2.

Excerpt from Table 3 Activity Centre Functions, Typical Characteristics and Performance Targets
(State Planning Policy 4.2 - Activity Centres for Perth and Peel)

<table>
<thead>
<tr>
<th>Typical Characteristics</th>
<th>District Centres</th>
<th>Proposed Centre</th>
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</thead>
<tbody>
<tr>
<td>Main role/function</td>
<td>District Centres have a greater focus on servicing the daily and weekly needs of residents. Their relatively smaller scale catchment enables them to have a greater local community focus and provide services, facilities and job opportunities that reflect the particular needs of their catchments.</td>
<td>Centre size of 22,000m² NLA consistent in size to provide retail and service needs of the local population. An increase of approximately 2,038m² NLA.</td>
</tr>
<tr>
<td>Transport connectivity and accessibility</td>
<td>Focal point for bus network</td>
<td>Various existing bus stops at the centre.</td>
</tr>
</tbody>
</table>
Typical retail types
- Discount department stores
- Supermarkets
- Convenience goods
- Small scale comparison shopping
- Personal Services
- Some specialty shops

- Discount department store
- 2 full sized supermarkets
- Specialty Shops
- Personal services
- Convenience goods

Typical Office Development
- District level office development
- Local professional services
- Medical Centre

Future indicative service population (trade area)
20,000 - 50,000 persons
- Currently 66,700 people
- Projected 92,100 by 2026.

Walkable catchment for residential density target
400m
400m nominated on the Local Structure Plan

Residential density target per gross hectare | Minimum | Desirable | Provided
--- | --- | --- | ---
20 | 30 | 12.5

2. Excerpt: Table 3
Although the minor increase in NLA floor space does not warrant the preparation of an RSA, the Proponent proceeded with the preparation thereof.

SPP 4.2 also requires that when District Centres exceeds 20,000m² NLA an Activity Centre Structure Plan need to be prepared and adopted. The City needs to undertake consultation with the Department of Planning to clarify if an Activity Centre Structure Plan will be required. The Proponent appears to premise the application to the LCS may somehow avoid the requirement of an Activity Centre Structure Plan, however, this does not appear to be an exemption provided for under SPP 4.2.

3. Excerpt: Table 6

<table>
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<tr>
<th>Centre plan required</th>
<th>Perth Capital City</th>
<th>Strategic metropolitan centres</th>
<th>Secondary centres</th>
<th>Specialised centres</th>
<th>District centres</th>
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<td>Approval required</td>
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<td>WAPC</td>
<td>WAPC</td>
<td>WAPC</td>
<td>WAPC (if floor space exceeds 20,000m² shop-retail nla) *13</td>
<td>Local Government may require a detailed area plan</td>
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</table>

Nil: net lettable area

3. Excerpt: Table 6

e. **Financial**
Nil

f. **Legal and Statutory**
Clause 4.6.6 of TPS2 states the Council may modify the LCS, provided that it is satisfied that such modification is in the interest of proper and orderly planning and will not detract from the amenity of the locality. Modifications shall be advertised for public comment in accordance with the provisions of clause 8.9.9, unless the proposed modification is minor.

**Comments**
The Proponent's RSA advised that the expanded Centro Warnbro Shopping Centre will enhance the shopping choice and range for local residents, as well as create employment opportunities for the local community. Against these benefits, a minor level of impact is projected for retailers within the Centre's trade area. These impacts as discussed in the proponent's RSA are not perceived as significant and argue that it would not threaten the ongoing viability of any existing retailers.

The applicant is, however, at this point in time, arguing the non-retail definition of the LCS in order to comply with the recommended 19,962m² NLA (District centre) and the 17,840m² NLA (Core Retail Centre).
Voting Requirements
Simple Majority

Officer Recommendation
That Council **ENDORSE** the publishing of a notice that it has prepared an amendment to Planning Policy 6.3 - Local Commercial Strategy to increase the maximum shop/retail floor space of the Warnbro District Centre from 19,629m² NLA to 22,000m² NLA, for public inspection.

Committee Recommendation
That Council **ENDORSE** the publishing of a notice that it has prepared an amendment to Planning Policy 6.3 - Local Commercial Strategy to increase the maximum shop/retail floor space of the Warnbro District Centre from 19,629m² NLA to 22,000m² NLA, for public inspection.

Committee Voting – 4/0

The Committee’s Reason for Varying the Officer’s Recommendation
Not Applicable

Implications of the Changes to the Officer’s Recommendation
Not Applicable
<table>
<thead>
<tr>
<th></th>
<th>Reports of Councillors</th>
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<tbody>
<tr>
<td></td>
<td>Nil</td>
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<tr>
<td></td>
<td>Addendum Agenda</td>
</tr>
<tr>
<td></td>
<td>Nil</td>
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<td>Motions of which Previous Notice has been given</td>
</tr>
<tr>
<td></td>
<td>Nil</td>
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<td></td>
<td>Notices of Motion for Consideration at the Following Meeting</td>
</tr>
<tr>
<td></td>
<td>Nil</td>
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<td></td>
<td>Urgent Business Approved by the Person Presiding or by Decision of the Committee</td>
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<tr>
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<td>Nil</td>
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<td>Matters Behind Closed Doors</td>
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<tr>
<td></td>
<td>Nil</td>
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<tr>
<td></td>
<td>Date and Time of Next Meeting</td>
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<tr>
<td></td>
<td>The next Planning Services Committee Meeting will be held on <strong>Monday 20 May 2013</strong> in the Council Boardroom, Council Administration Building, Civic Boulevard, Rockingham. The meeting will commence at 4:00pm.</td>
</tr>
<tr>
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<td>Closure</td>
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<td>There being no further business, the Chairperson thanked those persons present for attending the Planning Services Committee meeting, and declared the meeting closed at <strong>5.17pm</strong>.</td>
</tr>
</tbody>
</table>