

CITY OF JOONDALUP

MINUTES OF SPECIAL ELECTORS MEETING HELD IN COUNCIL CHAMBER, JOONDALUP CIVIC CENTRE BUILDING, BOAS AVENUE, JOONDALUP, ON MONDAY 8 MARCH 1999.

ATTENDANCES

Commissioners

Cmr C Ansell

Chairman of Commissioners

Cmr H Morgan AM

Officers

Chief Executive Officer:

L DELAHAUNTY

Manager, Development Management:

R ZAGWOCKI

Manager, Urban Design Services:

D BUTCHER

Senior Planning Officer:

P NEILSON

Manager, Executive Services:

K ROBINSON

Publicity Officer:

L BRENNAN

Committee Clerk:

J AUSTIN

APOLOGIES

Cmr R Rowell

Cmr Clark-Murphy

Cmr Buckley

M and R Dyson, 4 Boronia Court, Greenwood

Hon G Watson, Greens Member, North Metropolitan Zone

Hon Minister for Planning, Mr G Kierath

Dr Judy Edwards, MLA

Dr Geoff Gallop, MLA

There were 108 Electors in attendance.

The Chairman declared the meeting open at 1830 hrs.

ITEM OF BUSINESS

The Chairman advised that the purpose of the meeting was to discuss the cancellation of a portion of Parks and Recreation – Local Reserve adjoining the former Greenwood Primary School Site and associated Ministerial decision.

The City has obtained legal advice on this matter to confirm the ability of both the Ministers for Planning and Lands to make the decisions they have. The following responses to the points raised in the request for a Meeting of Electors dated 12 February 1999, as provided to the meeting, reflect the legal advice received.

Q1 The illegal cancellation of a portion of Parks and Recreation – Local Reserve adjoining the former Greenwood Primary School site.

A1 The cancellation of portions of Reserve 31016 and 30958 adjoining the northern and southern boundaries of the former Greenwood Primary School has not been undertaken illegally. Pursuant to the provisions of the Land Administration Act 1997, it is open for the Minister for Lands to cancel the reserve status of the reserves in question and dispose of such land.

Q2 The Minister for Planning improperly instructing the City of Joondalup to change Amendment No 833 to Town Planning Scheme No 1 – proposed rezoning of Greenwood Primary School (Reserve 31790) to Residential R20 and Parks Recreation; contrary to the resolution of Council and the expressed wishes of the residents.

A2 Whilst the Minister for Planning's instructions to the City to modify Amendment No 833 was contrary to the Joint Commissioners' resolution, it was consistent with the powers conferred to him under the Town Planning Regulations 1967 (as amended). The regulations provide that once directed by the Minister to make certain changes to an amendment, a local government cannot refuse.

Q3 The Minister for Planning denying the rights of property owners adjoining and close to Reserves 30958 and 31016 to continue to enjoy the current amenity of the reserves.

A3 This is a matter the Minister for Planning should respond to. However, it should be noted that the decision making process involved in making an Amendment includes public consultation. The Minister for Planning advised the City that he considered the case both for and against Amendment No 833 and in reaching his decision, decided to dismiss the submissions opposing the amendment.

Q4 Other matters that may be raised from the floor of the meeting relating to the proposed cancellation of a portion of Reserves 30958 and 31016, Greenwood Primary School, Greenwood.

A4 To be determined.

The Chairman advised that legal advice indicated that the Minister is entitled, under the Act, to take the action he has.

The Chief Executive Officer referred to a facsimile received from the Stop the Swap Committee asking Commissioners to take Supreme Court Action against the Minister for Lands and stating its intention to submit a motion calling for the Commissioners to take out a writ of prohibition against the Minister for Lands, in order to stop the Minister from committing an unlawful act by giving part of the park to a developer. The Committee believes there to be procedural defects and that the Minister may have considered irrelevant matters in this case.

Following receipt of this information, officers of the Council sought legal advice for this evening's meeting which indicates that the Minister has the right, in accordance with Section 50 of the Land Act, to direct a Council to modify a Scheme Amendment in a manner which involves the rezoning of a portion of the Parks and Recreation Reserve.

The Chief Executive Officer reported that further legal advice, in summary, states:

“In summary, on the facts known to us at present, although there may be some possibility that the City could obtain an Order Nisi or Writ of Prohibition against the Minister, it would seem most unlikely that the application could succeed ultimately before the full Court. An unsuccessful application to the full Court would almost certainly result in an order that the City pay the legal costs of the respondents to the application”.

The Chief Executive Officer stated that the situation therefore is that the Council could be subject to considerable costs.

The Chairman advised that the Minister for Planning, Mr Kierath, had sent a facsimile to Commissioners in relation to the Special Electors meeting, which read as follows:

“I wish to clarify matters concerning the rezoning of Greenwood Primary School and surrounding reserves. Contrary to assertions made, I did not support the Amendment which was advertised by the City of Joondalup. My final decision on advice from the Western Australian Planning Commission was to support a modified proposal which retains the north/south access way as supported by the local community, introduces a larger, more useable open space component adjacent to the Blackall Reserve which retains the majority of the significant trees in the area, zones two smaller accessways for housing but retains community accessibility through the subdivision design as required by the Western Australian Planning Commission.

On balance, after considering the advice from the Commission and the specific local concerns about retaining accessibility and preserving vegetation, I think the final modified proposal was the best solution. The suggestion that this opens the way for parks to be wantonly redeveloped are absurd. There will be no nett loss in open space as a result of the proposal. In fact, it is designed to preserve the most significant portions of open space in the area and increase the amount of park in Blackall Reserve contrary to recent media assertions.

Many people do not realise the practical area of Blackall Reserve adjacent to the cricket nets is not part of the reserve itself, but part of the old school. As such it would have been open to development for residential lots effectively restricting practical use of the reserve. It was considered inappropriate that this area be redeveloped. The modified proposal in response to the submissions received also retains the largest accessway adjacent to Mamo Place. This reserve also contains significant trees and a path to allow for residents access to continue. I think the primary issue really comes down to a thin strip of reserve of approximately 3700 square metres abutting residences of Pullan Place. This area is not being lost, but replaced by an equivalent area of open space, preserving the most significant trees in the area which would otherwise be lost. Concerns that the proposal would remove accessibility is not correct. It will be retained by the Commission in its consideration of the subdivision. The access residents currently enjoy via this reserve could not practically be retained over the longer term. Redevelopment of the school would leave a thin wedge of grassed open space which would most likely have houses backing onto it from both sides. Potentially this could create havens for criminal, antisocial behaviour which would not clearly be to anyone's benefit. The Commission in recommending the proposal has an obligation not only to look at the existing residents in the area but also those who will be living there in the future.

In response to other concerns raised, the Commission will also be looking at pedestrian cycle movements in the area and the retention of significant trees when a subdivision application is lodged. The developer will also be required to provide more public open space as part of any subdivision proposal. It seems that much of your concerns have been about due process. I have made a decision at the end of the planning process as I am required to do under the Act to consider a rezoning proposition originally given preliminary approval by the City of Joondalup. In considering the advice before me and the submissions that were made, I believe the decision will provide the best outcome for all residents in the longer term by retaining accessibility and preserving the most important vegetation in the area and improving the arrangement of open space adjacent to Blackall Reserve. It is important to note that my decision does not authorise a swap or determine who the land should go to, rather it simply changes the zoning of the land. I was disappointed to hear personal comments made publicly about me, attacking my character, rather than on the merits of my decision. In my experience, such personal attacks apply usually where logic has failed to serve their case."

PUBLIC QUESTION TIME/MOTIONS

The Chairman then invited questions or motions from the floor.

Mrs Sue Hart, Mamo Place, Greenwood:

Mrs Hart gave notice of the following Motion:

“That we, the electors of the City of Joondalup, being mostly residents of the suburb of Greenwood, do hereby move that the community of Greenwood expect the Joint Commissioners to:

- 1 defer consideration of item CJ62-03/99, Amendment No 833, Proposed rezoning of the former Greenwood Primary School, until it has obtained legal advice on the questions of law raised at this Special Electors’ meeting;
- 2 inform the Minister for Lands that the Department of Land Administration should not proceed with the land exchange until the questions of law regarding the land exchange are settled;
- 3 continue to work with, and on behalf of the residents of Greenwood, providing good government of the persons in this district, and as such be willing to take whatever legal action is required to represent the interests of electors, ratepayers and residents of the district in the matter of the cancellation of parts of Reserve 31016 Greenwood;
- 4 allow representatives of the Stop the Swap Committee to brief Council’s solicitors on matters relating to this issue;
- 5 inform the Minister for Planning that Council’s resolution in October last year, regarding the former Greenwood Primary School site complied with the Planning Commission guidelines for new recreation reserves in new subdivisions and still met the residents’ expectations not to cancel part of Reserve 31016 at the rear of the residences of Pullan Place;
- 6 request the Minister for Planning to change the planning legislation to create a planning approval process that is open and transparent, such as the Charrette process, so that the local community is not forced into conflict with the local authority, the state government and the developer”

Mrs Hart then outlined the following reasons for raising the above motion:

Point 1 of Motion:

The questions of law regarding this issue are to do with the way the Ministers for Land and Planning have exercised their powers. The questions are not about if they had the power to do what they are doing, but how they did what they did.

Following a request by the meeting, Mrs Hart read the following points of law:

Reason 1 for challenge to Minister for Land:

The Stop the Swap Committee has legal advice that an examination of publicly available papers gave rise to serious questions about the legality of what the Minister for Lands has done. This is not to question his powers to do certain things, this is about the way he has exercised his powers, his discretionary powers under the Land Administration Act. In particular his discretionary powers under Section 51 of the Act which gives him powers to cancel reserves.

Before a reserve can be cancelled, the management order for that reserve must be revoked. In the Greenwood case the management order can only be revoked under Section 50, subsection (2). That is when the Minister considers that it is in the public interest.

It is on the question of what is the correct process for a Minister to follow when he determines what is in the public interest that the public must be satisfied about. It is in this regard that the proposed land swap is being questioned. It is the question of what a reasonable person would do to determine what is in the public interest, that is the question that must be answered.

In particular, would a reasonable person obtain valuations on the parcels of land to be exchanged prior to a decision to proceed with the swap. If a reasonable person would obtain valuations prior to a decision to swap, and in the absence of any evidence to the contrary, and there is no publicly available evidence to say the Minister has obtained valuations on the land, then the Minister's decision must be seen as fundamentally flawed and any actions taken void.

Put simply, the Minister for Lands failed in his duty to the people of Western Australia if he did not make sure that he knew the value of the land being exchanged prior to determining what is in the public interest. The Minister is bound by law to act as a reasonable person. If there is evidence to say that a Minister has not acted reasonably then in the interest of good governance that the Minister's decision should be legally challenged.

Reason 2 for challenge to Minister for Lands:

In addition to the question of the value of the land to be exchanged, the Stop the Swap Committee has concerns regarding the Minister for Lands having a possible conflict of interest. This possible conflict of interest could be against the rules of natural justice. The conflict of interest could prejudice the mind of the Minister and create bias in favour of the developer of the school site as the Minister for Lands has been a party to a commercial transaction with the developer.

The question of conflict of interest is a serious issue. Was the Minister's mind fettered by commercial considerations when he determined to revoke the management order and cancel the recreation reserve?

Is it reasonable to expect the Minister for Lands to be both the final decision maker for the fate of the recreation reserves and the seller or the agent for the seller, of the former primary school site?

Should the umpire also be a player on the field? If the answer is no, the umpire should not be a player on the field, then was natural justice served in this case?

Reason 3 for challenge to the Minister for Planning's actions:

Questions must be asked about the role of the Minister for Planning in the Greenwood case. Questions such as was it proper for the Minister for Planning to instruct the City of Joondalup to amend its Town Planning Scheme prior to the finalisation of the Minister for Lands decision to cancel the recreation reserve?

Where is the evidence that the Minister for Planning knew that the land at the back of Pullan Place was no longer a Crown Reserve which was subject to a management order with the City of Joondalup?

Point 2 of Motion:

This speaks for itself. We don't want government employees wasting time putting into place something that will have to be undone through legal action if they don't stop.

Point 3 of Motion:

The Commissioners have supported the residents of Greenwood on this issue before. We are now asking them to continue the support at a higher level.

Point 4 of Motion:

There are various matters that could be difficult to explain in public regarding the questions of law regarding the former Greenwood Primary School issue. These matters are best discussed in private with a lawyer.

Point 5 of Motion:

The problem we are dealing with at the moment is that the State Planning Commission is attempting to enforce its guidelines for Public Open Space in new subdivisions into an old suburb. The new subdivision rules should only apply to the Primary School site itself. The guidelines should not apply to the existing parks unless the residents of the area have asked for the guidelines to be applied.

What we are asking the Commissioners to do here is affirm their decision of October 1998.

Point 6 of Motion:

It is clear from the experiences of all the parties of the Greenwood Primary saga that the planning processes of this State create undue conflict producing distrust on all sides. This distrust could have been avoided if the State Government with the Council held a Charrette. A Charrette is a public workshop that is fully resourced to allow all stakeholders and interested parties to find out all the information required to come up with the best answer for the planning problem being addressed.

The Shire of Swan held a Charrette in September 1997 regarding the Midland Town Centre. I understand it was very successful.

The first thing about a Charrette is that nothing is cast in stone. Compare this with the Greenwood saga where the idea to swap land was discussed by the Department of Land Administration Officers, the Council Officers, and the developer all before the residents had a chance to have a say.

The current planning system forces planning officers at both the Council and the State Planning Commission to try to guess what the local community will find acceptable. Once the officers have decided what they think we want or may tolerate, the plans are put out for public comment. If the officers have made a wrong guess then the public and the public authorities are in conflict. Such processes do not foster win/win problem solving solution. A better way must be found, and in fact has been found and tried and proven to work.

In conclusion, Mrs Hart referred to the requirement of the Local Government Act that “all decisions made at an electors meeting are to be considered at the next ordinary council meeting or, if that is not practicable, then at the first ordinary council meeting after that meeting, or at a special meeting called for that purpose, whatever happens first:

Mrs Hart advised the meeting that the next ordinary Meeting of the City of Joondalup is scheduled for Tuesday 9 March 1999.

Submission of Petition:

A 202-signature petition was submitted on behalf of local residents seeking support to save public open space in Greenwood. The residents requested that this petition be forwarded to the Minister for Planning.

The following Motion was then Put.

MOVED Mrs Sue Hart, SECONDED Mr Don Adamson that we, the electors of the City of Joondalup, being mostly residents of the suburb of Greenwood, do hereby move that the community of Greenwood expect the Joint Commissioners to:

- 1 defer consideration of item CJ62-03/99, Amendment No 833, Proposed rezoning of the former Greenwood Primary School, until it has obtained legal advice on the questions of law raised at the Special Electors' meeting held on 8 March 1999;**
- 2 inform the Minister for Lands that the Department of Land Administration should not proceed with the land exchange until the questions of law regarding the land exchange are settled;**
- 3 continue to work with, and on behalf of the residents of Greenwood, providing good government of the persons in this district, and as such be willing to take whatever legal action is required to represent the interests of electors, ratepayers and residents of the district in the matter of the cancellation of parts of Reserve 31016 Greenwood;**
- 4 allow representatives of the Stop the Swap Committee to brief Council's solicitors on matters relating to this issue;**
- 5 inform the Minister for Planning that Council's resolution in October last year, regarding the former Greenwood Primary School site complied with the Planning Commission guidelines for new recreation reserves in new subdivisions and still met the residents' expectations not to cancel part of Reserve 31016 at the rear of the residences of Pullan Place;**
- 6 request the Minister for Planning to change the planning legislation to create a planning approval process that is open and transparent, such as the Charrette process, so that the local community is not forced into conflict with the local authority, the state government and the developer.**

The Motion was

CARRIED UNANIMOUSLY

Mrs C Edwards, MLA, Member for Kingsley:

Mrs Edwards stated she had supported residents in the past and will continue to support their position, and will personally take the views expressed at this meeting to the Minister for Planning.

Mr Ken Travers, MLC, Member for North Metropolitan Region:

Mr Travers submitted apologies on behalf of Dr Judy Edwards and Dr Geoff Gallop and advised that Dr Edwards had written to the Minister for Planning asking for the reasons behind his decision.

Mr Travers raised his concerns in relation to planning legislation and the need for community consultation.

Mr Travers stated he supported the community and will give support to Mrs Edwardes in changing this decision and getting the wishes of the Greenwood community heard.

Ms Monique Moon:

Mrs Moon stated she did not believe in the law and order issue. She believed that parks are provided to keep children and adults amused, and felt it was not right to provide walls for them to paint on.

Mr Peter Clark

Mr Clark believed that Mr Kierath was under the impression that a narrow strip of grass will remain, being 21 metres. Mr Clark did not consider this to be narrow, and stated that the recommendation is that the road should interface with the reserve, so fences will not back onto each other.

Cmr Morgan:

In view of this evening's meeting unanimously endorsing the motions put forward, Cmr Morgan asked whether Mrs Hart would consider requesting a deputation to the Minister, in company with Mrs Edwardes.

Mrs Hart advised that she had previously met with officers from the Ministry for Planning, however would request Mrs Edwards to arrange a deputation to the Minister.

Cmr Ansell stated that further legal advice was required on various matters raised this evening, and consideration would be given to scheduling a Special Meeting of Council to resolve the issue.

Mr Bob Foston, Mamo Place, Greenwood:

Mr Foston provided an original map showing school and recreation areas, for the meeting's information. Mr Foston requested that the term "remnant" not be used in relation to the land. In relation to access, Mr Foston believed that if the north/south access is retained and others are closed, then the east and west access will be cut off from each other.

Mr Foston stated there has been mention of opposition to back fences adjoining public open space. From the map, Mr Foston believed there is in excess of 70 properties that have back and side fences fronting the open space, not seven as previously advised. Mr Foston considered that if the policy of getting rid of lands which front onto back fences persisted, the whole area will be developed and the public open space will be lost.

Mrs Pauline Kalajzich, Bankhurst Way, Greenwood:

Mrs Kalajzich stated her property backed onto Penistone Park and was concerned that if Mr Kierath disregards his community's wishes in this issue, what will happen to Penistone Park.

Mr Peter Moulden, Bottlebrush Drive, Greenwood:

Mr Moulden believed that the developer might be given an unfair advantage over the other people who may have tendered on the land as it was. He stated that if this land has been value-added, the people of the State are being shortchanged.

Mrs A Hine, Dundobar Road, Wanneroo:

Mrs Hine believed the residents were not being treated fairly and had not been consulted prior to Council officers meeting with the developer.

In response, the Chief Executive Officer advised that for any proposal put before Council, it is not unusual for developers and landowners to discuss the matter with Council officers to find out their rights and processes.

There being no further business, the Chairman declared the meeting closed at 1920 hrs.