

CITY OF JOONDALUP

Notice is hereby given that a **SPECIAL MEETING OF JOINT COMMISSIONERS** will be held in the Council Chamber, Joondalup Civic Centre, Boas Avenue, Joondalup on **TUESDAY 16 MARCH 1999** commencing at **5.00 pm**.

LINDSAY DELAHAUNTY
Chief Executive Officer
12 March 1999

Joondalup
Western Australia

AGENDA

ATTENDANCES AND APOLOGIES

PUBLIC QUESTION TIME

(Please Note: Section 7(4)(b) of the Local Government (Administration) Regulations 1996 states that a Council at a special meeting is not required to answer a question that does not relate to the purpose of the meeting. It is requested that only questions that relate to items on the agenda be asked).

DECLARATIONS OF FINANCIAL INTEREST

ITEM OF BUSINESS

**JSC1-03/99 AMENDMENT NO 833 – PROPOSED REZONING OF THE FORMER
GREENWOOD PRIMARY SCHOOL – [02419J]**

CLOSURE

**JSC1-03/99 AMENDMENT NO. 833 - PROPOSED REZONING OF
THE FORMER GREENWOOD PRIMARY SCHOOL -
[02419J]**

SUMMARY

The Joint Commissioners at their meeting of 27 October 1998 (CJ213-10/98 refers) considered the close of advertising of Amendment No. 833 to rezone the former Greenwood Primary School to Residential R20. The proposal to cancel the reserves adjoining the school site and to exchange this land for an equal portion of land within the school site was also considered at this meeting. After consideration of the submissions following advertising, the Joint Commissioners resolved not to cancel the adjoining reserves and to modify Amendment 833 to rezone only the former Greenwood Primary School site to Residential R20.

The Western Australian Planning Commission (WAPC) considered the matter and has now instructed the City to, inter alia, include the northern and southern Crown Reserves adjoining the school site within the Residential zoning and in exchange for these reserves to rezone 5216 m² in the north-east corner of the former school site as a Local Reserve for Parks and Recreation.

The Department of Land Administration (DOLA) has advised that it is currently proceeding with the land exchange. Accordingly it is recommended that Amendment 833 be modified.

BACKGROUND

The Joint Commissioners at their meeting of 14 July 1998 (CJ17-07/98 refers) considered a proposal from Richard Pawluk and Associates on behalf of the Greenwood Primary School Venture who own the former school site, to rezone this site from a Local Scheme Reserve for Primary School to Residential R20 and a Local Reserve for Parks and Recreation and the adjoining portions of Reserves 30958 and 31016 from Local Reserve for Parks and Recreation to Residential R20. This proposal included cancellation of the relevant portions of the adjoining reserves and to exchange these Reserves for an equal portion of land within the former school site.

The Joint Commissioners, resolved “*that in pursuance of Section 7 of the Town Planning and Development Act 1928, amend Town Planning Scheme No. 1 to rezone Swan Loc 8809 (former Reserve 31790 Greenwood Primary School), and portions of Reserves 30958 and 31016 from Local Reserve - Public Use to Residential R20 and Local Reserve (POS) and adopt Amendment 833 accordingly.*”

The amendment proposal was advertised for a period of 42 days inviting public comments. After an extensive public consultation process, the Joint Commissioners reconsidered the proposal in detail with reference to the public submissions received and resolved that they,

1 do NOT SUPPORT the cancellation of Reserves 31016 and 30958 adjoining the boundary of the former Greenwood Primary School site;

- 2 *advise the Western Australian Planning Commission (WAPC) that the City does NOT SUPPORT the current subdivision application submitted by Richard Pawluk and Associates on behalf of the Greenwood Primary School Joint Venture, but that it would be prepared to support a modified application that includes the following modifications:*
- (a) *deletion of all the proposed lots indicated within the existing recreation reserves abutting the site;*
 - (b) *roads being provided abutting the boundary of the site (within the site) as an interface between the existing recreation reserves and the proposed development;*
 - (c) *provision of a 10% POS land contribution adjoining Blackall Reserve (or in such other location as determined to the satisfaction of the Manager Parks Landscaping Services) to maximise opportunity for the retention of significant vegetation within the area;*
 - (d) *standard conditions of subdivision.*
- 3 *pursuant to Town Planning Regulation 17(2) modify and adopt Amendment 833 to Town Planning Scheme No 1 to rezone Swan Location 8809 (former Reserve 31790 Greenwood Primary School) to Residential;*
- 4 *following advice that the Minister for Planning is prepared to finally approve the amendment, authorise the affixation of the common seal to, and endorse the signing of, the amendment documents.*

This matter was again referred to the Meeting of the Joint Commissioners held on 9 March 1999 where it was resolved to:

- “1 *NOTE the Minutes of the Special Electors’ meeting held on Monday 8 March 1999 forming Appendix VI hereto regarding the cancellation of a portion of Parks and Recreation – Local Reserve adjoining the former Greenwood Primary School Site and associated Ministerial decision;*
- 2 *DEFER consideration of Item CJ62-03/99 – Amendment 833 Proposed Rezoning of the former Greenwood Primary School until further legal advice is obtained and the outcome of a proposed deputation to the Minister is known;*
- 3 *CONVENE a Special Meeting of the Joint Commissioners of the City of Joondalup on Tuesday 16 March 1999 at 5.00 pm.”*

DETAILS

Correspondence was received on 4 February 1999 from the WAPC advising that the Hon Minister for Planning dismissed the submissions opposing the Amendment and upheld the submissions supporting the Amendment. Pursuant to Section 21(2) of the Town Planning Regulations (1967), the Minister has decided not to approve the Amendment until such time it has been modified to include portions of the northern and southern Crown Reserves (1429.8

m² and 3786.2 m² respectively = 5216 m² -Attachment 1) within the Residential R20 zoning and 5216 m² of land in the north-east corner as Parks and Recreation - Local Reserves.

The WAPC considers that this modification will maintain adequate pedestrian/cyclists access to the shopping and other facilities within the locality and can enable conservation of most of the significant trees.

COMMENT

The instructions received from the WAPC are consistent with the recent advice the City has received from DOLA indicating that it has decided to cancel portions of Reserves 31016 and 30958 in exchange for the north-east corner of the former school site. In this regard DOLA further advised that the relevant plan has now been lodged and the exchange is in the process of being dealt on.

The Joint Commissioners previously resolved not support the proposed cancellation of the Reserves adjoining the boundary to the north and south of the former school site. However, now that the Hon Minister for Planning has resolved not to approve the Amendment unless these Reserves are included with the subject site, the City has no alternative but to accept the Minister's 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 and to determine what action, if any, the City can now take.

Council's solicitor has confirmed the following:

- The Town Planning Regulations 1967 make it quite clear that a local government generally does not have control over a scheme amendment process and that once directed by the Minister to make certain changes to an amendment, the local government cannot refuse.
- Under regulation 21(2) of the Regulations, a local government is required as a matter of law, to comply with such modifications and to forward three copies of the modified amendment to the WAPC within 42 days of being notified.
- Section 18A of the Town Planning and Development Act 1928 provides that if a local government does not comply with the Minister's order to proceed with an amendment, then it allows the Minister himself to complete such an amendment.
- An example was cited of a metropolitan local government that has been sued in an action for negligence and breach of statutory duty by developers who have claimed that the local government delayed in progressing an amendment following the Minister's direction.
- So far as the Minister for Lands is concerned, it is open for the Minister to cancel the management order for the reserves in question and pursuant to Section 51 of the Land Administration Act cancel the reserve status and ultimately dispose of the land.

On this basis it is recommended that Amendment 833 be modified accordingly.

Special Electors Meeting

SUMMARY

Following receipt of a petition on 12 February 1999, a Special Meeting of Electors was held on Monday 8 March 1999, in accordance with Section 5.28 of the Local Government Act 1995, to discuss the cancellation of a portion of Parks and Recreation – Local Reserve adjoining the former Greenwood Primary School Site and associated Ministerial decision.

DETAIL

Following a period of question and comment time, the following motion was put at the Special Meeting of Electors:

“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”

Section 5.33 of the Local Government Act 1995 requires any decisions made at a Special Electors’ meeting to be considered, where practicable, at the next Ordinary Meeting of the Council or at a Special meeting of the Council called for that purpose.

COMMENT

Following the Electors Meeting, further legal advice was sought from the City's solicitors and the Stop the Swap Committee advised the City who their legal advisor is. Both parties were to confer regarding the legality of the decision of Minister for Lands and Minister for Planning.

In accordance with Town Planning Regulation 21, subsection 2, a response to the Minister's request is required in 42 days of being notified that a modification to the Scheme Amendment is required. The Minister's letter was received on 4 February 1999.

The Council has remained in contact with the Hon Cheryl Edwardes, MLA, Member for Kingsley regarding her offer to see a deputation to meet with the Minister.

RECOMMENDATION

That the Joint Commissioners:

- 1 NOTE the concerns of the local community and the Minister for Planning's decision requiring modifications to be made to Amendment 833;**
- 2 pursuant to Town Planning Regulation 21(2) MODIFY and ADOPT Amendment 833 to Town Planning Scheme No 1 to rezone Swan Location 8809 (former Reserve 31790 Greenwood Primary School) and portions of Reserve 31016;**
- 3 30958 adjoining the immediate northern and southern boundaries of the former Greenwood Primary School site from Public Use - Primary School and Parks and Recreation - Local Reserves to Residential R20 Zone and Parks and Recreation - Local Reserves.**