

CITY OF JOONDALUP

MINUTES OF SPECIAL MEETING OF JOINT COMMISSIONERS HELD IN COUNCIL CHAMBER, JOONDALUP CIVIC CENTRE, BOAS AVENUE, JOONDALUP ON TUESDAY, 16 MARCH 1999

ATTENDANCES AND APOLOGIES

Commissioners:

C T ANSELL	Chairman
H MORGAN, AM	Deputy Chairman
M CLARK-MURPHY	
W BUCKLEY	
R ROWELL	

Officers:

Chief Executive Officer:	L DELAHAUNTY
Director, Resource Management:	J B TURKINGTON
Director, Development Services:	C HIGHAM
Manager, Executive Services:	K ROBINSON
Manager, Council Support Services:	M SMITH
Manager, Urban Design Services:	D BUTCHER
Manager, Development Management Services:	R ZAGWOCKI
Publicity Officer:	L BRENNAN
Minute Clerk:	L TAYLOR

APOLOGIES AND LEAVE OF ABSENCE

Nil

There were 18 members of the Public in attendance.

The Chairman declared the meeting open at 1715 hrs.

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).

The following questions were submitted by Mr Steve Magyar of Heathridge in relation to Amendment 833 to the Town Planning Scheme.

Q1 What is the current status of the part of Reserve 31016 Greenwood that adjoins the rear of the residence of Pullan Place?

(a) is it still subject to a Management Order placing it in the care of the City of Joondalup? If not, when was the Order revoked? If the Order has been revoked, has the City been informed as the reason for the revocation?

(b) if the Management Order has been revoked, is the land still Crown land or has it been transferred?

Q2 If the Management Order has been revoked, then under which sub-section of Section 50 of the Land Administration Act 1997 was the Order revoked?

A1 & 2 The City has not received any official advice from either the Department of Land Administration (DOLA) or the Minister for Lands concerning the management order in relation to Reserve 31016. It is therefore not aware of the current status of this order.

Q3 Has the Council received any correspondence from the Department of Land Administration or from the Minister for Lands informing the Council that the Minister for Lands has decided under Section 51 of the Land Administration Act 1997 to cancel part of Reserve 31016 Greenwood?

A3 The City has not received any correspondence in relation to this question. The Council has received advice from the applicant that the land transfer has been undertaken, but no confirmation has been received of this.

Q4 Is the meeting of 16 March 1999 called under section 5.33(b) of the Local Government Act?

A4 Yes.

Mrs Sue Hart, Mamo Place, Greenwood:

Mrs Hart referred to details of the joint venture purchase of the Greenwood Primary School and felt the purchasers were fully aware of what they had purchased.

Mrs Hart advised the rule followed by the Stop the Swap Committee in attempting to win its case at local government level was disposal of 20A reserves. She referred to Report CJ25-07/98 which stated “*where small reserves are of no practical value and their disposal*

will not disadvantage the local community. The Crown will allow these reserves to be sold at a price determined by the Minister for Lands. Before approval to dispose of the land is given, Council must satisfy the Minister that the proposal has been widely publicised within the locality and is not objected to.”

Mrs Hart read from the Particulars, Conditions and Agreement for Sale document relating to the former Greenwood Primary School – Warranties and Representations Negated.

Mr Steve Magyar of Heathridge:

Q1 I believe that Council has three choices:

- (a) agree with the Minister for Planning and change its resolution of October last year, that is give the park at the back of Pullan Place to the developer, against the wishes of the overwhelming majority of concerned residents of Greenwood.*
- (b) disagree with the Minister and reject Amendment No 833 totally, risking legal action from the developer.*
- (c) disagree with the Minister and only support Amendment No 833 as far as the old school site itself, leaving the recreation reserves in public ownership.*

If Council was to support option (c) would not the Council be safe from legal action from the developer as the developer’s rights must surely only run on his property?

Can this meeting be informed of what action the Minister for Planning can take if Council was to support Option (b) or (c)?

A1 Response by Cmr Buckley: Cmr Buckley advised Commissioners had received a series of advice, culminating in advice as late as this afternoon, to the affect that Commisioners’ function with respect to the Minister’s direction to sign the rezoning documentation is purely a functionary task. If this is not done, the Minister can direct Commissioners to sign and if no response is given to this direction, the Minister is able to sign any rezoning documents. Commissioners are in a position of being asked to affix a signature to the documents as a formality. Should Commissioners refuse with regard to Point (b) or (c) raised by Mr Magyar, Commissioners’ advice is that the Council is left open to possible legal action by the land developers.

Q2 Have the Commissioners had any advice from local members of Parliament on this issue? If so, can the Commissioners reveal what that advice was?

A2 Response by Cmr Ansell: As late as this afternoon, I had discussions with Cheryl Edwardes regarding this matter. According to legal advice received, Commissioners would be placing the Council in a difficult position should they refuse to accept.

Q3 In relation to the recreation reserves at the rear of Pullan Place, the Department of Land Administration Guidelines for the administration of Section 20A “Public Recreation” reserves, states under section 3, Moral Considerations:

“the subdivider of the land would be justified in expectations that the reserve would be used for the purpose for which it was taken” and

“purchasers or users of subdivided blocks are frequently influenced in their decisions to acquire land and build by the existence of such reserves and expectations that these reserves will remain”.

Are the Commissioners satisfied that the processes to date have properly heeded these moral considerations?

A3 Response by Cmr Ansell: The answer Mr Magyar, is no.

Mr Bob Foston, Mamo Place, Greenwood:

Mr Foston stated the former Greenwood Primary School site was sold by public auction on 4 April 1998, and that the purchaser’s entitlement at that point was for the area of the school only. He put the question “who raised the issue of the land swap, the Council or the developer?”

He raised his concerns in relation to:

- the areas of land being considered for “swap”;
- land to be used for public open space;
- cash in lieu considerations for public open space;

Mr Foston made reference to a letter from Mr Kierath’s office which was read out at the Special Electors meeting held on 8 March 1999 which was subsequently publicised in the Wanneroo Times. It was the opinion of Mr Foston that this was the only opportunity the community had had to look at the comments made and raised a number of concerns in relation to those comments.

Response by Cmr Ansell: Cmr Ansell advised he felt Mr Foston’s comments related to the future, as at this time no development application had been received from the developer. As such, it is not known what percentage of public open space can be expected from the developer.

Mrs Sue Hart, Mamo Place, Greenwood:

Mrs Hart read from the Town Planning Regulations 1967, Section 6 25 aa.

Mr Don Adamson, Greenwood:

Mr Adamson felt the comment “all Commissioners were required to do was rubber stamp the documents” was incorrect.

Response by Cmr Buckley: Cmr Buckley commented she had recounted the legal advice received. She advised it was her understanding that the regulations referred to by Mrs Hart did not relate to the rezoning application before Commissioners this evening.

Cmr Buckley reiterated her earlier comments that the role of the Commissioners was to act in response to the request from the Minister. In the event that Commissioners refused to act in accordance with the Minister's request, the Minister was able to take action in any case and that by refusing to act, left the Council open to legal action by the developer.

Response by Mr Adamson: Mr Adamson advised representatives of the Stop the Swap Committee had been attempting to arrange a meeting with Mr Kierath. Mr Adamson referred to certain irregularities within the letter received from Mr Kierath's office.

AMENDMENT TO STANDING ORDERS

Cmr Ansell requested that Standing Orders be amended to permit consideration of Item JSC1-03/99.

MOVED Cmr Morgan, SECONDED Cmr Buckley that Clause 3.2 of the Standing Orders – Order of Business be amended to allow a period of public question time following consideration of Item JSC1-03/99 at this point.

The Motion was Put and

CARRIED

DECLARATIONS OF FINANCIAL INTEREST

Nil

**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.

OFFICER'S 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 and 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.

MOVED Cmr Rowell, SECONDED Cmr Morgan that the Joint Commissioners:

- 1 in relation to the resolutions carried at the Electors Meeting held 8 March 1999 provide the following response:

- (a) Legal advice has been obtained on matters raised at the meeting, the advice is that on the information available there may be an arguable case to start proceedings but that the chances of success are small;
- (b) The Council will seek to discuss the matter of the land swap and rezoning with the relevant Ministers as soon as possible but in light of the advice that any proceedings have only a small chance of success, will not be informing the Minister for Lands not to proceed with the land swap;
- (c) In light of the legal advice received, the Joint Commissioners are of the view that legal action would not further the interests of electors, ratepayers and residents in either the district of Greenwood or of the City of Joondalup. The Joint Commissioners will work with the residents of Greenwood by seeking to discuss the matters of the land swap and the rezoning with the relevant Ministers;
- (d) The legal representative of the Stop the Swap Committee has had access to the Council's solicitors regarding the legal issue on this matter;
- (e) The Joint Commissioners intend to raise this matter in their discussions with the Minister for Planning;
- (f) The Joint Commissioners intend to discuss the necessity for an open and transparent planning approval process with the Minister at the meeting detailed in recommendation 4 below;

- 2 NOTE the concerns of the local community and the Minister for Planning's decision requiring modifications to be made to Amendment 833;

- 3 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 and 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 Zone and Parks and Recreation – Local Reserves;

4 SEEK a meeting with the relevant Ministers as soon as possible to discuss the matter of the land swap and rezoning.

Cmr Buckley advised there were two aspects to the matter as it currently stood. The first being the signing of the rezoning documentation which is being dealt with this evening. Secondly, the actions of the Minister for Lands with respect to the exchange or the swap of land.

She pointed out the advice to Commissioners (after liaison with the solicitor acting on behalf of the Stop the Swap Committee) had been that there are matters which could be raised, but similarly with respect to that matter, those matters have little chance of success. If we refuse to sign, the Council is left open to legal action. With respect to the exchange of land, there is nothing further for Council to do. This is solely in the hands of the Minister for Lands and Department of Land Administration.

Cmr Ansell advised that Cheryl Edwardes had forwarded a letter to Mr Kierath requesting a meeting at the earliest possible convenience. Mr Kierath had indicated that he was not prepared to deal with this issue until such time as this evening's meeting had been held.

The Motion was Put and

CARRIED

PUBLIC QUESTION TIME

Mr Bob Foston, Mamo Place, Greenwood

Mr Foston referred to Point 3 of the Motion regarding Reserve 30958 adjoining the immediate northern and southern boundaries of the former Greenwood Primary School. He felt this should read "the western and southern boundaries"?

Response by Manager, Development Management Services: Manager, Development Management Services advised that this was not correct. He pointed out there was a portion of Reserve 30958 that predominantly abutts the western boundary of the school site, but in terms of the Minister's decision to rezone the northern and southern reserves, there is a portion of Reserve 30958 that does abutt the southern boundary of the school site.

Response by Cmr Ansell: Cmr Ansell invited Mr Foston to view the plan at the conclusion of the meeting.

Response by Cmr Rowell: Cmr Rowell advised the western reserve goes the whole length from the north to the south and therefore if the Minister is approving the southern area, it actually extends and incorporates the southern area of Reserve 30958.

Mr Peter Clark, Pullan Place, Greenwood

Q1 Has the Minister been made aware of the recommendation that the reserve behind Pullan Place should include an interfacing road?

A1 Response by Cmr Ansell: I believe the Minister has been made aware of this.

Q2 Referring to the swap of 5,600sqm of land, is this square metre for square metre or is there a dollar value on the land in question?

A2 *Response by Cmr Ansell:* I understand a valuation has been carried out on the land that is equal. To date, this information has not been received from the Minister of Lands.

Mr Steve Magyar, Heathridge:

I feel the question as to the actions of the Minister for Lands has still not been answered. The Minister for Lands can only revoke the management order under Section 50 if Council has agreed. In this instance, Commissioners have not agreed to revoke the management order, despite the rezoning.

Response by Cmr Buckley: Cmr Buckley pointed out that on advice received, the Minister was able to act under Section 50, subsection 2 of the Act if he considered it to be in the public interest to revoke a management order without the agreement of the management body. In other words, the Minister was able to act without the agreement of Council under a different section of the act.

Cmr Buckley advised that it was not known at this stage under what provision the Minister had purported to act.

Mrs A Hine, Wanneroo:

Q1 *Is there a full chronology from the commencement of the sale of the school site, including all reserves and other areas of land in question on record with this Council?*

Q2 *Were the areas of land offered to the public as being of sale value?*

Q3 *Was a value ever obtained from the Department of Land Administration?*

Q4 *Was there an agreement completed prior to the sale of the school site, or after the sale to purchase or swap a portion of the reserve land with Department of Land Administration or Council?*

Who made all these proposals?

Response by Cmr Ansell: No, there is not a complete chronology. There is only a complete chronology since the appointment of Commissioners. Any transactions that may have occurred prior to this, of which I am not aware, took place prior to the appointment of Commissioners. The land in question was freehold land; sold by the Education Department. It did not belong to Council.

Q5 *Would Commissioners or the Chief Executive Officer request a full chronology from the outset of this issue.*

Mrs Sue Hart, Mamo Place, Greenwood:

Mrs Hart advised if it was the intention of Commissioners to request a full chronology history on this issue she had in her possession papers relating to the meeting Greenwood residents had with Mr Passione.

CLOSURE

There being no further business, the Chairman declared the Meeting closed at 1802 hrs, the following Commissioners being present at that time:

COMMISSIONERS: ANSELL
MORGAN
ROWELL
CLARK-MURPHY
BUCKLEY