

# DRAFT AGENDA

## Briefing Session City of Joondalup

**A BRIEFING SESSION**  
WILL BE HELD IN CONFERENCE ROOM 1, JOONDALUP CIVIC CENTRE,  
BOAS AVENUE, JOONDALUP

MEETING DATE



to be held on  
**TUESDAY, 12 JUNE 2007**

PUBLIC QUESTION TIME



### Public Question Time

Members of the public are requested to lodge questions in writing by close of business on Monday, 11 June 2007. Answers to those questions received within that timeframe will, where practicable, be provided in hard copy form at the Briefing Session.



**GARRY HUNT**  
Chief Executive Officer  
8 June 2007



City of  
Joondalup

[www.joondalup.wa.gov.au](http://www.joondalup.wa.gov.au)

## **PROTOCOLS FOR BRIEFING SESSIONS**

The following protocols for the conduct of Briefing Sessions were adopted at the Council meeting held on 9 August 2005.

### **INTRODUCTION**

The modern role of the Elected Council is to set policy and strategy, and provide goals and targets for the local government (City of Joondalup). The employees, through the Chief Executive Officer, have the task of implementing the decisions of the Elected Council.

A well-structured decision-making process that has established protocols will provide the elected body with the opportunity to:

- have input into the future strategic direction set by the Council;
- seek points of clarification;
- ask questions;
- be given adequate time to research issues;
- be given maximum time to debate matters before the Council;

and ensure that the elected body is fully informed to make the best possible decision for all the residents of the City of Joondalup.

### **PURPOSE OF BRIEFING SESSIONS**

Briefing Sessions will involve Elected Members, staff, and external advisors (where appropriate) and will be open to the public.

Briefing Sessions will provide the opportunity for Elected Members to be equally informed and seek additional information on matters prior to the presentation of such matters to the next ordinary meeting of Council for formal consideration and decision.

### **Protocols for Briefing Sessions**

The following protocols will apply to Briefing Sessions that are conducted by the City of Joondalup.

- 1 Briefing Sessions will be open to the public except for matters that relate to a confidential nature. The guide in determining those matters of a confidential nature shall be in accordance with the Local Government Act 1995.
- 2 Dates and times for Briefing Sessions will be set well in advance where practicable, and appropriate notice given to the public.
- 3 The Chief Executive Officer will ensure timely written notice and an agenda for each Briefing Session will be provided to all Elected Members, Members of the public and external advisors (where appropriate).

- 4 The Mayor is to be the Presiding Member at Briefing Sessions. If the Mayor is unable or unwilling to assume the role of Presiding Member, then the Deputy Mayor may preside at the Briefing Session. If the Deputy Mayor is unable or unwilling, those Elected Members present may select one from amongst themselves to preside at the Briefing Session.
- 5 The Presiding Member at the commencement of each Briefing Session shall:
  - (a) Advise Elected Members that there will be no debate on any matters raised during the Sessions;
  - (b) Ensure that the relevant employee, through liaising with the Chief Executive Officer, provides a detailed presentation on matters listed on the agenda for the Session;
  - (c) Encourage all Elected Members present to participate in the sharing and gathering of information;
  - (d) Ensure that all Elected Members have a fair and equal opportunity to participate in the Session; and
  - (e) Ensure the time available for the Session is liberal enough to allow for all matters of relevance to be identified;
- 6 Elected Members, employees and relevant consultants shall disclose their interests on any matter listed for the Briefing Sessions. When disclosing an interest the following should be considered:
  - (a) Interests are to be disclosed in accordance with the provisions of the Local Government Act 1995 and the City's Code of Conduct;
  - (b) Persons disclosing a financial interest will not participate in that part of the Session relating to the matter to which their interest applies and shall depart the room;
  - (c) An exception shall be applied to the disclosing of interests by consultants where the consultant will be providing information only, and will be able to remain in the Session;
  - (d) As matters raised at a Briefing Session are not completely predictable, there is some flexibility in the disclosures of interests. A person may disclose an interest at such time as an issue is raised that is not specifically listed on the agenda for the Session.
- 7 Elected Members have the opportunity to request matters to be included on the agenda for consideration at a future Briefing Session by:
  - (a) A request to the Chief Executive Officer; or
  - (b) A request made during the Briefing Session.
- 8 A record shall be kept of all Briefing Sessions. As no decisions are made at a Briefing Session, the record need only be a general record of the items covered but shall record any disclosure of interests as declared by individuals. A copy of the record is to be forwarded to all elected members.

- 9 Members of the public may make a deputation to a Briefing Session by making a written request to the Mayor by 4pm on the working day immediately prior to the scheduled Briefing Session. Deputations must relate to matters listed on the agenda of the Briefing Session.
- 10 Other requirements for deputations are to be in accordance with the Standing Orders Local Law where it refers to the management of deputations.

## **PUBLIC QUESTION TIME**

The following protocols for the conduct of Public Question Time were adopted at the Council meeting held on 11 October 2005

Members of the public are invited to ask questions, either verbally or in writing, at Briefing Sessions.

The Council encourages members of the public, where possible, to submit their questions at the earliest opportunity.

Public question time will be limited to the legislative minimum of fifteen (15) minutes and may be extended in intervals of up to ten (10) minutes by resolution of the Council, but the total time allocated for public questions to be asked and responses to be given is not to exceed thirty five (35) minutes in total.

## **PROCEDURE FOR PUBLIC QUESTION TIME**

Members of the public are invited to ask questions, either verbally or in writing, at Briefing Sessions. Questions asked at a Briefing Session must relate to a matter contained on the draft agenda.

- 1 A register will be provided for those persons wanting to ask questions to enter their name. Persons will be requested to come forward in the order in which they are registered, and to give their name and address.
- 2 Each member of the public wanting to ask questions will be encouraged to provide a written form of their question(s) to the Chief Executive Officer (CEO) or designated City employee.
- 3 Public question time will be limited to two (2) minutes per member of the public, with a limit of two (2) questions per member of the public.
- 4 Statements are not to precede the asking of a question during public question time. Statements should be made during public statement time.
- 5 Members of the public are encouraged to keep their questions brief to enable everyone who desires to ask a question to have the opportunity to do so.

- 6 Where the number of required questions exceeds the number able to be asked, the member of the public may submit the unasked questions to the Council, where they would be 'taken on notice' and a written response provided.
- 7 Public question time is declared closed following the expiration of the allocated time period, or earlier than such time where there are no further questions.
- 8 To enable prompt and detailed responses to questions, members of the public are encouraged to lodge questions in writing to the CEO by close of business on the working day immediately prior to the scheduled Briefing Session.  
  
Responses to those questions received within the above timeframe will, where practicable, be provided in hard copy at the meeting.
- 9 The Mayor or presiding member shall decide to:
  - Accept or reject the question and his/her decision is final;
  - Nominate a member of the Council and/or City employee to respond to the question;
  - Due to the complexity of the question, require that it be taken on notice with a written response provided as soon as possible, and included in the agenda of the next briefing session.
- 10 Questions are to be directed to the presiding member and should be asked politely in good faith and are not to be framed in such a way as to reflect adversely or be defamatory on a particular Elected Member or City employee.
- 11 Where a response has been provided to a question asked by a member of the public, and where that response, in the opinion of the presiding person, adequately deals with the question, there is no obligation to further justify the response.
- 12 Where an elected member is of the opinion that a member of the public is:
  - asking a question at a Briefing session, that is not relevant to a matter listed on the draft agenda, or;
  - making a statement during public question time;they may bring it to the attention of the meeting.
- 13 Questions and any response will be summarised and included in the notes of the Briefing Session.
- 14 It is not intended that question time should be used as a means to obtain information that would not be made available if it was sought from the City's records under Section 5.94 of the Local Government Act 1995 or the Freedom of Information (FOI) Act 1992. Where the response to a question(s) would require a substantial commitment of the City's resources, the Chief Executive Officer (CEO) will determine that it is an unreasonable impost upon the City and refuse to provide it. The CEO will advise the member of the public that the information may be sought in accordance with the FOI Act 1992.

## **PUBLIC STATEMENT TIME**

The following protocols for the conduct of Public Statement Time were adopted at the Council meeting held on 11 October 2005

Members of the public are invited to make statements, either verbally or in writing, at Briefing Sessions of the City.

Public statement time will be limited to a maximum of fifteen (15) minutes. Individual statements are not to exceed two (2) minutes per member of the public.

### **PROCEDURE FOR PUBLIC STATEMENT TIME**

Members of the public are invited to make statements, either verbally or in writing, at Briefing Sessions. Statements made at a Briefing Session must relate to a matter contained on the draft agenda.

- 1 A register will be provided for those persons wanting to make a statement to enter their name. Persons will be requested to come forward in the order in which they are registered, and to give their name and address.
- 2 Public statement time will be limited to two (2) minutes per member of the public.
- 3 Members of the public are encouraged to keep their statements brief to enable everyone who desires to make a statement to have the opportunity to do so.
- 4 Public statement time is declared closed following the expiration of the allocated time period, or earlier than such time where there are no further statements.
- 5 Statements are to be directed to the Presiding Member and are to be made politely in good faith and are not to be framed in such a way as to reflect adversely or be defamatory on a particular Elected Member or City employee.
- 6 Where an elected member is of the opinion that a member of the public is making a statement at a Briefing session, that is not relevant to a matter listed on the draft agenda, they may bring it to the attention of the meeting.
- 7 Statements will be summarised and included in the notes of the Briefing Session.
- 8 It is not intended that public statement time should be used as a means to obtain information that would not be made available if it was sought from the City's records under Section 5.94 of the Local Government Act 1995 or the Freedom of Information (FOI) Act 1992. The CEO will advise the member of the public that the information may be sought in accordance with the FOI Act 1992.

## **DISCLAIMER**

Responses to questions not put in writing are provided in good faith and as such, should not be relied upon as being either complete or comprehensive.

## DEPUTATION SESSIONS

Council will conduct an informal session on the same day as the Briefing Session in Conference Room 1, Joondalup Civic Centre, Boas Avenue, Joondalup, commencing at 6.30 pm where members of the public may present deputations by appointment only. (Please note that deputation requests are to be received by no later than 4.00 pm on the Monday prior to a Briefing Session.)

A time period of fifteen (15) minutes is set-aside for each deputation, with five (5) minutes for Elected members' questions. Deputation sessions are open to the public.

\* *Any queries on the agenda, please contact Council Support Services on 9400 4369*

## CITY OF JOONDALUP – BRIEFING SESSION

to be held in Conference Room 1, Joondalup Civic Centre, Boas Avenue, Joondalup on **TUESDAY, 12 JUNE 2007** commencing at **6.30 pm**

### ORDER OF BUSINESS

#### **1 OPEN AND WELCOME**

#### **2 DEPUTATIONS**

#### **3 PUBLIC QUESTION TIME**

The following questions were raised verbally at the Briefing Session on 15 May 2007:

**Mrs T Everitt, Kallaroo:**

*Re: Item 14 – Proposed child care centre at Bridgewater Drive, Kallaroo*

Q1 *Can the Council explain how the process can be described as fair to all parties as this is the second time local residents only got 1-2 business days notice on time session held?*

A1 *Response by Mayor:* This is a direction from SAT for the application to be considered. The City has to adhere to it. The SAT also ruled that it did not need to be advertised publicly for comment.

Q2 *There are a limited number of parking bays – how will the Council ensure that cars do not park on the verges or nearby cul-de-sac?*

A2 It is SAT who makes the direction as to what has to happen. Patrols occur periodically and the City will rely on community reporting any deviation from what is allowed.

**Mr M Caiacob, Mullaloo:**

Q1 *With 76 children and 8 staff – will there be any commercial deliveries to this site?*

A1 The City is not aware of any special arrangements for commercial vehicles – if there were they would probably be in small amounts and would use the parking bays provided.

Q2 *Are the opening hours from 7.00 a.m. to 6 pm and would deliveries be made outside of this?*

A2 Operating hours are the ones presented to the City on the application.

**Mrs M Zakrevsky, Mullaloo:**

- Q1 *Regarding Item 8 – List of Payments made during the month of March – refer Appendix 6, stamped white page 105, Payment 10922 – What services did Cr Marie Evans provide for an amount of \$50? Please clarify what the March \$50 allowance is for, and also for the \$783.33 payment 10480 on 28 February 2007?*
- A1 The resignation of Cr Evans was after December – the final payment is recoup of expenses for the period up to the date she resigned.
- Q2 *No cheques were issued to the City's contractors, Turfmaster and Geoff's Tree Services. Was this because these contractors undertook no work for the City during March? What is the reason for this in view of the total of \$277,347.87 for the 3 months of December to February to Turfmaster and \$120,104.49 to Geoff's Tree Services?*
- A2 An amount of \$14,972.25 (inc GST) was paid to Geoff's Tree Service on 16 March 2007.

The following payments were made in April:

30 April 2007	Geoff's Tree Service Pty Ltd	\$69,132.98 (inc GST)
31 March 2007	Turfmaster Facility Management	\$31,026.04 (inc GST)

**Mrs F Manners, Kallaroo:**

- Q1 *I am concerned regarding the removal of the condition requiring a 2m high masonry fence along entire boundary of my fence. Where has the fence gone.*
- A1 As a result of work done by acoustic experts the wall was considered not necessary from a technical point of view. Advice provided to the mediation of SAT has indicated that that high wall is not necessary on information presented.
- Q2 *External consultants were appointed to act on behalf of Council. Considering the mediation was private, how were the consultants briefed and who attended the mediation?*
- A2 Consultant was briefed on background which led to the Council's decision; this was necessary because of original report conflict with Council's view. Senior Planning Officers attended the Mediation.

**Mr V Ford, Kallaroo:**

- Q1 *If there was a private contractor dealing with the noise level – is there a report and if so were is it recorded?*
- A1 It has been provided in the Councillors Reading Room.
- Q2 *The entrance to the proposed child care centre is on a bend in the road and is dangerous. Has Council viewed the area and how do you propose to deal with the increased traffic?*

A2 *Response by Mayor Pickard:* Yes I have been on site.

*Response by the City:* Traffic report was prepared and is also in the Councillors Reading Room. Extracts of the acoustic and traffic reports will be included as an attachment to the report or in the report.

**Mr M Marques, Kallaroo:**

*Re: Item 14 – Proposed child care centre at Bridgewater Drive, Kallaroo*

Q1 *There are currently four childcare centres within 3km of the proposed childcare centre. These have vacancies – do we need another one in the area?*

A1 This is not considered a planning matter and is not taken into consideration in a planning application. It has a commercial implication and Council could not take on board oversupply or undersupply of centres.

Q2 *The proposed centre backs on to 4 Shelley Place where an elderly lady of 85 years of age lives – has anyone spoken to this lady or anyone approached her? She is very concerned about her health.*

A2 The City is sure Mrs Manners has spoken to her. It is suggested that you liaise with the Director, Planning and Community Development to arrange for an officer to go and talk to the lady.

## **4 PUBLIC STATEMENT TIME**

**The following statements were raised verbally at the Briefing Session on 15 May 2007:**

**Mrs A Plummer, Kallaroo:**

Mrs Plummer spoke against the proposed childcare centre in Bridgewater Drive, Kallaroo.

**Mrs D Piovesan, Iluka:**

Mrs Piovesan spoke in favour of the proposed childcare centre in Bridgewater Drive, Kallaroo.

**Mrs Colleen Burger, Kingsley:**

Mrs Burger spoke in support of the childcare centre in Bridgewater Drive, Kallaroo.

**Mrs C Hedley, Carramar:**

Mrs Hedley spoke in favour of the application for the childcare centre in Bridgewater Drive, Kallaroo.

**Mr M Caiacob, Mullaloo:**

Mr Caiacob spoke against the proposed childcare centre in Bridgewater Drive, Kallaroo.

**Mr G Radich, Kallaroo:**

Mr Radich spoke against the proposed childcare centre in Bridgewater Drive, Kallaroo.

**Mrs J Richards, Hillarys:**

Mrs Richards spoke in favour of the application for the childcare centre in Bridgewater Drive, Kallaroo.

**Mr B Scafidas:**

Spoke on behalf of the applicant for the childcare centre.

**Ms S Lowe:**

Ms Lowe spoke in favour of the application for the childcare centre in Bridgewater Drive, Kallaroo.

## **5 APOLOGIES AND LEAVE OF ABSENCE**

Cr S Hart	23 May 2007 to 23 June 2007 inclusive
Cr B Corr	10 August 2007 to 1 September 2007 inclusive

## **6 DECLARATIONS OF FINANCIAL INTEREST/INTEREST THAT MAY AFFECT IMPARTIALITY**

### **Disclosure of Financial Interests**

A declaration under this section requires that the nature of the interest must be disclosed. Consequently a member who has made a declaration must not preside, participate in, or be present during any discussion or decision-making procedure relating to the matter the subject of the declaration. An employee is required to disclose their financial interest and if required to do so by the Council must disclose the extent of the interest. Employees are required to disclose their financial interests where they are required to present verbal or written reports to the Council. Employees are able to continue to provide advice to the Council in the decision making process if they have disclosed their interest.

### **Disclosure of interest affecting impartiality**

Elected members and staff are required under the Code of Conduct, in addition to declaring any financial interest, to declare any interest that may affect their impartiality in considering a matter. This declaration does not restrict any right to participate in or be present during the decision-making process. The Elected member/employee is also encouraged to disclose the nature of the interest.

## 7 REPORTS

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## **8 REPORT OF THE CHIEF EXECUTIVE OFFICER**

## **9 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

## **10 REPORTS/PRESENTATIONS REQUESTED BY ELECTED MEMBERS**

### **LATE ITEMS / ADDITIONAL INFORMATION**

In the event that further documentation becomes available prior to this Briefing Session, the following hyperlink will become active:

[Additional Information 120607.pdf](#)

## **ITEM 1                    DOCUMENTS EXECUTED BY MEANS OF AFFIXING THE COMMON SEAL - [15876]**

**WARD:**                    All

**RESPONSIBLE  
DIRECTOR:**            Mr Garry Hunt  
                                 Office of CEO

### **PURPOSE**

To provide a listing of those documents recently executed by means of affixing the Common Seal for noting by the Council for the period 3 April 2007 to 15 May 2007.

### **EXECUTIVE SUMMARY**

The City of Joondalup enters various agreements by affixing its Common Seal. The Local Government Act 1995 states that the City is a body corporate with perpetual succession and a common seal. Those documents that are executed by affixing the Common Seal are reported to the Council for information on a regular basis.

### **BACKGROUND**

Not Applicable.

### **DETAILS**

<b>Document:</b>	<b>Deed of Caveat</b>
<b>Parties:</b>	City of Joondalup and Warwick Cinema Syndicate Pty Ltd
<b>Description:</b>	To ensure new trustee (Warwick Cinema Syndicate P/L) enters into the existing deed over property relating to reciprocal car parking – 639 Warwick Road
<b>Date:</b>	03.04.07

<b>Document:</b>	<b>Restrictive Covenant</b>
<b>Parties:</b>	City of Joondalup and Marmion Estate P/L
<b>Description:</b>	Restrictive covenant to restrict vehicular access for Lot 61 (No 14) Leach Street, Marmion (CSIRO subdivision) required in order to satisfy Condition 7 of the WAPCs subdivision approval
<b>Date:</b>	20.04.07

<b>Document:</b>	<b>Copyright – Local Studies Collection</b>
<b>Parties:</b>	City of Joondalup and Amanda MacFarlane
<b>Description:</b>	Registration of copyright consent of interview – 18 April 2007 for local studies collection
<b>Date:</b>	26.04.07

<b>Document:</b>	<b>Copyright – Local Studies Collection</b>
<b>Parties:</b>	City of Joondalup and Rosemary Welsh
<b>Description:</b>	Registration of copyright consent of interview for local studies collection
<b>Date:</b>	26.04.07

<b>Document:</b>	<b>Restrictive Covenant</b>
<b>Parties:</b>	City of Joondalup and J K and L C McQuade
<b>Description:</b>	Restrict access from Lot 1 and Lot 2 on Survey Strata Plan 52313 to Outlook Drive, Edgewater pursuant to Section 129 BA of the Transfer of Land Act 1893 Property Address: Lot 349 (46) Stillwater Way, Edgewater
<b>Date:</b>	09.05.07

<b>Document:</b>	<b>Withdrawal of Caveat</b>
<b>Parties:</b>	City of Joondalup and Westfield
<b>Description:</b>	Permanent withdrawal of caveat held over the land at Lot 6 (37) Endeavour Road, Hillarys by City of Joondalup with regard to a restrictive covenant no longer required, as per resolution of Council, 27 March 2007 – Item CJ052-03/07
<b>Date:</b>	15.05.07

**Issues and options considered:**

Not Applicable.

**Link to Strategic Plan:**

Some of the documents executed by affixing the common seal may have a link to the Strategic Plan on an individual basis.

**Legislation – Statutory Provisions:**

Sub-sections (2) and (3) of section 2.5 of the Local Government Act 1995 states:

- (2) The local government is a body corporate with perpetual succession and a common seal.
- (3) The local government has the legal capacity of a natural person.

**Risk Management considerations:**

Not Applicable.

**Financial/Budget Implications:**

Some of the documents executed by the City may have financial and budget implications.

**Policy Implications:**

Not Applicable.

**Regional Significance:**

Not Applicable.

**Sustainability Implications:**

Not Applicable.

**Consultation:**

Not Applicable.

**COMMENT**

The various documents have been executed by affixing the Common Seal of the City of Joondalup and are submitted to the Council for information.

**ATTACHMENTS**

Nil.

**VOTING REQUIREMENTS**

Simple Majority

**RECOMMENDATION**

**That the schedule of documents executed by means of affixing the common seal covering the period 3 April 2007 to 15 May 2007 be NOTED.**

## **ITEM 2                    REGISTRATION OF VOTING DELEGATES FOR THE WESTERN AUSTRALIAN LOCAL GOVERNMENT ASSOCIATION (WALGA) 2007 ANNUAL GENERAL MEETING – [00033]**

**WARD:**                    All

**RESPONSIBLE  
DIRECTOR:**            Mr Garry Hunt  
                                 Office of CEO

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### **PURPOSE**

For Council to endorse its voting delegates appointed to attend the Western Australian Local Government Association (WALGA) 2007 Annual General Meeting.

### **EXECUTIVE SUMMARY**

The 2007 WA Local Government Convention will be held at the Burswood Convention Centre from Saturday 4 August to Monday 6 August 2007. The statutory Annual General Meeting for the Association will be held on Sunday 5 August 2007. Member Councils having representatives attending the meeting and wanting to participate in voting in matters are required to register their voting delegates by Friday 6 July 2007.

### **BACKGROUND**

The Annual General Meeting of WALGA is traditionally held during the WA Local Government Convention (previously referred to as Local Government Week Conference) when the majority of local governments in the State have representatives attending.

### **DETAILS**

In order to participate in the voting on matters received at the Annual General Meeting, each member Council must register their voting delegates by Friday 6 July 2007. Part 22 of WALGA's Constitution states:

#### **“24     PRESENTATION AND VOTING AT GENERAL MEETINGS**

- (1) Subject to this Constitution, each Ordinary Member shall be entitled to be represented at any Annual General Meeting or Special General Meeting of the Association by two (2) delegates.*
- (2) A delegate shall be entitled to one (1) deliberative vote at the Annual General Meeting or Special General Meeting of the Association. Votes are to be exercised in person.*
- (3) A delegate unable to attend any Annual General Meeting or Special General Meeting shall be entitled to cast a vote by proxy. A proxy shall be in writing and shall nominate the person in whose favour the proxy is given which person need not be a delegate. Proxy authorisations shall be delivered to the Chief Executive Officer before the commencement of authorisations.*

*(4) Except as provided in this Constitution, all matters considered at an Annual General Meeting or Special General Meeting of the Association shall be passed by a simple majority of the Ordinary Members' delegates as, being entitled to do so, vote in person or by a duly authorised proxy vote exercised on their behalf.*

*(5) At any Annual General Meeting or Special General Meeting of the Association, greater than one half of the delegates who are eligible to vote must be present to form a quorum."*

The current City of Joondalup members of the WALGA – North Metropolitan Zone are:

Members	Deputies
Mayor Troy Pickard	Cr Sue Hart
Cr Richard Currie	Cr Michele John
Cr Steve Magyar	Cr Albert Jacob
Cr Tom McLean	Cr Kerry Hollywood

Mayor Troy Pickard currently serves as the North Metropolitan Zone representative on the State Council of WALGA.

**Issues and options considered:**

Not Applicable.

**Link to Strategic Plan:**

Outcome: The City of Joondalup is an interactive community.

Objective 4.3: To ensure the City responds to and communicates with the community.

Strategy 4.3.3: Provide fair and transparent decision-making processes.

**Legislation – Statutory Provisions:**

Not Applicable.

**Risk Management considerations:**

If the City of Joondalup does not submit its voting members, it will not be able to vote on the matters to be debated as part of the Annual General Meeting of WALGA.

**Financial/Budget Implications:**

Not Applicable.

**Policy implications:**

Not Applicable.

**Regional Significance:**

Matters considered at the 2007 WALGA Annual General Meeting relate to local government as an industry.

**Sustainability implications:**

Not Applicable.

**Consultation:**

Not Applicable.

**COMMENT**

The North Metropolitan Zone Committee of WALGA, consisting of the Cities of Joondalup, Stirling and Wanneroo, is the main link the City has in considering matters relating to WALGA activities.

**ATTACHMENTS**

Nil

**VOTING REQUIREMENTS**

Simple Majority

**RECOMMENDATION****That Council:**

- 1 ENDORSES the following as voting delegates on behalf of the City of Joondalup at the 2007 Annual General Meeting of the Western Australian Local Government Association held during the WA Local Government Convention on Sunday 5 August 2007:**

(1)

(2)

- 2 NOTES that in the event that the abovementioned Elected Members are unable to attend the convention that the 'proxy' delegates be:**

(1)

(2)

### **ITEM 3                    MINUTES OF EXTERNAL COMMITTEES    [02153] [03149] [41196] [18879]**

**WARD:**                    All

**RESPONSIBLE  
DIRECTOR:**            Mr Ian Cowie  
                                 Governance and Strategy

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#### **PURPOSE/EXECUTIVE SUMMARY**

To submit minutes of external committees to Council for information.

#### **DETAILS**

The following minutes are provided:

- Minutes of the Tamala Park Regional Council Meeting held on 12 April 2007.
- Minutes of the Mindarie Regional Council Meeting held on 26 April 2007.
- Minutes of the Western Australian Local Government Association North Zone Meeting held on 31 May 2007.

#### **ATTACHMENTS**

Attachment 1            Minutes of the Tamala Park Regional Council Meeting held on 12 April 2007

Attachment 2            Minutes of the Mindarie Regional Council Meeting held on 26 April 2007

Attachment 3            Minutes of the Western Australian Local Government Association North Zone Meeting held on 31 May 2007

#### **VOTING REQUIREMENTS**

Simple Majority

#### **RECOMMENDATION**

**That Council NOTES the Minutes of the:**

- 1            Meeting of the Tamala Park Regional Council held on 12 April 2007 forming Attachment 1 to this Report;**
- 2            Meeting of the Mindarie Regional Council held on 26 April 2007 forming Attachment 2 to this Report;**
- 3            Meeting of the Western Australian Local Government Association North Zone held on 31 May 2007 forming Attachment 3 to this Report.**

*Appendices 1, 1a, 1b refer*

To access this attachment on electronic document, click here: [Attach1brf120607.pdf](#)  
[Attach1abrf120607.pdf](#)            [Attach1bbrf120607.pdf](#)

## **ITEM 4 ABANDONED SHOPPING TROLLEYS – [04103]**

<b>WARD:</b>	All
<b>RESPONSIBLE DIRECTOR:</b>	Mr Ian Cowie Governance and Strategy

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### **PURPOSE / EXECUTIVE SUMMARY**

To inform Council of the issues involved in the management of abandoned shopping trolleys.

The report explains the current situation related to abandoned shopping trolleys, considers several potential options for alleviating the City's concerns before recommending that:

- the City's Local Government and Public Property Local Law be amended to reduce the hours for trolley removal;
- a commitment be made to lobby for state legislation that will enforce the management of abandoned shopping trolleys by trolley owners;
- a planning approval condition be introduced for all new shopping centre developments/major redevelopments within the City, requiring the development of a Shopping Trolley Management Plan;
- the City carry out a concerted campaign on abandoned shopping trolleys which includes impounding all trolleys identified as abandoned and prosecuting all offenders.

### **BACKGROUND**

Recently, attention has been focussed on the impact and implications of abandoned shopping trolleys within the City. This report facilitates Council decision-making on this subject.

### **DETAILS**

The issue of abandoned shopping trolleys is of considerable concern to the City in light of their impact on amenity, the high administrative and removal costs for the City when abandoned trolleys are found and the City's limited storage facilities for impounded trolleys. In 2006 alone, 674 shopping trolleys were registered as abandoned. A little over six per cent of these were impounded and only \$3,300 was recovered by the City for both impoundment and infringement fees. This figure is considerably less than the associated processing costs required to deal with abandoned shopping trolleys.

The City has traditionally used partnerships and Working Group forums to work towards a resolution for the abandoned shopping trolley issue. For instance, regular monthly meetings between the Cities of Bayswater, Stirling, Wanneroo and Joondalup have been held with the aim to feed relevant local government issues to the Office of Crime Prevention. Abandoned shopping trolleys has been one of the group's major concerns.

The City has also organised meetings with shopping centre owners and retailers in an effort to have shopping trolleys better managed by their owners. The object of the meetings was to obtain the cooperation of owners in committing to collect shopping trolleys with greater

diligence, otherwise the City would have to become more active in impounding them and recovering the costs.

Despite the good intentions of these meetings, little has been achieved in curbing the continued abandonment of shopping trolleys. Possible reasons for this outcome are listed below:

- The City is led to believe that trolley contractors are made to pay for any infringements and associated impounding costs through their contracts (\$211 of costs if impounded by the City of Joondalup).
- Contractors are paid a relatively small salary, therefore paying impounding and infringement costs are often difficult.
- If costs are not paid and the trolleys are not reclaimed, it is understood that owners are able to claim their lost shopping trolleys on insurance.
- The cost of new shopping trolleys has come down in price to around \$150 per trolley, which is less than the recovery costs of an impounded trolley.
- Trolley collectors do not work long enough hours to ensure that all trolleys are returned and secured during trading hours, so trolleys can easily become displaced.
- Contracts for trolley collection are sometimes awarded and administered centrally by retail owners and several contractors may be working within one shopping centre.
- Therefore, varying collection procedures may be used within a single area and contractors are made to only collect the trolleys of their employer, leaving many trolleys unnecessarily abandoned.
- Introducing new management processes to prevent shopping trolleys from leaving the perimeter of shopping centres has not historically been attractive to centre/retail owners due to the initial deterring effect they may have on customers and the purchase/instalment costs.

### **Current Management Process of the City**

Part 9, clause 58 of the *Local Government and Public Property Local Law 1999* articulates the requirement that “*persons not leave a shopping trolley in a public place, other than in the area set aside for the storage of shopping trolleys*”.

Part 9, clause 59 of the *Local Government and Public Property Local Law 1999* articulates the requirement that owners remove abandoned trolleys upon receiving notification from a local government authority. It states:

*“Where a shopping trolley is found abandoned in a public place and the owner has been advised verbally or in writing of its location by the local government, the owner shall remove the shopping trolley from the public place within 24 hours of being advised”.*

The Local Law creates an offence for owners who do not remove their trolleys once they receive notice. The maximum penalty for this offence is \$1,000 which is the maximum amount prescribed in the Litter Act 1979. This penalty can only be imposed by a court. The Local Law also establishes a modified penalty of \$100. This is the maximum for a modified penalty when the actual penalty’s maximum is \$1,000. That is, a modified penalty can be no more than 10% of the actual penalty. A modified penalty involves the issuing of an

infringement notice for the offence. If the infringement notice penalty is paid, the offence is resolved and there is no need to take the matter to court. If the modified penalty is not paid, then the City can prosecute the alleged offender, take the alleged offender to court, and the court will determine the penalty.

The City's "Abandoned Shopping Trolley Procedure Manual" (ASTPM), (that specifically outlines the process required before the impounding of abandoned shopping trolleys can take place), supports these clauses. The manual requires an authorised officer of the City to undertake the following procedure once a shopping trolley has been found abandoned:

- Attach an identifying tag to the trolley;
- Forward the tag's information on to Ranger Services Administration for registering;
- Contact the closest identifiable store and give **notice** to the owners for prompt removal within 24 hours if not causing a serious obstruction, or within 3 hours if posing a potential danger to the public;
- Additionally to this notice, the owner must be made aware that failure to remove the trolley will result in its subsequent impounding and the issuing of an infringement notice;
- If not removed, the trolley will then be impounded by the City;
- The owner is then given **notice** that their trolley has been impounded and the necessary procedure for releasing the trolley(s) is explained;
- The impounding fee for shopping trolleys is set at \$111.

This process is laborious and generates a significant cost to the City in the form of administrative and processing-related expenses. As such, it is considered appropriate that the approach be modified.

Research into the simplification of the current trolley impounding process has been undertaken, including investigations into higher statutory requirements governing local government functions (in relation to notification and impounding). Attachment 1 of this report assesses the relevant State Government legislation and regulations, enforcing the current management of abandoned shopping trolleys by local government authorities.

#### WALGA Working Party on Abandoned Shopping Trolleys

In 2003, WALGA set up a Working Party in cooperation with four metropolitan local governments to consider the issues surrounding abandoned shopping trolley management and to look at developing appropriate prevention strategies. The Working Party's major findings were as follows:

- Voluntary Codes of Practice, developed by the Retail Traders Association, are ineffective tools for curbing acts of shopping trolley abandonment.
- Local governments have no responsibility for public liability or legal action if a resident is injured or if their property is damaged as a result of shopping trolley misuse.
- Current state government legislation does not provide local governments with a suitable head of power to enforce effective management of abandoned shopping trolleys.

- Shopping Trolley Management Plans should be prepared by each retailer/centre in consultation with local government to articulate how retailers can better manage the control of shopping trolleys, eg: introducing locking mechanisms, installing deposit systems, using one trolley collecting contractor per centre, etc. (Research indicates that in Europe, trolley-locking mechanisms have effectively overcome the issue of abandoned shopping trolleys with the number of displaced trolleys reaching a negligible figure).
- Suitable and specific legislative powers should be introduced so that local governments can manage enforcement without the need to resort to subsidiary legislation such as Local Laws or regulations.
- Suggestions for legislative support include:
  - Effective state legislation (such as the *Litter Act 1979*) to include explicit powers for local authorities to seize shopping trolleys found on public land and require payment by the owner before trolleys can be returned. (This currently occurs in the UK under the *Clean Neighbourhoods and Environment Act 2005*).
  - Introduce a uniform Local Law that makes removing trolleys from shopping precincts a fineable offence.
  - Amendments to the *Local Government Act 1995* to allow local authorities to impound abandoned shopping trolleys without prior notice for their removal.

The Working Group's Discussion Paper is provided as Attachment 2 where the specific details of recommended legislative changes can be viewed.

The WALGA Working Group's overall conclusions are:

- That locking or deposit mechanisms should be installed onto trolleys to prevent and deter their abandonment by customers. (The cost of installing these mechanisms is recoverable within an 18-month period according to WALGA research. The owners' insurance premiums should also decrease as a result of reduced numbers in claims, as trolleys are being better managed).
- Specific legislative powers should be introduced at a State Government level to allow local governments to manage the enforcement of abandoned shopping trolleys, without the need to resort to subsidiary legislation.
- Legislative amendments should allow for trolleys to be impounded without notice.
- Education programs should be conducted in abandoned shopping trolley "hot spots" to inform the public of the implications that abandoned trolleys have to public safety.

The WALGA Working Group is currently lobbying the State Government to achieve the recommendations stated above and the Department of Local Government and Regional Development is undertaking its own research into the issue in light of local government concerns.

#### Options for the City of Joondalup

While it is important to maintain good relations with shopping centre management and retailers, it is also important for the City to address the problems caused by abandoned trolleys sooner rather than later. As such, the immediate options available to the City are

outlined below. These options must be considered in light of the legislative restrictions outlined in Attachment 1:

Option 1 - Removing the tagging process:

The City may still be required to contact the trolley owners and ask for their removal, but tagging and registering would not be necessary. This would require no legal amendments to any of the City's current Local Laws. However, alterations to the ASTPM would need to be undertaken. Removing the tagging process may simplify current trolley collecting procedures, however, the disadvantage is that disputes may arise if an abandoned trolley is moved slightly before it is impounded. Such movement raises questions as to whether it is the same trolley. These questions are eliminated by the tagging process. On balance, this option may well prove to be a 'false economy' if it allows more disputes to arise and consequently it is rejected.

Option 2 - Reducing removal period from 24 to 3 hours:

The three-hour period is already applied at an operational level, (where safety is an issue), due to its inclusion in the City's ASTPM. However, it does not have legislative backing because Clause 59 of the City's Local Government and Property Local Law only refers to a 24-hour period for removal. Officially reducing the removal period will require undertaking the necessary processes for legislative amendment to the Local Law, however, it will provide only minimal change to the City's current practices in relation to dealing with abandoned shopping trolleys. In relation to this option, the WALGA report at Attachment 2 notes that in 1998 the Town of Vincent was successful in amending its Local Law to reduce the time for shopping trolley removal from 24 hours to 3. The effects of this amendment have not been discussed in the WALGA report.

As this option has been implemented elsewhere and provides legislative support for current practices, it appears reasonable to support this option, although there will be costs involved in legislative change.

Option 3 - Removing the need to notify owners before trolley removal and impounding:

This would consequently allow the City to impound trolleys on public land without notice. The City's relevant Local Law on impounding shopping trolleys would require amending/repealing if this option were to be pursued. The only statutory provision that may undermine such an amendment is regulation 6(1) of the *Local Government (Uniform Local Provisions) Regulations 1996*. This provision deals with offenders failing to remove an obstruction upon request by a local government authority. It refers to the need to provide notice before removing obstructions; however, it only applies to instances where the obstruction is placed in a thoroughfare. Also, it does not stipulate whether the owner of the obstruction is required to remove the obstruction, or whether it is the obligation of the person who placed it there. Such logic may distinguish the regulation's application to abandoned shopping trolleys. Legal advice would be necessary to confirm this position. Even without this potential technical difficulty, on balance, if owners are to face penalties for the non-removal of abandoned shopping trolleys, it is considered reasonable that they be notified that one of their trolleys has been found abandoned. In other words, it would be unreasonable to impose a penalty without making the alleged offender aware that an offence was being committed.

Option 4 - Planning approval conditions for new shopping centre developments/major redevelopments:

This would require developers to provide comprehensive shopping trolley management plans to the City, when undertaking new developments or major redevelopments. This option is considered reasonable but has limitations in its application as such approvals will be rare.

Option 5 – Significantly increasing the current impoundment fees:

It is unlikely that increasing the City's current impoundment fee of \$111 would have any significant effect on retailer/contractor behaviours. This is because less than 10 per cent of impounded trolleys are currently collected by their owners; meaning, less than 10 per cent of retailers/contractors pay impoundment fees. Further, with new trolleys costing only around \$150 and owners potentially having the ability to claim lost trolleys on insurance, an increase in impounding fees is likely to mean that even fewer impounded trolleys would be reclaimed in the future. On this basis, the option cannot be supported.

Option 6 – Significantly increase the current penalties:

The City's ability to increase penalties is constrained by State legislation. The current maximum penalty for shopping trolley abandonment is set at \$1,000, which is in line with littering offences under the *Litter Act 1979*. The infringement is set as a modified penalty of \$100 which is the maximum allowed. While there is a possibility that the maximum penalty could be increased to \$5,000 under the *Local Government Act 1995*, the penalty would only apply if the trolley was left in a thoroughfare and owners of shopping trolleys may not fall within the ambit of the *Local Government (Uniform Local Provisions) Regulations 1996*. (See Attachment 1 for details).

It should be noted that there is no guarantee that a court would impose the maximum penalty of \$5,000 for an abandoned shopping trolley offence. Indeed, it is postulated that a court is unlikely to impose anything like a \$5,000 penalty on an offender in this area, particularly when it is remembered that \$10,000 is the maximum fine for financial interest offences. It is also worth noting it is most likely that the difference in the City's legal fees and the ultimate penalty handed down by the Magistrate would result in a cost to the City. It is not often that the City is able to recover full costs for prosecuting offences and on many occasions, the net cost to the City associated with a prosecution has been in excess of \$1,000.

Option 7 – Supporting WALGA in its lobbying for state legislative reform in relation to abandoned shopping trolleys:

WALGA's review of this issue was explained earlier in this report where it was noted that WALGA is lobbying the State Government for amendments to state legislation to facilitate local governments addressing problems created by abandoned shopping trolleys. The seventh option is for Council to support WALGA's lobbying attempts which could include letters to both WALGA and the Department for Local Government and Regional Development. This appears reasonable.

Option 8 – Undertake a concerted campaign in relation to abandoned shopping trolleys:

This option involves City officers focussing on abandoned shopping trolleys, impounding all reported abandoned trolleys which are not collected and prosecuting all offenders in accordance with the Local Law. This option is considered reasonable in an effort to address the current problems being experienced.

**Link to Strategic Plan:**

Key Focus Area 1 – Community Wellbeing.

Objective 1.4 – To work with the community to enhance safety and security in a healthy environment.

**Legislation – Statutory Provisions:**

Information regarding relevant statutory provisions is outlined in Attachment 1 of the report.

**Risk Management considerations:**

Taking a harder line in relation to abandoned shopping trolleys may upset some trolley owners and trolley collectors but it is likely to be welcomed by the community.

The risk of adopting a hard line is that fines may be passed on to the contractor which may make it difficult for shopping centre managers to obtain trolley contractors in the future. If this was to occur, the abandoned trolley problem could be exacerbated in the short to medium term.

**Financial/Budget Implications:**

Abandoned shopping trolleys pose a significant cost to the City in the form of processing-related expenses, staff resources and ongoing storage cost. There will be some small costs associated with amending the Local Law and increased operational costs associated with an extra focus on this area. Revenue received from penalties would be expected to increase.

**Policy implications:**

Not Applicable.

**Regional Significance:**

Not Applicable.

**Sustainability implications:**

Not Applicable.

**Consultation:**

The City frequently undertakes consultation between local governments, retailers and shopping centre owners, as well as regular discussions with WALGA and the Department of Local Government and Regional Development on current government positions in relation to the abandoned shopping trolley issue. Amending the Local Law as recommended will also involve public consultation as required by the Act.

Upon recent consultation with WALGA, it appears the Cities of Subiaco and Melville have amended their local laws, making it an offence to fail to remove an abandoned shopping trolley upon request. Not only does the fine apply to retailers, but also customers who remove a trolley from shopping centre premises. Major retailers have subsequently refused to pay their prescribed fines and as a result, WALGA and the Keep Australia Beautiful Council have negotiated an agreement between Coles, Woolworths and the Cities of Subiaco and Melville for a trial infringement promotion. The promotion is anticipated to commence in June of this year and will involve advertising within trial shopping centres the repercussions of removing trolleys from shopping centre perimeters. The aim will be to

educate shoppers on the implications of misusing trolleys by promoting abandonment as a littering issue. Despite the good intentions of the trial, it is understood that the City of Subiaco is refusing to partake in the initiative until Coles agrees to pay their outstanding fines. WALGA is currently mediating the situation in the hope that the trial will eventually take place.

## COMMENT

The intention of this report has been to identify methods that will modify the management practices for shopping trolleys. To date, discussions between the City and trolley owners regarding this matter have not solved the problem and abandoned trolleys remain a significant issue.

## ATTACHMENTS

- Attachment 1: State Government legislation and regulations governing local governments' management of abandoned shopping trolleys.
- Attachment 2: Western Australian Local Government Association Discussion Paper on the Management of Abandoned Shopping Trolleys.

## VOTING REQUIREMENTS

Simple Majority

## RECOMMENDATION

### That Council:

- 1 ENDORSES option 2: reducing the removal period for abandoned shopping trolleys from 24 to 3 hours and AGREES to commence the process for amending the City's Local Government and Public Property Local Law to achieve this outcome;**
- 2 SUPPORTS WALGA in its lobbying for state legislation that will provide guidance and increased enforcement options for local governments in relation to the abandoned shopping trolley issue;**
- 3 ENDORSES option 4: planning approval conditions for new shopping centre developments or major redevelopments, requiring the production of Shopping Trolley Management Plans as a condition of future planning approvals; and**
- 4 SUPPORTS a concerted campaign on abandoned shopping trolleys, including impounding all abandoned shopping trolleys which are not reclaimed following tagging and prosecuting all offenders.**

*Appendix 2 refers*

To access this attachment on electronic document, click here: [Attach2brf120607.pdf](#)

## **ITEM 5                    YELLAGONGA REGIONAL PARK ENVIRONMENT CENTRE FEASIBILITY STUDY – PRESENTATION OF PUBLIC SUBMISSIONS – [60510]**

**WARD:**                    North

**RESPONSIBLE DIRECTOR:**                    Mr Ian Cowie  
Governance and Strategy

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### **PURPOSE/EXECUTIVE SUMMARY**

To provide Elected Members with the outcomes of the public consultation process with regard to the feasibility study for an Environment Centre within the Yellagonga Regional Park.

Having taken into account the comments, issues and concerns arising from the public consultation process, this report recommends that Council endorses the development of a detailed concept design and business plan for an Environment Centre on Reserve 43290, Lot 12050, 580 Joondalup Drive, Joondalup (formerly known as Lot 1). Further to this, this report requests the Chief Executive Officer holds further discussions with the City of Wanneroo and the Department of Environment and Conservation (DEC) in order to progress the recommendations as stated.

### **BACKGROUND**

The City of Joondalup and the City of Wanneroo have formed a partnership to undertake a feasibility study for an Environment Centre within the Yellagonga Regional Park. A detailed background to this project is provided in Attachment 1.

The feasibility study was concluded in February 2007 and the final draft report was presented to both Councils in March 2007. Each Council resolved inter alia to: -

*“APPROVE the draft Yellagonga Environment Centre Feasibility Study to be released for broad public consultation for a period of 6 weeks”.*

This report provides details of the public submissions received and a report on, and summary of, those submissions is shown in Attachment 2 and 3.

### **DETAIL**

At its meeting on 27 March 2007, Council resolved that the Feasibility Study report be advertised for public comment for a period of 6 weeks. (CJ041 – 03/07 refers).

Calls for public submissions were advertised in the local community newspaper, an online submission facility was made available on the City of Joondalup website and letters were sent to directly affected residents living in close proximity to the proposed sites. Hard copies of the study were also made available at all library facilities, customer service centres and administration buildings throughout both the Cities of Wanneroo and Joondalup.

Public submissions closed on 9 May 2007 and the report, which provides an analysis of the submissions received, is shown as Attachment 2 to this report. Details of individual submissions are shown in Attachment 3. The submissions were analysed by independent consultants to ensure objectivity in the qualitative analysis of all the public submissions received.

In summary a total of 45 independent submissions were received. In the analysis these were divided between positive and negative comments. Twenty-five respondents were classified as positive while 18 were classified as negative. One submission was classified as a mixture of positive and negative comments. The final submission was not classified as the respondent was referring to the previous steering committee report.

It should be noted that one of the negative submissions provided a petition with 31 names strongly opposing the site at Reserve 43290 (formerly known as Lot 1). Four of the signatories to this petition also submitted individual responses making for 27 unique signatories. Three respondents provided multiple submissions.

Submissions were invited from residents of both the City of Joondalup and the City of Wanneroo with 29 submissions being received from City of Joondalup residents, 13 from City of Wanneroo residents, one respondent reported paying rates to both Cities and one response was from the National Trust. It was not possible to categorise one submission, as an address was not provided.

The key comments and issues raised from the submissions are summarised as follows:

#### Summary of Reasons for Support:

- The predominant reasons given for supporting the proposed Environment Centre could be attributed to the perceived educational benefits such a facility would provide including:
  - As an attractor for people visiting the YRP to learn about the native flora and fauna.
  - As a place where school children (and others) could learn about the cultural and indigenous heritage of the region.
  - As a model for addressing environmental issues in a demonstrably unique and fragile environment.
- Positive reference was made to the environmental centres at Herdsman Lake and Piney Lake and the benefit they provided to the local communities.
- The proposed Environment Centre was viewed as an asset that would provide a benefit to the local community by enhancing the existing park.
- Existing facilities would be enhanced by the inclusion of an Environment Centre.
- Proper development of the area would result in a decrease in anti-social behaviour.
- Several submissions indicated their general support for the concept. These respondents provided no concrete reason for providing positive support, although several did provide comments along the lines of *“we are pleased that the Centre is finally being built”* and *“the community has waited a long time for this project and now is the time to move forward.”*

#### Summary of Reasons for Non-Support:

- Increased traffic was one of the most common reasons for not supporting the development at Reserve 43290 (formerly known as Lot 1). Eight submissions mention the issue of traffic conditions and the subsequent increase in noise and disturbance to the wildlife.

- An expectation that traffic would increase due to the hospital expansion was expressed and this would only be compounded by the proposed development.
- There were negative references to Neil Hawkins Park with regards to vandalism, car hooning, graffiti and general anti-social behaviour. Several respondents noted that they expected the same “*drug users and hoons*” to avail themselves of the proposed facilities. Mention was also made of the provision of “a *public use area for mischief making*” by people and the effect the increased litter would have on natural wildlife.
- Some respondents felt the development will interfere with the natural flora and fauna of the A class reserve.
- There was a view that property value would decrease.
- A long term nearby resident felt that “*our beautiful view (which was the main reason for purchasing our block) of the lake, bushland and native flora and fauna would be replaced by concrete, car parks and buildings*”.
- Other respondents noted that it was important to maintain the natural bush setting and landscape and that building an Environment Centre could negatively impact on that amenity.
- The financial viability and sustainability of the proposed centre was questioned by nine submissions. The feasibility study financial projections were questioned as being too low. Reference to the Herdsman Environment Centre as not being self-sustaining was used as an example of the potential outcome for the proposed development. This was seen as a potential drain on City resources.
- Some expressed concern that the support required from volunteers may not eventuate, causing a cost blow out of the estimates.

### Issues and Options Considered

Each submission received has been summarised in the Table shown as Attachment 3 to this report. Where appropriate, officer’s comments have been provided to expand further on some of the issues raised. Most issues, which concern environmental impact, traffic impact, noise, antisocial behaviour and financial viability, can be addressed during the further development of the concept. The next phase of the project, if supported, will include development of a business plan and the detailed design of the Environment Centre.

It should be noted that Joondalup Drive is a district distributor A class road and that Lakeside Drive is a district distributor B class road. Both roads were designed to take high traffic volumes given the growth that was predicted would occur within the Joondalup City centre.

Council has the following options in relation to the proposed Environment Centre: -

- 1 To support the development of a detailed concept design and business plan for an Environment Centre at Reserve 43290 (formerly known as Lot 1).
- 2 To support the development of a detailed concept design and business plan for an Environment Centre at Scenic Drive Wanneroo.
- 3 Not to pursue the development of an Environment Centre within the YRP at this stage.
- 4 To undertake further studies and consultation to look at other options that may have not been considered to date.

**Link to Strategic Plan:**

The undertaking of a feasibility study for an Environment Centre links to the City of Joondalup Strategic Plan 2003-2008 under the following areas:

*Community Well Being - The City of Joondalup is a cultural centre*

*1.2 To meet the cultural needs and values of the community*

*1.2.1 Continue to enhance and create new cultural activities and events*

*1.2.2 Create cultural facilities*

*Caring for the Environment - The City of Joondalup is environmentally responsible in its activities*

*2.1 To plan and manage our natural resources to ensure environmental sustainability*

*2.1.1 Maintain and protect natural assets to retain biodiversity*

*Organisational Development - The City of Joondalup is an interactive community*

*4.3 To ensure the City responds to and communicates with the community*

*4.3.1 Provide effective and clear community consultation.*

**Legislation – Statutory Provisions:**

Land Tenure and uses – Either site if selected will need approval from the Western Australian Planning Commission (WAPC) before any development can proceed.

1 Reserve 43290 (formerly known as Lot 1)

This site is currently vested in the Conservation Commission of WA. It is zoned recreational use in the Yellagonga Regional Park Management Plan, is a Class A reserve as per Section 5 of the Conservation and Land Management Act.

It is recommended that in order for development of an Environment Centre to occur on this site, the process of vesting the reserve (or part of the reserve) commence to allow for the proposed uses, namely environmental education, research and associated services. The City should also be given the power to lease on this site.

Enacting this vesting will require legislative change through State Parliament. This process may take up to 2 years to enact and will be initiated by the City of Joondalup Council resolving to request the Department of Environment and Conservation to commence the legislative change process.

2 Scenic Drive

The Scenic Drive site is located on several parcels of land all vested in the City of Wanneroo under a management order. This order is currently waiting to be approved by the Council. The area is currently zoned for Sport and Recreation in the Yellagonga Regional Park Management Plan. The City would need to seek 'power to lease' authority under its management order to accommodate the concept of an Environment Centre facility. In addition the island is currently owned freehold by the Western Australian Planning Commission and managed by Department of Environment and Conservation. Department of Environment and Conservation would need to agree to locate a boardwalk in the area to give access to the island. The Conservation Commission would also need to be consulted on this aspect.

**Risk Management considerations:**

A number of risks have been identified that may need mitigation should the project be supported to the next stage of development. These include:

- Potential opposition from local residents not wishing any development to be undertaken in the regional park;
- Potential to impact on cultural sensitivities with the Nyoongar people relating to the site that will be selected for development;
- Potential for competition from the National Trust's redevelopment of Luisini's Winery;
- Potential to raise community expectations without secured funding or commitment for the establishment of the Environment Centre;
- Potential conflict over the preferred location of the centre;
- Potential for future external grant assistance to achieve the next stage of the project is unknown.

**Financial/Budget Implications:**

The feasibility study contains detailed costings for the design and construction stages for an Environment Centre.

Should Council agree to pursue the recommendations of this report capital funding support from the State and Federal Governments will need to be sought immediately.

It should be noted that with respect to the development of the site at Reserve 43290 (formerly known as Lot 1), the feasibility study suggests that the centre is projected to run at a operating loss for the first five years of its operation as follows: -

Year 1	Year 2	Year 3	Year 4	Year 5
-\$47,250	-\$73,500	-\$115,800	-\$48,600	-\$43,000

Detailed design work and a business plan, as recommended by this report, will refine the financial costs associated with this project.

**Policy implications:**

Not applicable

**Regional Significance:**

The Yellagonga Regional Park is by nature a strategic regional natural asset for the two Cities and the State of Western Australia. It is imperative that the YRP wetlands are managed effectively and protected. The development of an Environment Centre is in keeping with the YRP Management Plan 2003-2013 and to this end the development of an Environment Centre has immense regional significance. The project represents an important demonstration of cross local government cooperation and participation.

**Sustainability Implications:**

An Environment Centre would be designed to enhance sustainability of the wetlands by providing ongoing education, care and monitoring processes.

**Consultation:**

This report explains the outcomes of the recent consultation.

The next phase of the project will be to develop a detailed concept design and a business plan for the centre. Given the significant interest and concerns of adjoining land owners to the proposed site, it would be appropriate to engage with the residents once a more detailed concept design has been developed to ensure their concerns are taken into account and mitigated where reasonable.

**COMMENT**

In determining the way forward on this project, Council will need to consider and balance the opposing views of local residents with the desires and aspirations of the wider community. The regional benefits that can be derived from having a centre that can pursue environmental excellence is attractive and to date has been positively supported by the State Government.

If the City of Joondalup and Wanneroo are to make a truly concerted effort to address the future environmental challenges that the community will face, particularly with the onset of climate change, then the local government and its community will need a strong and transparent interface for the environmental work to be coordinated and resourced.

**ATTACHMENTS**

Attachment 1	Background to the YRP Environment Centre Feasibility Study
Attachment 2	Report: A Qualitative Evaluation of Resident Responses to the Proposed Yellagonga Environment Centre Feasibility Study
Attachment 3	Summary Table of Resident Submissions and Officer Comments

**VOTING REQUIREMENTS**

Simple Majority

**RECOMMENDATION****That Council**

- 1 NOTES the comments, issues and concerns being raised from the public as shown in the report shown as Attachment 2 and 3 to this Report;**
- 2 SUPPORTS the establishment of the Yellagonga Environment Centre on Reserve 43290, Lot 12050, 580 Joondalup Drive, Joondalup, (formerly known as Lot 1);**
- 3 SEEKS endorsement for development of an Environment Centre on Reserve 43290 (formerly known as Lot 1) from both the City of Wanneroo and the Department of Environment and Conservation;**
- 4 REQUESTS that the Department of Environment and Conservation initiate the process for vesting Reserve 43290, Lot 12050, 580 Joondalup Drive, Joondalup (formerly known as Lot 1) or a portion of the reserve to allow for the proposed land uses being: environmental education, research and associated services and for power to lease;**
- 5 REQUESTS that further work be undertaken to develop a more detailed design of the concept including a business plan and funding opportunities;**

- 6 NOTES that further consultation, particularly with residents adjoining the proposed site, be undertaken once a more detailed concept design is developed.**

*Appendix 3 refers*

*To access this attachment on electronic document, click here: [Attach3brf120607.pdf](#)*

## **ITEM 6                      REVIEW OF DISTRICT PLANNING SCHEME 2: ISSUES PAPERS – [50574]**

<b>WARD:</b>	All
<b>RESPONSIBLE DIRECTOR:</b>	Mr Ian Cowie Governance and Strategy

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### **PURPOSE**

To seek Council's endorsement of seven Issues Papers which have been drafted to solicit public input into the review of the City's District Planning Scheme.

### **EXECUTIVE SUMMARY**

In October 2006, Council approved a process for reviewing District Planning Scheme 2. The first stage of this review was to prepare a series of issues papers. Drafts of these issues papers have been prepared and Council's consideration and endorsement of these papers is now sought.

### **BACKGROUND**

The *Planning and Development Act 2005* requires local governments to review their Town Planning Schemes once every five years. DPS2 is the City's scheme which was introduced in 2000. Consequently it must be reviewed.

The Act also requires each local government to develop a Local Planning Strategy (LPS). Such strategies provide the broad framework which guides the development and operation of the more detailed Town Planning Schemes. Consequently, the City needs to implement a Local Planning Strategy.

To inform the development of the LPS, seven issues have been prepared for community feedback.

### **DETAILS**

#### **Issues and options considered:**

The seven issues papers have been produced covering the following topics:

- Planning for the Joondalup City Centre;
- Commercial centres;
- Environment and sustainability;
- Home businesses;
- Housing density;
- Public open space; and
- Heritage.

It was suggested that an Issues Paper be produced in relation to definitions or interpretations within the scheme. However, it has proved difficult to draft a high level Issues Paper on this topic, which raises broad issues for public consideration. Definitions and interpretations are, by their very nature, detailed and set at a lower level. Consequently, it is suggested that the issue of definitions and interpretations be considered in public consultation during the

finalisation of the local planning strategy and commencement of the actual scheme review when the various elements of a planning scheme will be considered in more detail.

**Legislation – Statutory Provisions:**

With regard to the issues papers, there is no legal requirement that issues papers be prepared prior the development of a Local Planning Strategy.

**Risk Management considerations:**

Not applicable

**Financial/Budget Implications:**

There are sufficient budget funds to cover the cost of advertising and promotion of the issues papers.

**Policy implications:**

Not applicable

**Regional Significance:**

Not applicable

**Sustainability implications:**

Not applicable

**Consultation:**

There is no statutory obligation to develop issues papers or seek public input prior to the development of an LPS. However, it is considered that feedback from the issues papers will assist in forming the development of the LPS.

It is proposed that all issues paper would be advertised at the same time to gain public feedback, for a period of 60 days. Advertising would be in the form of prominent positioning of advertisements in the local paper and on the website, promotion through the customer service centres, and media releases. It is also proposed that a response form be developed to enable feedback to be given via the City's website.

**COMMENT**

The feedback provided through the public consultation period on the issues papers will be analysed and reported to Council, together with the possible directions for the local planning strategy.

**ATTACHMENTS**

Attachment 1	Issues Papers.
Attachment 2	Process Plan

**VOTING REQUIREMENTS**

Simple Majority

**RECOMMENDATION**

**That Council ENDORSES the Issues Papers forming Attachment 1 to this Report, for public feedback for a period of 60 days.**

*Appendix 4 refers*

*To access this attachment on electronic document, click here: [Attach4brf120607.pdf](#)*

## **ITEM 7                      CODE OF CONDUCT: MISCONDUCT REPORTING AND WHISTLEBLOWER PROTECTIONS – [09358]**

**WARD:**                      All

**RESPONSIBLE DIRECTOR:**      Mr Garry Hunt  
Office of CEO

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### **PURPOSE / EXECUTIVE SUMMARY**

To propose amendments to the sections of the Code of Conduct relating to the Corruption and Crime Commission and Whistleblower Protections to improve the clarity of the Code's requirements and to ensure it aligns with relevant legislation.

### **BACKGROUND**

The *Corruption and Crime Commission Act 2003* imposes a paramount duty to notify reasonably suspected misconduct to the Commission on the part of the Chief Executive Officer. There are also protections afforded to persons who report misconduct/corruption to the Commission. The *Public Interest Disclosure Act 2003* also provides protections to persons who make disclosures under that legislation. There is a need for the Code of Conduct to reflect more accurately the requirements under this legislation.

### **DETAILS**

There are several areas within the Code of Conduct relating to misconduct reporting and whistleblower protection that give cause for concern.

- 1      The third paragraph under heading 'Enforcement of the Code' provides that definitions of 'corrupt conduct', 'criminal conduct' and 'serious improper conduct' are provided in the *Corruption and Crime Commission Act 2003*. However, the Act does not contain these definitions; only the terms 'misconduct' and 'serious misconduct' are defined.
- 2      Under the heading 'Corruption and Crime Commission Act 2003' in Part 9, the phrase 'voluntary reporting' may lead persons to believe that the Chief Executive Officer can exercise discretion whether or not to notify the Commission of reasonably suspected misconduct when in fact that requirement is mandatory. Therefore, the Chief Executive Officer's obligation to notify must be distinguished from the reporting of misconduct by Elected Members and Employees.
- 3      Under the same heading, it states there are penalties if a person who makes a complaint:
  - (a)      has his or her safety or career prejudiced or threatened to be prejudiced;
  - (b)      is intimidated or harassed;
  - (c)      has an act done to his or her detriment because of having assisted the Commission, or furnished information to the Commission.

Under the Act, the categories of offence are in fact much broader and cover victimising, dismissing or prejudicing and causing injury or detriment.

- 4 Part 9 omits reference to the *Public Interest Disclosure Act 2003*, which affords ‘whistleblowers’ statutory protections.

To address these concerns, the relevant sections of the Code of Conduct have been rewritten and are included at Attachment 1 for consideration. Key elements of the rewrite include:

- including the definitions of ‘misconduct’ and ‘serious misconduct’ in annexure 1 to the Code;
- clarifying the obligations of the Chief Executive Officer;
- including the rights and responsibilities of people who make public interest disclosures in annexure 2 to the Code.

**Issues and options considered:**

The proposed wording for the Code could be:

- accepted;
- modified; or
- rejected

**Link to Strategic Plan:**

Not applicable

**Legislation – Statutory Provisions:**

Sections 28, 173, 174 & 175 *Corruption and Crime Commission Act 2003*

*Public Interest Disclosure Act 2003*

**Risk Management considerations:**

The wording within the current Code of Conduct in relation to misconduct reporting is considered confusing and more information could be provided with respect to public interest disclosures. If this is not improved, the decision-making capacity of Elected Members and Employees with respect to reporting misconduct and making public interest disclosures could be impaired.

**Financial/Budget Implications:**

Not applicable

**Policy implications:**

An amendment to the Code of Conduct.

**Regional Significance:**

Not applicable

**Sustainability implications:**

Not applicable

**Consultation:**

Not applicable

**COMMENT**

Not applicable

**ATTACHMENTS**

Attachment 1            The current Code provisions and alternative wording for the Code relating to misconduct reporting and whistleblower protections

**VOTING REQUIREMENTS**

Simple majority

**RECOMMENDATION**

**That Council AMENDS the Code of Conduct in accordance with Attachment 1 to this Report in relation to misconduct reporting and whistleblower protections.**

*Appendix 5 refers*

*To access this attachment on electronic document, click here: [Attach5brf120607.pdf](#)*

## **ITEM 8 SUBMISSION ON DRAFT LOCAL GOVERNMENT (RULES OF CONDUCT) REGULATIONS 2007 – [09358] [74591] [00033] [39386]**

**WARD:** All

**RESPONSIBLE DIRECTOR:** Mr Garry Hunt  
Office of CEO

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### **PURPOSE**

To consider a response to the Minister for Local Government on the draft *Local Government (Rules of Conduct) Regulations 2007*.

### **EXECUTIVE SUMMARY**

The Minister for Local Government has requested local governments' comments on the draft Regulations by mid June 2007. The proposed date upon which the new Regulations will come into effect is 20 October 2007.

This report identifies some issues with the draft Regulations and recommends a response to the State Government to reflect the City's concerns with these issues.

### **BACKGROUND**

The *Local Government (Official Conduct) Amendment Bill 2005*, which introduces a new disciplinary framework to deal with individual misconduct by elected members, was passed by Parliament in March 2007. When the Act is proclaimed and becomes operative, a statewide Standards Panel will deal with complaints about minor breaches of a new code (rules) and the State Administrative Tribunal will have powers to review the conduct of elected members where the Act or the regulations have been breached.

The Bill establishes the Rules of Conduct Regulations which enshrine minimum behaviour standards to be observed by all elected members. The Western Australian Local Government Association (WALGA) and Local Government Managers Australia (LGMA) have been directly involved in the development of the draft Regulations.

The draft Regulations have now been released and the Minister for Local Government has invited local governments to comment. Regulation 2 deals with the general principles of behaviour that elected members should follow, however, the panel will not sit in judgment about matters such as care, honesty and integrity that are subjective principles. Regulations 3-11 cover conduct relating to the standing orders, use of council information, obtaining personal advantage, misuse of council resources, restrictions on involvement in administration and directing council employees, disclosure of particular interests and obtaining and disclosing gifts.

The Minister has also requested whether any further rules should be included in the Regulations.

### **DETAILS**

Due to the inadequacy of existing mechanisms for regulating misconduct in the local government sector, there was a need for a legislative regime that would provide a more effective system for dealing with improper behaviour.

However, there are a number of concerns with the draft Regulations. These are as follows:

#### Definition of 'council member'

The term 'council member' is used in the draft Regulations; however, the term is not defined in the *Local Government Act 1995*. The Act includes definitions for 'councillor', 'councillor mayor or president', 'council', 'elector mayor or president', 'member'. However, the term 'council member' is used in 98 separate instances in the Act itself so it cannot be said that it is a new term that is introduced by the draft Regulations. The fact that 'council member' is not specifically defined is not something that invalidates the legislation. It could be argued that because the terms 'council' and 'member' are defined separately it was not necessary to include another definition of the conjugate term 'council member' (In a similar vein, 'committee member' is also not accorded a separate definition.) Consequently the lack of definition for the term 'council member' is not considered worthy of comment.

#### Use of information - Regulation 5

A council member who breaches regulation 5 could also be guilty of an offence against section 5.93 of the Act (improper use of information).

The words 'other than by deriving it from a document' in regulation 5(1)(b) require clarification. A document presented at a closed meeting is necessarily confidential and retains its confidentiality after the meeting ceases.

#### Misuse of council resources - Regulation 7

Regulation 7 is similar to the provisions in Part 8 of the Act which deal with the misapplication of property. A council member who breaches regulation 7 could also be subject to the process outlined in Part 8 which provides that a local government can commence legal action to recover the amount misapplied and the council member can be disqualified.

#### Prohibition against involvement in administration - Regulation 8

Although there is no corresponding or similar provision in the Act, the inclusion of regulation 8 is important to enshrine what is a generally accepted principle across local government.

#### Relations with local government employees - Regulation 9

The wording of regulation 9(2) suggests that council members can direct or influence an employee where that conduct occurs at a council meeting or committee meeting. The City understands that the intention of the regulation was to reflect the principle that although individual council members cannot direct employees, the Council as a body can do so through resolutions made at meetings. The City suggests that the wording should be changed to more accurately reflect the original intention.

Council members may also ask questions as part of the decision-making process at Council and committee meetings. The current wording of regulation 9 suggests that council members can direct a particular employee to respond to questions when in fact it is the Chief Executive Officer's responsibility to provide information in response to questions. If the Chief Executive Officer is unable to respond or requires further clarification, then he would request the appropriate employee's assistance.

### Disclosure of interest - Regulation 10

The definition of 'interest' in reg 10 is different from:

- 'interest' as defined in section 5.60 of the Act;
- 'financial interest' defined in section 5.60A;
- 'proximity interest' defined in 5.60B;
- 'indirect financial interest' defined in section 5.61;
- 'impartiality interest' as defined in reg 34C *Local Government (Administration) Regulations 1996*.

The fact that there are multiple derivative definitions of 'interest' is potentially confusing and may lead to the undesirable situation where one definition of 'interest' applies to employees (reg 34C) and another definition applies to council members (reg 10).

### Gifts - Regulation 11

'Notifiable gift' is defined in reg 11 and section 5.62(2) of the Act. The *Local Government (Administration) Regulations 1996* also contain provisions about gifts. Again, the perceived duplication is potentially confusing.

The definition of 'prohibited gift' is a gift with a value of \$250 or more. The concern is that over time prices may increase and with the onset of inflation, something that is worth \$250 in today's terms may not have equivalent value to a similar item in five or ten years' time. In this regard, the legislation should be amended so that the monetary figure can be adjusted according to Consumer Price Index or some other measure.

### Comparison with City's Code of Conduct

The Code has an 'Introduction' section which explains the importance of the Code, its application and the general standard of behaviour that is expected of elected members and employees. The draft Regulations do not contain an introduction.

Both the Code and draft Regulations contain a set of general guiding principles, however, the Code does not cover all of the principles identified in the draft Regulations. Part 3 of the Code also lists various values and ethical standards which are not reflected in the draft Regulations. Part 4 of the Code talks about review and enforcement of the Code. The Standards Panel will enforce the Regulations.

The following sections of the Code mirrors the legislative provisions contained in the Act and draft Regulations:

- Conflict and disclosure of interest
- Confidential information
- Improper or undue influence
- Gifts
- Relationships between elected members, committee members and employees
- Dealing with Council property

The Code's section on Disclosure of Election Campaign contributions is not covered in the draft Regulations because the legislation only applies to council members and not electoral candidates. The sections on Corporate Obligations and Whistleblower Protection are also not covered by the draft Regulations.

It is important to keep in mind that there are some provisions in the current Code with specific applicability to employees and these will be treated as an addition to the uniform rules of conduct when Council adopts the new Code of Conduct.

#### Additional rules that ought to be included in the Regulations

It is recognised that the draft Regulations already contain a general principle that a council member must avoid damaging the reputation of the local government. This would include the making of public statements and seeking access to information that potentially jeopardises the City's legal or financial position. However, it is not a requirement that this principle be observed. In some situations, the behaviour of a council member may reflect a personal agenda to 'bring down' or 'expose' the local government and there would be no recourse against the member under the draft Regulations. It is proposed that an additional rule be included in the draft Regulations to encompass this situation.

Further, it would be desirable to specify clearly what avoiding damaging the reputation means. It is important that the legislation makes it clear that avoiding damage does not include rigorous debate in Council or Council reviewing the performance of a CEO and concluding it is unsatisfactory.

#### **Issues and options considered:**

Council could agree to:

- make a submission in accordance with the views identified in this report;
- modify some or all of the views identified in this report and make a submission; or
- decide not to make a submission.

#### **Link to Strategic Plan:**

The Strategic Plan provides that managing the business in a responsible and accountable manner is an objective. Compliance with legislation and the Code of Conduct is essential to achieving this objective.

#### **Legislation – Statutory Provisions:**

This report relates to proposed legislation.

#### **Risk Management considerations:**

If the legislation is not clear in the obligations it is imposing, there may be a risk that elected members will not understand the full extent of their obligations which could in turn lead to inadvertent breaches of the legislation.

#### **Financial/Budget Implications:**

Not applicable

#### **Policy implications:**

When the new legislation becomes operational, the City will need to review Policy 4-1 Code of Conduct. The City will have the option of either adopting the wording of the Rules of Conduct or imposing additional rules.

**Regional Significance:**

This report relates to a matter that applies to all local governments.

**Sustainability implications:**

Not applicable

**Consultation:**

Not applicable

**COMMENT**

It is important to note that the Regulations are still in draft form and may change following the consultation period. It is therefore recommended that any formal review of the City's Code of Conduct take place when the Regulations are formalised.

**ATTACHMENTS**

Attachment 1            Draft Local Government (Rules of Conduct) Regulations 2007

**VOTING REQUIREMENTS**

Simple majority

**RECOMMENDATION**

**That Council SUPPORTS a submission to the State Government on the draft Local Government (Rules of Conduct) Regulations 2007 which presents the views outlined in this Report.**

*Appendix 6 refers*

To access this attachment on electronic document, click here: [Attach6brf120607.pdf](#)

## ITEM 9 LIST OF PAYMENTS MADE DURING THE MONTH OF APRIL 2007 – [09882]

**WARD:** All

**RESPONSIBLE DIRECTOR:** Mr Mike Tidy  
Corporate Services

### PURPOSE

To present to Council the list of accounts paid under the CEO's delegated authority during the month of April 2007 to note.

### EXECUTIVE SUMMARY

This report presents the list of payments made under delegated authority during the month of April 2007, totalling \$7,054,738.90.

*It is recommended that Council NOTES the Chief Executive Officer's list of accounts for April 2007 paid under delegated authority in accordance with regulation 13 (1) of the Local Government (Financial Management) Regulations in Attachments A, B and C to this Report, totalling \$7,054,738.90.*

### BACKGROUND

Council has delegated to the Chief Executive Officer the exercise of its power to make payments from the City's Municipal and Trust funds. In accordance with Regulation 13 of the Local Government (Financial Management) Regulations 1996 a list of accounts paid by the Chief Executive Officer is to be provided to Council, where such delegation is made.

### DETAILS

The table below summarises the payments drawn on the funds during the month of April 2007. Lists detailing the payments made are appended as Attachments A and B. The vouchers for the month are appended as Attachment C.

FUNDS	DETAILS	AMOUNT
Municipal Account	<b>Cheques</b> 78598 - 78770 EFT 10968 – 11407 Net of cancelled payments	\$4,817,142.78
	<b>Vouchers</b> 263A - 265A & 267A – 269A	\$2,224,060.12
Trust Account	<b>Cheques</b> 201365 - 201395 Net of cancelled payments	\$13,536.00
<b>Total</b>		<b>\$7,054,738.90</b>

### Issues and Options Considered:

Not Applicable

**Link to Strategic Plan:**

Strategy 4.1.1 – Ensure financial viability and alignment to plan.

**Legislation – Statutory Provisions:**

The Council has delegated to the CEO the exercise of its authority to make payments from the Municipal and Trust Funds, therefore in accordance with Regulation 13(1) of the Local Government (Financial Management) Regulations 1996, a list of accounts paid by the CEO is prepared each month showing each account paid since the last list was prepared.

**Risk Management Considerations:**

In accordance with section 6.8 of the Local Government Act 1995, a local government is not to incur expenditure from its municipal fund for an additional purpose except where the expenditure is authorised in advance by an absolute majority of Council.

**Financial/Budget Implications:**

All expenditure from the Municipal Fund was included in the 2006/7 Annual Budget as adopted by Council at its meeting of 25 July 2006, or approved in advance by Council.

**Policy Implications:**

All expenditure included in the list of payments is drawn from the City's accounting records.

**Sustainability Implications:**

Expenditure has been incurred in accordance with budget parameters, which have been structured on financial viability and sustainability principles.

**Consultation:**

In accordance with Section 6.2 of the Local Government Act 1995, the annual budget was prepared having regard to the Strategic Financial Plan 2006/07-2009/10 which was available for public comment from 29 April 2006 to 29 May 2006 with an invitation for submissions in relation to the plan.

**COMMENT**

All Municipal Fund expenditure included in the list of payments is in accordance with the 2006/07 Annual Budget as adopted by Council at its meeting of 25 July 2006, or has been authorised in advance by Council where applicable.

**ATTACHMENTS**

- |              |  |
|--------------|--|
| Attachment A | CEO's Delegated Municipal Payment List for the month of April 2007 |
| Attachment B | CEO's Delegated Trust Payment List for the month of April 2007     |
| Attachment C | Municipal and Trust Fund Vouchers for the month of April 2007      |

**VOTING REQUIREMENTS**

Simple majority.

**RECOMMENDATION**

**That Council NOTES the Chief Executive Officer's list of accounts for April 2007 paid under delegated authority in accordance with regulation 13 (1) of the Local Government (Financial Management) Regulations 1996 forming Attachments A, B and C to this Report, totalling \$7,054,738.90.**

*Appendix 7 refers*

*To access this attachment on electronic document, click here: [Attach7brf120607.pdf](#)*

## ITEM 10 FINANCIAL ACTIVITY STATEMENT FOR THE PERIOD ENDED 30 APRIL 2007 – [07882]

<b>WARD:</b>	All
<b>RESPONSIBLE DIRECTOR:</b>	Mr Mike Tidy Director Corporate Services

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### PURPOSE

The April 2007 financial activity statement is submitted to Council to be noted.

### EXECUTIVE SUMMARY

The April 2007 year to date report shows an overall variance (under spend) of \$6.4 m when compared to the year to date revised budget approved by Council at its meeting of 27 February 2007 (CJ036-02/07).

Details of the variance are provided in the attached notes and can be summarised as follows:

- The **Operating Surplus** is \$19.5m compared to a budgeted surplus of \$17.1m at the end of April 2007. The \$2.4m variance is primarily due to additional income from fees and charges and interest earnings and lower than budgeted expenditure mainly in employee costs, materials and contracts and utilities. This is partially offset by lower than budgeted government grants received.
- **Capital Expenditure** is \$14.6m against the year to date budget of \$18.5m. The \$3.9m under spend is due to delays in purchasing of vehicles, recycling bins, buildings and in the construction of infrastructure assets.

*It is recommended that Council NOTES the Financial Activity Statement for the period ended 30 April 2007 forming Attachment A to this Report.*

### BACKGROUND

The Local Government (Financial Management) Regulations 1996 requires the production of financial activity statements. Council approved at the 11 October 2005 meeting to accept the monthly Financial Activity Statement according to nature and type classification.

### DETAILS

The financial activity statement for the period ended 30 April 2007 is appended as Attachment A.

### Issues and options considered:

Not Applicable

### Link to Strategic Plan:

Objective 4.1.1 – Ensure financial viability and alignment to plan.

**Legislation – Statutory Provisions:**

Section 6.4 of the Local Government Act 1995 requires a local government to prepare an annual financial report for the preceding year and such other financial reports as are prescribed.

Regulation 34(1) of the Local Government (Financial Management) Regulations 1996 as amended, requires the local government to prepare each month a statement of financial activity reporting on the sources and applications of funds as set out in the annual budget.

**Risk Management considerations:**

In accordance with section 6.8 of the Local Government Act 1995, a local government is not to incur expenditure from its municipal fund for an additional purpose except where the expenditure is authorised in advance by an absolute majority of Council.

**Financial/Budget Implications:**

Refer attachment A.

**Policy implications:**

All expenditure included in the Financial Activity Statement is drawn from the City's accounting records.

**Regional Significance:**

Not Applicable

**Sustainability implications:**

Expenditure has been incurred in accordance with budget parameters which have been structured on financial viability and sustainability principles.

**Consultation:**

In accordance with Section 6.2 of the Local Government Act 1995, the annual budget was prepared having regard to the Strategic Financial Plan, prepared under Section 5.56 of the Local Government Act 1995, which was made available for public comment from 29 April to 29 May 2006.

**COMMENT**

All expenditures included in the Financial Activity Statement are incurred in accordance with the adopted 2006/07 Revised Budget or have been authorised in advance by Council where applicable.

**ATTACHMENTS**

Attachment A            Financial Activity Statement for the period ended 30 April 2007.

**VOTING REQUIREMENTS**

Simple majority.

**RECOMMENDATION**

**That Council NOTES the Financial Activity Statement for the period ended 30 April 2007.**

*Appendix 8 refers*

*To access this attachment on electronic document, click here: [Attach8brf120607.pdf](#)*

## **ITEM 11                    PROPOSED PARKING PROHIBITIONS – NEWPORT GARDENS, HILLARYS – [29136] [47607] [06098] [46607]**

**WARD:**                    North

**RESPONSIBLE DIRECTOR:**                    Mr Dave Djulbic  
Infrastructure Services

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### **PURPOSE**

To amend the City of Joondalup Parking Scheme by the introduction of a “NO PARKING” parking prohibition along Newport Gardens adjacent to Mawson Park, Hillarys.

### **EXECUTIVE SUMMARY**

Residents of Hillarys are seeking to prohibit parking along Newport Gardens adjacent to Mawson Park to alleviate parking congestion problems. Residents are seeking the installation of prohibitions to stop users of Mawson Park parking their vehicles along Newport Gardens, and to address traffic congestion and safety issues in the area.

*It is recommended that Council AMENDS the City of Joondalup Parking Scheme in accordance with Clause 33 of the City’s Parking Local Law (1998) by the installation of a “NO PARKING” carriageway or verge along Newport Gardens, Hillarys as shown in Attachment 1 to this Report.*

### **BACKGROUND**

The City has received two petitions of 63 and 4 signatures respectively from the residents of Newport Gardens requesting the installation of parking prohibitions adjacent to Mawson Park.

It was requested that a parking prohibition be implemented in Newport Gardens.

### **DETAILS**

#### **Issues and options considered:**

Mawson Park is bounded by Newport Gardens, Flinders Avenue and Mawson Crescent. Flinders Avenue and Mawson Crescent provide verge parking for users of Mawson Park. The majority of park users park their vehicles in Newport Gardens as this is closest to play equipment in the park. On weekends and school holidays residents are experiencing increased traffic congestion in Newport Gardens resulting in the restriction of normal traffic flow and reducing the level of safety.

In view of this, to prevent unsafe parking on Newport Gardens and to maintain access for residents it is proposed to implement a “NO PARKING” prohibition.

The proposed parking prohibition is shown on Attachment 1.

#### **Link to Strategic Plan:**

The recommendation in this report is supported by the following objective and strategy in the City’s Strategic Plan 2003 – 2008:

Objective: 1.4 to work with the community to enhance safety and security in a healthy environment.

Strategy: 1.4.2 contribute to the protection of human health.

**Legislation – Statutory Provisions:**

The City of Joondalup Parking Local Law 1998 was made in keeping with the requirements of the Local Government Act (1995):

33 *The local government may by resolution constitute, determine, vary and indicate by signs:*

- (a) Prohibitions;*
- (b) Regulations; and*
- (c) Restrictions,*

*on the parking and stopping of vehicles of a specified class or classes in all roads, specified roads or specified parts of roads in the parking region at all time or at specified times, but this authority shall not be exercised in a manner inconsistent with the provisions of this local law or any other written law.*

**Risk Management considerations:**

Not Applicable.

**Financial/Budget Implications:**

The cost to erect the necessary signage is approximately \$150 each, and sufficient funds exist in the maintenance operational budget for this work to occur.

**Policy implications:**

Not Applicable.

**Regional Significance:**

Not Applicable.

**Sustainability implications:**

Not Applicable.

**Consultation:**

The residents directly affected by the proposed prohibition, as outlined in Attachment 1, were consulted. All residents supported the proposed prohibition.

**COMMENT**

The proposal to prohibit parking along Newport Gardens, adjacent to the park as per Attachment 1, will maintain the general traffic flow at all times and therefore increase the level of safety and access at all times for all road users.

Adequate verge parking is available for users of Mawson Park on the park side of Mawson Crescent and Flinders Avenue.

On this basis, it is recommended that the proposed parking prohibition be supported.

## **ATTACHMENTS**

Attachment 1	Parking Prohibition – Newport Gardens, Hillarys
Attachment 2	Plan showing Newport Gardens and Mawson Park, Hillarys

## **VOTING REQUIREMENTS**

Simple majority.

## **RECOMMENDATION**

**That Council AMENDS the City of Joondalup Parking Scheme in accordance with Clause 33 of the City's Parking Local Law (1998) by the installation of a "NO PARKING" carriageway or verge along Newport Gardens, Hillarys as shown in Attachment 1 to this Report.**

*Appendix 9 refers*

To access this attachment on electronic document, click here: [Attach9brf120607.pdf](#)

## ITEM 12 PROPOSED MODIFICATION TO THE BURNS BEACH STRUCTURE PLAN – [29557]

**WARD:** North

**RESPONSIBLE DIRECTOR:** Mr Clayton Higham  
Planning and Community Development

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### PURPOSE

The purpose of this report is for Council to consider a modification to the Burns Beach Structure Plan.

### EXECUTIVE SUMMARY

The Burns Beach Structure Plan covers the land situated north of Burns Beach Road and west of Marmion Avenue, Burns Beach. The structure plan includes objectives and development provisions to guide the subdivision and development of the site. It was adopted by the Council and certified by the Western Australian Planning Commission (WAPC) in 2005.

A modification to the provisions of the Burns Beach Structure Plan is proposed in relation to corner lots with rear laneway access in a relatively small part of the structure plan area (the Residential R40 and R60 Precinct). Approximately 32 lots would be affected by the proposed modification (refer Attachment 2).

The amendment would enable garages on these lots to be located at a 'nil' (zero) side setback on northern and eastern side boundaries, while requiring the remainder of the dwelling to be setback a minimum of 2 metres. The proposal is sought to provide design flexibility and maximise the development potential of these corner lots, while ensuring good passive solar design.

The proposed modification is minor and would not alter the intent or purpose of the Burns Beach Structure Plan. The proposal would not adversely impact on the adjoining property, the subject lots or the front streetscape.

It is therefore recommended that the Council waives the requirement for public advertising and adopts the modification for forwarding to the Western Australian Planning Commission.

### BACKGROUND

**Suburb/Location:** Burns Beach  
**Applicant:** Development Planning Strategies  
**Owner:** Burns Beach Property Trust  
**Zoning:** **DPS:** Urban Development  
**MRS:** Urban/Parks and Recreation  
**Site Area:** 147 hectares  
**Structure Plan:** Burns Beach

The Burns Beach Structure Plan covers 147 hectares of land located north of Burns Beach Road and west of Marmion Avenue that is zoned 'Urban Development' under District Planning Scheme No 2 (DPS2). The structure plan will facilitate the future development of approximately 1600 dwellings.

The Burns Beach Structure Plan was finalised on 3 May 2005. Staged subdivision of the land (for predominantly residential use) is currently underway, with approximately 450 lots created to date.

This report is concerned with changes to development provisions relating to side setbacks for lots in the Residential R40 & R60 Precinct only, and does not impact on the rest of the structure plan.

### Previous Council Resolution

Council adopted an amendment to the Burns Beach Structure Plan, largely in relation to the Northern Residential Precinct, at its meeting held on 27 March 2007 (CJ059-03/07 refers). The amendment has been forwarded to the WAPC for final approval (certification), and this should be received soon.

### **DETAILS**

The proposed modification relates to the Residential R40 & R60 Precinct.

### Existing Provision

A current development provision for lots within the precinct permits a nil setback for dwellings to nominated side boundaries (western or southern) to maximise solar penetration to dwellings and courtyards. Where a side wall to the other side boundary contains a major opening to a habitable room, the side setback is required to be a minimum of 2 metres. A setback of 1.5 metres from the side (secondary) street also applies to corner lots.

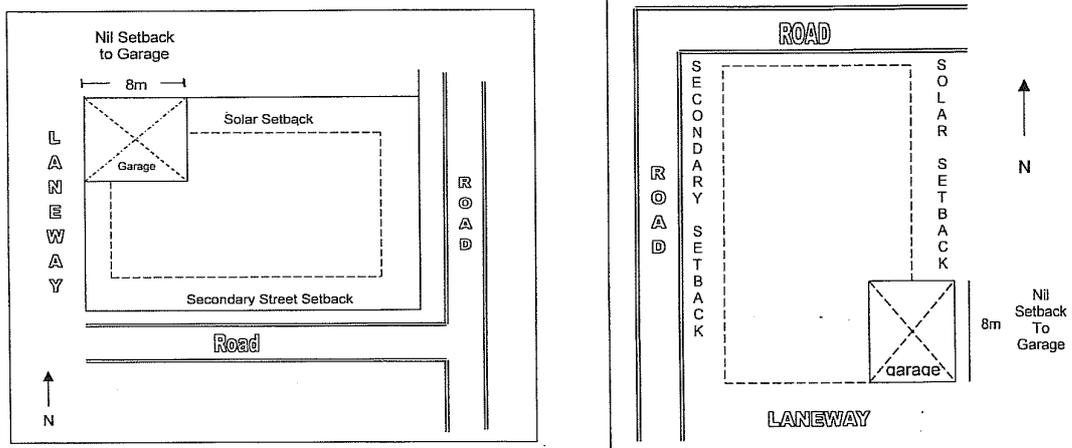
For corner lots in the Precinct, the imposition of all side setback requirements has a greater impact on the developable area of the lots. The developer of the Burns Beach estate is therefore seeking a modification to allow garages to have a nil setback on the boundaries where a 2 metre setback for passive solar design is normally required.

### Proposed Modification

Clause 6.2 (I) of the Burns Beach Structure Plan is proposed to be modified by the addition of the words in italics below:

*“To maximise winter solar penetrations, solar accessible courtyards are required. A nil setback onto a nominated side boundary is permitted to facilitate this (excluding street setbacks). For north-south orientated lots the nil setback shall be on the western boundary (Refer Figure 2). For east-west orientated lots the nil setback shall be on the southern boundary (Refer Figure 2). Garages on corner lots may, however, be permitted to be located at nil side setback on northern or eastern side boundaries for a maximum depth of 8 metres, with the garage doors offset a minimum of 1.0 metre from the subject side boundary where the laneway is a minimum of 7.0 metres in width. Where laneways are less than 7.0 metres in width, garage doors are to be offset 1.5 metres from the subject side boundary.”*

The following diagrams illustrate the effect of the proposed modification:



### Issues and options considered:

The options available to Council are:

- Adopt the proposed modification to the Burns Beach Structure Plan for the purpose of initiating public advertising.
- Adopt the proposed modification to the Burns Beach Structure Plan and forward it to the WAPC for final adoption and certification;
- Refuse to adopt the proposed modification to the Burns Beach Structure Plan.

### Link to Strategic Plan

The Burns Beach Structure Plan is supported by the following objective and strategy of the City's Strategic Plan 2003-2008:

Objective 3.3 To continue to meet changing demographic needs.

Strategy 3.3.1 To provide residential living choices

### Legislation – Statutory Provisions:

Clause 9.7 of DPS2 enables Council to amend an Agreed Structure Plan subject to the approval of the WAPC. Should Council determine that the modification to the structure plan is satisfactory, advertising of the proposal is required in accordance with Clause 9.5 of DPS 2.

Under Clause 9.6, upon the completion of the public advertising period, Council is required to consider all submissions within sixty (60) days to either adopt or refuse to adopt the amended structure plan, with or without modifications. Attachment 3 sets out the structure plan process.

Should Council determine that the proposed modification is minor such not to materially alter the intent or purpose of the Agreed Structure Plan or cause any significant detriment to land within or abutting the structure plan area, it may waive public advertising of the proposed modifications in accordance with Clause 9.7 of DPS2.

**Risk Management considerations:**

Not Applicable.

**Financial/Budget Implications:**

Not Applicable

**Policy Implications:**

Not applicable

**Regional Significance:**

Not applicable

**Sustainability implications:**

Not applicable

**Consultation:**

Given the minor nature of the current proposed modification and unlikely negative impacts on adjoining properties, the subject lots and the streetscape, waiving of public advertising is recommended.

**COMMENT**Amendment to Clause 6.2 (I)

Currently, buildings on corner lots in the Residential R40 & R60 Precinct are required to have a side setback for solar penetration (minimum 2m), as well as a secondary street setback (minimum 1.5m). These requirements limit the design options for development on these lots compared to other non-corner lots. The proposal is to amend the side setback to allow a nil side setback to garages on the boundary where a 2 metre setback for passive solar design would normally be required. No changes to other setback provisions are proposed.

The proposal would enable greater design flexibility and, at the same time, not result in any adverse impacts in terms of the subject lots, the adjoining lots or the front streetscape. In particular, as garages are non-habitable areas, often without windows, a setback for passive solar purposes is not necessary.

It is necessary, however, to include details specifying the location of garage doors in relation to the side setback to ensure visual truncations for vehicles accessing the garages are maintained.

Conclusion

Adoption of the proposed modification is aimed at providing additional design flexibility for corner lots in the R40 & R60 Precinct, without compromising the passive solar design of buildings. Given the minor nature of the proposal and unlikely impacts on adjoining properties, waiving of public advertising is recommended.

## ATTACHMENTS

Attachment 1	Location plan and aerial photograph
Attachment 2	Burns Beach Structure Plan, showing the subject corner lots
Attachment 3	Structure plan process flowchart

## VOTING REQUIREMENTS

Simple Majority

## RECOMMENDATION

### That Council:

- 1 Pursuant to Clauses 9.6 and 9.7 of the City of Joondalup’s District Planning Scheme No 2 RESOLVES that the proposed modification to the Burns Beach Structure Plan is considered to be minor in nature and AGREES to waive public notification of the proposed modifications;**
- 2 Pursuant to clause 9.7 of the City of Joondalup’s DPS2, ADOPTS the proposed modification to clause 6.2 of the Burns Beach Structure Plan, as follows, and submits it to the Western Australian Planning Commission for final adoption and certification:**

**Amends Clause 6.2 I to read:**

- I “To maximise solar penetration, solar accessible courtyards are required. A nil setback onto a nominated side boundary is permitted to facilitate this (excluding street setbacks). For north-south orientated lots the nil setback shall be on the western boundary (Refer Figure 2). For east-west orientated lots the nil setback shall be on the southern boundary (Refer Figure 2). Garages on corner lots may, however, be permitted to be located at nil side setback on northern or eastern side boundaries for a maximum depth of 8 metres, with the garage doors offset a minimum of 1.0 metre from the subject side boundary where the laneway is a minimum of 7.0 metres in width. Where laneways are less than 7.0 metres in width, garage doors are to be offset 1.5 metres from the subject side boundary.”**
- 3 Subject to certification by the Western Australian Planning Commission, ADOPTS the modified Burns Beach Structure Plan as an Agreed Structure Plan and authorises the affixation of the Common Seal to, and the signing of, the Structure Plan documents.**

*Appendix 10 refers*

To access this attachment on electronic document, click here: [Attach10brf120607.pdf](#)



Lot 600 Timberlane Drive, Woodvale is 1554m<sup>2</sup> in area and is located adjacent to the Woodvale Shopping Centre and opposite residential and commercial development. The site was previously used as a service station until operations ceased in 2003, with the site remaining vacant since that time.

Amendment 37 was considered by council for the purpose of public advertising at its meeting on 27 February 2007 (CJ028-02/07 refers). Council resolved to:

- 1 *Pursuant to Part 5 of the Planning and Development Act 2005, CONSENTS to initiate Amendment No 37 to the City of Joondalup District Planning Scheme No. 2 to rezone and rezone Lot 600 (243) Timberlane Drive, Woodvale from 'Commercial' R20 to 'Residential' R40, for the purposes of public advertising for a period of 42 days;*
- 2 *Prior to the advertising period commencing, FORWARDS the proposed amendment to the Environmental Protection Authority in order to decide if an environmental review of the site is required.*

The City received notification from the Environmental Protection Authority on 12 April 2004 that the scheme amendment did not require an environmental review of the site.

## **DETAILS**

### **Issues and options considered:**

The amendment proposes to rezone Lot 600 (243) Timberlane Drive, Woodvale from 'Commercial' R20 to 'Residential R40 (refer to Attachment 2). The R40 density would allow the development of a maximum of ten (10) aged or dependant persons dwellings or seven (7) grouped dwellings.

The indicative development plan submitted by the applicant shows nine (9) single storey aged or dependant persons dwellings (Attachment 3 refers). The proposed future development would front both Timberlane and Trappers Drives with a common driveway from Timberlane Drive servicing four (4) dwellings. Five separate driveways would service the other five residential dwellings (two on Timberlane Drive and the remaining three on Trappers Drive). While the plan is indicative only, it demonstrates the applicant's future development intentions for the site.

### **Options**

- Grant final approval to the amendment,
- Grant final approval to the amendment with modifications
- Refuse to adopt the amendment.

In all the above options, the proposal is forwarded to the WAPC for determination.

### **Link to Strategic Plan:**

The recommendation in this report is supported by the following objective and strategy in the City's Strategic Plan 2003-2008:

Objective 3.3	To continue to meet changing demographic needs.
Strategy 3.3.1	Provide residential living choices.

**Legislation – Statutory Provisions:**

Part 5 of the Planning and Development Act 2005 enables local governments to amend a Town Planning Scheme and sets out the process to be followed (Attachment 4 refers). Council has supported the initiation of the proposed amendment for the purposes of public advertising in its February meeting. The proposed amendment was then referred to the Environmental Protection Authority (EPA) for their comment. The EPA decided that a formal review of the amendment was not required.

Upon closure of the advertising period, Council is to consider all submissions received during the advertising period and resolve to either grant final approval to the amendment with or without modifications, or refuse the amendment. The decision will then be forwarded to the Western Australian Planning Commission (WAPC), who makes a recommendation to the Minister for Planning and Infrastructure. The Minister can either grant final approval to the amendment, with or without modifications, or refuse the amendment.

**Risk Management considerations:**

Not Applicable.

**Financial/Budget Implications:**

Not Applicable.

**Policy implications:**

Not Applicable.

**Regional Significance:**

The proposal has significance to the local neighbourhood as it is intended to facilitate the redevelopment of a site that immediately adjoins the Woodvale Shopping Centre. The proposal is unlikely to have any regional significance.

**Sustainability implications:**

The proposed scheme amendment would enable future subdivision and development on the site that will provide residential dwellings at a medium density, thereby promoting both economic and social sustainability. The development of medium density housing is considered appropriate given the location of the subject site to a number of services that includes bus services on both Timberlane and Trappers Drive, a nearby local park, a primary school and local neighbourhood centre. This accords with Strategy 3.3.1 'Provide Residential Living Choices' of the City's Strategic Plan 2003-2008 and the State Government Policy document, Liveable Neighbourhoods Community Design Guide Code.

**Consultation:**

The amendment was advertised in writing to all adjoining landowners, a notice placed in the local newspaper and Western Australian Newspaper and a sign placed on the site. Public advertising for the proposed scheme amendment occurred from 18 April to 30 May 2007.

A total of seven submissions were received, two of which were objections to the proposed amendment, two of which were from government agencies that had no objection, and the remaining three submissions had no objection to the proposed amendment. The submissions received have been addressed in the Schedule of Submissions (Attachment 5).

## COMMENT

### Submissions

The submissions of objection raised the following concerns:

- The impact of noise and traffic on future residents of the site.
- Reduced exposure to the existing commercial premises.
- The area should remain commercially zoned.

It is noted that the tavern and shopping centre adjoins a residential area, and the commercial premises are required to operate according to the required environmental standards in regard to safety, noise and pollutant emissions. The development of the site for residential purposes is not expected to block street exposure to the shopping centre as vehicle access and street exposure can be ascertained from both Timberlane and Trappers Drive. The former service station is in a derelict state and the owners have stated that they have been unable to attract a commercial business to the site.

### Suitability of Proposed Zoning, Density and Future Development

As other surrounding land is zoned R20, the proposal represents a 'transitional' zone between existing Residential R20 areas and the adjoining shopping centre and it is unlikely that there would be any impact on streetscape amenity. The proposed rezoning will not generate any traffic related issues in terms of additional vehicle movements beyond that of the previous service station. The indicative design concept for the site shows three (3) dwellings obtaining vehicle access to Trappers Drive, and six (6) dwellings obtaining access from Timberlane Drive. Given the nearby location of a roundabout, detailed assessment of the proposed driveways will be required at the development application stage to ensure appropriate and safe design.

The proposed R40 density is higher than adjacent residential lots, which have been developed to R20 with predominately single and two storey detached single residential dwellings. The indicative development of the future development shows the scale of the buildings proposed for the site is similar to existing residential development. The potential development of a maximum of seven (7) grouped dwellings or a maximum of ten (10) aged or dependant persons dwellings upon the site could take advantage of public transport, community services and retail facilities available in close proximity to the subject site, which promotes environmental and economic sustainability. Grouped or aged or dependent persons' dwellings are considered compatible with adjoining and surrounding land uses and could improve the amenity and visual amenity of the area.

It is recommended that the amendment be granted final approval without modification and the documents be subsequently endorsed and submitted to the WAPC for determination.

## ATTACHMENTS

Attachment 1	Location and Aerial site Plans
Attachment 2	Proposed Amendment No 37 to District Planning Scheme No 2 Zoning and R Code Maps
Attachment 3	Indicative Plan
Attachment 4	Scheme Amendment process flowchart
Attachment 5	Submission table.

## VOTING REQUIREMENTS

Simple Majority

**RECOMMENDATION****That Council:**

- 1 Pursuant to Town Planning Regulations 17(2) ADOPTS Amendment No 37 to the City of Joondalup's District Planning Scheme No. 2 without modification for the purposes of rezoning Lot 600 (283) Timberlane Drive, Woodvale from 'Commercial' to 'Residential' and recode from R20 to R40;**
- 2 AUTHORISES the affixation of the Common Seal and to endorse the signing of the amendment documents;**
- 3 NOTES the submissions received and advise the submitters of Council's decision;**
- 4 ADVISES the applicant that the concept plan submitted with the Amendment is not endorsed at this time, and will require the submission of development application. The development application will be required to adequately address the interface between the subject site and the shopping centre.**

*Appendix 11 refers*

*To access this attachment on electronic document, click here: [Attach11brf120607.pdf](#)*

## **ITEM 14 LEASE PORTIONS OF LOT 451 SHENTON AVENUE, JOONDALUP TO PROVIDE ADDITIONAL OFF-STREET PUBLIC PARKING – [07190]**

**WARD:** North

**RESPONSIBLE DIRECTOR:** Mr Clayton Higham  
Planning & Community Development

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### **PURPOSE**

To consider whether to enter into a lease for portions of Lot 451 Shenton Avenue, Joondalup with the Department of Attorney General (DOAG), to provide additional off-street public parking adjacent to the Police Station.

### **EXECUTIVE SUMMARY**

The report proposes entering into a lease on the basis of terms negotiated to provide medium and potential long-term investment benefits.

The lease would enable a further 110 car parking bays to be added to existing on ground public car parking adjacent to the Police Station building in the CBD North Zone.

### **BACKGROUND**

**Suburb/Location:** See attached plan (Attachment 1 refers)  
**Owner:** Minister for Justice and Legal Affairs (as primary interest owner)  
**Zoning:** **DPS:** DPS2 Joondalup City Centre  
**Land Area:** Zones 1 and 3 on Attachment 1 (Total site 1.9666ha)

At its meeting on 12 February 2002, Council adopted the Joondalup City Centre Public Parking Strategy. The strategy supported maximisation of ground level on-street and off-street parking before progressing with the more expensive multi-level parking stations.

In 2005 the City engaged Uloth & Associates Consultants in Traffic Engineering and Transport Planning to update an earlier 2001 Parking Study and undertake a Car Parking Occupancy Survey of the Joondalup CBD including City controlled on-street and off-street public parking.

The area surveyed was bounded by Joondalup Drive, Barron Parade, Collier Pass, Grand Boulevard, City of Joondalup Administration office, Lakeside Drive and Shenton Avenue.

The survey identified the levels of car parking occupancy and availability in the Joondalup CBD North Zone, Joondalup CBD South Zone and Lakeside Shopping Centre.

The 2005 Car Parking Occupancy Survey results identified the availability of car parking in the Joondalup CBD North as reaching capacity and highlighted the need for consideration to be given to future land use in the area and the need for further investigation to determine future demand and car parking capacity required and the subsequent action to be taken.

In November 2006, negotiations to purchase Lot 6 Lawley Court, Joondalup from Landcorp were concluded and the title transferred to the City of Joondalup.

Lot 6 Lawley Court is a site in the CBD North Zone acquired to construct a 245 car park for public off-street parking. Construction of the car park commenced in January 2007, with completion due by April 2007.

Ongoing negotiations with the Police Service were also progressed in the CBD North Zone to acquire a lease over land adjacent to the Police Station in order to expand existing at grade off-street public parking areas currently accessible from McLarty Avenue.

Agreement in principle has now been reached with the Department of the Attorney General (DOAG), on the basis of leasing land adjacent to the Police Station for the purpose of public car parking.

Planning approval would need to be obtained in due course.

## **DETAILS**

### The Site and encumbrances

The subject site is a reserve Under Management Order, for the purpose of Court House and Police Station, with the primary interest holder being the Minister for Justice and Legal Affairs.

In preparation of the lease agreement, the City will also pursue a first right of refusal to renew or extend the initial lease term beyond the 10 year term.

The primary interest holder is the only party permitted to enter into a lease over the site and only with the consent of the Western Australian Police.

Consent has been given in principle by the Department of the Attorney General (DOAG) to the City's proposal to add additional public car parking areas on the site subject to conditions raised by the Western Australian Police (WAPOL). This meets with the approval of the Western Australian Police (WAPOL).

### Site Potential

The existing site has the potential to provide a further 110 at grade parking bays (attachment 1 refers), with an estimated cost in the range of \$800,000 to \$850,000. The cost of negotiating a lease for a 10 year conditional term would be at a peppercorn rent.

As a medium term prospect the site has the potential to generate an income stream in addition to providing a need to meet the current and future strategic obligations and demands in the CBD North Zone. These needs are anticipated to increase with the proposed public announced expansion phases of the Joondalup Health Campus, north of Shenton Avenue.

Subject to future extension or expansion of the Police Station, which is not considered to be likely in the short term, the possibility would also exist to extend any currently negotiated lease term to one or both of Zones 1 and 3.

### Negotiated Terms of Lease

- 1 City to meet all costs of construction and ongoing maintenance for the term of the lease.
- 2 City to ensure proposed works does not compromise the Police Station's security.
- 3 City to indemnify the Western Australian Police Service for any liabilities resulting from this proposal.

- 4 Lease to be confined to Zone 1 and Zone 3 areas as located on Drawing No L-01-Rev0.
- 5 Final approval of the lease being obtained from the Commissioner of Police.
- 6 Approval of the lease being obtained from Minister, Department of Attorney General.
- 7 Term of lease to be 10 years of which the initial 5 years are to be fixed with the balance thereafter of the 10 year term being subject to a “break lease” clause, requiring the City to relinquish tenure on either or both zones should one or both zones be required for future redevelopment of the Police Station.
- 8 City reserves the right to introduce paid parking during the tenure of the lease.
- 9 City to enter into the lease for an agreed consideration of \$1.00.
- 10 Final documentation of proposed construction works to be submitted to the Western Australian Police Service and Department of Attorney General for approval prior to commencement of construction.

#### **Issues and Options considered:**

##### Option 1

Extend existing off street public parking at the Police Station site Lot 451 Shenton Avenue by leasing Zones 1 and 3.

By leasing of this site at Zones 1 and 3, the existing off-street public car parking areas on City land adjoining the site a further 110 car bays could be added. Average cost per bay gained is anticipated to be in order of \$7000 to \$7500 per bay.

##### Option 2

Extend existing off-street public parking at Police Station site to Zone 1 only.

This delivers an additional 55 car bays, however, in order to construct, reconfiguring of the existing 32 car bays would need to take place, putting this out of operation while the extension is carried out. This would create a shortfall for the period of construction of the new additional 55 bays. Average cost per bay gained is anticipated to be in the order of \$8,350 to \$8,850 per bay.

##### Option 3

Extend existing off-street parking at Police Station site to Zone 3 only.

This could be progressed with little interference to existing car parking and in turn, utilise a newly proposed driveway off Shenton Avenue during construction. A gain of 55 bays would be made at an average cost in the order of \$5,700 to \$6,200 per bay.

##### Option 4

Do nothing.

This option would lose the opportunity to expand available off-street public parking without land acquisition cost to meet growing community needs in the northern zone of the City Centre. The opportunity to generate further investment income for the City as and when

paid parking is introduced within the City Centre would also be lost. This would also fail to recognise the impact of the proposed expansion of the Joondalup Health Campus.

**Link to Strategic Plan:**

The implementation of a lease over Zones 1 and 3 of Lot 451 Shenton Avenue, Joondalup supports a range of outcomes identified within the Strategic Plan including:

Objective 3.1

To develop and maintain the City of Joondalup's assets and built environment.

Strategy 3.1.1

To plan the timely design, development, upgrade and maintenance of the City's infrastructure.

Strategy 3.1.2

To facilitate the safe design, construction and approval of all buildings and facilities within the City of Joondalup.

Objective 3.3

To continue to meet the changing demographic needs.

Strategy 3.3.2

To integrate plans to support community and business development.

Objective 3.4

To provide integrated transport to meet regional and local needs.

Strategy 3.4.2

To align use of land and modes of transport.

**Legislation – Statutory Provisions:**

Section 3.59 of the Local Government Act

The proposed leasing of a site for the purpose of construction of a car park in the Joondalup City Centre is identified as a major trading undertaking under this section.

This section of the Act provides that all major trading undertakings require a business plan to be prepared prior to entering into the transaction.

Pursuant to Section 3.59 (Commercial Enterprises by Local Government), a business plan is required to be prepared for public exhibition and comment (Attachment 2).

**Risk Management considerations:**

No Applicable.

**Financial/Budget Implications:**

The cost of entering into a lease for Zones 1 and 3 for the purpose of constructing a car park is considered to be in the order of \$1.

An estimate of cost for constructing the 110 bay on ground car park to Zones 1 and 3 was carried out by RBB Construction Cost Consultants on 27 July 2006 and after provision for consultants, escalation and other necessary scope items, it is estimated that a provision of \$800,000 to \$850,000 should be allowed.

It is anticipated that securing a lease over the subject zones has the potential to generate revenue benefits for the City, once fee paid parking is introduced in the central CBD. A pay back period of approximately 7 years could be anticipated with minimal risk.

Discussions with the Police Service did not identify any Treasury forward provision for any current expansion plans of the Police Station within the next 5 to 6 years. Should this occur it is not expected to expand the building footprint in a northerly direction or effect both zones concurrently of the subject zone.

The cost of carrying out the works will be considered as part of the 2007/2008 Draft Budget for Capital Works.

**Policy Implications:**

The Joondalup City Centre Public Parking Strategy, adopted by Council at its meeting on 12 February 2002, foreshadowed the maximisation of at-grade off-street parking in the medium term to be followed by construction of multi-level parking stations in the longer term.

The current Draft Parking Strategy 2007 suggests that the City should be encouraging parking in order to support both business activity and public transport, and that the CBD is not perceived to have a parking problem.

**Regional Significance:**

The City of Joondalup is recognised as the second major City Centre to Perth CBD. To ensure the continued growth of the City to meet the needs of the region, adequate support services and infrastructure will be required.

**Sustainability Implications:**

It is important that a balance be achieved between private and public transport needs. The City Centre is well served by public transport. In relation to private transport, there is a need to provide additional parking to ensure ongoing sustainability of business and community activities in the City Centre.

**Consultation:**

The Business Plan would be available for public inspection for a period of 6 weeks after a state wide notice is given, with the opportunity for members of the public to lodge submissions on the issue for Council to consider.

**COMMENT**

The planned enlargement of the Joondalup Health Campus is anticipated to increase demand for additional off-street public parking in the CBD North Zone.

The proposed lease adjacent to the Police Station and accessible to Shenton Avenue, provides a further 110 car bays to the CBD North Zone. This is considered worthwhile for both medium and potential long term investment outcomes in addressing community needs and the City's Strategic obligations.

The lease is supportive of the Current Parking Draft Strategy 2007, which suggests that the City should be encouraging parking in order to support both business activities and public transport, with the CBD not being perceived as having a parking problem.

## **ATTACHMENTS**

- 1 Site Plan Pt Lot 451 Shenton Avenue, Joondalup showing Zones 1 and 3
- 2 Business Plan

## **VOTING REQUIREMENTS**

Absolute Majority.

## **RECOMMENDATION**

### **That Council:**

- 1 BY AN ABSOLUTE MAJORITY ENDORSES the Business Plan for the proposed lease of land for construction of an at-grade car park, Lot 451 Shenton Avenue, forming Attachment 2 to this report, for the purpose of public notice in accordance with Section 3.59 (4) of the Local Government Act;**
- 2 Subject to 1 above, AUTHORISES the Chief Executive Officer to enter into an agreement to Lease Zones 1 and 3 of Lot 451 Shenton Avenue, Joondalup with the Department of Attorney General for construction of off street public parking, subject to the following conditions:**
  - (a) the City to meet all costs of construction and ongoing maintenance for the term of the lease;**
  - (b) the City to ensure proposed works does not compromise the Police Station's security;**
  - (c) the City to indemnify the Western Australian Police Service for any liabilities resulting from this proposal;**
  - (d) the lease to be confined to Zone 1 and Zone 3 areas as located on Drawing No L-01-Rev0;**
  - (e) the final approval of the lease being obtained from the Commissioner of Police;**
  - (f) the approval of the lease being obtained from Minister, Department of Attorney General;**
  - (g) the term of lease to be 10 years of which the initial 5 years are to be fixed with the balance thereafter of the 10 year term being subject to a "break lease" clause, requiring the City to relinquish tenure on either or both zones should one or both zones be required for future redevelopment of the Police Station;**

- (h) the City reserves the right to introduce paid parking during the tenure of the lease;**
- (i) the City to enter into the lease for an agreed consideration of \$1.00;**
- (j) the final documentation of proposed construction works to be submitted to the Western Australian Police Service and Department of Attorney General for approval prior to commencement of construction;**
- (k) the Business Plan for the proposed lease of land for construction of an At-Grade car park, Lot 451 Shenton Avenue, forming Attachment 2 to this report is approved by the Council with or without modifications after the consideration of public submissions.**

*Appendix 12 refers*

*To access this attachment on electronic document, click here: [Attach12brf120607.pdf](#)*



**BACKGROUND**

<b>Suburb/Location:</b>	Lot 504 (270) Joondalup Drive, Joondalup
<b>Applicant:</b>	S R Bruce (Telstra)
<b>Owner:</b>	Edith Cowan University
<b>Zoning:</b>	<b>DPS:</b> Centre
	<b>MRS:</b> Central City Area
<b>Site Area:</b>	19.0583 Hectares
<b>Structure Plan:</b>	Joondalup City Centre Structure Plan and Manual

History

- 18/11/2003 Applicant advised City of the proposed installation of a low impact telecommunications facility on Building 19 at Edith Cowan University and asked for comments.
- 25/11/2003 City advised that a consultation plan is required for the proposed facility.
- 28/11/2003 Applicant advised that Telstra is preparing the consultation plan.
- 21/07/2004 Applicant formally advised the City of the proposal for a low impact installation on Building 19 at Edith Cowan University. The consultation plan was included with the proposal and Council's comments were sought on this plan.
- 30/07/2004 The City advised that they had no objection to the consultation plan.
- 4/08/2004 Telstra advised that consultation had commenced.
- 17/09/2004 Interim report received from Telstra stating that objections had been received from several parties and face to face consultation would be undertaken with Joondalup ECU to discuss the issues raised.
- 10/11/2004 Telstra advised the City that ECU was not happy with the proposed low impact option near the child care centre and that they had requested the consideration of alternative options. Telstra stated that the most likely alternative option would be the replacement of one of the existing light poles surrounding ECU oval with a new pole of sufficient height to provide an appropriate level of coverage for both carriers. However, this solution would not be low impact.
- 9/02/2005 City advised that a Development Application would be required for the pole swap option, which would be advertised for public comment and determined by Council.
- 27/06/2005 Further interim report received from Telstra on the consultation process. ECU objected to the installation of the low impact facility on Building 19 due to its architectural merits and its proximity to a child care centre and student housing. The light pole swap on the ECU oval was determined to be an alternative that could provide an acceptable level of service. Telstra advised that a Development Application will follow to pursue this option, however they also stated that if this proposal is not approved, they will proceed with the construction of the low impact facility on Building 19.
- 6/07/2006 Development Application received by the City.
- 9/08/2006 Application advertised in accordance with City of Joondalup Planning Policy 7-11 – Telecommunication Facilities.

- 8/09/2006 Advertising closed.
- 17/11/2006 New photomontage received, taken from near the intersection of Lakeside and Joondalup Drive. This was included in the Information Pack.
- 21/11/2006 Item considered by Council. Recommendation to approve was not supported by Council, however no alternative resolution was passed.
- 15/05/2007 Telstra confirmed that the details of the photomontages are correct.

### Location

The MTF is proposed to be located in the south west corner of the ECU sports field (refer Attachments 1 and 2). The topography of the area is such that Joondalup Drive is approximately 5.5 metres higher than the sports field. There is existing mature vegetation surrounding the perimeter of the sports field including banksias and gum trees (refer Attachment 3).

### **DETAILS**

The proposal is for a new MTF that incorporates the construction of a 36.1 metre high monopole in the south west corner of the ECU sports field (refer Attachments 1 and 2). The development will comprise a 28.8 metre high slimline monopole with a 7.3 metre extension consisting of four sets of antennas flush mounted over four levels. The initial installation will be two sets of antennae over two levels, totalling six antennae, with a maximum of 12 antennae proposed in the future. The proposal also includes a purpose built three-carrier equipment room to be built in materials matching existing buildings in the area.

The applicant has stated that the installation is required as there are network coverage issues within ECU Campus, the adjoining residential area and along Joondalup Drive. The applicant advised that the proposed MTF is suitable to address these coverage issues and accommodate Telstra and other carriers infrastructure and also to mount floodlighting for the playing fields. The pole has been designed to allow other carriers to co-locate infrastructure on the pole in the future.

The applicant also stated that the possibility of co-locating with existing mobile telephone facilities was investigated, however none of the other carriers had a suitable facility within the subject area that would address the coverage issues. Also, the low impact facility was not considered to be suitable as it received strong opposition from ECU due to its proximity to a child care centre (approximately 100m). As a result, the applicant pursued the option of installing a new MTF within the grounds of ECU (approximately 440m away from the child care centre). The applicant stated that “the establishment of a new high impact site is only considered after all of the other options have been considered and exhausted as a resolution for the coverage issues.”

In relation to the Industry Code on the Deployment of Radio-communications Infrastructure (the Code), the applicants have stated the following in relation to the selection of location of the proposed MTF:

*Telstra confirms that it has applied the Precautionary Approach in selecting the proposed site at the above location in accordance with Section 5.1 of the Code. Further, that the Precautionary Approach has also been applied to the design of this proposed monopole installation in accordance with Section 5.2 of the Code.*

Further, the applicant has stated that:

*This proposed solution would provide a suitable resolution for both 3G and 2G networks by using a minimal number of antennas and the smallest possible structure size – from both a height and diameter perspective.*

The applicant stated the following in relation to the site selection and proposed location of the pole:

*The site that has been selected provides good separation from the future residential uses on the campus and from adjoining existing residential areas. The topography of the area and the vegetation in the area will also provide a good visual screen for the proposed infrastructure.*

The applicant has advised that selection of the site has been made utilising the policy provisions of the Western Australian Planning Commission's statement of Planning Policy 5.2. The applicant has prepared the proposal having regard to the City of Joondalup District Planning Scheme No 2 (DPS2) and achieves a reasonable separation to the adjacent residential uses.

#### **Issues and options considered:**

Council has the discretion to:

- Approve the application without conditions;
- Approve the application with conditions; or
- Refuse the application.

#### **Link to Strategic Plan:**

To continue to provide services that meet the changing needs a diverse growing community.

#### **Legislation – Statutory Provisions:**

The City of Joondalup DPS2 is the relevant document for this proposal with Section 6.8 of DPS2 being the relevant Clause:

##### **6.8 Matters to be considered by Council**

**6.8.1** *The Council when considering an application for Planning Approval shall have due regard to the following:*

- (a) interests of orderly and proper planning and the preservation of the amenity of the relevant locality;*
- (b) any relevant submissions by the applicant;*
- (c) any Agreed Structure Plan prepared under the provisions of Part 9 of the Scheme;*
- (d) any planning policy of the Council adopted under the provisions of clause 8.11;*
- (e) any other matter which under the provisions of the Scheme the Council is required to have due regard;*
- (f) any policy of the Commission or its predecessors or successors or any planning policy adopted by the Government of the State of Western Australia; City of Joondalup District Planning Scheme No 2 November 2000*

- (g) *any relevant proposed new town planning scheme of the Council or amendment or proposed Metropolitan Region Scheme Amendment insofar as they can be regarded as seriously entertained planning proposals;*
- (h) *the comments or wishes of any public or municipal authority received as part of the submission process;*
- (i) *the comments or wishes of any objectors to or supporters of the application;*
- (j) *any previous decision made by the Council in circumstances which are sufficiently similar for the previous decision to be relevant as a precedent, provided that the Council shall not be bound by such precedent; and*
- (k) *any other matter which in the opinion of the Council is relevant.*

**Risk Management considerations:**

The applicant has a right of appeal against Council's decision, or any conditions included therein, in accordance with the State Administrative Tribunal Act 2004 and the Planning and Development Act 2005.

**Financial/Budget Implications:**

Not applicable.

**Policy implications:**

City of Joondalup Planning Policy 7-11 Telecommunication Facilities (refer Attachment 4).

**Regional Significance:**

Not applicable.

**Sustainability implications:**

Not applicable.

**Consultation:**

The MTF proposal was advertised for a period of 30 days, in accordance with the requirements of the City of Joondalup Planning Policy 7-11 Telecommunication Facilities. The advertising was in the form of written notification to landowners within a 500m radius of the MTF location. A total of 223 letters were sent.

The following table summarises the submissions received:

<b>Submission Type</b>	<b>No of persons</b>	<b>No of submissions</b>
Objection	10	15
Neutral	4	4
<b>Total</b>	<b>14</b>	<b>19</b>

It should be noted that some objectors made multiple submissions.

The 14 people that responded during the advertising period represents a response rate of 6.3%.

The main issues and concerns raised were as follows:

- The effects of radiation on the health of the surrounding residents and whether these poles have cancer causing properties.
- The close proximity of the pole to residential homes.
- Why is it required in this location? A sports field is not an appropriate location for the pole.
- The proposal is unsightly.
- Depreciation of property values.
- Insufficient information was provided on the location of the pole to make an informed decision on the proposal.

## COMMENT

The various issues raised during the advertising period are discussed below:

### Health Risks and Matters

The majority of the submissions objecting to the proposal, believe there are health effects associated with MTFs as a result of EME. The concerns have been raised in relation to the possible effects on the nearby residents and users of the oval.

It is a mandatory requirement for all telecommunications carriers to comply with the Australian Safety Standards set by the Australian Communications and Media Authority (ACMA). The Radiation Frequency (RF) limits are established by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA).

The Australian Communications and Media Authority (ACMA) has provided the following information on the exposure limits for installations such as mobile phone base stations:

*The exposure limits set by the ACMA were determined by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) based on recent scientific findings and world's best practice. These limits are many times below a level of exposure to EME that is known to have adverse health effects on the human body and are consistent with World Health Organization guidelines.*

*ACMA has adopted a precautionary approach to the regulation of EME, ensuring that exposure limits to emissions from communications transmitters are stringent and lower than those levels that have been found to cause adverse health effects.*

The applicant stated that compliance with all applicable EME standards is part of Telstra's responsible approach to EME and mobile phone technology.

The EME levels for the proposed development, as provided by the applicant are 0.2% of the Australian Safety Standards, which is well below the level that is allowable. A copy of the EME estimations for the proposed MTF is included as Attachment 5.

### Location

The City's Policy 7-11 (Telecommunications Facilities) states that as a general rule, the City "does not support the location of telecommunications facilities within the vicinity of schools, child care establishments, hospitals and general residential areas".

The proposed facility is located adjacent to a sports oval within the grounds of ECU Campus. The site is located approximately 200 metres north of the closest residential area and is

approximately 1250 metres from the nearest primary schools, being Heathridge Primary School, Eddystone Primary School and Edgewater Primary School.

The original proposal for a low impact installation on Building 19 was not considered to be appropriate by ECU due to its proximity to a child care centre and student housing. The proposed location of the MTF was selected by the applicant after consultation with ECU to find an alternative location that would provide an appropriate level of mobile telephone service to ECU and the surrounding area, an acceptable visual resolution and is not in a sensitive location. Additionally, there were no existing mobile telephone facilities within the immediate area that Telstra could co-locate with which would address the coverage issues.

Sports fields are often used for the installation of MTFs as they allow some level of separation from adjoining residential areas, and in this case, can also be used to support lighting for the sports ground. Furthermore, sports fields are generally used by people on an infrequent basis. Therefore, users of the oval will be exposed to any EME far less frequently than if the MTF was located on or near a structure such as an office or school where people are present consistently throughout the week.

Given the above factors, the location of the MTF is considered appropriate and is supported.

#### Visual Impact

The proposed pole is proposed to be installed in galvanised grey to match the existing light poles surrounding the oval. The antennae are proposed to be installed in soft grey. Attachment 3 is a photo montage depicting how the pole will appear in the environment. Part of the pole will be screened by existing mature vegetation surrounding the oval.

The equipment room will be constructed utilising the same materials as the adjoining ECU infrastructure to integrate with the immediate environment and match the existing buildings in the vicinity. The brick type and colour will match the existing buildings and the roof is proposed to be custom orb in pale eucalypt.

Although the total height of the pole is 36 metres, it is largely screened by existing gum trees and has been designed as much as possible to match the existing light poles surrounding the oval to minimise the visual impact.

Due to the topography of the area with Joondalup Drive being approximately 5.5 metres higher than the sports oval the full height of the pole will not be seen from Joondalup Drive as the natural slope of the land will screen part of the pole. The pole will appear to be approximately 30 metres in height when viewed from Joondalup Drive and together with the surrounding vegetation the visual impact of the pole is reduced.

#### Depreciation of Property Values

Property values are not considered to be a valid planning consideration. However, no details were submitted in support of the supposed negative impact on property values.

### **CONCLUSION**

The community's demand for mobile phone services has increased over recent years and to satisfy this demand, MTFs are required within the urban environment. Notwithstanding this, each application is required to be considered on its merits on planning grounds.

The proposed MTF at ECU sports field is considered to be a suitable option, having regard to the:

- (i) distance of the proposed MTF from schools, hospitals and residential areas;
- (ii) topography and vegetation of the area providing visual screening; and

(iii) design of the proposed structure.

The technical information submitted by the applicant indicates that the estimated EME levels for the MTF are well below the mandatory standards set by the ACMA. The issue of compliance with the safety standards is a matter to be monitored and administered by the relevant federal agencies, however, it is recommended that ongoing reports be provided to Council confirming that the MTF is operating in compliance with the relevant standards.

It should be noted that Telstra has the right to pursue the low impact installation on the rooftop of Building 19 regardless of whether ECU supports the proposal (refer to background notes for the Council meeting of 27/06/2005). The location of the proposed telecommunications pole was selected through negotiations between ECU and the applicant. ECU supports the location of the telecommunications pole on the oval.

The proposed telecommunications pole is located 200m from the closest residential area. It is located in a sports field, which is an open area used on an infrequent basis. The topography of the land is such that part of the pole will be screened from view from Joondalup Drive.

Having considered the applicant's proposal and the comments from nearby residents, it is still recommended that the proposal be supported subject to conditions.

## ATTACHMENTS

Attachment 1	Location plan
Attachment 2	Site plan and elevation
Attachment 3	Visual montages of proposed MTF
Attachment 4	Policy 7-11 (Telecommunications Facilities)
Attachment 5	EME readings and estimations

## VOTING REQUIREMENTS

Simple Majority

## RECOMMENDATION

**That:**

- 1 Council APPROVES the application for planning approval dated 6 July 2006 for a telecommunications pole and equipment shelter at Edith Cowan University, Lot 504 (270) Joondalup Drive, Joondalup subject to the following conditions:**
  - (a) Submission of a detailed report to the satisfaction of the City within 90 days of the commissioning of the infrastructure, confirming that the Electromagnetic Energy (EME) levels being emitted from the structure, are in accordance with the relevant standards. The report should also identify the EME levels being emitted during the peak usage period;**
  - (b) The colours of the monopole and antennae to be similar in colour to the sports ground light poles and that the equipment shelter be of similar colours to the existing buildings in the vicinity, to the satisfaction of the Manager Approvals, Planning & Environmental Services;**
  - (c) The area surrounding the perimeter of the mobile telecommunication facility to be reinstated once construction work is completed;**

**(d) Written undertaking that all obsolete mobile telecommunication facilities at the subject site be removed at the cost of the carrier and that the land be reinstated to the original state should the mobile telecommunication facility not be required;**

**2 All submitters to be advised of Council's decision on this application.**

*Appendix 13 refers*

*To access this attachment on electronic document, click here: [Attach13brf120607.pdf](#)*



The land is reserved for Parks and Recreation under the MRS, and is under the management of the Hillarys Yacht Club.

The site is currently utilised as a boat sales and repairs yard.

In the past, Council has expressed concern over the availability of car parking associated with further commercial development within Hillarys Boat Harbour. In 2005, Council resolved to advise the WAPC that it did not support a proposed tavern and boardwalk due to safety concerns and a lack of parking in the immediate locality.

The WAPC ultimately resolved to support the application, subject to a cash payment being made in lieu of the provision of car bays associated with the development. It is anticipated that the cash-in-lieu payment would be used to pay for additional parking at the harbour, possibly including decked parking.

However, at this stage there is no certainty over the timing of the construction of any additional bays at the harbour.

## DETAILS

The main features of the development are as follows:

- A building height of 2 storeys (approximately 10.8m);
- A total floorspace of 687m<sup>2</sup> on the ground floor, comprising a fishing, tackle and boat chandlery outlet (467m<sup>2</sup>), office (23m<sup>2</sup>) kiosk and bait shop (197m<sup>2</sup>) and associated toilets;
- A total floorspace of 566m<sup>2</sup> on the first floor comprising offices and associated toilets;
- Outdoor dining area facing southwards, fronting onto the harbour;
- Balconies facing eastwards and southwards, fronting onto the harbour and car park area.

The Structure Plan provides a number of design criteria for developments in the structure plan area. As outlined later in the report, the development generally meets these criteria.

The applicant has estimated that the proposed development will generate a demand for 109 car bays. This is based on the parking ratios provided in the Structure Plan, as shown below:

Use	Area	Parking Standard	Parking Requirement
Office	589m <sup>2</sup>	8 per 100sqm	47.12
Retail	467m <sup>2</sup>	8 per 100sqm	37.36
Kiosk (Café)	197m <sup>2</sup>	1 per 4 seats or 12 per 100sqm	23.64 bays
<b>TOTAL BAYS REQUIRED</b>			<b>109 bays</b>

The applicant contends that the existing car parking provision will allow for these bays without the need to provide any new bays. This is explained by the applicant as follows:

(Note: One trailer bay is equivalent to two car bays)

Total on site parking provision figures

Total Car Bays = 1824

Total Boat Trailer Parking Bays = 253

Peak Demand Figures Provided (Sat / Sun)

Total Car Bays = 1690

Total Boat Trailer Parking – 200-250

*There are 334 car bays within the northern car park as well as 253 boat trailer bays and an additional 41 car bays within the area. The total car bays in the northern section is 375 bays.*

The applicant contends that given the number of existing bays, and based on a review of parking data from 2005/06, the current parking provisions would cater for the proposed development. The applicant has also stated that it is not intended for the development to attract new visitors, but instead facilitate existing visitors who are already parked at the marina.

The applicant further contends that the proposed offices would be used primarily during the week, during 'off-peak' parking periods. It is also contended that the kiosk would be utilised by boat owners, staff and people who already work in the vicinity.

## Options

Council has the discretion to:

- Make a recommendation to the WAPC supporting the proposal, with or without conditions;
- Make a recommendation to the WAPC that the application should be refused.

## Consultation

The proposal was advertised for 21 days, by way of two signs being erected on site and an advertisement being placed in the Joondalup Times for three consecutive weeks and also on the City's website.

At the conclusion of advertising, one submission had been received, being an objection based mainly on car parking and commercial viability grounds.

## Policy implications:

Not applicable.

## Risk Management considerations:

A decision considered adverse by the applicant will give rise to the potential for an appeal to the State Administrative Tribunal. In this regard, the Department for Planning and Infrastructure is both the landowner and determining authority (through the Western Australian Planning Commission).

**Legislation – Statutory Provisions:**

The statutory provisions of DPS2 do not apply for land reserved under the Metropolitan Region Scheme (MRS). The WAPC is the decision maker for any development proposals on reserved land. Council is empowered only to make a recommendation on the proposal.

**Link to Strategic Plan:**

The proposal is considered to have no Strategic Plan implications.

**Financial/Budget Implications:**

Not applicable.

**Regional Significance:**

Hillarys Boat Harbour is located within land that is reserved for Parks and Recreation under the MRS and serves a regional recreational function.

**Sustainability implications:**

Not applicable.

**COMMENT****Hillarys Boat Harbour Structure Plan and Implementation Strategy**

Hillarys Boat Harbour is recognised as one of the State's major regional recreation centres for tourism, which contains multi-faceted uses including ferry services, residential, food and beverage, public open spaces and entertainment.

The City of Joondalup, in conjunction with the Department for Planning and Infrastructure (DPI) has developed the Hillarys Boat Harbour Structure Plan and Implementation Strategy (the Structure Plan), which was endorsed in October 2004.

The Structure Plan guides the use and development of land and the seabed within Hillarys Boat Harbour. The main objectives of the Structure Plan are to enhance the role and improve the appearance of Hillarys Boat Harbour over the next 10 years.

The Structure Plan provides a number of design criteria for new developments within the Harbour area, which are outlined below.

**Size, Scale and Height**

The Structure Plan requires that new development should harmonise with existing adjacent buildings, by way of their height, bulk, roof type and window and door treatments. The size and scale of buildings should not dominate or be significantly smaller than neighbouring buildings, or '*destroy the existing pattern of two and three storey development*'.

As shown in the elevations and streetscape perspectives (Attachment 3 refers), the proposed development meets these requirements, as its height, roof pitch and external treatments are of a similar bulk and scale of those of the adjoining boat workshops.

**Relation to Lease Boundaries**

Development is not permitted beyond the lease area boundaries. Further, no outdoor seating areas are permitted beyond the lease area boundaries.

The proposed development meets these requirements.

### Roof Form

The Structure Plan requires that roof elements must be in harmony with the roofs of existing buildings in the immediate area, by way of their pitch and finished materials. The Structure Plan further states that roofs pitched at 35 degrees or greater will fit in best with the established roofscape.

The proposed roof pitch measures at 27 degrees, however as shown in the streetscape perspectives, the roof pitch and treatments generally complement those of the adjoining boat workshops. Further, the roof is proposed to be finished in Colorbond, consistent with the requirements of the Structure Plan.

### Character

The Structure Plan requires that the character of new developments shall maintain existing sightlines throughout the harbour area, and maintain visual and physical links between land and the harbour area. Public entrances are required to be clearly distinguishable.

The proposed development generally meets these requirements, through the provision of clearly marked entry points to the building as well as orientation of dining areas and balconies towards the adjacent pedestrian access way, to reinforce the physical links throughout the harbour area.

### Other design criteria

A number of other design criteria are outlined in the Structure Plan, in relation to materials, colours and the treatment of windows and doors. However, these criteria relate to additions to existing buildings, rather than new stand-alone developments, such as the subject application.

As such, it is considered that the additional criteria do not apply to the subject application, however it is noted that the proposal generally complies with the specified criteria.

### **Issues Raised During Public Consultation**

The issues raised in the public consultation are addressed below. The single submission received was an objection from the owner/operator of a lunch bar/kiosk in close proximity to the subject site.

### Car Parking

Concerns have been raised regarding the scale of the development and its potential impact on car parking in the locality. In its original consideration of the Structure Plan in 2000, Council expressed a number of concerns about the future demand for car parking within the harbour area (Item CJ261-09/00 refers).

The Structure Plan specifies the number of car parking bays required for each land use type. As outlined, it has been calculated that the development will generate a total car parking requirement of 109 bays.

The applicant contends that the development will not attract new visitors to the harbour, but would instead *'facilitate existing visitors who are already parked at the marina'*. However, the applicant has also stated that *'there is a great need for this type of development given there are no other facilities like this in the near vicinity.'*

The applicant further contends that the number of existing bays in the immediate locality can easily accommodate the extra demand created by the proposed development, without the need to provide further parking bays.

There are currently approximately 1800 car parking bays throughout the entire Hillarys Boat Harbour, with some 375 bays located in the northern section of the Harbour area. The car parking area immediately adjacent to the subject site has 55 bays, while a further 100 bays are located in nearby public car parks.

It is considered that the demand generated by the proposed development will considerably reduce the availability of public parking in the area. The parking requirements of the HBHSP will result in approximately one third of all public parking in the northern precinct being allocated to the proposed development, which will adversely impact on existing developments, and act to constrain future development in the precinct.

It is anticipated that demand on existing car parking in the northern precinct will also significantly increase once the new tavern and boardwalk have been developed, providing direct pedestrian access to the southern section of the harbour. Council has previously raised a number of concerns regarding parking at the harbour, and for this reason resolved to not support the tavern and boardwalk in 2005, however the development application was subsequently approved by the WAPC.

This increase in parking demand will be further compounded by the recent development of the Marine Research Building in the northern car park, which is acting to increase parking demand at the harbour.

Despite applicant's assertion that the proposed development will not attract new customers/visitors, it is considered the development would potentially attract additional fishermen and boat users to the area. Site visits to the area indicate that parking in the locality is already in high demand and already at capacity.

In its assessment of the proposal, the DPI has recommended that a cash-in-lieu contribution be sought from the developer, however it has not been specified how many bays the contribution will cover, or where the money is to be spent to provide future parking.

Based on the above, and in the absence of a suitable strategy to guide future parking provision in the locality, the comments received in the objection relating to public parking are supported.

#### Competition and Commercial Viability

Concern has been raised regarding the commercial impact of the proposed development on the existing lunch bar / kiosk, which is located approximately 100 metres from the subject site.

While these concerns are noted, competition is generally not regarded to be a valid planning consideration. Further, the proposal is considered to be consistent with the primary objective for the Northern Precinct of the Structure Plan, which is *"to reinforce the northern precinct's roles for maritime"*.

#### Conclusion

It is recommended that the WAPC be advised that the proposed development is not supported due to insufficient car parking in the immediate locality. The car parking demand generated by the development will adversely affect the amenity of the area, and will impact the potential for further development in the Harbour area by claiming a significant allocation of existing car parking bays in the locality.

**ATTACHMENTS**

Attachment 1            Location Plans  
Attachment 2            Development Plans

**VOTING REQUIREMENTS**

Simple Majority

**RECOMMENDATION**

**That Council ADVISES the Western Australian Planning Commission that the proposed office and retail development at 65 Northside Drive, Hillarys is not supported as:**

- 1        The amenity of the area will be detrimentally affected by the increase in commercial activity on the site, without the provision of further car parking areas;**
- 2        The existing car parking for the site is considered to be close to capacity in which further development would put considerable pressure on the availability of parking within the northern car parking areas thereby affecting the amenity of the area.**

*Appendix 14 refers*

*To access this attachment on electronic document, click here: [Attach14brf120607.pdf](#)*



variations are considered minor and could be supported. It is therefore recommended that the application be approved under DPS2 subject to relevant conditions of approval.

Further, it is recommended that the Western Australian Planning Commission be advised that the proposed 45 aged persons' dwellings are supported.

## BACKGROUND

<b>Suburb/Location:</b>	Lot 1001 (50) Woodlake Retreat, Kingsley
<b>Applicant:</b>	Planning Solutions
<b>Owner:</b>	Rockingham Park Pty Ltd
<b>Zoning:</b>	<b>DPS:</b> Residential- R40
	<b>MRS:</b> Urban and Parks & Recreation Reserve
<b>Site Area:</b>	2.9110 Hectares
<b>Structure Plan:</b>	Not applicable

The western portion of Lot 1001 is reserved under the Metropolitan Region Scheme (MRS) as Park and Recreation, while the eastern portion (which contains the existing and proposed development) is within the Urban zone under the MRS.

In 1999, planning approval was granted for the construction of 45 aged persons' dwellings with retirement village facilities on the subject site, which was to form Stage 1 of the Kingsley Retirement Village.

In 2000 and 2003, planning applications were submitted for Stage 2 of the Kingsley Retirement Village. However, due to insufficient information being provided in support of the applications, both applications were subsequently cancelled.

In 2006, the WAPC granted conditional approval for Lot 1001 to be subdivided into two lots and the creation of the Woodlake Retreat road reserve, which was proposed to dissect the site (Attachment 2 refers). With regards to the clearance of the conditions of subdivisional approval, the developer is liaising with the City to finalise the design details of the Woodlake Retreat extension in front of the development site. However, as the subdivision process has not been finalised, Lot 1001 currently exists as one lot.

The proposed additional 45 aged persons' dwellings would be located on the proposed eastern lot while the proposed western lot would be ceded to the WAPC as Crown Land, to form part of the Yellagonga regional reserve. The two proposed lots would be separated by the Woodlake Retreat road reservation.

Based on the approved 2006 subdivision plan, the proposed eastern lot would be 1.9472 hectares in area. All calculations for the subject development application have been based on this land area.

As the parent lot still contains the reserved portion of the site, the application is to be referred to the WAPC for its determination under the MRS. Council is still required to make its own determination of the application under DPS2.

The City in conjunction with a number of Government Agencies has submitted a Development Application to WAPC for the extension to Woodlake Retreat to Wanneroo Road. The road extension project will be constructed by the City, however, the installation of a four-way traffic signalised intersection at Wanneroo Road is to be carried out by Main Roads WA.

As part of the development application for the Woodlake Retreat extension, the City has undertaken an extensive public consultation process between December 2006 and the end of February 2007, with adjacent residents and other affected stakeholders. Outcomes from

the public consultation process supported the application and the City is currently awaiting the WAPC to approve the application.

The City has listed this project as a high priority, however, WAPC has not indicated its timeframe to approve this application. The City will continue to liaise with WAPC for an early response.

Notwithstanding the above, the City is working with the other Agencies in progressing the preliminary design of Woodlake Retreat, following which, the detailed design will be undertaken once WAPC approval is granted.

It is to be noted that the construction of the portion of road within Lot 1001 (Kingsway Retirement Village) will be designed and constructed by the developer as part of the overall lot development. On this basis, the City is negotiating with the developer for these works to proceed in conjunction with the overall road extension works. Initial indication from the developer is that they intend constructing the portion of road by January 2008.

## **DETAILS**

The subject site slopes nearly 5.5 metres from the proposed western boundary up to the eastern boundary (Wanneroo Road). For the purposes of this report, the reference to the western boundary will be a reference to the proposed subdivisional boundary that abuts the extension of the Woodlake Retreat road reservation, rather than the western boundary of the original lot.

The proposed aged persons' dwellings have been designed as 13 grouped dwellings and 32 multiple dwellings.

Proposed dwellings 73 to 90 will have direct access to Woodlake Retreat and are proposed to be set back 2.575 metres to 2.71 metres from the proposed western boundary. Dwellings 61 to 67 are proposed to be located along the northern boundary. These proposed dwellings will have boundary walls abutting the northern boundary, with the remaining parts of the dwellings being setback 4 metres from the northern boundary. The remaining proposed dwellings are located in the middle of the site.

The proposed development includes the following features:

- Part single and part two-storey development;
- A path network and common access driveway through the site;
- A pedestrian pathway is proposed along the Woodlake Retreat Extension
- Most of the dwellings are to be provided with their own parking areas; however for units 46 to 51 freestanding carports are proposed on the sides of the building;
- Twelve visitor bays are proposed in addition to the existing 18 visitor bays;
- The maximum height of the multiple dwellings is 7.5 metres above the finished ground floor level – most of the multiple dwellings are located in areas where there is to be excavations.

Due to the scale of the proposed development, it is not possible to provide plans with clear details as an attachment to this report. Full-scale plans are available for viewing in the Councillors' Reading Room.

The applicant has provided the following supporting information for the proposed development:

*The proposed Stage 2 of the Kingsley Retirement Village development shall ensure the integration is achieved with the existing Stage 1 development, through the use of common building materials, connecting vehicle and pedestrian access ways, etc. A review of the enclosed development plans supports the aforementioned.*

*It is important to appreciate that the topography of the subject site, and in particular the Stage 2 development site, is challenged with topography related constraints. A simple solution to dealing with the constraint would be to modify the contour levels of the site to simplify development and associated construction, however, this approach would likely result in a 'secluded' atmosphere with minimal integration to the Woodlake Retreat extension being undertaken as part of the subdivision of the subject site.*

*Rockingham Park Pty Ltd appreciates the importance of promoting an integrated streetscape to the public realm (ie Woodlake Retreat). As a result, the proposed development has been designed to negate the constraining topography of the subject site to achieve a streetscape elevation that promotes high levels of natural surveillance towards Woodlake Retreat and Lake Goollelal. The promotion of natural surveillance is a planning principle advocated by both the R-Codes and the WAPC's 'Designing Out Crime' guideline document. Furthermore, the proposal's ability to negate the constraints of the subject site's topography ensures that all residents of the Kingsley Retirement Village are able to access Woodlake Retreat without difficulty and enjoy the amenity of the adjacent Lake Goollelal and wider Yellagonga Regional Park.*

Further, the applicant has provided the following justification for not requiring compliance with Acceptable Standards of the RDC - Design Element 4.1.2A2iii – which relates to the design of the proposed dwellings to allow for "ageing in place":

*'Firstly it is important to appreciate that the proposed development (i.e 45 dwellings) shall complete the Kingsley Retirement Village, comprising a total of 90 dwellings. The total number of dwellings 'under-develops' the subject site in relation to the applicable 'R40' density coding. Put simply, no effective 'density bonus' is sought under the provision of the R-Codes. Furthermore, the Kingsley Retirement Village niche is to provide a resort style self-care retirement village, purpose built for independent living.*

*In consistency with the existing Stage 1 dwellings, no dwellings are proposed to meet any class associated with AS 4299.*

*The main problem associated with compliance with AS 4299 is that this standard imposes onerous spatial circulation requirements to accommodate permanent wheelchair dependent persons. Further sections shall elaborate on why the Kingsley Retirement Village site, in practical terms, repels wheelchair bound persons.*

*However, whilst AS 4299 is not proposed to be satisfied, 'ageing in place' is appreciated by Kingsley Retirement Village and management and operational procedures provide community members the available option of retrofitting a dwelling/s to modify:*

- *Placement heights and size increase of switches;*
- *Placement heights and size increase of powerpoints;*
- *Obstruction free shower recesses (e.g no hobbs or shower screen);*
- *Installation of hand rails;*
- *Removal of hinged doors;*
- *Increase of pavement height to provide a ramped finish to doorways; and*
- *Emergency call buttons- monitored 24 hours daily.*

*Whilst the abovementioned retrofitting options are provided by the Kingsley Retirement Village at a community member's request, it is reiterated that the niche is to provide a resort style self care retirement village, purpose built for independent living. Accordingly, it is the experience of Kingsley Retirement Village that any community members who experience permanent mobility or self-care problems willingly opt to relocate to other villages that specifically cater for highly dependent persons. In this regard, it is noted that none of the existing Stage 1 Kingsley Retirement Village community members are permanently disabled.*

*Clearly, from the above-mentioned, non-compliance with AS 4299 is, in our opinion, warranted, as the Kingsley Retirement Village offers through other means the opportunity to 'age in place'.*

#### **Issues and options considered:**

Two planning approvals are required to be issued for the site. Council approval is required under the DPS2, and WAPC approval is required under the MRS.

Council has the discretion, under DPS2, to:

- Approve the application;
- Approve the application subject to conditions; or
- Refuse the application.

In relation to the MRS, Council is required to refer its recommendation to the WAPC for its decision under the MRS.

#### **Link to Strategic Plan:**

The proposal is consistent with objective 3.3 of the City's Strategic Plan, whereby the City recognises the changing demographic needs of the community and assists in providing a variety of living choices and housing styles for its residents.

#### **Legislation – Statutory Provisions:**

The proposed Aged Persons' Dwellings will be located on Part of the Lot 1001 which is zoned Residential under DPS2.

Aged Persons' Dwelling is a 'D' use in the Residential Zone. A 'D' use means:

*"A use class that is not permitted, but to which the Council may grant its approval after following the procedures laid down by sub clause 6.6.2."*

Clause 6.6.2 requires that Council in exercising discretion to approve or refuse an application shall have regard to the provisions of clause 6.8, which is shown below:

## 6.8 MATTERS TO BE CONSIDERED BY COUNCIL

6.8.1 *The Council when considering an application for Planning Approval shall have due regard to the following:*

- (a) *interests of orderly and proper planning and the preservation of the amenity of the relevant locality;*
- (b) *any relevant submissions by the applicant;*
- (c) *any Agreed Structure Plan prepared under the provisions of Part 9 of the Scheme;*
- (d) *any planning policy of the Council adopted under the provisions of clause 8.11;*
- (e) *any other matter which under the provisions of the Scheme the Council is required to have due regard;*
- (f) *any policy of the Commission or its predecessors or successors or any planning policy adopted by the Government of the State of Western Australia;*
- (g) *any relevant proposed new town planning scheme of the Council or amendment or proposed Metropolitan Region Scheme Amendment insofar as they can be regarded as seriously entertained planning proposals;*
- (h) *the comments or wishes of any public or municipal authority received as part of the submission process;*
- (i) *the comments or wishes of any objectors to or supporters of the application;*
- (j) *any previous decision made by the Council in circumstances which are sufficiently similar for the previous decision to be relevant as a precedent, provided that the Council shall not be bound by such precedent; and*
- (k) *any other matter which in the opinion of the Council is relevant.*

As the proposed use being a “D” use, the following matters also require Council consideration, as identified in Clause 6.8.2:

6.8.2 *In addition to the matters referred to in the preceding sub clause of this clause, the Council when considering whether or not to approve a “D” or “A” use application shall have due regard to the following (whether or not by implication or otherwise they might have required consideration under the preceding subclasses of this clause):*

- (a) *the nature of the proposed use and its relationship to the use of other land within the locality;*
- (b) *the size, shape and character of the parcel of land to which the application relates and the nature and siting of any proposed building;*

- (c) *the nature of the roads giving access to the subject land;*
- (d) *the parking facilities available or proposed and the likely requirements for parking, arising from the proposed development;*
- (e) *any relevant submissions or objections received by the Council; and*
- (f) *such other matters as the Council considers relevant, whether of the same nature as the foregoing or otherwise.*

### Development Standards Table

The following table summarises the issues of non-compliance with the Residential Design Codes 2002 (RDC).

Standard	Required	Provided	Compliance
Front setback (from proposed Woodlake Retreat extension)	2 metres minimum, 4 metres average	3.54m	No
Front setback (common access driveway)	2 metres minimum, 4 metres average	3.15m	No
Side & Rear setbacks	Units 46 -51 Ground Floor- 1.5m First Floor-1.8m  Units 52 -72 Ground Floor- 1.5m First Floor-1.8 to 3.6m  Units 57-67 Ground Floor- 1.5m  Units 73-80, 83-90 Ground floor- 1.5m to 3m First floor- 1.2m to 3.13m  Units 81-82 Ground floor- 1.5m	0.97m to 1.3m 0.97m to 1.3m  1.085m to 1.2m 1.444m to 3.13m  1m  1.5m to 3m  1.8m to 3.6m  1m to 1.147m	No   No  No  No  No
Boundary Walls	2/3 of the length of the balance of the boundary behind the front setback, to one side boundary	Exceeding length, on two sides of boundaries and within the front setback	No
Retaining Walls Setbacks	1.5m	Nil	No
Outdoor Living Areas	Grouped Dwellings: 20m <sup>2</sup>	Units 57, 58 & 59:19.24m <sup>2</sup>	No

Standard	Required	Provided	Compliance
Balcony	Multiple Dwellings Unit Balcony: 10m <sup>2</sup> minimum	Unit 47=9.37m <sup>2</sup>	No
Stores	Minimum dimension of 1.5m with an internal area of at least 4m <sup>2</sup>	1.832m <sup>2</sup> to 3.84m <sup>2</sup>	No
Plot Ratio Areas	Plot Ratio Areas:  Grouped dwellings 100m <sup>2</sup> maximum  Multiple Dwellings 80m <sup>2</sup> maximum	<u>Grouped dwellings</u> 109m <sup>2</sup> to 119.28m <sup>2</sup>  Multiple dwellings 110.19m <sup>2</sup> to 134.05m <sup>2</sup>	No

**Risk Management considerations:**

Not Applicable.

**Financial/Budget Implications:**

Woodlake Retreat is planned to be extended northwards to Wanneroo Road, at the intersection with Kingsway in the near future.

One of the conditions of subdivision approval for Lot 1001 is for the construction of the Woodlake Retreat road extension to the northern boundary of the subject site. Other agencies, including the City of Joondalup, will be responsible for the extension of the road from the northern boundary of the development site to Wanneroo Road.

**Policy Implications:**

Not Applicable.

**Regional Significance:**

Not Applicable.

**Sustainability Implications:**

The environmental impact of the subdivision and development of the lot has been the subject of assessment by the Department of Environment and Conservation (DEC) and the WAPC.

The DEC has advised that it is satisfied that the Acid Sulphate Soil issues for the subdivision and the proposed 45 aged persons' dwellings have appropriately been addressed.

**Consultation:**

Advertising was undertaken for a period of twenty-one (21) days from 25 January to 14 February 2007. All nearby landowners were notified in writing of the proposal, one sign was erected on the site facing Woodlake Retreat and a notice was placed in the Joondalup Community newspaper for three (3) consecutive weeks, commencing on 25 January 2007.

At the conclusion of the advertising, a total of two submissions were received. One submission supported the proposal and the other submission expressed concern with the delay for the start of the construction of Woodlake Retreat road extension.

## COMMENT

### Land Use

Clause 3.4 of DPS2 states that the Residential Zone is intended primarily for residential development in an environment where high standards of amenity and safety predominate to ensure the health and welfare of the population. Clause 3.4 (c) specifies that one of the objectives of the Residential Zone is to provide the opportunity for aged persons housing in most residential areas in recognition of an increasing percentage of aged residents within the City.

As outlined in the Background section, the proposal is in addition to the existing aged persons' dwellings and retirement village facilities on the development site. Immediately to the south is an Aged Care Facility, currently under construction. The proposed additions will be complementary with the existing and proposed development in the immediate vicinity, and therefore, are considered to meet the objectives of Clause 3.4 (c) of DPS2.

Given that Woodlake Retreat is proposed to be extended to Wanneroo Road at the Kingsway intersection in the near future, it is expected that the traffic generated by the proposed additions will have a minimal impact on the surrounding area.

### Plot Ratio Area and Dwelling Design

Aged persons' dwellings are to be designed in the form of either single houses, grouped dwellings or multiple dwellings. In this instance, the proposed 45 aged dwellings are proposed to take the form of grouped and multiple dwellings.

The Acceptable Standards of the RDC specify that the maximum plot ratio area for Aged Persons Dwellings designed as grouped dwellings or multiple dwellings is 100m<sup>2</sup> and 80m<sup>2</sup> respectively. Further, the acceptable standards also require that all proposed dwellings are to be designed to meet the design requirements of Australian Standard AS4299 (Adaptable Housing) – Adaptable House class B Standard. The Performance Criteria of the RDC for these two matters are the same and are shown below:

- *the proportion of dwellings designed to meet Australian Standards for Dependent Persons Dwellings;*
- *the location of the site in relation to public transport and convenience shopping ;*
- *the topography of the locality in which the site is located; and*
- *the demand for aged and dependent persons' accommodation.*

The plot ratio areas for the proposed grouped dwellings vary from 109m<sup>2</sup> to 119.28m<sup>2</sup> and for the multiple dwellings, vary from 110.19m<sup>2</sup> to 134.05m<sup>2</sup>. Although the proposed dwelling sizes are larger than the limits set under the Acceptable Standards of the RDC, no objection is held to the larger sized dwellings.

The applicants are also seeking a variation to the Acceptable Standards by not requiring any proposed dwelling to meet Australian Standard AS4299 (Adaptable Housing) – Adaptable House class B Standard. The applicant's justification for their request has been provided in the Detail section of this report.

With respect to location, the site is located adjacent Wanneroo Road, where public transport is available. Further, Kingsway Shopping Centre is located opposite the subject site, on the eastern side of Wanneroo Road.

Whilst it is understood that the proposed dwellings will be more of a self-care retirement village, the Acceptable Standards of the RDC can be varied to specify that a proportion of the dwellings is to be designed to meet Australian Standard AS 4299 (Adaptable Housing), to the Adaptable House class B standard.

It can be argued that dwellings 49 - 60 can be modified to meet the relevant Australian Standards, given that the:

- (a) topography around these dwellings can support wheelchair access to the existing Retirement Village Centre facilities, unlike the location of the other proposed dwellings; and
- (b) larger sized dwellings are supported, which should assist in modifying the design to allow compliance with the Australian Standard.

Compliance with this requirement would then support "ageing in place" within some of the development. Therefore, it is recommended that dwellings 49-60 should meet the Australian Standards for Adaptable Housing, in order to satisfy the performance criteria of the RDC.

### **Parking**

DPS2 establishes car-parking standards for aged persons' dwellings at the rate of one bay per dwelling. However, the DPS2 does not specify a standard for visitor parking for this type of development. In this regard, it is considered appropriate that the RDC requirements be applied to the proposed development as follows:

#### Grouped Dwellings

Visitors' spaces are to be provided at the rate of one space per four dwellings, or part thereof, in excess of four dwellings served by a common access.

#### Multiple Dwellings

Not less than 10 per cent of the required spaces provided for the exclusive use of visitors where there are more than four dwellings are provided.

The required car parking for the proposed additions is shown below:

Dwellings Type	Rate	Bays Required	Additional Bays Proposed
Grouped Dwelling	1 space per dwelling (13 dwellings proposed)	13	
Grouped Dwelling-visitor parking	1 space per four dwellings	4	
Multiple Dwelling	1 space per dwelling (32 dwellings proposed)	32	

Dwellings Type	Rate	Bays Required	Additional Bays Proposed
Multiple Dwelling-visitor parking	Not less than 10 per cent of the required spaces	4	
Total Bays		53	57

### **Building Setbacks, Boundary Walls & Retaining Walls**

The proposed variations are considered to be minor and are not expected to impact on adjoining properties in terms of sunlight and ventilation. The proposed development will complement the existing development and therefore the variations are supported.

### **Outdoor Living Areas for Grouped Dwellings**

Most of the dwellings comply with the required outdoor living areas except for four units. The variations to the outdoor living areas are minimal and are not expected to impact on the proposed dwellings, as the outdoor area will be used in conjunction with a habitable room. Therefore the variations are supported.

### **Balcony area for Multiple Dwelling**

The variation to the balcony is minimal and therefore it is expected that that it will provide open space appurtenant to the multiple dwelling. Therefore, the variation is supported.

### **Average front setbacks**

The variations to the proposed average front setbacks along Woodlake Retreat are not expected to impact on the streetscape as the proposed units will be located opposite the Yellagonga Park Reserve. There is adequate privacy and open space for the proposed dwellings and therefore, it is recommended that the Woodlake Retreat variations be supported.

The average front setbacks for the internal units are not expected to impact on the internal streetscape, as the front setbacks along the internal driveways are uniform. The internal variations are not expected to impact on the privacy and open space of the proposed dwellings and therefore, these variations are supported.

### **Store rooms**

The proposed store rooms of the existing Aged Persons' Dwellings do not satisfy the required areas of the Acceptable Standards of the RDC, however, it is expected that the proposed store rooms would meet the needs of the residents. On this basis, the variations are supported.

### **Appeal to the State Administrative Tribunal**

Clause 6.5.1 of DPS2 specifies that an application that is required to be determined by Council, may be deemed by the proponent to have been refused, if a decision determining the application has not been conveyed to the applicant or proponent by the Council within 60 days of the Council's receipt of the application.

No decision was made on this application within 60 days of receipt of the application and as such the applicant has exercised their right of appeal to the State Administrative Tribunal (SAT). As such, this matter is subject to the SAT process.

On receipt of the application, the City wrote to the applicant requesting an acid sulphate soil (ASS) assessment report, which would then be referred to the DEC for comment. The applicant stated that they would contact DEC directly and would submit the comments of DEC to the City. The City continued to progress the application. However, the comments from DEC were not provided within the 60 day period and as such, the applicant lodged an appeal to the SAT.

The matter is currently at the mediation stage.

The City has already been required to provide a draft list of conditions of approval to the SAT as part of the mediation process. The SAT is aware that this report is being presented to Council's June 2007 meeting and the application, if approved, could result in conditions of approval that may vary from the draft conditions of approval already provided by the City.

### **Acid Sulphate Soils**

Whilst the DEC have indicated acceptance of the ASS assessment report, it is considered appropriate to impose a condition of planning approval requiring:

- the formulation of an Acid Sulphate Soil Management Plan (ASSMP);
- approval by DEC for the ASSMP prior to works commencing on-site;
- work ceasing if ASS are found; and
- remedial work being carried out in accordance with the approved ASSMP.

### **Determination by Western Australian Planning Commission**

As outlined in the background section, the site is partly Reserved for Recreation under the MRS. The WAPC will be the decision-making body for the development under the MRS and Council will make the determination under the DPS2.

### **Consultation**

With regards to the concern regarding the perceived delays for the extension of Woodlake Retreat, it is the City's intention to extend Woodlake Retreat north of this development and connect with Wanneroo Road, at the intersection with Kingsway. The City is currently awaiting approval of a development application for the extension of Woodlake Retreat through to Wanneroo Road from the WAPC.

Finalisation of this matter cannot occur until such time as the land required for the Woodlake Retreat extension has been excised from this development site. This will be covered by way of finalisation of the subdivision process or by the provision of relevant conditions of planning approval.

### **Conclusion**

It has been determined that the proposed development generally complies with the provisions of the RDC, and in particular; density, plot ratio and open space. The proposed development is consistent with the surrounding development and given the proposed extension of Woodlake Retreat, the proposal will have minimal traffic impact on the locality. The discretions sought for the proposed development are not expected to be detrimental to future residents and the surrounding area. In this instance, it is considered that the overall interest of orderly and proper planning and the preservation of the amenity of the locality has been addressed to the satisfaction of the City.

Given the above and that the proposed development will meet the objectives of 3.4 (c) of DPS2 in relation to the opportunity for aged persons housing in residential areas, it is recommended that the:

- 1 application be approved under DPS2 with standard and special conditions relating to:
  - (a) the proposed extension of Woodlake Retreat;
  - (b) certain dwellings incorporating the Australian Standard AS 4299.
  - (c) the portion of Lot 1001 proposed to be located west of the Woodlake Retreat road reserve, being vested in the Crown.
- 2 WAPC be advised that Council recommend approval of the application under MRS.

## ATTACHMENTS

Attachment 1	Site and Location plans
Attachment 2	Subdivision Plan Approved
Attachment 3	Development Plans

## VOTING REQUIREMENTS

Simple Majority

## RECOMMENDATION

### That Council:

- 1 **EXERCISES discretion under Clause 6.8 of the District Planning Scheme No 2 and under clause 2.3.4 of the Residential Design Codes 2002 and determines that the performance criteria under clause(s) 3.2.1, 3.3.2, 3.4.2, 3.4.3, 3.6.2, 3.10.3 & 4.1.2 have been met and that:**
  - (a) **the average front setbacks of 3.54m & 3.15m in lieu of 4 metres;**
  - (b) **boundary walls exceeding the maximum length, on two sides boundaries and within the front setback;**
  - (c) **retaining walls that are setback at nil in lieu of 1.5m;**
  - (d) **outdoor living areas for dwellings 47, 57 - 59;**
  - (e) **balcony area of 9.37 m<sup>2</sup> in lieu of 10 m<sup>2</sup> for dwelling 47;**
  - (f) **stores areas with areas 1.82m<sup>2</sup> to 3.84m<sup>2</sup> in lieu of 4m<sup>2</sup>;**
  - (g) **plot ratio areas for Aged Persons' grouped dwellings are 109m<sup>2</sup> to 119.28m<sup>2</sup> in lieu of 100m<sup>2</sup>;**
  - (h) **plot ratio areas for Aged Persons' multiple dwellings are 110.19m<sup>2</sup> to 134.05m<sup>2</sup> in lieu of 80 m<sup>2</sup>; are appropriate in this instance.**
- 2 **APPROVES, under the City of Joondalup District Planning Scheme No 2, the application for Planning Approval dated 21 December 2006 submitted by Planning Solutions (AUST) Pty Ltd, on behalf of the owner, Rockingham Park Pty Ltd, for an additional 45 aged persons' dwellings at Lot 1001 (50) Woodlake Retreat, Kingsley, subject to the following conditions:**

- (a) The existing Woodlake Retreat is to be extended to the northern boundary of the development and is to be constructed at the owners cost and to the specification and satisfaction of the City. Should these works be completed prior to the extension of Woodlake Retreat to Wanneroo Road, then a turnaround facility will be required at its northern end;
- (b) The portion of Lot 1001 Woodlake Retreat, located west of the Woodlake Retreat road reserve being shown on a Diagram or Plan of Survey (deposited plan) as a ‘Reserve for Recreation’ and vested in the Crown under Section 152 of the Planning and Development Act 2005. Such land to be ceded free of cost and without any payment of compensation by the Crown;
- (c) The boundaries accommodating the proposed development as depicted on the approved site plan shall be consistent with the Deposited Plan to be issued by Landgate, for the proposed subdivision of Lot 1001 in order to meet the requirements of conditions (a) and (b);
- (d) A 1.8 metre wide path is to be provided in the eastern verge of Woodlake Retreat and a 2.4 metre wide shared path in the western verge;
- (e) The capacity of the road drainage system may be reduced to the 10 year storm event provided approval for this is obtained from the Department of Environment and Conservation. Appropriate pollutant control is to be incorporated into the drainage design;
- (f) All stormwater generated from within the proposed road reserve, including the existing catchment to the south, is to be contained within the road reserve or within a drainage reserve, to the design and satisfaction of the City;
- (g) A stormwater management plan being prepared for the further approval of the Manager, Approvals, Planning and Environmental Services and such plan being approved prior to the commencement of works on site. The stormwater management plan shall be designed for the 100 year storm event with all stormwater being contained within the development site;
- (h) All buildings and works, other than works where otherwise required by these conditions, shall be contained within the property boundary;
- (i) The materials and finishes of the proposed additional dwellings shall complement the existing buildings on site to the satisfaction of the Manager, Approvals, Planning & Environmental Services;
- (j) All proposed hilite windows shall be 1.65 metres above the floor level to the satisfaction of the Manager, Approvals, Planning & Environmental Services;
- (k) The boundary walls and the retaining walls being of a clean finish and made good to the satisfaction of the Manager, Approvals, Planning & Environmental Services;

- (l) A refuse management plan is required to be submitted for approval indicating number of bins, frequency of servicing and on site management to the satisfaction of the Manager, Approvals, Planning & Environmental Services;
- (m) Bin storage and wash down facilities shall be provided in accordance with the approved plans and to the satisfaction of the Manager, Approvals, Planning & Environmental Services. Bin areas shall consist of a concrete floor that grade evenly to an industrial floor waste gully connected to sewer and a hose cock installed to the satisfaction of the Manager, Approvals, Planning & Environmental Services;
- (n) The parking bays, driveways and points of ingress and egress to be designed in accordance with the Australian Standard for offstreet Carparking (AS2890). Such areas are to be constructed, drained, marked and thereafter maintained to the satisfaction of the City prior to the development first being occupied. These works are to be done as part of the building program;
- (o) The lodging of detailed landscaping plans to the satisfaction of the City for the development site with the Building Licence application. For the purpose of this condition, detailed landscaping plans shall be drawn to a scale of 1:100 and show the following:
  - (i) the location and type of existing and proposed trees and shrubs within the car park area;
  - (ii) any lawns to be established; and
  - (iii) areas to be reticulated or irrigated.
- (p) Landscaping and reticulation to be established in accordance with the approved plans prior to the development first being occupied and thereafter maintained to the satisfaction of the Manager, Approvals, Planning & Environmental Services;
- (q) All visitor bays shall be marked and permanently set aside as such;
- (r) Dwellings 49 to 60 are to be modified to incorporate the standards set out in AS 4299 (Adaptable Housing) to the Adaptable House class B standard;
- (s) At least one occupant of each dwelling shall be an aged person over 55, or is the surviving spouse of such person;
- (t) A Memorial shall be placed on the Certificate of Title to provide a warning regarding midge plague problems that may exist on the site. Prospective tenants shall also be warned of potential midge problems.
- (u) An Acid Sulphate Soil Management Plan shall be submitted and approved by the Department of Environment and Conservation prior to works commencing on-site. Should the site be found to contain acid sulphate soils, all site works shall cease. Any further site works shall be carried out in accordance with the provisions of the approved Acid Sulphate Soil Management Plan by the Department of Environment and Conservation and to the satisfaction of the City of Joondalup and the Department of Environment and Conservation;

- (v) **Rights of access across the site in the favour of the City or its servants shall be granted to enable the construction of the proposed extension of Woodlake Retreat.**
- 3 NOTES that this approval is based on the construction of an extension of Woodlake Retreat to Wanneroo Road at Kingsway, to be jointly funded by the developer of Lot 1001, Department of Environment and Conservation and the Department of Planning and Infrastructure (Main Roads), as well as the City of Joondalup.**
- 4 RECOMMENDS to the Western Australian Planning Commission approval of the application under the Metropolitan Region Scheme, subject to the conditions of approval outlined in Part (2).**

*Appendix 15 refers*

*To access this attachment on electronic document, click here: [Attach15brf120607.pdf](#)*



## DETAILS

The proposed structure would adjoin the southern boundary of Lot 699, which is occupied by the City of Joondalup's Padbury Community Hall and a car park (refer to Attachment 1). The subject site abuts Jason Place but has no direct vehicular access to this street, although a pedestrian access way connects the centre with this street. Vehicle access to the subject site is provided from Caley Road through Lot 699.

The proposed shed has an area of 30.1m<sup>2</sup> and a height of 3.7 metres and is proposed to be located 0.5 metres from the side boundary (refer to Attachment 2). Under DPS2, the side setback requirement for non-residential uses is 3.0 metres.

The subject lot, as well as Lot 699, is zoned Residential R 20

### Applicant Justification:

The applicant has advised that:

*"The reason for the justification for 500mm setback for the patio we are wanting to build at the Padbury Play Group is because you are requesting the patio to be built at the Play group for the safety of the children from the tree and for the rubber matting that you have put down on the ground under the children's play equipment. Also for the protection for the children out of the harsh WA sun and weather."*

### Link to Strategic Plan:

Not Applicable

### Legislation – Statutory Provisions:

A Child Day Care Centre is a 'D' use in a Residential area. A 'D' use means:

*"A use class that is not permitted, but to which Council may grant its approval after following the procedures laid down by subclause 6.6.2"*

In this instance, the land use has already been established and the development application is for a small patio addition on the site.

Council has the discretion under Clause 4.5 of the DPS to vary the development standards for non-residential building (clause 4.7 of the DPS2) as follows:

#### 4.5 VARIATIONS TO SITE AND DEVELOPMENT STANDARDS AND REQUIREMENTS

*4.5.1 Except for development in respect of which the Residential Planning Codes apply and the requirements set out in Clauses 3.7.3 and 3.11.5, if a development is the subject of an application for planning approval and does not comply with a standard or requirement prescribed under the Scheme, Council may, notwithstanding that non-compliance, approve the application unconditionally or subject to such conditions as Council thinks fit.*

*4.5.2 In considering an application for planning approval under this clause, where, in the opinion of Council, the variation is likely to affect any owners or occupiers in the general locality or adjoining the site which is subject of consideration for the variation, Council shall:*

- (a) consult the affected parties by following one or more of the provisions for advertising uses pursuant to clause 6.7.1; and*

- (b) *have regard to any expressed views prior to making its decision to grant the variation.*

4.5.3 *The power conferred by this clause may only be exercised if Council is satisfied that:*

- (a) *approval of the proposed development would be appropriate having regard to the criteria set out in Clause 6.8; and*
- (b) *the non-compliance will not have any adverse effect upon the occupiers or users of the development or the inhabitants of the locality or upon the likely future development of the locality.*

Unless otherwise provided for in Part 3 of the DPS2, Clause 4.7 sets out the setback requirements for non-residential buildings. The site is located within the Residential Zone. Part 3.4 – The Residential Zone of the DPS2, does not establish setbacks for non-residential buildings in this Zone. As such, the setback standards of Clause 4.7 apply, which are shown below:

#### 4.7 **BUILDING SETBACKS FOR NON RESIDENTIAL BUILDINGS**

4.7.1 *Unless otherwise provided for in Part 3 of the Scheme, buildings shall be set back from property boundaries as follows:*

- Setback from street boundary 9.0 metres*
- Setback from side boundary 3.0 metres*
- Setback from rear boundary 6.0 metres*

Clause 6.6.2 requires that Council in exercising discretion to approve or refuse an application, shall have regard to the provisions of clause 6.8, as follows:

#### 6.8 **MATTERS TO BE CONSIDERED BY COUNCIL**

6.8.1 *Council when considering an application for Planning Approval shall have due regard to the following:*

- (a) *interests of orderly and proper planning and the preservation of the amenity of the relevant locality;*
- (b) *any relevant submissions by the applicant;*
- (c) *any Agreed Structure Plan prepared under the provisions of Part 9 of the Scheme;*
- (d) *any planning policy Council adopted under the provisions of clause 8.11;*
- (e) *any other matter which under the provisions of the Scheme Council is required to have due regard;*
- (f) *any policy of the Commission or its predecessors or successors or any planning policy adopted by the Government of the State of Western Australia;*
- (g) *any relevant proposed new town planning scheme of Council or amendment or proposed Metropolitan Region Scheme Amendment insofar as they can be regarded as seriously entertained planning proposals;*
- (h) *the comments or wishes of any public or municipal authority received as part of the submission process;*
- (i) *the comments or wishes of any objectors to or supporters of the application;*
- (j) *any previous decision made by Council in circumstances which are sufficiently similar for the previous decision to be relevant as a*

- precedent, provided that Council shall not be bound by such precedent; and*
- (k) *any other matter which in the opinion of Council is relevant.*

With the proposed use being a “D” use, the additional matters identified in Clause 6.8.2 also require Council consideration in relation to this application for planning consent:

6.8.2 *In addition to the matters referred to in the preceding subclause of this clause, Council, when considering whether or not to approve a “D” or “A” use application, shall have due regard to the following (whether or not by implication or otherwise they might have required consideration under the preceding subclauses of this clause):*

- (a) *the nature of the proposed use and its relationship to the use of other land within the locality;*
- (b) *the size, shape and character of the parcel of land to which the application relates and the nature and siting of any proposed building;*
- (c) *the nature of the roads giving access to the subject land;*
- (d) *the parking facilities available or proposed and the likely requirements for parking, arising from the proposed development;*
- (e) *any relevant submissions or objections received by Council; and*
- (f) *such other matters as Council considers relevant, whether of the same nature as the foregoing or otherwise.*

**Risk Management considerations:**

Not Applicable.

**Policy implications:**

Not Applicable.

**Regional Significance:**

Not Applicable.

**Sustainability implications:**

Not Applicable.

**Consultation:**

The adjoining site is occupied by the City of Joondalup’s Padbury Community Hall. No advertising has been undertaken.

**COMMENT**

The development proposal is in conflict with the Scheme provisions as set out in clause 4.7 of DPS2. Clause 4.7 requires a side boundary setback of 3.0 metres whereas the development application is for a setback of 0.5 metres.

Although the development application is minor in nature, the delegation notice does not permit the City to deal with the application.

The patio is small in dimensions and is located near an adjoining commercial car parking area. Consequently, it is considered that the proposed development will not adversely affect

the adjoining property owner nor will it have an adverse impact on the amenity of the area generally.

In light of the above comments it is recommended that the application for planning approval be granted.

## **ATTACHMENTS**

Attachment 1            Locality plan and aerial photo  
Attachment 2            Plans of proposed patio

## **VOTING REQUIREMENTS**

Simple Majority

## **RECOMMENDATION**

### **That Council:**

- 1        EXERCISES discretion under clause 6.8 and 4.5 of District Planning Scheme No 2, and determines that a side setback of 0.5m in lieu of 3m is appropriate in this instance;**
  
- 2        APPROVES the application for planning approval dated 30 March 2006 submitted by Pearcey Constructions, the applicants, on behalf of the owners, the City of Joondalup, for a proposed outbuilding on Lot 40 (11) Jason Place, Padbury, subject to the following conditions:**
  - (a)      The colour of the patio to complement the colour of the existing building;**
  
  - (b)      All stormwater must be contained on site to the satisfaction of the City.**

*Appendix 16 refers*

*To access this attachment on electronic document, click here: [Attach16brf120607.pdf](#)*

## **ITEM 19                    MONTHLY TOWN PLANNING DELEGATED AUTHORITY REPORT, DEVELOPMENT AND SUBDIVISION APPLICATIONS – APRIL 2007 – [07032] [05961]**

**WARD:**                    All

**RESPONSIBLE  
DIRECTOR:**            Mr Clayton Higham  
                                 Planning and Community Development

### **PURPOSE**

To report on the number and nature of applications considered under Delegated Authority.

### **EXECUTIVE SUMMARY**

The provisions of clause 8.6 of the text to the District Planning Scheme No 2 allows Council to delegate all or some of its development control powers to those persons or committees identified in Schedule 6 of the Scheme text.

The purpose of delegation of certain powers by Council, in addition to other Town Planning matters, is to facilitate timely processing of development applications and subdivision applications. The framework for the delegation of those powers is set out in resolutions adopted by Council and is reviewed generally on a two yearly basis, or as required. All decisions made by staff, acting under delegated authority as permitted under the delegation notice, are reported to Council on a monthly basis.

The normal monthly report on Town Planning Delegations identifies:

- 1     Major development applications
- 2     Residential Design Codes
- 3     Subdivision applications

This report provides a list of the development and subdivision applications determined by those staff members with delegated authority powers during the month of March 2007 (see Attachments 1 and 2 respectively) for those matters identified in points 1-3 above.

### **BACKGROUND**

The number of development and subdivision applications determined for April 2007 under delegated authority and those applications dealt with as “R-code variations for single houses” for the same period are shown below:

<b>Approvals Determined Under Delegated Authority – Month of April 2007</b>		
<b>Type of Approval</b>	<b>Number</b>	<b>Value (\$)</b>
Development Applications	91	12,729,031
R-Code variations (Single Houses)	49	3,092,847
<b>Total</b>	<b>140</b>	<b>15,821,878</b>

The number of development applications received in April 2007 was 77. (This figure does not include any applications that may become the subject of the R-Code variation process).

<b>Subdivision Approvals Processed Under Delegated Authority Month of April 2007</b>		
<b>Type of Approval</b>	<b>Number</b>	<b>Potential new Lots</b>
Subdivision Applications	2	2
Strata Subdivision Applications	4	9

The District Planning Scheme No 2 requires that delegation be reviewed annually, unless a greater or lesser period is specified by Council. The Council, at its meeting of 13 December 2005 considered and adopted the most recent Town Planning Delegation for a period of two years.

## **DETAILS**

### **Issues and options considered:**

Not Applicable

### **Link to Strategic Plan:**

The strategic plan includes a strategy to provide quality value-adding services with an outcome to provide efficient and effective service delivery. The use of a delegation notice allows staff to efficiently deal with many simple applications that have been received and allows the elected members to focus on strategic business direction for the Council, rather than day-to-day operational and statutory responsibilities.

### **Legislation – Statutory Provisions:**

Clause 8.6 of the District Planning Scheme No 2 permits development control functions to be delegated to persons or Committees. All subdivision applications were assessed in accordance with relevant legislation and policies, and a recommendation made on the applications to the Western Australian Planning Commission.

### **Risk Management considerations:**

The delegation process includes detailed practices on reporting, checking and cross checking, supported by peer review in an effort to ensure decisions taken are lawful, proper and consistent.

### **Financial/Budget Implications:**

Not Applicable

### **Policy implications:**

Not Applicable

### **Regional Significance:**

Not Applicable

**Sustainability implications:**

Not Applicable

**Consultation:**

Consultation may be required by the provisions of the Residential Design Codes 2002, any relevant Town Planning Scheme Policy and/or the District Planning Scheme.

Of the 91 development applications determined during April 2007, consultation was undertaken for 35 of those applications. Of the 6 subdivision applications determined during April 2007, no applications were advertised for public comment, as the proposals complied with the relevant requirements.

All applications for an R-codes variation require the written support of the affected adjoining property owner before the application is submitted for determination by the Coordinator Planning Approvals. Should the R-codes variation consultation process result in an objection being received, then the matter is referred to the Director Planning and Community Development or the Manager, Approvals, Planning and Environmental Services, as set out in the notice of delegation.

**COMMENT**

Large local governments utilise levels of delegated authority as a basic business requirement in relation to Town Planning functions. The process allows determination times to be reasonably well accepted and also facilitates consistent decision-making in rudimentary development control matters. The process also allows the elected members to focus on strategic business direction for the Council, rather than day-to-day operational and statutory responsibilities.

All proposals determined under delegated authority are assessed, checked, reported and crosschecked in accordance with relevant standards and codes.

**ATTACHMENTS**

Attachment 1	April 2007 decisions - Development Applications
Attachment 2	April 2007 Subdivision Applications processed

**VOTING REQUIREMENTS**

Simple Majority

**RECOMMENDATION**

**That Council NOTES the determinations made under Delegated Authority in relation to the:**

- 1 development applications described in Attachment 1 to this Report for April 2007;**
- 2 subdivision applications described in Attachment 2 to this Report for April 2007.**

*Appendix 17 refers*

*To access this attachment on electronic document, click here: [Attach17brf120607.pdf](#)*

**ITEM 20                    RECOVERY OF COSTS IN THE MATTER OF  
MULLALOO PROGRESS ASSOCIATION V CITY  
JOONDALUP & RENNET PTY LTD SUPREME  
COURT ACTION CIV 1285 OF 2003 - [02089]  
[32027]**

**WARD:** All

**RESPONSIBLE  
DIRECTOR:** Mr Garry Hunt  
Office of the CEO

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**PURPOSE**

To consider the various options available to the City with respect to taxed costs in the amount of \$60,978.12 awarded to the City in the matter of *Mullaloo Progress Association v City of Joondalup & Rennet Pty Ltd*, Supreme Court Action CIV 1285 of 2003.

**EXECUTIVE SUMMARY**

This report outlines the actions the City has taken to recover costs pursuant to the Council's resolution of 13 December 2005 (Item CJ266-12/05 refers). Reasonable measures to obtain payment from the Mullaloo Progress Association (MPA) have been carried out. The report also identifies the various options available to the Council in respect to the debt owed to it by the MPA.

It is recommended that the Council resolves to continue the recovery action against the MPA. It is also recommended that the Council address the MPAs conduct through making a submission to the State Government on proposed legislative changes in the *Associations Incorporation Act 2006*.

**BACKGROUND**

The MPA commenced legal proceedings in the Supreme Court of Western Australia objecting to the Mullaloo Tavern redevelopment. The application made by the MPA was dismissed in the judgement made by the Full Court delivered on 28 November 2003. Orders for costs in favour of the City were made and the court granted a special costs order on 25 March 2004.

On 14 September 2004, the bill of costs was taxed and the amount finalised was \$60,978.12.

**City's attempts to recover costs**

The City's legal advisor in this matter, Watts & Woodhouse, wrote to the MPA on 21 October 2004 demanding payment of the taxed costs within 10 days.

On 30 October 2004, the MPA wrote to the City requesting that it waive the awarded costs on the basis that 'as a voluntary self funded, not for profit, resident Association, it does not have funds or assets to pay any of the monies being sought.'

The City responded on 11 November 2004 advising 'the matter is currently being reviewed, and it is anticipated that a report will be submitted to a future meeting of the Council. No further action was taken in relation to this matter until Council considered a report in December 2005.

## **Council Resolution**

On 13 December 2005, the Council resolved as follows (Item CJ266 -12/05 refers):

*“That Council:*

- 1 *AGREES not to pursue the recovery of the full costs against the Mullaloo Progress Association Inc (MPA) for the taxed amount of \$60,978.12 subject to the MPA providing a written acknowledgement to the satisfaction of the Chief Executive Officer acknowledging the significant costs that have been incurred by the ratepayers as a result of their unsuccessful action;*
- 2 *PROGRESSES action to recover the amount of \$10,000, from the Mullaloo Progress Association Inc by way of a payment plan spread over five years, which will constitute full satisfaction of the costs awarded;*
- 3 *REQUESTS the Chief Executive Officer to draft a policy for consideration of the Council in relation to recovering costs awarded to the City in legal proceedings.”*

## **Original invoice**

An invoice in the amount of \$10,000 was raised on 30 June 2006, however, it was not accompanied by a covering letter.

Mr Mitch Sideris, President of the MPA, claims the invoice received was dated 18 August 2006 and payable by 23 August 2006.

## **Complaint to the Australian Competition and Consumer Commission (ACCC)**

On 26 August 2006, Mr Sideris emailed all Elected Members advising he had made a complaint to the ACCC alleging unconscionable conduct on the part of the City in relation to the debt recovery.

The City wrote to the ACCC on 4 September 2006 advising of the action it had taken.

The City responded to the MPA on 14 September 2006 apologising for the oversight that had occurred with the relevant supporting documentation of the Council decision not being attached to the original invoice. (Attachment 1 refers). The letter set out the Supreme Court's decision to award costs in favour of the City and the Council's resolution. The letter also requested the provision of a payment plan and a written acknowledgement of the significant costs incurred by ratepayers as a result of the unsuccessful legal action.

The ACCC subsequently contacted the CEO and advised him that the ACCC's involvement in this matter was not required.

## **Further correspondence with the MPA**

From October 2006 – April 2007, the City corresponded with the MPA about the costs recovery issue. (Attachments 2-7 refers) On 20 March 2007 (Attachment 4 refers), the City wrote to the MPA advising:

- the total amount of the debt that the City agreed to recover was \$10,000 spread over five years;
- the original invoice raised on 30 June 2006 for the full sum of \$10,000, against which the City had expected that progress payments would be made, has been cancelled;

- a new invoice has been raised for the sum of \$2,000, the first of five instalments of \$2,000 over five years;
- the MPA has not responded to the City's request for the provision of a payment plan;
- the MPA has failed to provide the written acknowledgment that was stipulated by the Council as a condition of accepting a reduced amount of costs;
- failure to pay the invoice and provide the written acknowledgement would result in the recall of the payment plan and a submission to the Council of a further report requesting reconsideration of the recovery of costs.

The City again wrote to the MPA on 16 April 2007 (Attachment 6 refers) requesting that it confirm that it is unable to pay the amount of \$10,000 owing to the City or any portion of that amount in any form of payment arrangement. The City also requested the MPA provide audited financial statements to support its claim that it has no capacity to pay. In its response of 14 May 2007, the MPA did not comply with this request. The MPA merely repeated questions and allegations which previously had been responded to by the City and submitted new allegations. (Attachment 8 refers)

The City has responded to numerous and repeated allegations the MPA has raised including:

- the Council had authorised an unlawful attempt to recover immediately in full the entire amount of \$10,000;
- the Council failed to apologise to the MPA for issuing the original invoice;
- the City's reason for wanting to take this matter back to the Council relates to the City's refusal to process the MPAs current FOI request;
- the CEO did not have the written authorisation of the Council to defend the legal proceedings in the Supreme Court;
- it was the City that commenced the legal action in the Supreme Court, not the MPA.

## **DETAILS**

The City's view is that there is no point engaging in further debate and conjecture by corresponding with the MPA about this issue. Prolonging the exchange of correspondence would serve no useful purpose and in fact would detract from the central issue, which is to decide if and how the City should progress the recovery of costs. The nature of the correspondence from the MPA to date largely constitutes stalling tactics and suggests not only a reluctance to pay the outstanding costs but also casts serious doubt on its capacity to pay. The MPA has not responded substantively to the City's attempts to recover costs and instead has persisted in making allegations unrelated to the issue.

If the City fails to take action, it may set a precedent whereby other associations may decide to commence legal action against the City with the resolve that the City would not pursue the repayment of costs. The risk of frivolous litigation would increase. The City may also be criticised by ratepayers, who ultimately bear the costs of legal actions, for failing to take proactive measures.

The City has also recently developed Policy 7-18 Recovery of Costs Awarded to the City. The policy contains a general principle that the City would 'seek to recover costs which are awarded to the City as a result of legal proceedings which have been taken against the City by another body.' The policy also provides that a report must be presented to the Council on matters relating to costs recovery and that it is the Council that is responsible for making the final decision on whether to proceed with recovery action.

### **Issues and options considered:**

There appears to be five distinct options for the Council to consider, however, elements of those options may be combined.

### Option 1: Request the Commissioner for Fair Trading's intervention

The Commissioner for Fair Trading has powers under section 39 of the *Associations Incorporation Act 1987* (AI Act) to investigate the financial affairs of an incorporated association.

Under subsection 3, the Commissioner may give a direction to an incorporated association requiring the production of records relating to the affairs of the association, including accounting records. Section 39(4) provides the Commissioner may give a direction to an incorporated association requiring the production to the Commissioner of a statement of the financial position of the association as at the end of the last preceding financial year, or as at some other specified date. A registered company auditor must audit the statement.

The powers under section 39 can only be exercised where the circumstances suggest that there has been:

- a contravention of, or failure to comply with, the AI Act or the regulations; or
- an offence that involves fraud or dishonesty or concerns the management of the affairs of the association.

In certain circumstances the Commissioner may cancel the incorporation of an incorporated association.

In view of the fact that the MPA has not complied with the City's request to produce financial statements and the difficulties encountered during the cost recovery process, the City may approach the Commissioner for Fair Trading for assistance.

### Option 2: Apply to wind up the MPA

Section 31(1) of the AI Act provides that an incorporated association may be wound up by the Supreme Court if:

- the association is unable to pay its debts;
- the Court is of the opinion that it is just and equitable that the association should be wound up.

The question is what evidence would the City need to present to the court in an application to wind up the MPA. Case law indicates that more than just affidavit evidence that the MPA is insolvent is required. In *QBE Workers Compensation v Wandiyali A.T.S.I. Incorporated; S E Kilroy - Applicant [2004] NSWSC 1022*, proof of failure to pay a particular debt did not, in the judge's opinion, satisfy the generally accepted definition of insolvency which involves inability to pay all debts as and when they fall due.

Several pieces of correspondence from the MPA indicate that it is unable to pay any or all of the costs awarded:

- letter of 30 October 2004 to the Commissioners mentions on two occasions that the MPA 'does not have funds or assets to pay **any** of the monies being sought' (emphasis added);
- email of 6 December 2006 to the Council mentions on two occasions that 'the MPA effectively became insolvent the moment a \$10,000 account was issued'.

Case law indicates that the admissions contained in the MPAs correspondence about its ability to pay the debt would not suffice and the City may need to initiate the judgement execution process (outlined below) prior to winding up proceedings.

Three important factors to consider when deciding whether the winding up option should be pursued:

- the dissolution clause in the MPAs constitution provides that surplus money may be distributed to another incorporated association, which may or may not carry out operations to the benefit of the City's ratepayers;
- should the MPA be successfully wound up, there is nothing stopping former members to form a new incorporated association with the same objectives and intent of the MPA;
- once the legal identity is ended, an association cannot be sued for any debts in its own right (Committee members may then be held liable. Strict conditions of liability are explained in option 4.)

### Option 3: Commence legal action against the MPA – enforcement of judgment

The decision of the Supreme Court to award costs can be enforced as a civil judgment under the *Civil Judgments Enforcement Act 2004*.

The City is likely to incur more legal expenditure in pursuing the MPA for costs through the judgment execution process. As the predicted outcome would be that the court would make a suspension order, the process would not assist in actual costs recovery. However, if a suspension order were made, the City would be able to argue in any application to wind up the MPA that this was evidence the MPA is unable to pay its debts.

In practice, the City would only pursue an organisation for costs where it knew that organisation had taken out public liability insurance. There is no legislative requirement for an incorporated association to hold public liability insurance. The MPA is unlikely to have a public liability insurance policy that covers costs of litigation as it is expensive and the type of activities the MPA engages in is generally not high risk.

### Option 4: Commence legal action against individual members

Section 12 of the AI Act provides that members or officers of an incorporated association are generally not liable to contribute towards the payment of debts or liabilities of the association.

Unless there is evidence to demonstrate that one or more of the Committee members have breached their 'duties' in a negligent or illegal manner, any action against individual members would likely be futile. It is also doubtful that the committee members of the MPA have director's liability or officer's insurance (covers the committee members where the organisation is proven to be negligent and is insolvent).

In Western Australia, the *Volunteers (Protection from Liability) Act 2002* protects volunteers from incurring civil liability when doing community work on a voluntary basis. The MPA may argue that its members are afforded the protection under this piece of legislation.

There is considerable doubt as to whether the City can actually take the course of action of suing individual members and even if the City were able to, the associated legal costs would likely be significant.

### Option 5: Publicise the actions of the MPA

The State Government is reviewing the *Associations Incorporations Act 1987* and is seeking public submissions on the proposed changes. Some of the proposed amendments contained in the Bill are directly relevant to the situation the City finds itself in with the MPA. By making a submission the City could highlight the inadequacies of the current legislation in terms of

the accountability of incorporated associations when they institute unmeritorious legal proceedings.

Some of the proposed amendments include:

- the requirement to lodge an annual return with the Commissioner showing financial information;
- increased financial accountability eg. auditing of financial records, solvency statements;
- power of Commissioner to appoint a statutory manager where it is in the interests of the association's creditor;
- increased investigative powers of the Commissioner;
- court winding up process to be aligned with the provisions of the *Corporations Act 2003*;
- local governments to receive the surplus property of an association upon winding up;
- increased penalties for non-compliance with the Act.

**Link to Strategic Plan:**

The defence of legal actions and the significant costs associated with them affects the City's capacity to utilise monies for the benefit of the community and the pursuit of strategic goals.

**Legislation – Statutory Provisions:**

There are various potential legislative impacts as outlined in the report.

**Risk Management considerations:**

If the Council resolves to take no further action with respect to costs recovery, it may encourage community associations, whether incorporated or not, to undertake potentially expensive legal actions against the City in the belief that payment of costs could be avoided. This may lead to an increase in litigation against the City with the consequential effect of increasing the burden on ratepayers who ultimately bear the cost of defending such actions.

**Financial/Budget Implications:**

The original debt was the Supreme Court costs order taxed at \$60,978.12 and Council subsequently resolved to accept \$10,000 over five years subject to conditions.

**Policy Implications:**

Policy 7-18 Recovery of Costs Awarded to the City.

**Regional Significance:**

Not Applicable.

**Sustainability Implications:**

Not Applicable.

**Consultation:**

Not Applicable.

## COMMENT

The City has done all it possibly can to carry out Council's resolution of 13 December 2005, however, the MPA has not co-operated and costs have not been able to be recouped. The fact the MPA has not complied with the two conditions of Council accepting the reduced sum of \$10,000 in satisfaction of the original debt gives the Council the option of reconsidering that offer.

It is evident that there are considerable impediments to pursuing either of the following options:

- apply to wind up the MPA;
- commence legal action against the MPA – enforcement of judgment;
- commence legal action against individual members.

There are doubts over the practicability of proceeding with winding up or further legal action to pursue the costs as it may be a case of 'throwing good money after bad' with no effective outcome.

While any strategy for the way forward would need to take into account the identified obstacles, the City has an obligation to ensure that positive steps are taken to address the MPAs actions.

## ATTACHMENTS

Attachment 1	City's letter to the MPA of 14 September 2006 requesting payment plan and written acknowledgment
Attachment 2	Mayor's letter to the MPA of 12 October 2006
Attachment 3	MPAs email of 6 December 2006 to the Elected Members
Attachment 4	City's letter to the MPA of 20 March 2007 advising neither a payment plan nor written acknowledgement has been received
Attachment 5	MPAs letter to the City of 30 March 2007
Attachment 6	City's letter to the MPA of 16 April 2007
Attachment 7	City's letter to the MPA of 18 April 2007
Attachment 8	MPAs letter to the City of 14 May 2007

## VOTING REQUIREMENTS

Absolute Majority

### **Call for Support of one-third of members of the Council**

The Local Government Act 1995, under regulations prescribed to deal with Section 5.25(e), lays down the following procedure for dealing with revoking or changing decisions made at Council or Committee meetings:

*If a decision has been made at a Council meeting, then any motion to revoke or change the decision must be supported by at least one-third of the number of officers (whether vacant or not) of members of the Council.*

*If supported by one-third of the members, then any decision to revoke a resolution of the Council is required to be passed by an Absolute Majority.*

Prior to giving consideration to the following recommendation, Elected Members are required to give the support of one-third of its members, and such support is to be recorded in the Minutes of this meeting.

**RECOMMENDATION****That Council:**

- 1** NOTES the actions taken to recover monies owing from the Mullaloo Progress Association;
- 2** BY AN ABSOLUTE MAJORITY, REVOKES Point 2 of its decision of 13 December 2005 (Item CJ266-12/05 refers ) being:  
  
*“2 PROGRESSES action to recover the amount of \$10,000, from the Mullaloo Progress Association Inc by way of a payment plan spread over five years, which will constitute full satisfaction of the costs awarded;”*
- 3** AUTHORISES the Chief Executive Officer to take up the situation of the Mullaloo Progress Association with the Commissioner for Fair Trading;
- 4** SUPPORTS a submission to the State Government on the proposed amendments contained in the *Associations Incorporation Act 2006* that is in accordance with the views identified in this Report.

*appendix 18 refers*

To access this attachment on electronic document, click here: [Attach18brf120607.pdf](#)

## **ITEM 21                    RETROSPECTIVE APPROVAL - RE-MARKING OF CARPARKING BAYS - MULLALOO TAVERN DEVELOPMENT LOT 100 (10) OCEANSIDE PROMENADE, MULLALOO – [02089]**

**WARD:**                                North Central

**RESPONSIBLE**                        Mr Clayton Higham  
**DIRECTOR:**                        Planning and Community Development

### **PURPOSE**

To request Council's determination of an application for retrospective Planning Approval for the remarking of car parking bays at Lot 100 (10) Oceanside Promenade, Mullaloo.

### **EXECUTIVE SUMMARY**

The development of the site was approved in August 2002. The approved plan included a multi-deck parking area. Upon the construction of the deck, the parking area was evaluated as being non-compliant with the approved plan. The City ultimately issued a "Stop Notice" seeking the cessation of any land uses on site, and the land owner responded by appealing this decision in the State Administrative Tribunal (SAT).

A determination on the Stop Notice was made on 22 September 2006. It was found that no structural modifications to the building would be required provided that the bays were marked out as detailed in evidence given during the SAT hearing. Further, the SAT was satisfied that the reduction in the total number of car parking spaces from 121 to 119 (excluding the 5 drive through bays) were acceptable based on the reduced number of dwellings and the subsequent reduction in parking demand.

After the bays were re-marked it was found that 53 were full size bays, 61 were small bays and 5 were disabled bays. At the SAT hearing of 30 March 2007 Judge Chaney determined that although the re-marked car parking areas contain a high proportion of small car bays, the bays would be functional and the increased number of small bays would not have any practical impact. Accordingly the Judge discharged the Stop Notice, on the basis the remarked bays are acceptable from a planning perspective.

As a result of this action, this application is now for retrospective approval for the re-marking of the car parking areas.

**This application is not a reconsideration of any past proposals presented to Council and arises only as a result of the SAT consideration of the Stop Notice.**

It is therefore recommended that the arrangements for parking be approved.

### **BACKGROUND**

**Suburb/Location:** Lot 100 (10) Oceanside Promenade, Mullaloo  
**Applicant:** Hardy Bowen  
**Owner:** Rennet Pty Ltd  
**Zoning:**        **DPS:** Commercial  
                      **MRS:** Urban  
**Site Area:** 2,377m<sup>2</sup>  
**Structure Plan:** Not applicable

13/08/02	Approval granted for– tavern, shops and residential development.
22/04/05	Application lodged for shade sails, bi-fold tavern doors and roof over driveway.
28/07/06	Separate application lodged for the roof over the driveway.
19/09/06	Approval granted for a roof over the vehicle exit lane.
22/09/06	SAT decision handed down regarding Stop Notice and carparking.
29/11/06	Plans lodged for line marking of car bays.
04/12/06	Additional letter and signed plans by line marking company and applicant's traffic engineer received.
12/12/06	SAT Directions Hearing- determination unable to be made as line marking in dispute.
12/12/06	Applicant requests the City to withdraw consideration of the application for line marking.
23/02/07	SAT Directions Hearing - matter deferred as car parking layout issues remain unresolved.
30/03/07	SAT decision to set aside the stop direction of 13 April 2006 subject to bays 10 and 35 being marked as small car bays.
13/04/07	Revised plans received with amendments in accordance with the SAT determination of 30 March 2007.
29/05/07	Site inspection confirms that bays 10 and 35 have been marked as small car bays.

Notably, the development approval issued in September 2002 included 2 conditions of approval regarding parking, as follows:

- “1 The parking bay/s, driveway/s and points of ingress and egress to be designed in accordance with the Australian Standard for Offstreet Carparking (AS2890). Such areas are to be constructed, drained, marked and thereafter maintained to the satisfaction of the City prior to the development first being occupied. These works are to be done as part of the building programme;*
- 2 Carparking bays are to be 5.4 metres long and a minimum of 2.5 metres wide. End bays are to be 2.8 metres wide and end bays in a blind aisle are to be 3.5 metres wide.”*

Upon the construction of the deck, it was found that the car park did not accord with the approved plan.

In April 2006, the City issued a Stop Direction Notice to prevent the tavern from further trading due to non-compliance with certain conditions of planning approval relating to car parking. The owners appealed against the issue of that Notice.

## **DETAILS**

The SAT's decision of 22 September 2006 accepted that 119 car bays can comply with AS 2890.1 (ie condition 1 of the 2002 approval), provided that some bays are remarked and 59 of the car bays are designated as small bays. It was clarified that there is no need to carry out any structural modifications, but simply repositioning and re-marking of the bays.

The plans lodged by the applicants provide for a total of 119 bays of which 59 of the bays are designated small bays. It was also accepted by SAT that only 119 car parking spaces would be required due to a reduction in the number of dwellings provided on the site.

Justice Chaney in making his determination referred to the expert witness statement lodged with the SAT by traffic engineer Claire Smith. That report identified that currently 59 bays within the building are currently designated as small car bays.

However it was subsequently found, after a site visit by Ms. Smith, that although 119 bays had been marked out on site 53 were full size bays, 61 were small bays and 5 were disabled bays.

This discrepancy arose because the line marking carried out was not precisely accurate, with variations in bay widths in the order of generally 10mm to 50mm. The largest bay width reduction was 90mm. The City instructed an independent traffic engineer, Louise Round, to assess the bays as marked. Ms Round and Ms Smith agreed that while the discrepancies in marking technically gave rise to a higher number of small car bays, the discrepancies were minor and did not change the functionality of the bays. For example, where an additional small car bay is created as a result of slight inaccuracy in the line marking, the adjacent full size bay became wider than normal as a result. The experts agreed that the functionality of bays would generally not be expected to be adversely affected unless the reduction in width was around 150mm. No bay approached a width reduction of that order.

It should be noted also, in fairness, that the slight variations which occurred at the Mullaloo Tavern are almost certain to occur at practically every similar facility. It is not standard practice to have a surveyor check the bay dimensions after marking out, as happened in this case.

At the directions hearing of 30 March 2007, Justice Chaney concluded that the “as constructed” building would amount to a substantial compliance with the original development approval. Notwithstanding the two bay car parking shortfall and the high proportion of small car bays, he accepted that the bays would still have a functionality that would enable most normal cars to be serviced. His Honour went on to make Orders to the following effect:

*“Subject to bays 10 and 35 located in the basement of the tavern being adequately depicted as small car bays with appropriate signage, the direction under s214 of the Planning and Development Act dated 13 April 2006 is set aside.”*

Legal advice has clarified that it is not open to the Council to refuse the application. The advice states that:

- “(1) The decision of Judge Chaney, although not a decision on an application for planning approval, dealt expressly with the merits of the revised parking layout the subject of the application now before Council. The Judge determined that the marking out proposed is acceptable from a planning perspective.*
- (2) In making that decision, the Judge had all the powers and functions of the Council. In effect, he “stood in the shoes of the Council”, so the determination is basically the same as a prior determination by the Council of the planning merits.*
- (3) The decision by the Judge is the “correct and preferable” decision, pursuant to the SAT Act.*
- (4) The Judge was originally of the view that a new application would be unnecessary, but accepted that as his decision is not strictly a planning approval, a new approval from the Council would be needed in order for the City to be able to enforce compliance with the parking layout.*
- (5) For the Council to refuse the proposal in the circumstances would be manifestly unreasonable (in a legal sense), and would involve an error of law that could be set aside by the Supreme Court. Any challenge in the Supreme Court or the SAT would almost certainly lead to a costs order against the City.”*

Justice Chaney in making his decision has effectively made the final determination on this matter and did express his view that the issue did not give rise to any additional amenity or planning impacts.

By determining an application, the Council effectively puts on record an approved plan, which will provide the official record of the approved parking arrangement.

The dispute over the marking of the parking bays, while delaying the ability of the Council to make a determination on the remarking of the car parking bays, does not affect the Council's legal responsibilities as set out above.

**Link to Strategic Plan:**

Not Applicable

**Legislation – Statutory Provisions:**

Clause 6.6.2 requires that Council in exercising discretion to approve or refuse an application, shall have regard to the provisions of clause 6.8.1, as follows:

**6.8 MATTERS TO BE CONSIDERED BY COUNCIL**

*6.8.1 The Council when considering an application for Planning Approval shall have due regard to the following:*

- (a) interests of orderly and proper planning and the preservation of the amenity of the relevant locality;*
- (b) any relevant submissions by the applicant;*
- (c) any Agreed Structure Plan prepared under the provisions of Part 9 of the Scheme;*
- (d) any planning policy of the Council adopted under the provisions of clause 8.11;*
- (e) any other matter which under the provisions of the Scheme the Council is required to have due regard;*
- (f) any policy of the Commission or its predecessors or successors or any planning policy adopted by the Government of the State of Western Australia;*
- (g) any relevant proposed new town planning scheme of the Council or amendment or proposed Metropolitan Region Scheme Amendment insofar as they can be regarded as seriously entertained planning proposals;*
- (h) the comments or wishes of any public or municipal authority received as part of the submission process;*
- (i) the comments or wishes of any objectors to or supporters of the application;*

- (j) *any previous decision made by the Council in circumstances which are sufficiently similar for the previous decision to be relevant as a precedent, provided that the Council shall not be bound by such precedent; and*
- (k) *any other matter which in the opinion of the Council is relevant.*

In relation to applications for retrospective approval the Council shall have regard to the provisions of clause 6.12 as follows:

## 6.12 APPROVAL OF EXISTING DEVELOPMENTS

6.12.1 *The Council may give planning approval to a development already commenced or carried out regardless of when it was commenced or carried out. Such approval shall have the same effect for all purposes as if it had been given prior to the commencement or carrying out of the development, but provided that the development complies with the provisions of the Scheme as to all matters other than the provisions requiring Council's approval prior to the commencement of development.*

6.12.2 *An application to the Council for planning approval under subclause 6.12.1 shall be made on such form as the Council provides from time to time.*

6.12.3 *A development which was not permissible under the Scheme at the time it was commenced or carried out may be approved if at the time of approval under this subclause it is permissible.*

6.12.4 *The approval by the Council of an existing development shall not affect the power of the Council to take appropriate action for a breach of the Scheme or the Act in respect of the commencement of the development without approval.*

### **Risk Management considerations:**

Not Applicable

### **Financial/Budget Implications:**

Not Applicable

### **Policy implications:**

Not Applicable

### **Regional Significance:**

Not Applicable

### **Sustainability implications:**

Not Applicable

### **Consultation:**

No Applicable

## COMMENT

The SAT has supported the proposal presented by the owner's Traffic Engineers to provide 119 car parking spaces on site (excluding the 5 drive through bays) through the re-positioning and re-marking of the car parking areas.

In arriving at this position, Justice Chaney acknowledged that 121 car parking spaces were originally required and only 119 would now be provided. However, Justice Chaney stated the following in his findings:

*“37 As I have already observed, the extent of the non-compliance with conditions 1 and 2 of the parking bays as presently marked is such that the direction under s 214 should be maintained. However, it would be a relatively simple matter to very significantly reduce the level of non-compliance by re-marking the bays in the manner identified by Ms Smith. Without the structural modifications to the building, by a simple re-marking of the bays, all 119 bays could comply with AS 2890.1, provided 59 were designated as small car bays. There would thus be a shortfall of 2 bays from the 121 bays originally depicted on the development approval plans. Of the 119 bays, 22 would not be of the dimensions required by condition 2. Notwithstanding that non-compliance, if the bays were marked as suggested by Ms Smith, in my view the s 214 direction should then be set aside. As I have said, whether or not a notice should issue involves the exercise of a discretion. The reason I would exercise that discretion against affirming the direction, in the circumstances of this case are as follows:*

- (i) The overall shortfall in bays is only two of 121.*
  
- (v) The development approval plans contemplated a total of 15 residential units. It was on that number of units that the parking requirements were assessed. The change to 14 units on the TPAT plans, and then 12 units on the 2004 building plans would all have resulted in a reduced calculation as to the parking bay requirements. Although it is accepted that the total number of bays was never addressed in relation to subsequent plans, and thus the original requirement remained, the actual parking demand is reduced as a result of the changes to the plans after the initial approval.”*

Consequently, SAT resolved to allow the applicants to amend the marked out car parking layout, including the total number of car parking spaces of 119, in accordance with the plans submitted to SAT.

It was found however, after the bays were marked out, that there was an increased number of small bays. Despite this, Judge Chaney on 30 March 2007 accepted that the small bays would still have a functionality that would enable most normal cars to be serviced. The Order made stated that subject to bays 10 and 35 being depicted as small car bays that the Stop Notice direction of 13 April 2006 could be set aside. The applicant has now provided evidence that this condition has been satisfied and the City has inspected the site and confirmed that the two bays have been marked as small car bays.

Having regard to the legal position at this time – it is not reasonably open to the Council to adopt additional or alternate resolutions (for example in regard to new conditions or cash-in-lieu contributions), other than those which accord with the SAT findings.

In light of the above comments it is recommended that the application for retrospective planning approval be granted.

## ATTACHMENTS

- |              |                   |
|--------------|-------------------|
| Attachment 1 | Locality Plan     |
| Attachment 2 | Development Plans |

**VOTING REQUIREMENTS**

Simple Majority

**RECOMMENDATION**

**That Council APPROVES the application for Retrospective Planning Approval dated 27 November 2006 and additional plans received by McLeod's on 13 April 2007 on behalf of the City of Joondalup from Hardy Bowen, the applicants, on behalf of the owners, Rennet Pty Ltd for the re-marking of car parking bays at Lot 100 (10) Oceanside Promenade, Mullaloo subject to the car parking spaces allocated to the dwellings and the residential building being marked and set aside for the exclusive use of the occupants of the dwellings and residential building.**

*Appendix 19 refers*

*To access this attachment on electronic document, click here: [Attach19brf120607.pdf](#)*



## BACKGROUND

<b>Suburb/Location:</b>	10 Oceanside Promenade Mullaloo
<b>Applicant:</b>	Not Applicable
<b>Owner:</b>	Rennet Pty Ltd
<b>Zoning:</b>	<b>DPS:</b> Commercial (R20)
	<b>MRS:</b> Urban
<b>Site Area:</b>	2377m <sup>2</sup>
<b>Structure Plan:</b>	Not applicable

The development was approved by Council in 2002. At the time of its approval, the application included the following broad elements:

- Basement car parking
- Commercial floor space at street level
- Replacement of a pre-existing tavern at the first floor level
- Three upper levels of accommodation, comprised of five permanent dwellings (multiple dwellings) and 10 short stay apartments (defined as a residential building)
- Three levels of decked parking behind the building.

### Classification of dwellings

As part of the assessment process, the application required that the elements of the building be categorised into certain land uses. The classification of the residential component is noteworthy for reasons that have subsequently come to light, and are discussed in this report.

Within the applicable R-codes of the day (the 1991 Residential Planning Codes) the following definitions applied:

*Multiple dwelling – means a dwelling in a group of more than one where any part of a dwelling is vertically above part of another.*

*Grouped dwelling – means a dwelling, which is one of a group of two or more dwellings on the same lot such that no dwelling is placed wholly or partly vertically above another, except where special circumstances of landscape or topography dictate otherwise.*

Ordinarily, “multiple dwellings” is a term that would describe flats and apartment style living. “Grouped dwellings” is a term that would describe townhouse and villa style development, where each unit has its own private open space at ground level.

For the original Mullaloo Tavern proposal, the permanent residential units were most akin to multiple dwellings, as the units were above ground level, and most closely aligned with apartment style accommodation. This is the land use that was applied in the 2002 assessment of the plans.

The Residential Planning Codes 1991 were reviewed and replaced by the Residential Design Codes in late 2002. However, the substantive characteristics of the two types of dwellings did not change.

### August 2002 Approval and Planning Appeal

Council applied a number of conditions to the approval of the Mullaloo Tavern development. In particular, the height of the development was required to be reduced by one storey, and

this was to be achieved by removing 5 of the proposed short stay apartments on the (then) third level of the proposal and then lowering the residential accommodation above. The developer subsequently appealed against this requirement, and other conditions, to the Town Planning Appeals Tribunal (TPAT).

The appeal was resolved with a mediated outcome, being that:

- 1 The bulk of the development was to be reduced by a storey in height (as intended in Council's resolution), and
- 2 The proponent was allowed to reconfigure the now 2 levels of residential accommodation and include 5 permanent dwellings and 9 short stay apartments in those levels.

A plan was prepared to support the mediated outcome, and this was the basis for the building licence application that was lodged.

### Section 18 Complaint and Supreme Court Action

After the development was approved in 2002, the Mullaloo Progress Association Inc commenced proceedings against the City in the Supreme Court of Western Australia, alleging that the decision to approve the development was invalid or inappropriate for a number of reasons. A similar complaint was made to the Minister for Planning and Infrastructure under Section 18 of the (then) *Town Planning and Development Act 1928*.

It is noted that the Supreme Court considered the plans originally approved by Council in 2002, and not those approved by the TPAT by consent following mediation.

The outcome of both the Supreme Court action and the Section 18 inquiry were in favour of the City.

In relation to the subject matter of this report – one of the reasons that the Supreme Court was asked to set aside Council's 2002 planning approval was on the basis that multiple dwellings were unlawful in the R20 density code. The Supreme Court did not need to directly deal with this issue as it determined that the permanent stay apartments, as approved, fell into the definition of "Grouped Dwellings" rather than "Multiple Dwellings". The Court also noted that either land use was a Discretionary land use in the Commercial Zone.

However the plans considered by the Supreme Court were those originally approved by Council, and not those arising from the mediated TPAT outcome. The unit configuration approved by the TPAT differs from the original plans, and would create some multiple dwellings.

It is noted that the TPAT has now been replaced by the SAT.

### Building Program and Changes Made During Construction

In 2003 and 2004, the proponent attempted to obtain a building licence. One application was refused, to which the applicant subsequently appealed. The appeal was lost and a second licence application was made, and granted.

As construction progressed, the proponent departed from the approved plans in some aspects as well as changing the plans and including alterations, during construction.

The proponent changed the plans for the upper levels of the development, whereby some of the accommodation units were made larger, this being achieved by reducing the number of units on the upper floors. These changes did not present any new planning issues, nor did

they exacerbate any features of the proposal in a manner that was thought to give rise to new planning assessment issues.

Advice from solicitors and independent expert planning witnesses had been sought on the degree of changes being made (through the planning appeal process). The conclusion was that a fresh planning application was not required.

However, some changes were made that did give rise to the need for enforcement action, including departure from the approved car parking layout and the relocation of columns.

During this time, various actions complicated the process. These actions were either:

- 1 Undertaken by third parties (objecting to the development); or
- 2 Required as a result of the proponent's non-compliance with required conditions of planning or building licence approval.

### 2005 Sorrento SAT Decision

In 2005, Council refused to approve the conversion of a large development of resort style short stay units (the Sorrento Beach Resort) to allow them to be used as permanent dwellings.

In summary:

- The land was zoned Commercial and had a density coding of R20;
- The units were constructed specifically as short stay units, and did not lend themselves to being used as permanent dwellings;
- For information, many of the apartments are located above one another;
- The density of the development is also very high compared to the surrounding areas, and as such the application was refused (if approved the density of the site would be approximately R160, compared to R20 on nearby land).

The owners appealed against Council's decision to the SAT. The SAT found in favour of Council's decision, and the appeal was lost. In its decision, the SAT concluded that multiple dwellings are not permitted upon land coded Residential R30 or less, as follows:

*"...Although the Zoning Table of DPS 2 identifies the use class of multiple dwellings as a use to which the City may grant its approval, cl 3.2.1 states that the Zoning Table indicates the permissibility of use classes "subject to the provisions of the Scheme". Clause 4.2.3 is, in consequence of the provisions of the Codes, a provision of the Scheme which relevantly qualifies the permissibility of development for multiple dwellings on land coded "R30" or less.*

*In consequence, if the proposed use were categorised as "multiple dwellings" for the purpose of DPS 2, the development would not "conform to" the provisions of the Codes...*

*...The result is that if the Tribunal were, like the City, to categorise the proposed use as "multiple dwellings", approval of the application is not within the discretion of the decision-maker under DPS 2 and the Tribunal would be obliged to decline to consider the strata company's application for review of the City's refusal of planning approval. If that were the case, the application to the Tribunal would be dismissed."*

Prior to this decision, it was considered that the standing legal principle was that land use permissibility is to be decided by the Planning Scheme zoning table. In the case of the City's Planning Scheme, the use "Multiple Dwellings" is a discretionary use in the Commercial zone.

The SAT decision was of assistance to Council in the case outlined above, however, the detailed conclusion about the permissibility of multiple dwellings in the land coded R30 or less constituted a different interpretation to land use permissibility than had previously been held.

## **DETAILS**

The time taken to proceed through the building program has meant that the Mullaloo Tavern development was not largely complete until 2006. Some detailed aspects of the building have not yet been completed.

It is understood that all of the apartments were under offer to intending purchasers, and that a number of the purchasers apparently intended to occupy the building on a permanent basis, including at least 2 of the apartments located one above the other (ie multiple dwellings).

Various parties, including potential apartment owners, the proponents and interest groups have recently sought clarification about the impact of the changes to the development and the regulatory framework in which it now sits and is required to comply with.

The question for Council is how would it address any complaint or inquiry about the use of the residential units in the building. Council has an obligation, under section 211 of the *Planning and Development Act 2005* to enforce the provisions of its Scheme, (which includes the terms of any of its approvals).

In summary:

- The location of the 7 short stay apartments within the site does not give rise to any planning issues;
- The proposal to have 5 dwellings used as permanent accommodation does not give rise to planning issues;
- The issue is that if some permanent units were located above other permanent units (ie multiple dwellings), then there is an argument that such a land use is not permissible, in accordance with the SAT decision.

A variety of legal and other technical advice has been sought during the various processes and challenges to the development, or about the manner in which it has been built. With the resolution of the strata title issue, the final potential issue arising appears to be in regard to the manner in which the residential accommodation is used.

### **Issues and options considered:**

#### Legal advice

As a result of the pre-selling of the apartments, and the representations made by parties referred to above, legal advice has been sought in an attempt to rationalise the differing and potentially conflicting views expressed in the Planning Scheme and as a result of Court and SAT proceedings.

The advice is that if Council believes that the multiple dwelling use is appropriate for the site, a scheme amendment could be initiated to confirm this.

That advice was also considerate of a future scenario where Council might be asked to take some enforcement action against the owners, in relation to the configuration of the permanent accommodation.

If Council was required to enforce its Planning Scheme and took a position that permanent residents should not live one above the other then, a series of legal tests would need to be applied to gauge the prospect of success of any enforcement action. (The tests were quoted in an SAT decision of 2005, involving another local council.)

Those tests include consideration of:

- The public interest that the planning law be generally complied with
- The impact of the contravention on the locality must be considered
- The factual circumstances of the case
- The time elapsed since the contravention commenced
- The expense and inconvenience of remedying the contravention

The conclusion is that an enforcement action would likely fail if evaluated under the above criteria.

#### Prospective Ministerial Involvement

The Minister for Planning and Infrastructure has been requested to comment on this issue due to the prospect of a complaint to her under section 211 of the *Planning and Development Act 2005* in regard to the land uses in the building.

A response from the Minister is likely to be available before the 19 June Council meeting. However, a preliminary indication received is that the Minister is unable to pre-empt a viewpoint on any potential section 211 complaint, although a scheme amendment is the preferred means to deal with this matter. Such a viewpoint is consistent with the legal advice received.

#### **Link to Strategic Plan:**

Not applicable

#### **Legislation – Statutory Provisions:**

The Planning Scheme includes a zoning table which designates land use permissibility within the City. The zoning table states that “Multiple Dwellings” is a discretionary use in the Commercial zone.

The SAT decision of 2005 suggests that multiple dwellings are not permitted on land coded R20.

Section 211 of the *Planning and Development Act 2005* provides for persons to make submissions to the Minister for Planning and Infrastructure about Council’s preparedness to enforce the provisions of its Planning Scheme.

#### **Risk Management considerations:**

There is a risk to Council if the status of the permanent residential units is not affirmed. Queries about the land uses need to be directly answered to give owners or potential

purchasers reassurance. There is a prospect of action against Council in various forms and by various parties if Council does not make best endeavours to clarify this situation in good faith.

**Financial/Budget Implications:**

The costs of being engaged in a civil action (by the owners or potential purchasers) or a section 211 investigation under the *Planning and Development Act 2005* are potentially considerable.

**Policy implications:**

Not applicable

**Regional Significance:**

Not applicable

**Sustainability implications:**

Not applicable

**Consultation:**

The subject matter has not been subject to public consultation. The issue is of a technical nature and does not give rise to any impacts on neighbours or the surrounding community.

Council has been asked to clarify the issue by the various groups named in the report.

**COMMENT**

The development has been subject to rigorous assessment and substantial review and challenge since the proposal was first approved. That assessment has provided a detailed body of knowledge about the working of the development, its various aspects and implications. The detailed work on this issue has been assisted by the use of independent consultants at times and as required. The challenges made about the proposal have also contributed to that understanding.

Planning Impacts

Based on the decisions previously made, and the assessment referred to above, it is possible to make a definitive evaluation of the impacts of this aspect of the proposal.

In a practical application, it does not matter whether the permanent residents live above each other on the third and fourth floors of the development, or whether they live next door to each other. Either scenario does not present any new or changed planning circumstances. Neither option would be immediately discernible to adjoining neighbours, customers, or passers by.

This conclusion is assisted by the fact that the development exists, and it does not require any hypothetical estimation by Council about the nature of the development or the manner in which the residential component might operate.

Therefore any decision to affirm multiple dwellings as a permitted use within the Tavern development is consistent with the 2002 development approval for the land, and there would not be any amenity impact in allowing multiple dwellings.

### Proposed Scheme Amendment

In the event Council seeks to affirm that multiple dwellings are a permitted use within the Mullaloo Tavern development, an amendment to the planning scheme is necessary. This would involve the addition of 'Multiple Dwellings' as an Additional Use within Schedule 2 of the scheme. Importantly, the amendment would not allow the development to be intensified, nor would it allow a greater residential density on the land.

### Conclusion

Land across the City has a Residential density coding, regardless of the zoning of land. For most of the City, the coding is R20,

In 2002 Council approved a development of various land uses on the site, and the assessment concluded that the permanent dwellings were best defined as "Multiple Dwellings". "Multiple Dwellings" are a "D" (discretionary) land use within the Commercial zone.

In 2003 a planning appeal against some of Council's conditions of approval resulted in the upper floors being redesigned. The top floor was deleted, and the internal configuration of the third and fourth floors was altered – resulting in a proposal for 5 permanent dwellings (Multiple Dwellings) and 9 short stay apartments (in the Residential Building part of the development). Some of the permanent dwellings were located above or beneath each other (closely fitting the Multiple Dwelling definition).

During 2003, the Supreme Court considered a case put by the MPA questioning the validity of Council's 2002 approval. That action relied on the 2002 development approval plans rather than the 2003 appeal plans. The Supreme Court found in part that the dwellings were "Grouped Dwellings". The Court noted that either "Grouped Dwellings" or "Multiple Dwellings" are a D use in the Commercial zone, the Court did not attach any importance to this aspect when it subsequently delivered its findings in favour of Council.

Leading up to and during this time, an enduring legal principle was that the determination of land uses within a district is stipulated in the Zoning Table of the Planning Scheme. Council's Planning Scheme identified Grouped or Multiple dwellings as a Discretionary land use.

In 2005 the SAT determined a case about a proposal to convert short stay apartments to permanent dwellings at the Sorrento Beach Resort. The context of that application was that the proponents sought to convert many units (some located above or beneath each other) for permanent occupancy. The resulting density would have been very high (approaching R160) compared to the prevailing R20 zoning in the remainder of the suburb. The SAT found in favour of Council's rejection of that proposal, and commented that in its view Multiple Dwellings were not permissible in densities below R35.

The Mullaloo development has taken some years to build, and was still underway in 2006. The development requires various certifications from the City in order to gain occupancy, various other licences, and to have strata titles issued. The land must also be used only in accordance with the Planning Scheme and the terms of its approval. The SAT ruling casts doubt on the permissibility of having one permanent dwelling above another.

There is a risk of action against Council about the permissible or approved uses in the residential part of the development.

It is recommended that Council amends the Planning Scheme to reflect that Multiple Dwelling is a permissible use on 10 Oceanside Promenade, Mullaloo. The amendment would have no impact on the land other than to clarify that residents could live above each other, rather than being required to live next door to each other.

The proposal is also consistent with Council's 2002 approval of the Tavern, and the classification of Multiple Dwellings within the Zoning table of the Scheme.

## ATTACHMENTS

Attachment 1            Locality plan  
Attachment 2            Planning appeal outcome plan of third and fourth floor

## VOTING REQUIREMENTS

Simple Majority

## RECOMMENDATION

### That Council:

- 1 Pursuant to Part 5 of the Planning and Development Act 2005, **CONSENTS** to initiate Amendment No 38 to the City of Joondalup District Planning Scheme No. 2, for a period of 42 days, by adding additional use 1-20 to Lot 100 (10) Oceanside Promenade, Mullaloo, in "Schedule 2 – Section 1 (Clause 3.15) – Additional Uses" as follows:

NO	STREET/LOCALITY	PARTICULARS OF LAND	ADDITIONAL USE
1-20	10 Oceanside Promenade, Mullaloo	Lot 100	Multiple Dwelling

- 2 Prior to the advertising period commencing, **FORWARDS** the proposed amendment to the Environmental Protection Authority in order to decide if an environmental review of the site is required.

*Appendix 20 refers*

To access this attachment on electronic document, click here: [Attach20brf120607.pdf](#)

- 8 REPORT OF THE CHIEF EXECUTIVE OFFICER**
  
- 9 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**
  
- 10 REPORTS/PRESENTATIONS REQUESTED BY ELECTED MEMBERS**



**DECLARATION OF  
FINANCIAL INTEREST/INTEREST THAT MAY AFFECT  
IMPARTIALITY**

**To: CHIEF EXECUTIVE OFFICER  
CITY OF JOONDALUP**

<b>Name/ Position</b>	
<b>Meeting Date</b>	
<b>Item No/ Subject</b>	
<b>Nature of Interest</b>	Financial Interest * Interest that may affect impartiality* <span style="float: right;"><i>* Delete where not applicable</i></span>
<b>Extent of Interest</b>	
<b>Signature</b>	
<b>Date</b>	

Section 5.65(1) of the Local Government Act 1995 states that:

“A member who has an interest in any matter to be discussed at a Council or Committee meeting that will be attended by that member must disclose the nature of the interest:

- (a) *in a written notice given to the CEO before the meeting; or*
- (b) *at the meeting immediately before the matter is discussed.*



**QUESTION TO BE ASKED AT  
BRIEFING SESSION/COUNCIL MEETING**

<b>TITLE</b> <i>(Mr/Mrs/Ms/Dr)</i>	<b>FIRST NAME</b>	<b>SURNAME</b>	<b>ADDRESS</b>

**QUESTIONS**

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Please submit this form at the meeting or:

- **post** to The Chief Executive Officer, City of Joondalup, P O Box 21, Joondalup WA 6919
- **email** to [council.questions@joondalup.wa.gov.au](mailto:council.questions@joondalup.wa.gov.au)

**Please note that:**

- Questions asked at a **Briefing Session** must relate to matters contained on the draft agenda.
- Questions asked at a **Council meeting** can relate to matters that affect the operations of the City of Joondalup.
- Questions asked at a **Special Meeting of the Council** must relate to the purpose for which the meeting has been called



**STATEMENT TO BE MADE AT  
BRIEFING SESSION/COUNCIL MEETING**

<b>TITLE</b> <i>(Mr/Mrs/Ms/Dr)</i>	<b>FIRST NAME</b>	<b>SURNAME</b>	<b>ADDRESS</b>

**STATEMENT**

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Please submit this form at the meeting or:

- **post** to The Chief Executive Officer, City of Joondalup, P O Box 21, Joondalup WA 6919
- **email** to [council.questions@joondalup.wa.gov.au](mailto:council.questions@joondalup.wa.gov.au)

**Please note that:**

- Statements made at a **Briefing Session** must relate to matters contained on the draft agenda.
- Statements made at a **Council meeting** can relate to matters that affect the operations of the City of Joondalup.
- Statements made at a **Special Meeting of the Council** must relate to the purpose for which the meeting has been called