

Briefing Note

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| To: | City of Melville Mayor and Councillors | From: | Planning Solutions |
| Date: | 11 April 2023 | Job No: | 8181 |
| Copy to: | Marten Tieleman, CEO | | |
| Subject: | Agenda item UP23/4028 Erection of Floodlights to Applecross Tennis Club – Lots 260-264 (30) The Strand, Applecross | | |

Dear Mayor and Councillors,

Planning Solutions acts on behalf of Mr John Wilson and Mrs Jeanette Wilson, the registered proprietors of Lot 302 (12) Duncraig Road and Lot 301 (35) The Strand, Applecross. In doing so, Planning Solutions also acts on behalf of numerous other landowners residing on Duncraig Road and The Strand, Applecross (**affected properties**) working in conjunction with Mr and Mrs Wilson.

We advise our clients strongly oppose the proposed installation of twelve flood lights across courts 11, 12, 13 and 14 of the Applecross Tennis Club at Lot 264 (30) The Strand (**subject site**). A detailed submission was made to the City of Melville (**City**) on 27 February 2023 objecting to the proposed development.

We submit the application should be recommended for refusal on the grounds it is inconsistent with the applicable planning framework, including (but not limited to) the provisions of the Metropolitan Region Scheme (**MRS**), the Swan and Canning River Management Act 2006, and their relevant planning considerations.

There are clear deficiencies and errors in the City's assessment of the proposed development. In terms of an assessment against the applicable planning framework, we do not consider the brief assessment against *Local Planning Policy 1.16 – Flood and Security Lighting (LPP1.16)* and *Local Planning Policy 3.4 – Tennis Courts* to be sufficient. It is inappropriate for the City's planning officers to be supporting the proposed development based on asserted compliance with two of its local planning policies.

The officer report dismisses fundamental and relevant considerations in respect to the planning assessment and the requirements of the planning framework, including the Deemed Provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*. The requirements should not be ignored, and we submit the assessment and recommendation are therefore deficient, as they ignore the key points detailed in the planning framework. These deficiencies are examined below.

1. In its Development Advisory Unit report, the City has incorrectly identified the subject site as being zoned Public Open Space under the provisions of its Local Planning Scheme No.6 (**LPS6**). This is not the case, as the subject site is wholly reserved for Parks and Recreation under the provisions of the MRS. The City refers to the subject site being 'zoned' Parks and Recreation. This is incorrect, as the subject site is wholly reserved by the MRS and is not zoned.
2. The City states that *"the scheme objectives for public open space promote the use of recreation buildings and associated facilities to encourage active and passive use of the City's reserves and open spaces"*. Again, this is incorrect and entirely irrelevant, as the subject site is not zoned Public Open Space under the City's LPS6.
3. Although not zoned under the provisions of LPS6, the proposed development and officer recommendation appears to ignore the following aims of LPS6, of which the proposal undermines:
 - i. *To enhance the character and amenity of existing residential areas;*
 - ii. *To ensure that the natural environmental values of the City are protected and conserved for existing and future generations.*
 - iii. *To protect significant natural landscapes and remnant vegetation;*
 - iv. *To protect and promote places of cultural heritage significance within the City including significant sites, buildings, structures, trees and landscape elements;*
 - v. *To maintain, increase and improve where required the quantity, quality, amenity and accessibility of regional and local open space in accordance with the recommendations of the City's Open Space Strategy.*

4. Clause 67(2) of the Deemed Provisions sets out the matters for which due regard is to be given by the City when considering a development application:

(2) In considering an application for development approval (other than an application on which approval cannot be granted under subclause (1)), the local government is to have due regard to the following matters to the extent that, in the opinion of the local government, those matters are relevant to the development the subject of the application –

(n) the amenity of the locality including the following –

- (i) environmental impacts of the development;*
- (ii) the character of the locality;*
- (iii) social impacts of the development;*

Rather than having due regard for Clause 67(2)(n), the City has instead completely disregarded the relevant matters in relation to the impacts on the amenity of the locality.

5. Following noise modelling and our review of the Environmental Noise Assessment prepared by Lloyd George Acoustics, we submit that the proposed flood lights will exacerbate amenity impacts from its noise generation during the evening and night-time period. This will result in the City's constituents being adversely and unnecessarily impacted by noise. This situation must be avoided. It should not be the City which puts its own constituents in the unacceptable predicament of being impacted by noise and having to take steps to ensure compliance with relevant legislation.
6. The Obtrusive Light Analysis Report prepared by Rubidium Light concludes that the bright underside of the floodlights will be visible from the first level windows of the dwellings, and that while not exceeding AS/NZS4282 intensity limits, the floodlights will be obvious and will be seen against the relatively dark background of the Swan River. The elevation of the floodlights positions them in the direct sightlines to the otherwise panoramic and uninterrupted views of the City of Perth skyline. The effect of having a bright light-source within that sightline against the dark background will significantly reduce the ability of observers to see beyond them.
7. Failure to consider the planning framework and amenity impacts will render the determination subject to challenge, and would, in our opinion be proven to be invalid. The City should apply the requirements of the planning framework correctly and reject the proposed development, as it is contrary to the amenity of the locality as defined in the preceding clause 67(2)(n) of the Deemed Provisions.
8. Council should be compelled to reject the proposed development in consideration of the amenity impacts likely to be experienced by the affected residents (who are ratepayers) and the inconsistency with the applicable planning framework. The recommendation of approval by the City is misguided and is not in the best interests of its ratepayers.
9. Should the City recommend refusal of the application to the Department of Biodiversity, Conservation and Attractions (DBCA), then it is the role of the DBCA officers to make its recommendation to the Minister for Environment. When the application is approved or refused by the Minister for Environment, the City will not need to deal with the implications, if challenged. Council will then have the peace of mind knowing that it has made a recommendation (for refusal) in the best interests of its permanent and longstanding residents and ratepayers.

We submit it was ill-considered for the City of Melville officer report to provide any support for the proposed flood lights. The report provides a deficient assessment against the applicable planning framework and incorrectly asserts that the subject site is zoned Public Open Space under its LPS6.

We respectfully request that Council recommends refusal of the application to the Department of Biodiversity, Conservation and Attractions.

Yours sincerely,



PAUL KOTSOGLO
MANAGING DIRECTOR