



— *City of* —  
***Melville***

**NOTES  
OF THE  
AGENDA BRIEFING FORUM  
HELD ON  
TUESDAY, 5 AUGUST 2008  
AT THE MELVILLE CIVIC CENTRE  
2<sup>ND</sup> FLOOR IN THE SWAN ROOM  
10 ALMONDBURY ROAD, BOORAGOON**

**DISTRIBUTED: 8 August 2008**



— City of —  
**Melville**

10 Almondbury Road Booragoon WA 6154  
Postal Address: Locked Bag 1, Booragoon WA 6954  
Tel: 08 9364 0666  
Fax: 08 9364 0285  
Email: [melinfo@melville.wa.gov.au](mailto:melinfo@melville.wa.gov.au)  
Web: [www.melville.wa.gov.au](http://www.melville.wa.gov.au)

Notes of the Agenda Briefing Forum held in the Swan Room, Melville Civic Centre, 10 Almondbury Road, Booragoon on Tuesday, 5 August 2008 which commenced at 6.30pm.

## FORUM NOTES

### PRESENT

R A Aubrey

Mayor

Cr H Everett JP (Presiding Member)

Applecross/Mount Pleasant

Cr N Pazolli

Applecross/Mount Pleasant

Cr A Cenviva, Cr D Macphail

City

Cr R Subramaniam,

Bill Creek/Leeming

Cr Phelan; Cr C M Halton

Palmyra/Melville/Willagee

Cr L M Reynolds

University

### IN ATTENDANCE

Dr S Silcox

Chief Executive Officer

Mr M Tieleman

Director Customer & Corporate Services

Mr C McClure

Director Strategic Urban Planning

Mr J Christie

Director Technical Services

Ms C Young

A/Director Strategic Community  
Development

Mr I Davis

Manager Infrastructure Services

Mr D Vinicombe

Manager Planning & Development  
Services

Mr J Gonzalez

Planning Services Coordinator

Mr B Taylor

Manager Information, Technology &  
Support

Mr J Clark

Governance & Compliance Program  
Manager

Ms D Wynne

Environmental Officer

Ms C Rourke

Minute Secretary

There were 18 members of the public and 1 media representative present in the public gallery at the commencement of the Agenda Briefing Forum.

Mr Clark read aloud the 'Purpose of Agenda Briefing Forum' and the "Disclaimer Statement".

### APOLOGIES

Cr M J Barton

Bicton/Attadale

Cr G Wieland

Bicton/Attadale

Cr C W Robartson

Bill Creek/Leeming

## **LEAVE OF ABSENCE**

Cr J Bennett

University Ward

Agenda Briefing Forums & Ordinary Meetings of Council July to October 2008, inclusive.

## **DEPUTATIONS**

- . Item P08/3042 and P08/3043  
TPG Town Planning and Urban Design on behalf of applicant at 15 Tweeddale Road, Applecross. The presentation was made by Mr Murray Casselton, an Associate of TPG Town Planning and Urban Design and he was accompanied by Ms Claire Murray and Ms Melissa Needham.
- . Item P08/3042 and P08/3043  
Mr Peter Webb presented on behalf of concerned residents.
- . Item P08/3045  
Mr Louis Papineau presented on parking matters for Spices Grand Café, shop 3 & 4 Kearns Crescent, Ardross.
- . Item P08/3046  
Mr Darren Miller presented on Lot 66 Waddell Road, Bicton.
- . Item P08/5013  
Ms Fatima Ramirez from Greg Rowe & Associates presented on rezoning of Lots 12 and 20 McGregor Road, Palmyra.

## **QUESTION TIME**

Nil

## **DISCLOSURES OF INTEREST**

- |                       |  |
|-----------------------|--|
| . P08/3042 & P08/3043 | Mr D Vinicombe Manager Planning & Development Services |
| . T08/2000            | Cr H Everett   |
| . P08/5013            | Cr Ceniviva  |
| . P08/5013            | Cr Subramaniam   |

## **BUSINESS**

## **DISCLOSURE OF FINANCIAL INTERESTS LOCAL GOVERNMENT ACT 1995**

### **Members' interests in matters to be discussed at meetings to be disclosed**

S.5.65 (1) A member who as an interest in any matter to be discussed at a Council or Committee meeting that will be attended by the member must disclose the nature of the interest -

- (a) in a written notice given to the Chief Executive Officer before the meeting; or
- (b) at the meeting immediately before the matter is discussed.

Penalty: \$10,000 or imprisonment for 2 years.

### **Meeting to be informed of disclosures**

**S.5.66** If a member has disclosed an interest in a written notice given to the Chief Executive Officer before a meeting then before the meeting -

- (a) the Chief Executive Officer is to cause the notice to be given to the person who is to preside at the meeting; and
- (b) the person who is to preside at the meeting is to bring the notice to the attention of the persons who attend the meeting.

### **Disclosing members not to participate in meetings**

**S.5.67** A member who makes a disclosure under Section 5.65 must not -

- (a) preside at the part of the meeting relating to the matter; or
- (b) participate in, or be present during, any discussion or decision making procedure relating to the matter,

unless, and to the extent that, the disclosing member is allowed to do so under Section 5.68 or 5.69.

Penalty: \$10,000 or imprisonment for 2 years.

**Please refer to your Handbook for definitions of interests and other detail.**

## TABLE OF CONTENTS

ITEM	PAGE
<b>STRATEGIC URBAN PLANNING</b>	
<b>P08/3042</b> - PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPECROSS (REC) (ATTACHMENT)	7-22
<b>P08/3043</b> - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPECROSS (SMREC) (ATTACHMENT)	23-40
<b>P08/3044</b> - PROPOSED PLANNING BULLETIN 90 AND HOME OCCUPATION POLICY RELATIVE TO PROSTITUTION AMENDMENTS ACT 2008 (REC) (ATTACHMENT)	41-52
<b>P08/3045</b> - RECONSIDERATION OF APPROVED USE FOR RESTAURANT LOT 2 (UNITS 3 & 4, No. 3) KEARNS CRESCENT, ARDROSS (AMREC) (ATTACHMENT)	53-60
<b>P08/3046</b> - RESUMPTION OF PRIVATE RIGHT OF WAY, LOT 66 WADDELL ROAD, BICTON (AMREC) (ATTACHMENT)	61-69
<b>P08/5013</b> - PROPOSED AMENDMENT NO 51 TO COMMUNITY PLANNING SCHEME NO 5 – GOLDEN EGG FARM SITE AT LOTS 12 AND 20 LEACH HIGHWAY / MCGREGOR ROAD, PALMYRA – INDUSTRY TO RESIDENTIAL R35 AND R60 (REC)	70-81
<b>STRATEGIC COMMUNITY DEVELOPMENT</b>	
<b>C08/8008</b> – FRIENDSHIP RELATIONSHIP PROPOSAL FROM HATOLIA, EAST TIMOR – AMENDMENT TO EXISTING FRIENDSHIP RELATIONSHIP MOU (REC)	82-88
<b>CUSTOMER &amp; CORPORATE SERVICES</b>	
<b>C08/5018</b> – MEMBERSHIP TO PERTH AIRPORTS MUNICIPALITIES GROUP (REC)	89-93
<b>C08/5019</b> - COUNCIL MEETING CYCLE (AMREC) (ATTACHMENT)	94-100
<b>TECHNICAL AND DEVELOPMENT SERVICES</b>	
<b>T08/2000</b> - WIRELESS HILL BUSHLAND MANAGEMENT PLAN (REC) (ATTACHMENT)	101-104
<b>MANAGEMENT SERVICES</b>	
Nil	
<b>STANDARD ITEMS TO APPEAR ON THE AGENDA FOR THE ORDINARY MEETING OF COUNCIL – 19 August 2008</b>	
C08/5000 – COMMON SEAL REGISTER	
C08/6000 – INVESTMENT STATEMENTS	
C08/6001 – SCHEDULE OF ACCOUNTS	
C08/6002 – FINANCIAL STATEMENTS	

**AGENDA ITEMS FOR PRESENTATION**

**P08/3042 - PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC) (ATTACHMENT)**

Disclosure of Interest

Item No.	P08/3042
Officer	Mr David Vinicombe
Type of Interest	Interest under Code of Conduct 8.2.8
Nature of Interest	Past Business Association
Request	Leave
Decision of Council	Not Applicable

**At 6.32pm the Manager Planning and Development Services, Mr David Vinicombe, having declared an interest in this item left the meeting.**

**At 6.33pm Mr Murray Casselton, accompanied by Ms Claire Murray and Ms Melissa from TPG Town Planning and Urban Design presented a deputation on behalf of the applicant.**

**At 7.00pm Mr Peter Webb presented a deputation on behalf of adjoining residents.**

Item presented by	: Mr Craig McClure Director Strategic Urban Planning
Ward	: Applecross / Mount Pleasant
Category	: Operational
Disclosure of any Interest	David Vinicombe Manager Planning & Development Services
Previous Items	P07/3010 – Mixed Use Development Residential and Commercial on Lot 1057 (15) Tweeddale Road, Applecross – 15 May 2007
Application Number	: DA-2007-1793
Property	: 15 Tweeddale Road, Applecross
Proposal	: Mixed Use Development (3 multiple dwelling and 4 offices)
Applicant	: Tuscom Subdivision Consultants Pty Ltd
Owner	: Daystar Asset Pty Ltd
Responsible Officer	: Julio Gonzalez Planning Services Coordinator
Previous Items	: P07/3010 – Mixed Use Development Residential and Commercial on Lot 1057 (15) Tweeddale Road, Applecross – 15 May 2007

**P08/3042 - PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPECROSS (REC) (ATTACHMENT)**

**AUTHORITY / DISCRETION**

	<u>Definition</u>
<input type="checkbox"/> Advocacy	<i>when Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input type="checkbox"/> Executive	<i>the substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets</i>
<input type="checkbox"/> Legislative	<i>includes adopting local laws, town planning schemes &amp; policies.</i>
<input type="checkbox"/> Review	<i>when Council review decisions made by Officers.</i>
<input checked="" type="checkbox"/> Quasi-Judicial	<i>when Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>

**KEY ISSUES / SUMMARY**

- Proposal is for a four storey mixed-use building with 4 offices and 3 multiple dwellings.
- Undercroft carparking for 15 vehicles and 1 disabled bay in front setback.
- Total plot ratio is 1.058: non-residential - 0.344 and residential - 0.714.
- Non-residential use of property inappropriate in this location due to impact on amenity of adjacent residential precinct, therefore no non-residential plot ratio may be applied.
- Development exceeds the maximum permitted plot ratio of 0.6 by 0.458 (462.56 sqm).
- Eastern and western setback variations are proposed to the balcony of the penthouse residential units.
- Height limit variation is proposed for a small portion of the front roof.
- 42 submissions have been received (including a petition with 41 signatures) objecting the proposal.
- Report presents the results of a review of the proposed development by Councils Architectural and Urban Design Advisory Panel.
- Recommended for refusal.

**P08/3042 - PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC) (ATTACHMENT)**

**BACKGROUND**

The Council at its Ordinary Meeting on 15 May 2007 refused an application for a Four Storey Mixed Use Development (7 offices and 5 multiple dwellings) on the subject property for the following reasons:

- 1. The proposed office component of the development is not considered appropriate within the surrounding residential environment.*
- 2. The proposal significantly exceeds plot ratio requirements under both the Community Planning Scheme and Council Policy as the development site faces a living area precinct with an attractive residential streetscape.*
- 3. Variation of Council Policy in this regard will create an undesirable precedent for future development within commercial centre frame precincts and potentially impact on residential streetscapes and amenity within adjacent living area precincts.*
- 4. The proposal does not involve adequate provision for community benefit in order to satisfy the requirements of Council Policy 06–PL-029 – mixed use plot ratio bonus application.*
- 5. An increase in residential plot ratio is not supported under the performance criteria of the Residential Design Codes 4.2.1 p1 as the proposal will result in a considerable increase in building bulk which will negatively impact on residential neighbourhood amenity and the streetscape.*
- 6. The proposal if approved would be contrary to the orderly and proper planning of the locality and contrary to outcomes of the Council’s Melville Visions Project.*
- 7. The proposed plot ratio and building bulk is contrary to the intent of the City of Melville Scheme Amendment 35 which proposes buildings of a reduced bulk.”*

The Council at its Ordinary Meeting on 15 July 2008 resolved as follows:

*That the officer recommendation be rejected and replaced with the following:*

- 1. That Council refer the application for the mixed use Development at 15 Tweeddale Road, Applecross to the City of Melville Architectural and Urban Design Advisory Panel for comment.*
- 2. That the application to be recommitted to the next available meeting of the Council for further consideration once comments of the Architectural and Urban Design Panel have been received.*
- 3. That all the persons who made a submission on this proposal be advised of the Council decision.*



**P08/3042 - PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPECROSS (REC) (ATTACHMENT)****Scheme Provisions**

MRS Zoning	:	Urban
CPS 5 Zoning	:	CBF - Canning Bridge Frame
R-Code	:	R50
Use Type	:	Office / Residential
Use Class	:	Office: "S" Use – Council discretion required following advertising. Residential: "D" Use – Council discretion required.

**Site Details**

Lot Area	:	1010 sqm
Retention of Existing Vegetation	:	No
Street Tree(s)	:	Yes
Street Furniture (drainage pits etc)	:	No
Site Details	:	Property Map <a href="#">3042 PROPERTY MAP.pdf</a> <a href="#">3042 Plans 2008.pdf</a>

**DETAIL**

The application proposes a four storey building for mixed use development with 4 offices on the ground floor, 3 multiple dwellings on the first, second and third floors.

A total of 16 carparking bays are proposed (including disabled bay) within the undercroft carparking.

A total plot ratio of 1.058 is proposed with 0.344 for the non-residential component and 0.714 for the residential component.

The eastern and western setbacks require a variation on the third floor of 7.5 metres in lieu of 10.5 metres and 8.75 metres respectively, required under the Residential Design Codes.

The proposal indicates a landscaping area of 10.7% (108.07 sqm) in lieu of 25% (252.5 sqm) required under the the City of Melville Community Planning Scheme No. 5 (144.43 sqm variation required). However, the plan indicates that there are additional areas that do not show landscaping and have the potential to be landscaped. These areas have the potential to bring the landscaping into compliance at 25.7%.

The proposal indicates a small portion of the front roof, which is 13.8 metres in height above the natural ground level which is marginally above the maximum height of 13.5 metres as provided by the Scheme.

**P08/3042 - PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPECROSS (REC) (ATTACHMENT)**

**Development Requirements**

Development Requirement	Required/ Allowed	Proposed	Comments	Delegation to approve variation	Plan Notation
Plot Ratio Non-Residential	0.6	0.344	Complies if non-residential use supported. As this is not the case; <b>Does Not Comply</b>	MPDS	

Plot Ratio Residential	0.6	0.714	<b>Does not Comply</b>	MPDS	
Total Plot Ratio	1.2	1.058	<b>Does not Comply on basis that commercial use inappropriate on site, therefore mixed-use plot ratio not applicable</b>	MPDS	
Landscaping	25%	10.7%	<b>Does Not Comply</b>	MPDS	
Building Height	10.0 metres to eaves 13.5 metres	13.8 metres	<b>Does Not Comply</b>	MPDS	
Carparking	14 bays	16 bays	Complies		

(Note: Non compliance is emphasised in bold)

**P08/3042 - PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC) (ATTACHMENT)**

**Setbacks**

Wall	Required	Proposed	Comments	Delegation to approve Variation	Plan Notation
Front					
GF	Nil	Nil	Complies		
1 F	Nil	7.51 metres			
2 F	Nil	7.51 metres			
3 F	Nil	7.51 metres			
Rear					
GF	Nil	5.27 metres	Complies		
1 F	1.2 metres	8.88 metres			
2 F	1.4 metres	8.88 metres			
3 F	1.8 metres	8.88 metres			

<b>East Side</b>					
GF	2.0 metres	2.0/2.0 metres	Complies	<b>Not</b>	<b>MPDS</b>
1 F	1.2/5.5 mts	2.0/7.5 metres	Complies		
2 F	1.5/7.2 mts	2.0/7.5 metres	Complies		
<b>3 F</b>	<b>10.5/1.75 mts</b>	<b>7.5/2.0 mts</b>	<b>Does Comply</b>		
<b>West Side</b>					
GF	2.0 metres	2.0 metres	Complies	<b>Not</b>	<b>MPDS</b>
1 F	5.7/1.2 metres	7.5/2.0 metres	Complies		
2 F	7.3/1.4 metres	7.5/2.0 metres	Complies		
<b>3 F</b>	<b>8.75/1.7 mts</b>	2.0 mts	<b>Does Comply</b>		

(Note: Non-compliances are emphasised in bold)

**PUBLIC CONSULTATION/COMMUNICATION**

Advertising Required: Yes  
 Neighbour's Comment Supplied: Yes  
 Reason: "S" use (Office) – Council discretion required following advertising and "D" (Residential) use - Council discretion required  
 Support/Object: 42 Submissions objecting (including a petition). See attached Submission Table  
[3042 Submissions 2008.pdf](#)

**P08/3042 - PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPECROSS (REC) (ATTACHMENT)****REFERRALS TO GOVERNMENT AGENCIES**

Nil

**STATUTORY AND LEGAL IMPLICATIONS**

Should the City of Melville refuse the application for Planning Approval, the applicant will have the right to have the decision reviewed in accordance with Part 14 of the Planning and Development Act 2005.

**FINANCIAL IMPLICATIONS**

Nil

**STRATEGIC AND RISK MANAGEMENT IMPLICATIONS**

Nil

**POLICY IMPLICATIONS**

Policy No. 06-PL-024 Car Parking (Non-Residential) – compliant.

Policy No. 06-PL-036 Planning Process and Decision Making – process would normally require that this application be referred to a Portfolio Meeting, but not Council. In this instance, the development has not been presented to a Portfolio Meeting as one has not been scheduled recently. However the alternative of referring the matter through the Council Agenda Forum process provides a suitable option to provide Elected Members with information on the proposal.

**ALTERNATE OPTIONS & THEIR IMPLICATIONS**

The Council may approve the application should it be considered that the development does comply with the provision of the City of Melville Community Planning Scheme No. 5 and support the non-residential component of a mixed-use development fronting Tweeddale Road as the proposal does not exceed the maximum “as of right” 1.2 plot ratio (subject to discretionary consideration under Clause 7.8 of CPS No 5) requirements applicable for a Mixed-Use Development.

**P08/3042 - PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC) (ATTACHMENT)**

It is noted that an appeal at the State Administrative Tribunal (SAT) may be difficult to defend on the basis that a similar proposed mixed-use development at 4 Forbes Road has recently been supported on appeal to the SAT. This application was refused by Council in November 2007. This application was supported by Planning Services as the property was located on a busy section of Forbes Road (traffic counts in 2004 indicate 3184 vehicles per week) with diminished residential amenity attributes, notwithstanding that the property was located opposite a Living Area precinct. In relative terms, the average weekly traffic along Tweeddale Road between Forbes Road and Moreau Mews of 375 vehicles in 2004 results in a comparatively quieter street. Accordingly, support for Forbes Road should not be considered in the same context due to significantly differing amenity factors.

Notwithstanding, although traffic volumes in Tweeddale Road are significantly less than those counts for Forbes Road, it is not expected that the proposed mixed-use development with 347 square metres of offices and 3 residential units will increase traffic volumes along Tweeddale Road.

The application could be conditioned to comply and in view of the zoning permitting, a mixed-use development within the Canning Bridge commercial precinct is approvable.

Council should also consider this application in relation to the companion application for the straight residential development for this property which is also contained on this agenda. It is important to note that the other application is preferable to this application as it is considered that the impact of that application on the residential streetscape and amenity will not be as significant as the other application does not involve any commercial development.

## **COMMENTS**

The current proposal raises the following matters for consideration.

### Streetscape

The original residential character and amenity of the streetscape which was predominantly characterized by single residential along that section of Tweeddale Road has been substantially modified with redevelopment of the area in recent years.

The nine (9) original properties on the southern side of Tweeddale Road, within the Canning Bridge Frame and R50 coding, have been redeveloped as follows:

- 4 properties have been redeveloped with a three (3) grouped dwellings of 2 storeys each. Two of these properties have a 2 storey dwelling plus undercroft garage fronting Tweeddale Road.
- 2 properties have been redeveloped with a 3 storey dwelling each.

**P08/3042 - PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPECROSS (REC) (ATTACHMENT)**

- 1 property has been redeveloped with a 4 storey building plus undercroft garage, with seven (7) multiple dwellings.
- 1 property has 2 grouped dwellings of single storey and one of them with undercroft garage.
- 1 property is the subject of this application.

The northern side of Tweeddale Road is zoned residential with R30 coding and its 10 properties have been redeveloped mainly with 2 storeys dwellings as follows:

- 3 properties have been redeveloped with 2 storey house each.
- 1 property has been redeveloped with three (3) grouped dwellings of 2 storeys each.
- 2 properties have been subdivided into five (5) green title lots and four (4) of them have been redeveloped with 2 storey houses each and one of them with additional undercroft garage.
- 1 property has been redeveloped with two (2) houses of 2 storey each plus undercroft garage.
- 1 property is of a single storey house.
- 1 property is of a single storey house plus undercroft garage.
- 1 property still vacant and has been subdivided into three (3) green title lots, two (2) of them facing Tweeddale Road.

It should be noted that this northern section of Tweeddale Road, under the previous City of Melville Town Planning Scheme No. 3 was coding R17.5.

At the present time, the southern side of Tweeddale Road (with original nine lots) has a total of 21 dwellings facing it (excluding the subject property of this application) and the northern side (with original 10 lots) has a total of 14 dwellings facing it, plus 3 vacant lots with potential to be developed in the near future.

It is therefore noted that this portion of Tweeddale Road has been substantially modified in recent years. Although the zoning remains residential, its architectural character and amenity has been significant modified over time.

**P08/3042 - PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPECROSS (REC) (ATTACHMENT)***Plot Ratio*

Plot ratio requirements under CPS No. 5 and the R-Codes for this development depend on whether the use is supported as a mixed-use development. If the non-residential use is not supported on site, the maximum plot ratio is that afforded to residential development under the R-Codes and Special Majority discretion available under Clause 4.3 of the Scheme. It is noted that the Codes do not provide discretion to vary plot ratio for residential development (where not part of a Mixed-Use development) in its own right. It is also noted that Clause 7.8 of the Scheme provides for Council to take into account a number of amenity considerations in determining this application.

In simple terms, plot ratio is the ratio of built area relative to the site area. The planning tool aims to provide some rational for the assessment of building bulk on a property. However, other considerations such as setback, parking and building height, together with the visual aesthetics of a development have equal or more significance when considering the bulk of a development.

The plot ratio requirements are complex and in many instances do not give a true representation of building bulk.

In this regard, for residential development, the definition includes the area of walls and provides for a number of exclusions which still add to the bulk of a building. Exclusions for residential development include areas for lifts, stairs or landings for more than one dwelling, machinery, air conditioning and equipment rooms, non-habitable space that is wholly below natural ground level, areas used for parking at or below natural ground level, lobbies or amenity areas common to one or more dwellings, balconies or verandahs open on at least two sides.

Plot ratio exclusions for non-residential development were previously contained under the Uniform Building Bylaws (but are not included under the current Building Code of Australia). In practice, however, the former Uniform Building Bylaw requirements are generally applied and in this regard, plot ratio for commercial development also exclude walls of the commercial building and all floor areas for vehicle parking, whether at or below ground floor or above. In this regard, portion of the non-residential lobby and passage way between tenancy 1 and 2, and 1 and 3 on the ground floor has been included within the calculation of plot ratio.

The development proposes a non-residential plot ratio of 0.344 (347.4 square metres) which is 258.6 square metres less than the maximum 606 square metres in the Canning Bridge Frame. The residential component proposes a plot ratio of 0.714 (721.16 square metres), which is 115.16 square metres above the maximum 606 square metres permitted). The combined plot ratio equates to 1.058 (1608.56 square metres), which is 143.44 square metres less than the maximum 1212 square metres permitted "as per right" based on the Council's legal interpretation of plot ratio for mixed-use development.

Although the proposal does not involve an overall increase in plot ratio for mixed-use development as described above, the proposed 4 offices at the ground floor level directly front a quiet residential area across Tweeddale Road, which is zoned residential R30 under the City of Melville Community Planning Scheme No. 5.

**P08/3042 - PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPECROSS (REC) (ATTACHMENT)**

It should be noted that a proposal for a 5 level residential building and 3 storey offices building was approved by the Council on the adjoining property to the east (13 Tweeddale Road), however the approved non-residential component is facing Kintail Road (26 Kintail Road) and the surrounding properties are zoned Canning Bridge Frame (CBF). In addition, Council refused a previous application for mixed-use on this property for a number of reasons (as detailed above in the Background of this Report) inclusive of concerns that commercial uses fronting this residential street are inappropriate.

It is considered that the proposal involving office uses within an attractive residential environment is undesirable. The local community has, through significant opposition to the proposal, expressed a view that Tweeddale Road is too narrow and busy for the intensification of the local land uses. Accordingly it is considered paramount that any proposal which will have a significant impact on the streetscape is not supported. As such, the proposal significantly exceeds the maximum residential plot ratio afforded to development in this locality as commercial use and therefore mixed-use is not supported.

Whereas discretion is available under Clause 4.3 of the Scheme to consider a variation to the maximum residential plot ratio of 0.6 under the R-Codes, it is considered that this would be inappropriate in the context of Clause 7.8 of the Scheme which takes into account such matters as the objectives of the Scheme, orderly and proper planning, existing and future amenity and any relevant submission received. In this regard, the proposal is considered to be inconsistent with the following:

- a) The Statement of Intent for the Canning Bridge Frame (CBF) which indicates that offices may be supported where privacy of neighbours is respected and the design has a residential character – in this context, the proposal is in context with the residential character of the adjoining development at 13 Tweeddale Road.
- b) Orderly and proper planning for the locality in that the development is considered to be consistent with the adjacent development and changing streetscape.
- c) Existing and future amenity of the locality in that the predominant land use of this portion of Tweeddale Road is residential. Commercial intrusion has been guarded in the past by the Mixed Use Bonus Policy which no longer applies in the context of legal advice relative to the cumulative residential and non-residential plot ratios. Notwithstanding, legal advice indicates that Council may consider the impacts of increased plot ratio and development under the Scheme and in this context, the impacts of commercial intrusion into the residential streetscape are considered of paramount concern.



**P08/3042 - PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPECROSS (REC) (ATTACHMENT)**

It is noted that Amendment No 35 proposes to include the southern portion of Tweeddale Road between Forbes and Ogilvie Roads in the Applecross 3 Living Area Precinct with a density coding of R30 (Office Uses are not to be permitted) to provide for an improved integration of densities and development with the adjacent residential properties. It is noted however, that Amendment No. 35 is currently on hold (following consideration of submissions by Council in April 2007) pending the Department for Planning and Infrastructure (DPI), City of Melville and City of South Perth "Canning Bridge Study".

Whilst it may be premature to pre-empt the results of this Study, it is noted that the Study may require substantial modifications to Amendment No. 35 and re-advertising or the preparation of a new Amendment. Notwithstanding, the subject area is on the perimeter of the Frame and located well beyond standard 400 and 800 metre "Pedshed" walking distances to the Canning Bridge railway station. Accordingly, it may be considered that the main emphasis of the Study is likely to relate to land in closer proximity to the railway station and this portion of the Study Area may not be impacted (allowing current Amendment No. 35 proposals to proceed without modification) and allow normal principles of creating a demarcation between zonings and densities at the rear of properties (rather than along the road frontage) to prevail. Should the Canning Bridge Transport Oriented Design Study result in modifications which would support an alternate view relative to the development of this section of Tweeddale Road, the developer will have the option of applying for mixed-use development on the property. Approval for a mixed-use development at this point may prejudice future outcomes of the Study and therefore should not be supported.

- d) Significant public objection to the proposal as detailed in the attached Schedule of Submissions.

Traffic

The average weekly traffic along Tweeddale Road between Forbes Road and Moreau Mews was 375 vehicles in 2004 (City of Melville).

Based on roads and Traffic Authority of NSW (VTPD), the total vehicular trips should be in the order of 5 vehicles trips per day (VTPD) per dwelling and 10 vehicle trips per day (VTPD) per 100 square metres of offices. The proposed 3 multiple dwellings will generate a total of 15 VTPD and the 309 square metres of offices will generate additional 30 VTPD. A total of 45 VTPD (vehicle trips per day) is considered not to have a further impact onto this section of Tweeddale Road as its increase is only 12%.

**P08/3042 - PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC) (ATTACHMENT)***Setbacks*

The reduced side setbacks of 7.5 metres to the penthouse balcony on each side of the proposal, do not comply with the Acceptable Development standards of the R-Codes, however are deemed to comply with the Performance Criteria relative to assessment of the effects of sun, shadow, ventilation, privacy and building bulk on both properties which are considered to be insignificant and therefore compliant.

It should be noted that the balcony side setbacks to the first and second floor are in compliance with the R-Codes.

The rear setback is in compliance as is abutting a mixed-use building.

*Height of the Building*

The application proposes a maximum building height of 13.8 metres for a small portion at the front of the roof in lieu of 13.5 metres. This non-compliance is for the proposed roof on top of the balcony of the penthouse on the third floor. Council could require this portion of the roof to be removed or support a minor variation in consideration of the roof being classified as an architectural feature.

*Car Parking*

The carparking requirements for residential in accordance with the Residential Design Codes for Mixed Use is 3 bays (1 bays per dwelling – as the proposal does not involve 4 dwellings or more, no visitor parking is required for the residential component) and in accordance with the City of Melville Policy No. 06-024 Car Parking (Non-Residential) 11 bays would be required for the non-residential component (offices). The total required is 14 bays. The development initially proposed 17 bays, however in order for the parking area to comply with Australian Parking standards relative to vehicle manoeuvring, one bay at the rear of the parking area is required to be converted to a reversing bay. Accordingly, the result is that 16 bays are available, which complies.

*Landscaping*

The landscaping is only 10.7% in lieu of 25% required under the the City of Melville Community Planning Scheme No. 5 but there is potential for this area to be increased to exceed 25%.

**P08/3042 - PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPECROSS (REC) (ATTACHMENT)***Submissions*

42 Submissions have been received objecting the proposal, including a petition with 41 signatures. It is noted that 32 of the submission do not have grounds for the objection. The balance of 10 objections mainly address the loss of amenity along Tweeddale and surrounding residential adjoining properties, increase in traffic and lack of carparking.

Some of the submissions make comment in relation to the proposal involving R50 development which should not be permitted in an area with a R30 code. In this regard, it would appear that these respondents are of the view that the R30 proposal under Amendment No 35 has already been adopted. This is not the case as Amendment No. 35 is currently on hold and subject to further study and considerations by the Council and Department of Planning and Infrastructure.

*Architectural and Urban Design Advisory Panel*

Following the decision of the Council at its Ordinary Meeting on 15 July 2008, a meeting was held with the Architectural and Urban Design Advisory Panel. Minutes of the meeting are incorporated into this report.

The proposed Mixed Use (4 offices and 3 multiple dwellings) and proposed residential use (5 multiple dwellings) with undercroft carparking were reviewed by the Architectural and Urban Design Advisory Panel who agreed that the design of the four (4) storey building with undercroft carparking is acceptable and may be improved and further reduce the impact on the streetscape by implementing some architectural changes.

The members of the Advisory Panel noted that the location of the property in the Canning Bridge Frame allows for some non-residential uses such as offices. The panel was also aware of the Canning Bridge Study being undertaking.

The following issues were discussed and recommended:

The front column on the penthouse balcony be deleted and the first and second floor columns be in a different colour (dark) with a small recess. This will help to reduce the visual / vertical impact of the building. Alternatively, a central column similar to the side columns would be acceptable with a small recess.

The penthouse front elevation is to be softened by having the windows setback as per the first and second floor. In addition, the stone columns (architectural feature) on the corners of the building (east and west sides) be deleted.

The flat side elevations are recommended to provide some articulation by the penthouse being setback on each side and horizontal detailing used.

**P08/3042 - PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC) (ATTACHMENT)**

The Panel stated “*based on the existing Scheme provisions and equity arguments a four (4) storey development is acceptable subject to the following design changes which make the building more sympathetic with the streetscape.*”

The Architectural and Urban Design Advisory Panel made comments, that if either proposal was approved, conditions in this regard should be considered taking into account the above issues and therefore the following were recommended as conditions:

That the front elevation and side elevations be redesigned incorporating the following suggested changes and submitted for approval to the Director of Strategic Urban Planning, prior to the submission of a Building Licence:

- Deletion of the penthouse front central column and the remaining columns to be in a dark colour with a small recess. As an alternative a column (in dark colour) similar to the side columns is acceptable, with a small recess.
- The front penthouse windows to be setback similar to the other floors.
- The stone work (each corner of the building) on the front elevation is to be deleted.
- Side elevations (east and west) are to be broken up by horizontal detailing.

## **CONCLUSION**

The proposed non-residential component of the proposal will impact on adjacent neighbourhood amenity and accordingly is considered undesirable within a residential environment. As the non-residential use is considered inappropriate in this context, the cumulative application of residential and non-residential plot ratios is not supported and it is recommended that the application be refused.

**P08/3042 - PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC) (ATTACHMENT)**

**OFFICER RECOMMENDATION (3042)**

**REFUSAL**

**THAT COUNCIL VARY POLICY 06-PL-036 RELATIVE TO THE DECISION MAKING PROCESS AND THAT THE APPLICATION FOR PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS BE REFUSED FOR THE FOLLOWING REASONS:**

- 1. THE PROPOSED OFFICE COMPONENT OF THE DEVELOPMENT IS NOT CONSIDERED APPROPRIATE WITHIN THE SURROUNDING RESIDENTIAL ENVIRONMENT.**
- 2. THE DEVELOPMENT IS ON THE INTERFACE BETWEEN THE LIVING AREA AND COMMERCIAL CENTRE FRAME AND THE INTRODUCTION OF OFFICE USES ON THIS INTERFACE IS CONSIDERED INAPPROPRIATE HAVING REGARD TO THE AMENITY OF THE AREA.**
- 3. THE PROPOSAL IF APPROVED WILL CREATE AN UNDESIRABLE PRECEDENT FOR FUTURE DEVELOPMENT WITHIN COMMERCIAL CENTRE FRAME PRECINCTS AND AMENITY WITHIN ADJACENT LIVING AREA PRECINCTS.**
- 4. THE PROPOSAL IF APPROVED WOULD BE CONTRARY TO THE REQUIREMENTS OF CLAUSES 4.3 AND 7.8 OF THE COMMUNITY PLANNING SCHEME NO 5 RELATIVE TO ITS INCONSISTENCIES WITH REGARD TO THE EXISTING AND FUTURE AMENITY OF THE LOCALITY AS DETAILED IN AMENDMENT NO 35 AND FURTHER STUDIES INTO CANNING BRIDGE PRECINCT AND IN CONSIDERATION OF SIGNIFICANT PUBLIC OPPOSITION TO THE PROPOSAL.**
- 5. THE PROPOSAL IF APPROVED MAY PREJUDICE THE OUTCOME OF THE CANNING BRIDGE STUDY.**

**General discussion took place regarding this item and officer recommendation.**

**Cr Pazolli enquired as to whether the applicant for this item was the same applicant as a previous item presented for 13 Tweeddale Road approved by Council on 15<sup>th</sup> March 2005. The Manager Planning and Development Services advised that he will provide this information to Elected Members before the August 2008 Council Meeting.**

**P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPECROSS (SMREC) (ATTACHMENT)**

Disclosure of Interest

Item No.	P08/3043
Officer	Mr David Vinicombe
Type of Interest	Interest under Code of Conduct 8.2.8
Nature of Interest	Past Business Association
Request	Leave
Decision of Council	Not Applicable

**The Manager Planning & Development Services, Mr David Vinicombe, having declared an interest in the previous item (P08/3042) remained absent from the meeting.**

Item presented by	: Mr Craig McClure Director Strategic Urban Planning
Ward	: Applecross-Mount Pleasant
Category	: Operational
Disclosure of any Interest	: David Vinicombe Manager Planning & Development Services
Application Number	: DA-2007-1793
Property	: 15 Tweeddale Road, Applecross.
Proposal	: Residential Development with 5 Multiple Dwellings and undercroft carparking.
Applicant	: Tuscom Subdivision consultants Pty Ltd
Owner	: Daystar Asset Pty Ltd
Responsible Officer	: Julio Gonzalez Planning Services Coordinator
Previous Items	: P07/3010 – Mixed Use Development Residential and Commercial on Lot 1057 (15) Tweeddale Road, Applecross – 15 May 2007

**AUTHORITY / DISCRETION**

	<u>Definition</u>
<input type="checkbox"/> Advocacy	<i>when Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input type="checkbox"/> Executive	<i>the substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets</i>
<input type="checkbox"/> Legislative	<i>includes adopting local laws, town planning schemes &amp; policies.</i>
<input type="checkbox"/> Review	<i>when Council review decisions made by Officers.</i>
<input checked="" type="checkbox"/> Quasi-Judicial	<i>when Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>

**P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (SMREC) (ATTACHMENT)**

**KEY ISSUES / SUMMARY**

- Proposal is for a four storey residential building with 5 multiple dwellings.
- Undercroft carparking for 15 vehicles inclusive of 2 visitor bays in the front setback area.
- Total plot ratio is 1.027, in excess of the permitted 0.6 under R-Codes.
- Height limit variation is proposed for a small portion of the front roof.
- 13 submissions have been received 9 objecting and 4 supporting (including one multi-signature letter with 68 signatures supporting and one petition with 41 signatures objecting).
- Report presents the results of a review of the proposed development by Councils Architectural and Urban Design Advisory Panel.
- Recommended for approval.

**BACKGROUND**

The Council at its Ordinary Meeting on 15 May 2007 refused an application for a four storey Mixed Use Development (7 offices and 5 multiple dwellings) with a proposed plot ratio of 0.863 (0.702 residential and 0.161 non-residential) for the following reasons:

1. *The proposed office component of the development is not considered appropriate within the surrounding residential environment.*
2. *The proposal significantly exceeds plot ratio requirements under both the Community Planning Scheme and Council Policy as the development site faces a living area precinct with an attractive residential streetscape.*
3. *Variation of Council Policy in this regard will create an undesirable precedent for future development within commercial centre frame precincts and potentially impact on residential streetscapes and amenity within adjacent living area precincts.*
4. *The proposal does not involve adequate provision for community benefit in order to satisfy the requirements of Council Policy 06–PL-029 – mixed use plot ratio bonus application.*
5. *An increase in residential plot ratio is not supported under the performance criteria of the Residential Design Codes 4.2.1 p1 as the proposal will result in a considerable increase in building bulk which will negatively impact on residential neighbourhood amenity and the streetscape.*
6. *The proposal if approved would be contrary to the orderly and proper planning of the locality and contrary to outcomes of the Council’s Melville Visions Project.*

**P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPECROSS (SMREC) (ATTACHMENT)**

7. *The proposed plot ratio and building bulk is contrary to the intent of the City of Melville Scheme Amendment 35 which proposes buildings of a reduced bulk.”*

The Council at its Ordinary Meeting on 15 July 2008 resolved as follows:

*That the officer recommendation be rejected and replaced with the following:*

- 1. That Council refer the application for the mixed use Development at 15 Tweeddale Road, Applecross to the City of Melville Architectural and Urban Design Advisory Panel for comment.*
- 2. That the application to be recommitted to the next available meeting of the Council for further consideration once comments of the Architectural and Urban Design Panel have been received.*
- 3. That all the persons who made a submission on this proposal be advised of the Council decision.*

**Scheme Provisions**

MRS Zoning	: Urban
CPS 5 Zoning	: CBF - Canning Bridge Frame
R-Code	: R50
Use Type	: Residential
Use Class	: Residential: D Use – Council discretion required.

**Site Details**

Lot Area	: 1010 sqm
Retention of Existing Vegetation	: No
Street Tree(s)	: Yes
Street Furniture (drainage pits etc)	: No
Site Details	: <a href="#">3043 Site Photo 2008.pdf</a> <a href="#">3043 Plans 2008.pdf</a>

**DETAIL**

This current application proposes a four storey building for residential development with a total of 5 multiple dwellings, 2 multiple dwellings on the ground floor and 1 on the first, second and third floors.

A total of 13 carparking bays are proposed within the undercroft carparking plus 2 visitor bays in the front setback area.



**P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (SMREC) (ATTACHMENT)**

A total plot ratio of 1.027 is proposed in lieu of 0.6 permitted under the 2008 Residential Design Codes.

The application proposes a small portion of the front roof, which is 13.8 metres in height above the natural ground level.

**Development Requirements**

<b>Development Requirement</b>	<b>Required/ Allowed</b>	<b>Proposed</b>	<b>Comments</b>	<b>Delegation to approve variation</b>	<b>Plan Notation</b>
Open Space	45%	53%	Complies		
<b>Plot Ratio Residential</b>	<b>0.6</b>	<b>1.027</b>	<b>Does Not Comply</b>	<b>MPDS</b>	
Landscaping	Scheme does not specify requirement	Yes	Complies		
<b>Building Height</b>	<b>10.0 metres 13.5 metres</b>	<b>13.8 metres</b>	<b>Does Not Comply</b>	<b>MPDS</b>	
Carparking	10 bays	15 bays	Complies		

**Setbacks**

<b>Wall</b>	<b>Required</b>	<b>Proposed</b>	<b>Comments</b>	<b>Delegation to approve Variation</b>	<b>Plan Notation</b>
Front GF / 1 F / 2 F / 3 F	4.0	7.515	Complies		
Rear GF 1 F 2 F 3 F	Nil 2.5 metres 4.0 metres 5.75 metres	Nil 8.88 metres 8.88 metres 8.88 metres	Complies		

**P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (SMREC) (ATTACHMENT)**

<b>East Side</b>					
GF	1.1/1.5 mts	1.18/2.0 mts	Complies		
1 F	1.2/5.5 mts	2.0/7.5 mts			
2 F	1.5/7.2 mts	2.0/7.5 mts			
<b>3 F</b>	<b>10.5/1.75 mts</b>	<b>7.5/2.0 mts</b>	<b>Does Comply</b>	<b>Not</b>	<b>MPDS</b>
<b>West Side</b>					
GF	1.5/1.0 mts	7.5/2.0 mts	Complies		
1 F	5.7/1.2 metres	7.5/2.0 metres			
2 F	7.3/1.4 metres	7.5/2.0 metres			
<b>3 F</b>	<b>8.75/1.7 mts</b>	<b>7.5/2.0 mts</b>	<b>Does Comply</b>	<b>Not</b>	<b>MPDS</b>

**PUBLIC CONSULTATION/COMMUNICATION**

Advertising Required: Yes  
 Neighbour's Comment Supplied: Yes  
 Reason: "D" use not permitted unless the Council exercises discretion  
 Support/Object: 13 Submissions 9 objecting and 4 supporting (including two petitions). See attached Submission Table.  
[3043 Submissions 2008.pdf](#)

**REFERRALS TO GOVERNMENT AGENCIES**

Not Applicable

**STATUTORY AND LEGAL IMPLICATIONS**

Should the City of Melville refuse the application for Planning Approval, the applicant will have the right to have the decision reviewed in accordance with Part 14 of the Planning and Development Act 2005.

**FINANCIAL IMPLICATIONS**

Not Applicable

**STRATEGIC AND RISK MANAGEMENT IMPLICATIONS**

Not Applicable

**P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPECROSS (SMREC) (ATTACHMENT)****POLICY IMPLICATIONS**

Policy No. 06-PL-026 Height of the Building.

Policy No. 06-PL-036 Planning Process and Decision Making – as this application is major and involves a significant variation from the plot ratio standards for residential development, the process would normally require that this application be referred to an Elected Members Workshop and then Council. The application was referred to the Workshop on 24 June 2008.

**ALTERNATE OPTIONS & THEIR IMPLICATIONS**

The Council may refuse the application should it be considered that the development does not comply with the provision of the City of Melville Community Planning Scheme No. 5 as the proposal exceeds the maximum 0.6 plot ratio. However, it should also be considered that the proposal complies with the R50 coding, it is located within the Canning Bridge Frame and in general complies with the requirements of Community Planning Scheme No. 5, Council Policies and the 2008 Residential Design Codes with the exception of plot ratio. In addition, comparisons should be made with the companion application in terms of whether a straight residential development (the subject of this application) is more desirable than a mixed-use development (subject of the other application).

**COMMENTS**

Another application for Mixed-Use development, on the same property, is being considered by the Council as part of this Agenda. That proposal comprises 4 offices and 3 Multiple Dwellings within a four storey building with undercroft carparking.

The current proposal raises the following matters for consideration.

**Submissions**

13 Submissions have been received, 9 objecting to the proposal and 4 supporting the proposal, including one multi-signature letter (in the form of a petition but not in the correct format) with 68 signatures supporting the proposal and one petition with 41 signatures objecting to development above the R30 Code. The objections are mainly concerned with the loss of amenity along Tweeddale Road, eroded streetscape, increase in traffic and lack of carparking.

**P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPECROSS (SMREC) (ATTACHMENT)**

Some of the submissions make comment that the proposal being R50 coding shouldn't be permitted in an area with a R30 code. In this regard, it would appear that these respondents are of the view that the R30 proposal under Amendment No 35 has already been adopted. This is not the case as Amendment No. 35 is currently on hold and subject to further study and considerations by the Council and Department of Planning and Infrastructure in relation to the "Canning Bridge Study".

The submissions in support include a multi-signature letter containing 68 signatures. The submission does not refer to whether it relates to the straight residential development or the mixed-use development. However, one supporter made reference to supporting only the residential development. Therefore it is assumed that the other supporters are generally supportive of the residential development as well as the mixed-use development.

It should be noted that two property owners across Tweeddale Road, facing the proposal, are in support of the residential use and the mixed use.

**Height of the Building**

The application proposes a maximum building height of 13.8 metres for a small portion at the front of the roof in lieu of 13.5 metres. This non-compliance is for the proposed roof on top of the balcony of the penthouse on the third floor. Council could require this portion of the roof to be removed or support a minor variation in consideration of the roof being classified as an architectural feature.

**Car Parking**

The total required carparking for residential in accordance with the Residential Design Codes (Variation 1) is 10 bays (2 bays per dwelling) including 1 bay for visitors. The application proposes 15 bays, including 2 visitor bays. It should be noted that the application initially included 16 bays, however bay 12 is required to provide a reversing bay at the end of the parking area in accordance with Australian Standards

**Traffic**

The average weekly traffic along Tweeddale Road between Forbes Road and Moreau Mews is 375 vehicles in 2004.

The total vehicular trips should be in the order of 5 vehicles trips per day (VTPD) per dwelling (Based on roads and Traffic Authority of NSW – VTPD) and the proposed 5 multiple dwellings will generate a total of 25 VTPD which is considered to have no further impact onto this section of Tweeddale Road.

**P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (SMREC) (ATTACHMENT)**

Engineering Services have advised as follows:

1. Whilst the development might only generate 26 vehicular movements per day, and will not appear to impact on the road network, a cumulative effect may arise in adjacent streets when the area is fully developed. These matters will need to be taken into consideration in the Canning Bridge Study or supplementary reports on the development of the area.
2. Details are required with regard to the slope of the access way and how they relate to the two (2) parking bays at the front of the property. In addition, it is noted that the crossover to the development will need to be relocated to provide appropriate clearance to an existing street tree. This may place further constraints on access to these bays and require the front setback area to be redesigned to accommodate the 2 bays with suitable access. An appropriate condition is to be applied in this regard.
3. All parking bays, inclusive of disabled parking bays and ramps for vehicles and pedestrian movement are to be provided in accordance with Australian Standards.
4. Signage advising residents to give way to pedestrians when egressing the basement parking area is recommended.
5. A dedicated bin collection area is to be provided on the verge and not to interfere with the use and operation of the footpath. This may require relocation of the footpath. A suitable condition is recommended in this regard.

### Setbacks

The reduced side setbacks of 7.5 metres to the penthouse balcony on each side of the proposal, does not comply with the Acceptable Development standards of the R-Codes, however are deemed to comply with the Performance Criteria relative to assessment of the effects of sun, shadow, ventilation, privacy and building bulk on both properties which are considered to be insignificant and therefore compliant.

It should be noted that the balcony side setbacks to the first and second floor are in compliance with the R-Codes.

### Streetscape

The original residential character and amenity of the streetscape which was predominantly characterized by single residential along that section of Tweeddale Road has been substantially modified with redevelopment of the area in recent years.

**P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (SMREC) (ATTACHMENT)**

The nine (9) original properties on the southern side of Tweeddale Road, within the Canning Bridge Frame and R50 coding, have been redeveloped as follows:

- 4 properties have been redeveloped with a three (3) grouped dwellings of 2 storeys each. Two of these properties have a 2 storey dwelling plus undercroft garage fronting Tweeddale Road.
- 2 properties have been redeveloped with a 3 storey dwelling each.
- 1 property has been redeveloped with a 4 storey building plus undercroft garage, with seven (7) multiple dwellings.
- 1 property has 2 grouped dwellings of single storey and one of them with undercroft garage.
- 1 property is the subject of this application.

The northern side of Tweeddale Road is zoned residential with R30 coding and its 10 properties have been redeveloped mainly with 2 storeys dwellings as follows:

- 3 properties have been redeveloped with 2 storey house each.
- 1 property has been redeveloped with three (3) grouped dwellings of 2 storeys each.
- 2 properties have been subdivided into five (5) green title lots and four (4) of them have been redeveloped with 2 storey houses each and one of them with additional undercroft garage.
- 1 property has been redeveloped with two (2) houses of 2 storey each plus undercroft garage.
- 1 property is of a single storey house.
- 1 property is of a single storey house plus undercroft garage.
- 1 property still vacant and has been subdivided into three (3) green title lots, two (2) of them facing Tweeddale Road.

It should be noted that this northern section of Tweeddale Road, under the previous City of Melville Town Planning Scheme No. 3 was coding R17.5.

**P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPECROSS (SMREC) (ATTACHMENT)**

At the present time, the southern side of Tweeddale Road (with original nine lots) has a total of 21 dwellings facing it (excluding the subject property of this application) and the northern side (with original 10 lots) has a total of 14 dwellings facing it, plus 3 vacant lots with potential to be developed in the near future.

It is therefore noted that this portion of Tweeddale Road has been substantially modified in recent years. Although the zoning remains residential, its architectural character and amenity has been significantly modified over time.

Plot Ratio

The application proposes a plot ratio of 1.027 (1037.4 square metres) in lieu of 0.6 (606 square metres) required under the 2008 Residential Design Codes. It should be noted that this plot ratio has been increased by additional areas relative to the foyer area of 28.75 square metres on first and second floor due to that foyer being used for the exclusive use of the residents of that particular floor. Similar situations exist for the penthouse located on the third floor, which includes the foyer, lift and stairs, as these areas are to be used exclusively by the residents of the penthouse. Consequently a total of 109.22 square metres are added to the total plot ratio of 1037.4 square metres for these exclusive areas.

The proposed plot ratio is 431.1 square metres above the maximum permitted plot ratio of 0.6 (606 square metres), however the proposal is in accordance with the coding R50 as the subject site has a potential for 5 multiple dwellings and 5 dwellings are proposed.

Clause 4.3 of Community Planning Scheme No 5 provides for Council to consider variation of any standard or requirement of Part 4 (with exception to the density of development) through a Special Majority decision. The Precinct requirements under Part 4 for the Canning Bridge Frame provide for R Code standards in accordance with Clauses 5.1 and 5.2 of the Scheme. These provisions indicate that development is to accord with the applicable Residential Development standards of the Codes and accordingly, Council has discretion to vary the plot ratio standards of the Codes under the Scheme. This is consistent with legal advice on plot ratios applicable for mixed use development which was provided last year by Council's solicitors.

It is noted that Clause 4.3 of the Scheme does not specify any criteria for consideration of variation to the development standards. Notwithstanding, any application for development must be considered in the context of Clause 7.8 of the Scheme and in this regard, the following matters are considered appurtenant to this application:

**P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (SMREC) (ATTACHMENT)**

1. Objectives and provisions of the Scheme – In this regard, it is noted that the Statement of Intent for the Canning Bridge Frame (CBF) states, “*Primarily residential but may include offices and medical practitioners where privacy of neighbours is respected and design has a residential character.*” It is considered that the proposal is consistent with the Statement of Intent. The design is in keeping with the existing 4 storey building (with undercroft garage) next door on 13 Tweeddale Road and with the other residential dwellings of 3 and 2 storeys along Tweeddale Road.
2. Orderly and proper planning of land in the area – as indicated above, the proposal is consistent with development which has recently established within this portion of Tweeddale Road.
3. Existing and likely future amenity of the area – as indicated above, the proposal is consistent with existing recent development in this section of Tweeddale Road. The density of development would not be consistent with the proposed R30 residential density under Amendment No 35 if gazetted in accordance with the advertised documents in 2006 and now awaiting possible review dependant on the outcomes of the “Canning Bridge Study.” It is noted that if the Amendment had been gazetted with the current advertised proposals in place, Amendment No 35 would provide for 3 multiple dwellings in lieu of the proposed 5, and be limited to a maximum height of 10.5 metres in lieu of the current 13.5 metres. Notwithstanding, an application for variation in height to accommodate 3 dwellings could be made and would need to be considered under similar criteria as this application. In addition, it is too early to identify what the final outcomes of the Canning Bridge Study will be and accordingly, it is difficult to categorically state that the proposal will be out of keeping with future development standards in the area.
4. Nature of development proposed or existing on adjoining land – as indicated above, the proposal is consistent with adjoining development.
5. Design and external appearance and impact on amenity of the surrounding area – the proposal has a high quality finish, consistent with adjoining development.
6. Relevant submissions – these are dealt with in this report.



**P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPECROSS (SMREC) (ATTACHMENT)**

7. Any other relevant planning considerations – the companion application for a mixed-use development on the subject property would have significantly more impacts on the residential amenity of this section of Tweeddale Road than a straight residential development. In addition, it is noted that the application could have a plot ratio which is consistent with the base 0.6 requirements under the Codes, but maintain the same height within a reduced foot print moved forward on the property so as to maintain the same building bulk when viewed from the street or from properties to the rear. Finally, it should be noted that this increase in plot ratio would have an estimated value of approximately \$1.2m.

*Architectural and Urban Design Advisory Panel*

Following decision from the Council at its Ordinary Meeting on 15 July 2008, a meeting was held with the Architectural and Urban Design Advisory Panel. Minutes of the meeting are incorporated into this report.

The proposed Mixed Use (4 offices and 3 multiple dwellings) and proposed residential use (5 multiple dwellings) with undercroft carparking were reviewed by the Architectural and Urban Design Advisory Panel who agreed that the design of the four (4) storey building with undercroft carparking is acceptable and may be improved and further reduce the impact on the streetscape by implementing some architectural changes.

The members of the Advisory Panel noted that the location of the property in the Canning Bridge Frame allows for some non-residential uses such as offices. The panel was also aware of the Canning Bridge Study being undertaken.

The following issues were discussed and recommended:

The front column on the penthouse balcony be deleted and the first and second floor columns be in a different colour (dark) with a small recess. This will help to reduce the visual / vertical impact of the building. Alternatively, a central column similar to the side columns would be acceptable with a small recess.

The penthouse front elevation is to be softened by having the windows setback as per the first and second floor. In addition, the stone columns (architectural feature) on the corners of the building (east and west sides) be deleted.

The flat side elevations are recommended to provide some articulation by the penthouse being setback on each side and horizontal detailing used.

The Panel stated “bases on the existing Scheme provisions and equity arguments a four (4) storey development is acceptable subject to the following design changes which make the building more sympathetic with the streetscape.”

**P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPECROSS (SMREC) (ATTACHMENT)**

The Architectural and Urban Design Advisory Panel made comments, that if either proposal was approved, conditions in this regard should be considered taking into account the above issues and therefore the following was recommended as conditions:

That the front elevation and side elevations to be redesigned and submitted for approval to the Director of Strategic Urban Planning, prior to the submission of a Building Licence and the following matters are to be addressed:

- Deletion of the penthouse front central column and the remaining columns to be in a dark colour with a small recess. As an alternative a column (in dark colour) similar to the side columns is acceptable, with a small recess.
- The front penthouse windows to be setback similar to the other floors.
- The stone work (each corner of the building) on the front elevation is to be deleted.
- Side elevations (east and west) are to be broken up by horizontal detailing.

**CONCLUSION**

The proposed residential use will not have any further impact on neighbourhood amenity and the streetscape and it is considered appropriate within a residential environment. Accordingly the application is recommended for approval.

**OFFICER RECOMMENDATION (3043)**

**SPECIAL MAJORITY APPROVAL**

**THAT THE APPLICATION FOR A PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH FIVE MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPECROSS BE APPROVED BY SPECIAL MAJORITY OF THE COUNCIL, SUBJECT TO THE FOLLOWING CONDITIONS:**

**SPECIAL CONDITIONS**

- 1. A DETAILED LANDSCAPING AND RETICULATION PLAN BEING SUBMITTED AND APPROVED FOR THE SUBJECT SITE AND ROAD VERGE ADJACENT TO THE SITE. THE APPROVED LANDSCAPING PLAN SHALL BE FULLY IMPLEMENTED PRIOR TO OCCUPANCY OF THE DEVELOPMENT AND MAINTAINED THEREAFTER TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES**

**P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPECROSS (SMREC) (ATTACHMENT)**

- 2. THE EXISTING STREET TREE MARKED ON THE DEVELOPMENT PLANS IS TO BE RETAINED AND THE DRIVEWAY AND CROSSOVER TO BE MODIFIED ACCORDINGLY.**
- 3. THE PROVISION OF 1 STREET TREE (100L CONTAINER) IN THE VERGE AREA OF THE SUBJECT PROPERTY AT THE APPLICANTS / OWNERS FULL COST TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES. DETAILS OF THE PROPOSED STREET TREES AND LOCATION TO BE INCLUDED IN THE LANDSCAPING AND RETICULATION PLAN STATED IN SPECIAL CONDITION 1 ABOVE.**
- 4. DURING EXCAVATIONS, ALL NECESSARY PRECAUTIONS TO BE TAKEN TO PREVENT DAMAGE OR COLLAPSE OF ANY ADJACENT STREETS OR ADJOINING PROPERTIES. IT IS THE RESPONSIBILITY OF THE BUILDER TO LIAISE WITH ADJOINING AND ADJACENT PROPERTY OWNERS PRIOR TO CARRYING OUT WORK.**
- 5. PRIOR TO THE ISSUE OF A BUILDING LICENCE, THE APPLICANT TO SUBMIT A DILAPIDATION REPORT TO THE APPROVAL OF THE PRINCIPAL BUILDING SURVEYOR.**
- 6. ALL SECURITY ALARM DEVICES TO BE “SILENT MONITORED” SYSTEMS TO ADDRESS POTENTIAL IMPACTS ON SURROUNDING RESIDENTIAL AMENITY TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES.**
- 7. THE FAÇADE OF THE BUILDING AND WALLS TO BE TREATED WITH AN ANTI-GRAFFITI AGENT TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES.**
- 8. THE ROOF OF THE BUILDING NOT TO BE ZINCALUME OR WHITE METAL (E.G. COLORBOND SURFMIST) OR ANY OTHER MATERIAL / COLOUR CONSIDERED TO BE HIGHLY REFLECTIVE UNLESS OTHERWISE APPROVED BY THE MANAGER PLANNING AND DEVELOPMENT SERVICES. DETAILS OF THE PROPOSED ROOF MATERIAL AND COLOUR ARE TO BE SHOWN ON THE DEVELOPMENT PLANS PRIOR TO THE ISSUE OF A BUILDING LICENCE.**
- 9. THE DIMENSIONS OF ALL CAR PARKING BAYS, AISLE WIDTHS AND CIRCULATION AREAS, TOGETHER WITH ACCESS RAMPS FOR VEHICLES AND PEDESTRIANS COMPLYING WITH AUSTRALIAN STANDARDS.**
- 10. SUBMISSION OF A GLARE REFLECTIVITY STUDY BY A SUITABLY QUALIFIED PROFESSIONAL AND ANY GLARE ISSUES TO BE ADDRESSED PRIOR TO THE ISSUE OF A BUILDING LICENCE.**

**P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPECROSS (SMREC) (ATTACHMENT)**

- 11. THE SUBMISSION OF A COLOUR SCHEDULE BOARD DETAILING THE USE OF MATERIALS, FINISHES AND COLOURS FOR THE MIXED USE BUILDING TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES PRIOR TO THE ISSUE OF A BUILDING LICENCE.**
- 12. EQUIPMENT SUCH AS AIR CONDITIONERS OR EXHAUST VENTS, BUT NOT INCLUDING ANY SOLAR PANEL, WHICH ARE LIKELY TO DETRACT FROM THE VISUAL APPEARANCE OF THE BUILDING SHALL NOT BE LOCATED ON THE ROOF OR OTHERWISE EXPOSED TO PUBLIC VIEW.**
- 13. PROVISION OF A NOISE MANAGEMENT PLAN FOR THE DEVELOPMENT INDICATING HOW THE NOISE FROM THE CARPARKING, AIR CONDITIONING AND OTHER MECHANICAL EQUIPMENT WILL IMPACT ON THE NEIGHBOURING PROPERTIES AND RECOMMENDATIONS FOR REDUCING ANY POTENTIAL NOISE IMPACT TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES. THE RECOMMENDATIONS SHALL BE INCORPORATED IN THE PLANS SUBMITTED FOR A BUILDING LICENCE.**
- 14. LIGHTING TO BE PROVIDED TO ALL CARPARKING AREAS AND THE EXTERIOR ENTRANCES TO ALL BUILDINGS IN ACCORDANCE WITH AUSTRALIAN STANDARD AS 1158.3.1 (CAT. P). ALL EXTERNAL LIGHTING TO BE HOODED AND ORIENTED SO THAT THE LIGHT SOURCE IS NOT DIRECTLY VISIBLE TO THE TRAVELLING PUBLIC OR ABUTTING RESIDENCES.**
- 15. PRIOR TO THE ISSUE OF THE BUILDING LICENCE, THE APPLICANT/OWNER IS REQUIRED TO SUBMIT A CONSTRUCTION MANAGEMENT PLAN FOR THE PROPOSAL, TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES, DETAILING HOW IT IS PROPOSED TO MANAGE:**
  - THE DELIVERY OF MATERIALS AND EQUIPMENT TO THE SITE;**
  - THE STORAGE OF MATERIALS AND EQUIPMENT ON THE SITE;**
  - THE PARKING ARRANGEMENTS FOR CONTRACTORS AND SUBCONTRACTORS;**
  - IMPACT ON TRAFFIC MOVEMENT AND;**
  - OTHER MATTERS LIKELY TO IMPACT ON THE SURROUNDING RESIDENTS.**

**P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (SMREC) (ATTACHMENT)**

16. ON COMPLETION OF CONSTRUCTION, ALL EXCESS ARTICLES, EQUIPMENT, RUBBISH OR MATERIALS AND TEMPORARY FACILITIES ARE TO BE REMOVED AND THE SITE AND SURROUNDING AREA USED DURING THE DEVELOPMENT IS TO BE MADE GOOD AND LEFT IN AN ORDERLY AND TIDY CONDITION TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES.
17. DETAILS ARE REQUIRED WITH REGARD TO THE SLOPE OF THE ACCESS WAY AND HOW THEY RELATE TO THE 2 PARKING BAYS AT THE FRONT OF THE PROPERTY. SHOULD THE RELOCATED CROSSOVER REQUIRED BY CONDITION 2 OR THE DESIGN OF THE BAYS RELATIVE TO THE SLOPE OF THE DRIVEWAY RESULT IN CONSTRAINED ACCESS TO THE FRONT VISITOR PARKING BAYS AND NOT BE TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES, THE FRONT SETBACK AREA IS TO BE REDESIGNED TO ACCOMMODATE THE 2 BAYS WITH SUITABLE ACCESS TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES.
18. SIGNAGE ADVISING RESIDENTS TO GIVE WAY TO PEDESTRIANS WHEN EGRESSING THE BASEMENT PARKING AREA IS TO BE PROVIDED TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES.
19. A DEDICATED BIN COLLECTION AREA IS TO BE PROVIDED ON THE VERGE AND NOT TO INTERFERE WITH THE USE AND OPERATION OF THE FOOTPATH TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES. THIS MAY REQUIRE RELOCATION OF THE FOOTPATH.
20. THE APPLICANT/OWNER MAKING A COMMUNITY CONTRIBUTION OF \$50,000 TO THE CITY OF MELVILLE FOR INFRASTRUCTURE IMPROVEMENTS ASSOCIATED WITH THE DEVELOPMENT.
21. THAT THE FRONT ELEVATION AND SIDE ELEVATIONS BE REDESIGNED TAKING INTO ACCOUNT THE FOLLOWING SUGGESTIONS AND SUBMITTED FOR APPROVAL TO THE DIRECTOR OF STRATEGIC URBAN PLANNING, PRIOR TO THE SUBMISSION OF A BUILDING:
  - DELETION OF THE PENTHOUSE FRONT CENTRAL COLUMN AND THE REMAINING COLUMNS TO BE IN A DARK COLOUR WITH A SMALL RECESS. AS AN ALTERNATIVE A COLUMN (IN DARK COLOUR) SIMILAR TO THE SIDE COLUMNS IS ACCEPTABLE, WITH A SMALL RECESS.

**P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPECROSS (SMREC) (ATTACHMENT)**

- **THE FRONT PENTHOUSE WINDOWS TO BE SETBACK SIMILAR TO THE OTHER FLOORS.**
- **THE STONE WORK (EACH CORNER OF THE BUILDING) ON THE FRONT ELEVATION IS TO BE DELETED.**
- **SIDE ELEVATIONS (EAST AND WEST) ARE TO BE BROKEN UP BY HORIZONTAL DETAILING.**

**STANDARD CONDITIONS**

22. **A 1.8 METRE HIGH FENCE TO BE PROVIDED FROM THE HIGHEST RETAINED GROUND LEVEL. ALL FENCING TO BE PROVIDED IN ACCORDANCE WITH THE DIVIDING FENCES ACT AND AS A MINIMUM STANDARD BE CONSTRUCTED, OF FIBRE CEMENT.**
23. **THE CONSTRUCTION OF RETAINING WALLS NOT TO EXCEED THE HEIGHTS SPECIFIED ON THE APPROVED PLANS UNLESS OTHERWISE APPROVED BY COUNCIL. DETAILS, SIGNED BY A PRACTICING STRUCTURAL ENGINEER MUST BE SUBMITTED FOR APPROVAL AT THE TIME OF SUBMITTING A BUILDING LICENCE APPLICATION.**
24. **THE DEVELOPMENT IS TO BE CONNECTED TO THE WATER CORPORATION'S RETICULATED SEWERAGE SYSTEM.**
25. **GROUND LEVELS MAY NOT BE CHANGED OTHER THAN APPROVED AS PART OF THIS APPROVAL.**
26. **ALL SEWERAGE WASTES AND WATER PIPES ARE TO BE CONCEALED WITHIN THE BUILDING.**
27. **PRIOR TO THE COMMENCEMENT OF ANY CONSTRUCTION THE COUNCIL REQUIRES THE PROVISION OF A SUITABLE RECEPTACLE FOR THE CONTAINMENT OF WINDBLOWN RUBBISH. THE RECEPTACLE (GENERALLY A WIRE MESH CAGE) SHOULD HAVE MAXIMUM OPENINGS OF 100 MM; HAVE A BASE OF 4.0 SQM AND A HEIGHT OF 1.0 M AND A HINGED LID. THE RECEPTACLE SHOULD NOT BE ALLOWED TO OVERFILL.**
28. **DURING CONSTRUCTION ACCESS TO THE LOT TO BE VIA THE STREET FRONTAGE ONLY AND THAT NO BUILDING RUBBLE BE PERMITTED TO OVERSPILL THE SITE.**

**P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPECROSS (SMREC) (ATTACHMENT)**

- 29. ELECTRICAL INSTALLATION TO BE CONSTRUCTED AND MAINTAINED TO THE SATISFACTION OF WESTERN POWER IN ACCORDANCE WITH THE SAA WIRING RULES NO.CC1, PART 1, 1961.**
- 30. ALL STORMWATER AND DRAINAGE RUN OFF TO BE CONTAINED ON SITE. AN ONSITE STORMWATER DRAINAGE SYSTEM WITH A CAPACITY TO CONTAIN A 1:100 YEAR STORM OF A TWENTY-FOUR (24) HOUR DURATION IS TO BE PROVIDED PRIOR TO THE DEVELOPMENT FIRST BEING OCCUPIED AND THEREAFTER MAINTAINED TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES. ALL DOWNPIPES TO BE CONNECTED TO SOAKWELLS. THE PROPOSED STORMWATER DRAINAGE SYSTEM IS REQUIRED TO BE SHOWN ON THE BUILDING LICENCE SUBMISSION FOR APPROVAL PRIOR TO THE COMMENCEMENT OF CONSTRUCTION. THE LODGING OF DETAILED LANDSCAPE AND RETICULATION PLANS, TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES FOR THE DEVELOPMENT OF THE SITE AND THE ADJOINING ROAD VERGE(S) AT THE TIME OF SUBMITTING A BUILDING LICENCE APPLICATION.**

**FOOTNOTE 1**

**IT IS NOTED THAT THE INCREASE IN PLOT RATIO, THE SUBJECT OF THE APPLICATION HAS BEEN ESTIMATED BY OFFICERS TO HAVE A VALUE OF APPROXIMATELY \$1,200,000. (THE \$1,200,000 HAS BEEN DISPUTED AND IT HAS BEEN SUGGESTED THAT THE FIGURE IS SUBSTANTIALY MORE).**

**FOOTNOTE 2**

**IT IS NOTED THAT PETITIONERS AND THOSE WHO MADE SUBMISSIONS WILL BE ADVISED OF THE ABOVE.**

**At 7.15pm the Environmental Officer left the meeting.**

**General discussion took place regarding this item and officer recommendation.**

**His Worship the Mayor requested that Officers prepare an alternate recommendation for an Elected Member to present to the August 2008 Council Meeting should they wish to refuse the application.**

**Discussion took place regarding the Terms of Reference provided to the Architectural and Urban Design Panel. The Director Strategic Urban Planning advised the meeting of the Terms of Reference given to the panel and advised of the qualifications of the panel members.**

**At 7.18pm the Manager Planning and Development returned to the meeting.**

**P08/3044 - PROPOSED PLANNING BULLETIN 90 AND HOME OCCUPATION POLICY  
RELATIVE TO PROSTITUTION AMENDMENTS ACT 2008 (REC) (ATTACHMENT)**

**At 7.18pm Cr Pazolli and Cr Macphail left the meeting.**

Item presented by	: Mr David Vinicombe Manager Planning and Development Services
Ward	: All
Category	: Strategic
Application Number	: Not applicable
Property	: All Living Areas in City
Proposal	: Policy Guidelines for Home Occupations relative to Sexual Services
Applicant	: City of Melville
Owner	: Not Applicable
Disclosure of any Interest	: No Officer involved in the preparation of this report has a declarable interest in this matter.
Responsible Officer	: David Vinicombe Manager Planning and Development Services
Previous Items	: Not Applicable

**AUTHORITY / DISCRETION**

	<u>Definition</u>
<input type="checkbox"/> Advocacy	<i>when Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input type="checkbox"/> Executive	<i>the substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets</i>
<input checked="" type="checkbox"/> Legislative	<i>includes adopting local laws, town planning schemes &amp; policies.</i>
<input type="checkbox"/> Review	<i>when Council review decisions made by Officers.</i>
<input type="checkbox"/> Quasi-Judicial	<i>when Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>



**P08/3044 - PROPOSED PLANNING BULLETIN 90 AND HOME OCCUPATION POLICY  
RELATIVE TO PROSTITUTION AMENDMENTS ACT 2008 (REC) (ATTACHMENT)****KEY ISSUES / SUMMARY**

- The Prostitution Amendments Act 2008 was assented to on 14 April 2008 and is currently awaiting proclamation.
- When proclaimed, the amendments will provide for sexual services to legally operate through the State in accordance with a number of controls.
- Land use controls will in most instances be the responsibility of Local Government.
- Under the amended legislation, Sexual Service businesses may operate either as fully fledged business operation or as a home based business “small owner-operated business” for up to two sex workers.
- The amended legislation provides for Local Authorities to amend their Scheme and accordingly, many Local Authorities are proposing to amend their Town Planning Scheme to prevent Sexual Services from operating within their locality.
- The Hon. Minister for Planning and Infrastructure is on record indicating that she unlikely to approve any amendment which totally precludes Sexual Services from operating within a local authority.
- Community Planning Scheme No. 5 provides for commercially based Sexual Service businesses to operate as “Restricted Premises” from the Industrial zone (discretionary approval required) and home based “small owner-operated business” for up to two sex workers as Home Occupations (annual approval required).
- Whilst the provisions of Community Planning Scheme No. 5 provide some measure of control, it is desirable to tighten the requirements relating to Home Occupations to prevent these undesirable activities from establishing within the City’s Living Area Precincts and define “nuisance” under the definitions of the Scheme.
- It is proposed to amend CPS No. 5 to prevent Sexual Services from operating within residential Living Area Precincts of the City.
- In order to address this matter whilst awaiting finalisation and gazettal of the proposed Amendment, it was proposed by Council on 17 June 2008 to adopt a Policy for advertising to prevent the establishment of Sexual Services with the Living Area Precincts of the City.
- Advertising of the Policy concluded on 22 July 2008. One submission of support was received.
- Recommended that the proposed Policy be adopted by Council.
- The WA Planning Commission has released Planning Bulletin 90 which addresses this matter and seek comment.
- Proposed that the City makes comment on alternative land use provisions in Community Planning Scheme No. 5 and recommend modification to terminology used in the Bulletin to provided improved clarity.

**BACKGROUND**

The Prostitution Amendments Act 2008 was assented to on 14 April 2008 and is currently awaiting proclamation. The amendments provide for Sexual Services businesses to operate legally through the State. The new legislation provides a framework for addressing the regulation of prostitution in a manner that is conducive to public health, protects sex workers from exploitation and affords greater protection to children from being involved in or exposed to prostitution. In so doing, the new legislation ‘legalises’ the operation of brothels as business uses (based on locational criteria) and provides for home based sole-operator sex workers (up to two) to operate from a residential dwelling as a ‘Home Occupation’.

**P08/3044 - PROPOSED PLANNING BULLETIN 90 AND HOME OCCUPATION POLICY  
RELATIVE TO PROSTITUTION AMENDMENTS ACT 2008 (REC) (ATTACHMENT)**

Section 21 Y of the new legislation provides for local governments to assess applications for Sexual Service businesses under discretion, taking into account the likelihood of nuisance to ordinary members of the public using the area in which the land is situated and compatibility with existing character of the area. Sub-section 2 provides for a Planning Scheme to override the requirements of the new legislation by amending their Scheme.

The legislation will revoke Section 190 of the Criminal Code. This Section essentially prohibits the management of premises for the purpose of prostitution, allowing such to occur within a rental property and the collection of rent from a property where such activities are known to occur. Whilst a number of aspects of the present and proposed legislation relative to prostitution are and will continue to remain illegal, it is noted that the act of prostitution in itself is not illegal.

Report P08/5012 to Council on 17 June 2008 proposed an Amendment No. 55 to Community Planning Scheme No. 5 – Home Occupation provisions and proposed a Home Occupation Policy relative to the Prostitution Amendments Act 2008. The report addresses in detail how the Scheme deals with sexual service land uses and Council resolved as follows:

1. *That pursuant to Part 5 of the Planning and Development Act 2005, Council resolve to initiate Amendment No. 55 to Community Planning Scheme No. 5 as follows:*
  - A) *Amend paragraph 5.6(e)(i) to include reference to “with exception of a sexual service business” as follows:*
    - (i) *that occupation consists of the establishment and conduct of a business/office or consulting room with exception of a sexual service business, provided that the council shall not grant approval to any uses of retail sale, hiring or display of goods of any nature, manufacturing or production of goods, where adverse amenity impacts are likely to occur;*
  - B) *Amend Clause 5.6(e) by adding the following paragraphs (ix) and (x):*
    - (ix) *visitor and customers of the home occupation are restricted during the week to between the 8.00 am and 6.00 pm and 9.00 am and 12.00 pm on Saturdays.*
    - (x) *it will not in the opinion of the council create a nuisance or annoyance to owners and occupiers of land in the neighbourhood.*

**P08/3044 - PROPOSED PLANNING BULLETIN 90 AND HOME OCCUPATION POLICY  
RELATIVE TO PROSTITUTION AMENDMENTS ACT 2008 (REC) (ATTACHMENT)**

C) *Amend Schedule 1: interpretations to include a definition of “nuisance” as follows:*

*‘Nuisance’ means unreasonable, unwarranted, excessive or unlawful use of one’s property to the extent of unreasonable annoyance or inconvenience to a neighbour or to the public.*

2. *that His Worship the Mayor and the Chief Executive Officer be authorised to endorse the amendment document.*
3. *that the City of Melville forward a copy of the amendment documentation to:*
  - a) *the environmental protection authority in accordance with Section 81 of the Planning and Development Act 2005.*
  - b) *the Western Australian Planning Commission for information.*
4. *that on receipt of advice from the Environmental Protection Authority under section 48A of the Environmental Protection Act indicating that the amendment need not be subject to an environmental assessment, the amendment be advertised in accordance with the town planning regulations for not less than forty-two (42) days.*
5. *pursuant to Clause 9.6 of Community Planning Scheme No. 5, the draft Home Occupation relative to Sexual Services Policy 06-PL-037 dated 12 June 2008 be adopted for public consultation and referral to the Western Australian Planning Commission for Information.*

**Scheme Provisions**

MRS Zoning	: Urban
CPS 5 Zoning	: All Living Area Precincts
R-Code	: Various
Use Type	: N/A
Use Class	: N/A

**Site Details**

Lot Area	: N/A
Retention of Existing Vegetation	: N/A
Street Tree(s)	: N/A
Street Furniture (drainage pits etc)	: N/A
Site Details	: N/A

**P08/3044 - PROPOSED PLANNING BULLETIN 90 AND HOME OCCUPATION POLICY  
RELATIVE TO PROSTITUTION AMENDMENTS ACT 2008 (REC) (ATTACHMENT)**

**DETAIL**

The proposed legislation provides for one or two sex workers to legitimately apply for a permit to run a business from a residential dwelling as a Home Occupation. The Use Class Table of Community Planning Scheme No. 5 does not include "Home Occupation". The use is classified as "Residential" (defined "as a *building or use for human habitation or ancillary thereto*") which is a permitted use in the residential Living Area Precincts of the Scheme.

Clause 5.6 controls the extent and operation of Home Occupations as follows:

**"5.6 HOME OCCUPATIONS**

*To preserve the amenity of residential precincts:*

- (a) *no home occupation may be commenced, established, advertised or undertaken from a residential lot or address unless such use has been approved by the Council;*
- (b) *any home occupation shall be a use carried out by an occupier of land and shall not be transferable to any subsequent owner of the land;*
- (c) *approval for the establishment of a home occupation shall be for a maximum period of twelve (12) months only and the applicant is to seek renewals thereafter to effect the continuance of the home occupation;*
- (d) *if in the opinion of the Council, a home occupation is causing a nuisance or annoyance to owners or occupiers of land in the neighbourhood the Council may revoke its approval;*
- (e) *the Council may only grant approval for a home occupation where:*
  - (i) *that occupation consists of the establishment and conduct of a business/office or consulting room, provided that the Council shall not grant approval to any uses of retail sale, hiring or display of goods of any nature, manufacturing or production of goods, where adverse amenity impacts are likely to occur;*
  - ii) *it does not entail more than one (1) customer or client at any one time other than those members of the immediate family to travel to and from the premises in relation to the business. The Council may grant approval for a home occupation where it does not entail more than three (3) customers. The Council may permit greater than three (3) customers under an absolute majority decision provided that it is satisfied the increase will have not detrimental effect on the locality.*
  - (iii) *it does not create injury to or prejudicially affect the amenity of the neighbourhood including (but without limiting the generality of the foregoing) injury or prejudicial affection due to the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, grit, oil, waste water or waste products;*

**P08/3044 - PROPOSED PLANNING BULLETIN 90 AND HOME OCCUPATION POLICY  
RELATIVE TO PROSTITUTION AMENDMENTS ACT 2008 (REC) (ATTACHMENT)**

- (iv) *it does not entail the employment of any person not a member of the occupier family, unless the Council grants special approval;*
  - (v) *it does not occupy an area greater than thirty eight (38) square metres;*
  - (vi) *it does not require the provision of any essential service of a greater capacity than normally required for the permitted use of the lot;*
  - (vii) *it is restricted in advertisement to signs in accordance with Clause 5.10; and*
  - (viii) *it requires the provision of one on-site parking bay for the client/customer in addition to the domestic requirements on site, such parking bay to be accommodated to the satisfaction of the Council and not disrupting the access of domestic vehicles.*
- (f) *Notwithstanding any other provisions of this clause 5.6, approval is not required from the Council where:*
- (i) *the home occupation comprises a business office no greater than 38 square metres;*
  - (ii) *no clients, customers or staff other than the occupier family travel to the premises;*
  - (iii) *there is no advertising sign on site larger than 0.2 square metres; and*
  - (iv) *the home occupation does not prejudicially affect the amenity of the neighbourhood.”*

These provisions provide some degree of control over applications for Sexual Services within the residential Living Area Precincts of the City; however any application which is refused could be subject to review at the State Administrative Tribunal. Report P08/5012 to Council on 17 June 2008 raised concerns relative to the extent of control over potential nuisance aspects of these activities and whether the amenity considerations would be adequate to address these concerns, which would most likely be raised in the event of an application being received.

Proposed Non-Statutory Policy

It was recognised by Council on 17 of June 2008 that an Amendment to the Scheme will take up to 12 months or more to be finally approved and gazetted. In addition, it was recognised that the Hon. Minister for Planning and Infrastructure may not approve an amendment which, in her view, unreasonably restricts the intent of the Act. In the interim period, it is likely that the Prostitution Amendment Act 2008 will be promulgated. Accordingly, in order to safeguard the residential community from any adverse impacts resulting from Sexual Service businesses operating within the City's Living Precincts, it is desirable to adopt a Draft Policy for public consultation in accordance with Clause 9.6 of Community Planning Scheme No. 5.

**P08/3044 - PROPOSED PLANNING BULLETIN 90 AND HOME OCCUPATION POLICY RELATIVE TO PROSTITUTION AMENDMENTS ACT 2008 (REC) (ATTACHMENT)**

The proposed Policy [3044 Draft Policy.pdf](#) clearly defines the scope and objectives, providing clarity on the issue of sexual Services in residential Living Area Precincts.

Key objectives of the Policy include the protection of the City's residential environment by prohibition of Sexual Services from operating within the home.

**PUBLIC CONSULTATION/COMMUNICATION**

Advertising Required: Yes  
 Comment Supplied: Yes  
 Reason: Clause 9.6 of CPS No. 5  
 Support/Object: 1 support

The proposal was advertised for 21 days in accordance with Clause 9.6 of Community Planning Scheme No. 5 and one (1) submission was received. In addition, it is noted that since the initial report to Council on 17 June 2008 on this matter, Council has received a further petition containing 148 signatures which objects to the operation of brothels in the suburbs of the City of Melville.

<b>Affected Property</b>	<b>Summary of Submission</b>	<b>Support/Objection</b>	<b>Officer's Comment</b>	<b>Action (Condition/Uphold/Not uphold)</b>
1. Residents Association	Acknowledges that brothels have and will always exist, however they should not exist in residential areas. Concern raised that legislation will provide for the Department of Racing Gaming and Liquor to allow one or two person home based businesses to operate from residential areas without registration, however sexual services requiring certification will be prohibited from residential areas. Concerned that this would allow for small brothels in residential areas which can leave women and children in surrounding homes and parks at risk.	Support	Support noted.  Policy and related Scheme provisions will provide measures of control to preserve the amenity of residential areas.	Uphold

**P08/3044 - PROPOSED PLANNING BULLETIN 90 AND HOME OCCUPATION POLICY  
RELATIVE TO PROSTITUTION AMENDMENTS ACT 2008 (REC) (ATTACHMENT)**

	<p>Further concerns are raised with regard to the health and safety of sex workers and their clients when these businesses are not registered and monitored.</p> <p>Support Council attempts to stop sexual services establishing from establishing in residential areas. Agree that this is desirable to protect the residential amenity and avoid nuisance and annoyance to owners and occupiers of residential land.</p>		<p>It is noted that one of the impacts of heavily controlling sexual services may be that they are offered without the required approvals and that as a result they may not be monitored and health and safety issues will continue.</p> <p>Noted</p>	
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**REFERRALS TO GOVERNMENT AGENCIES**

Required: WA Planning Commission  
Reason: Advice (not comment)  
Support/Object: No comment received to date

Notwithstanding that no formal comment has been received from the WA Planning Commission, the Department for Planning and Infrastructure has now released a Planning Bulletin (90) on Planning Requirements for the Prostitution Amendment Act 2008. The Bulletin provides a background the Act and confirms measures available for the control of Sexual Services under town planning schemes and interim measures available for the control of these uses in the absence of suitable scheme provisions. Comments on the Bulletin are sought by 15 August 2008.

**P08/3044 - PROPOSED PLANNING BULLETIN 90 AND HOME OCCUPATION POLICY  
RELATIVE TO PROSTITUTION AMENDMENTS ACT 2008 (REC) (ATTACHMENT)**

**STATUTORY AND LEGAL IMPLICATIONS**

Clause 9.6 of Community Planning Scheme No. 5 provides procedures for the preparation and adoption of Non-Statutory Planning Policies. These procedures require public consultation. It is important to follow these procedures to ensure that any Policy is robust and to give it greater weight if challenged in an appeal situation. It is noted that Clause 9.6 (b) (ii) indicates that the Policy should be referred to the Commission where the provisions of the Policy affects the interests of the Commission. In this regard, the referral does not convey a right for the Commission to make comment or prevent Council from adopting a Policy.

**FINANCIAL IMPLICATIONS**

Nil

**STRATEGIC AND RISK MANAGEMENT IMPLICATIONS**

The proposal provides for greater control to be exercised in the determination of Home Occupations for Sexual Services in Living Areas of the City by way of Policy until such time the proposed Amendment to Community Planning Scheme No. 5 is finally approved and gazetted. Accordingly, the adoption of a Policy reduces the exposure to these types of businesses in Living Areas of the City for the interim period and would appear to meet envisaged community expectations which have surfaced since the Act has been assented. The City has received a number of letters and petitions raising concern over the Act, the impact on residential areas and alleged unlawful activities within the locality and all alleged operations have closed.

**POLICY IMPLICATIONS**

Advertising of the Policy has resulted in the receipt of letters of support for the Policy. In addition, a petition containing 148 signatures has been lodged to further illustrate growing community concerns with regard to the provision of Sexual Services within Living Areas of the City.

**ALTERNATE OPTIONS & THEIR IMPLICATIONS**

Council could choose not to adopt this Policy and further amend Community Planning Scheme No. 5 to totally prohibit the operation of any Sexual Service in the City by making this use prohibited in the Industrial Precinct. In this instance, it would still be appropriate to adopt the proposed Policy to provide greater levels of control of sexual services from residential areas whilst the Amendment is progressed through formal processes. However, it should be noted that to date, Community Planning Scheme No. 5 has adequately managed 'brothel' operations via the Restricted Premise use class in that no applications have been received. It is also apparent that the Hon. Minister for Planning and Infrastructure is on record indicating that she is unlikely to approve any amendment which totally precludes Sexual Services from operating within a local authority.



**P08/3044 - PROPOSED PLANNING BULLETIN 90 AND HOME OCCUPATION POLICY  
RELATIVE TO PROSTITUTION AMENDMENTS ACT 2008 (REC) (ATTACHMENT)**

**COMMENTS**

The Community Planning Scheme and Council Policy can legitimately deal with environmental amenity and land-use planning criteria in the assessment of proposals for Sexual Services. The Scheme and Council Policy has no moral or ethical criteria on which to judge the suitability of a proposed land or business use.

With regard to the WA Planning Commission Planning Bulletin 90 ([ATTACHMENT](#)), it is noted that the draft provides a definition of a sexual service business as follows:

*“Sexual service business’ means premises used for the business of providing, or arranging, the provision of a commercial sexual act.”*

The Bulletin indicates that the Act provides for these uses to be prohibited in residential or similar zones, will be permitted in light service or general industrial zones and will be discretionary in other zones. Notwithstanding, the Act also provides for Council to amend its Planning Scheme to control the location and impact of these services. It is suggested that Councils should have regard to a number of considerations in assessing planning applications for sexual service businesses. Of particular note, one of the considerations is *“the proximity of sensitive uses such as residential buildings, places of worship, educational establishments, community purpose buildings, child care or family day care facility, streets with high levels of pedestrian traffic – particularly major community thoroughfares.”*

**CONCLUSION**

It is considered that Community Planning Scheme No. 5 provides adequate control over commercial Sexual Service Business operations within the City. Notwithstanding, the Home Occupation provisions of the Scheme may not provide adequate controls over smaller scale owner-operated business in that these businesses will be discretionary within the residential Living Area Precinct of the City and any refusal of such applications may be subject to review at the State Administrative Tribunal.

Whilst an amendment to the Community Planning Scheme has been initiated in order to improve local control over these matters through a review of the Home Occupation provisions to prevent the establishment of these businesses in Living Area Precincts, it is recommended that Council adopt the attached Policy as a measure to address the implications of the Prostitution Amendment Act 2008 and make it clear that small owner-operated sexual service businesses may not operate from home or residential areas.

With regard to Planning Bulletin 90, it is recommended that the WA Planning Commission be advised that the Bulletin should also recognise that Local Government Planning Schemes may provide alternative land use provisions which control sexual service businesses such as “Restricted Premises” as in the case of the City of Melville’s Community Planning Scheme No. 5. In addition, it is recommended that the term “residential buildings” in the first consideration for assessing planning applications for sexual service businesses should be modified to include “all forms of residential development” as the term “residential buildings” is defined under the Residential Design Codes as being a specific form of residential accommodation and it appears that the intent of the term in this context relates to all forms of residential accommodation.

**P08/3044 - PROPOSED PLANNING BULLETIN 90 AND HOME OCCUPATION POLICY  
RELATIVE TO PROSTITUTION AMENDMENTS ACT 2008 (REC) (ATTACHMENT)**

**OFFICER RECOMMENDATION (3044)**

**APPROVAL**

- 1. PURSUANT TO CLAUSE 9.6 OF COMMUNITY PLANNING SCHEME NO. 5, THE HOME OCCUPATION RELATIVE TO SEXUAL SERVICES POLICY 06-PL-037 DATED 12 JUNE 2008 [3044 Draft Policy.pdf](#) BE FINALLY ADOPTED BY COUNCIL.**
- 2. THE WESTERN AUSTRALIAN PLANNING COMMISSION BE ADVISED THAT PLANNING BULLETIN 90 SHOULD ALSO RECOGNISE THAT LOCAL GOVERNMENT PLANNING SCHEMES MAY PROVIDE ALTERNATIVE LAND USE PROVISIONS WHICH CONTROL SEXUAL SERVICE BUSINESSES SUCH AS “RESTRICTED PREMISES” AS IN THE CASE OF THE CITY OF MELVILLE’S COMMUNITY PLANNING SCHEME NO. 5. IN ADDITION, IT IS RECOMMENDED THAT THE TERM ‘RESIDENTIAL BUILDINGS’ IN THE FIRST CONSIDERATION FOR ASSESSING PLANNING APPLICATIONS FOR SEXUAL SERVICE BUSINESSES SHOULD BE MODIFIED TO INCLUDE “ALL FORMS OF RESIDENTIAL DEVELOPMENT” AS THE TERM ‘RESIDENTIAL BUILDINGS’ IS DEFINED UNDER THE RESIDENTIAL DESIGN CODES AS BEING A SPECIFIC FORM OF RESIDENTIAL ACCOMMODATION AND IT APPEARS THAT THE INTENT OF THE TERM IN THIS CONTEXT RELATES TO ALL FORMS OF RESIDENTIAL ACCOMMODATION.**
- 3. THE WESTERN AUSTRALIAN PLANNING COMMISSION AND THOSE WHO MADE SUBMISSIONS ON THE POLICY AND SUBMITTED THE MOST RECENT PETITION BE ADVISED OF 1 AND 2 ABOVE.**

**At 7.20pm Cr Pazolli and Cr Macphail returned to the meeting.**

**General discussion took place regarding this item and officer recommendation.**

**The Manager Planning and Development Services confirmed that no applications for any premises to operate sexual services of any kind had been recently received and that to his knowledge all alleged business of this nature had ceased, however there is still an ongoing investigation being undertaken.**

**P08/3045 - RECONSIDERATION OF APPROVED USE FOR RESTAURANT LOT 2 (UNITS 3 & 4, No. 3) KEARNS CRESCENT, ARDROSS (AMREC) (ATTACHMENT)**

**At 7.23pm Mr Louis Papineau presented a deputation in regards to parking, seating and opening hours for Spices Grand Café.**

Item presented by : Mr David Vinicombe  
Manager Planning and Development Services

Ward : Applecross/Mt Pleasant

Category : Operational

Application Number : DA-2008-904

Property : Units 3 and 4, Lot 2 (3) Kearns Crescent, Ardross

Proposal : Reconsideration of approved use for Restaurant

Applicant : L Papineau

Owner : L Papineau

Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.

Responsible Officer : David Vinicombe  
Manager Planning and Development Services

Previous Items : U2/0146  
K4/03

**AUTHORITY / DISCRETION**

- |  | <u>Definition</u>   |
|--|---|
| <input type="checkbox"/> Advocacy                  | <i>when Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>   |
| <input type="checkbox"/> Executive                 | <i>the substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets</i>  |
| <input type="checkbox"/> Legislative               | <i>includes adopting local laws, town planning schemes &amp; policies.</i>  |
| <input type="checkbox"/> Review                    | <i>when Council reviews decisions made by Officers.</i>   |
| <input checked="" type="checkbox"/> Quasi-Judicial | <i>when Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i> |

**P08/3045 - RECONSIDERATION OF APPROVED USE FOR RESTAURANT LOT 2  
(UNITS 3 & 4, No. 3) KEARNS CRESCENT, ARDROSS (AMREC) (ATTACHMENT)****KEY ISSUES / SUMMARY**

- Application for a refurbishment for the restaurant (from Bella Italia to Spice's) for Unit 3 and a change of use from Shop to Restaurant for Unit 4 was received on 16 March 2000 and referred to Council's Development Advisory Unit (DAU) on 19 April 2000.
- This application was refused by Council due to a short fall of six (6) car parking bays.
- A subsequent appeal was lodged at the then Town Planning Appeals Tribunal (now State Administrative Tribunal - SAT).
- Mediation and subsequent decision made by Council at its February 2001 meeting resulted in a legal agreement for the lease of six (6) car parking bays from an adjoining landowner.
- This approval was subject to (*inter alia*) the restaurant owners (Spice's) not opening before 6.00pm Tuesday to Sunday (subsequently reviewed to 5.00pm Tuesday to Sunday and between 11.30am and 3.00pm for lunch on Sundays), the restaurant being closed on Monday and that the applicants agreeing to reduce the seating by 24 seats, or provide an alternate six (6) car bays, should the lease be terminated, expire or be revoked for any reason.
- The lease for parking on adjacent sites has proved problematic for the Restaurant owner and he has requested that the time constraints and the requirement for parking be relaxed.
- Site visits confirm the leased car bays are not utilised in the evening, and other external street parking bays are utilised instead.
- As the bays in the precinct are generally unused after normal day time trading hours, removing the condition for provision of six (6) extra bays will not affect the accessibility of the precinct.
- Application for request for removal of condition requiring parking provision on adjacent properties is recommended for approval.
- Restrictions on Monday evening trading being lifted are supported.
- Removal of hours of operation (not permitting lunch time trade other than takeaways) is not supported at this stage and may be reviewed on completion of the Riseley Street Study.

**BACKGROUND**

In March 2000, an application was received to amalgamate two (2) existing units within 7 Kearns Crescent and change the use from Shop and Restaurant to Restaurant (Spice's Grand Café). However this application was refused on the basis that it did not comply with Appendix One of the then Planning and Building Policy (47) (now 06-024 Car Parking (Non-Residential)) with regard to a shortfall of six (6) car parking bays. This decision was subsequently appealed to the Town Planning Appeals Tribunal (now State Administrative Tribunal - SAT) whereby mediation resulted in Council at its February Meeting 2001 resolving to approve the application, subject to the following:

*"That the solicitors acting on behalf of (the appellant) be advised that the Council would accept the proposal on Lot 2 (Units 3 & 4) Kearns Crescent, Ardross on the following conditions:*

- a) *that the operating hours be after 6.00 pm; and*
- b) *that no restrictions are placed on takeaway operations; and*

**P08/3045 - RECONSIDERATION OF APPROVED USE FOR RESTAURANT LOT 2 (UNITS 3 & 4, No. 3) KEARNS CRESCENT, ARDROSS (AMREC) (ATTACHMENT)**

- c) *that the proposal comply in all respects to health regulations as required to the satisfaction of the Chief Executive Officer; and*
  
- d)
  - i) *that the applicant enter into a sub-lease with the Council who shall lease the six car bays from an adjoining owner, and*
  - ii) *that the applicant agree to pay all costs incurred by the City of Melville; and*
  - iii) *that the applicant agree to reduce the seating by twenty-four (24) seats, or provide an alternate six (6) car bays, should the lease be terminated, expire or be revoked for any reason.”*

The matter was subsequently considered by the Town Planning Appeals Tribunal who granted Consent Orders for the proposal subject to the following conditions:

1. That the operating hours be from Tuesday to Sunday after 6.00 pm.
2. Seating for 50 patrons is approved.
3. The appellant shall enter into a sublease with the respondent for the provision of 6 car bays, with the respondent facilitating this by entering into a lease with an adjoining owner.
4. The appellant shall pay all costs incurred by the respondent in the negotiation, preparation and completion of the necessary documentation.
5. The appellant shall reduce the number of seats provided to a maximum of 26, or shall provide an alternative 6 car bays to the satisfaction of the respondent, should the car parking agreement in condition 3 be terminated, expire or revoked for any reason.
6. The development must comply with standard conditions for this form of development.

Footnote

1. In relation to Condition 1, food preparation duties may be undertaken on the premise at other times.
2. No restrictions are placed on takeaway operations.
3. The proposal must comply in all respects with Health Regulations.
4. A building licence must be obtained before any works are commenced, including disabled access.

The applicants subsequently sought to have Condition 1 modified to allow operation from 5.00pm in accordance with close of normal business hours; and secondly to allow for lunch time operations on Sundays from approximately 11.30am to 3.00pm as all other tenancies within the area (save for one other café) were closed on this day and therefore the bays were not required. This application was supported.

Now, according to the proprietors, the lease agreement is ineffectual, problematic and limiting. The agreement is also insecure and potentially under threat from the owners of the adjacent properties to withdraw the use of the bays. The following report therefore seeks to review opportunities available to the applicant's to operate at the full capacity of their restaurant without the need to provide for the additional car bays. Whilst the concerns raised with regard to the problematic lease arrangements are not substantiated, opportunity to consider alternative parking arrangements is a possible in evening hours as a majority of the uses within the area operate during normal business hours leaving a substantial area of street parking unused during evening restaurant hours.

**P08/3045 - RECONSIDERATION OF APPROVED USE FOR RESTAURANT LOT 2  
(UNITS 3 & 4, No. 3) KEARNS CRESCENT, ARDROSS (AMREC) (ATTACHMENT)****Scheme Provisions**

MRS Zoning	:	Urban
CPS 5 Zoning	:	DC2 -Riseley Centre
R-Code	:	R60
Use Type	:	Restaurant
Use Class	:	Permitted Use

**Site Details**

Lot Area	:	905sqm
Retention of Existing Vegetation	:	Not applicable
Street Tree(s)	:	Not applicable
Street Furniture (drainage pits etc)	:	Not applicable
Site Details	:	

**PUBLIC CONSULTATION/COMMUNICATION**

Advertising Required:	No
Neighbour's Comment Supplied:	No
Reason:	Restaurant Use Permitted and presently exists on site – no impact envisaged relative to supported portion of proposal.
Support/Object:	Letter of support for lunchtime trading from 30 local business representatives.

**REFERRALS TO GOVERNMENT AGENCIES**

Not Applicable

**DETAIL**

Council Policy 06-024 – Car Parking (Non-Residential) stipulates parking requirements for Restaurant uses - one (1) bay per four (4) patrons at capacity, plus one (1) bay per staff member is required. The restaurant currently operates with a maximum of 50 patrons and a variable number of staff. At any one time, the car parking requirement equates to a maximum of 16 (15.5) bays (12.5 bays for customers, plus three (3) staff members). Currently the site affords six (6) exclusive bays only.

In order to enable the restaurant to continue operating with a maximum of 50 seats, the proprietors are required by condition of planning approval to enter into a legal agreement with the owners of 6 and 8 Kearns Crescent to the lease six (6) car parking bays. Without securing the lease, the restaurant is permitted to operate with a maximum of 26 seats. The proprietor believes that the operation of the restaurant with only 26 seats is not viable. However, he is concerned that the leasing agreement provides no long term security and places the restaurant approval in a tenuous position.

**P08/3045 - RECONSIDERATION OF APPROVED USE FOR RESTAURANT LOT 2 (UNITS 3 & 4, No. 3) KEARNS CRESCENT, ARDROSS (AMREC) (ATTACHMENT)**

In lieu of the leasing arrangement with 6 and 8 Kearns Crescent, it is proposed to rely upon street parking embayments in front of the property on Kearns Crescent. These bays are proposed to work with the 6 bays on the property to provide sufficient parking for the restaurant taking into account that other activities within the Centre are generally not open at the operating time of the restaurant.

The applicant has also requested the Council to allow lunchtime trading within the restaurant in addition to takeaway services which are presently available. In this regard, the restaurant aims to service local businesses and has submitted a letter of support from many of the local businesses in this regard.

Finally, the applicant seeks approval to operate seven (7) nights a week as there appears no logic to the present six (6) night a week restriction.

**STATUTORY AND LEGAL IMPLICATIONS**

Should the City of Melville refuse the application for Planning Approval, the applicant will have the right to have the decision reviewed in accordance with Part 14 of the Planning and Development Act 2005.

**FINANCIAL IMPLICATIONS**

Should Council accept Cash in Lieu of car parking, approximately \$285,000 would be required.

**STRATEGIC AND RISK MANAGEMENT IMPLICATIONS**

Should Council relax the parking requirements relative to the restaurant (with or without the payment of cash in lieu for parking), precedence may be established for similar situations in the City of Melville.

**POLICY IMPLICATIONS**

As indicated above, Council Policy requires to provision of 16 parking bays. However it would appear that the overall requirement was reduced to 12 bays, subject to provision of the additional leased bays (no reason for the variation can be established).

The Policy further stipulates Council may allow for Cash in Lieu of the car bays provided the following Criteria can be met:

- Adequate parking exists in the locality or can be provided by the acquisition of land in the locality; and/or
- If there are restrictions on the provision of the required number of car bays either by virtue of the location of existing buildings on the site or other site constraints such as irregular lot boundaries or small lots, topography or location.

**P08/3045 - RECONSIDERATION OF APPROVED USE FOR RESTAURANT LOT 2 (UNITS 3 & 4, No. 3) KEARNS CRESCENT, ARDROSS (AMREC) (ATTACHMENT)****ALTERNATE OPTIONS & THEIR IMPLICATIONS**

Council has a number of options for consideration in determining this application. Council may approve the application in full (or in part), require the provision of cash-in-lieu (or not), or refuse the application.

**COMMENT**

The DC2 – Riseley Centre parking requirements under the Community Planning Scheme No. 5 provides for the provision of one bay per 15 sqm GLA however provides for discretion under Part 4 and Clause 5.8 of the Scheme and also Council Policy. Clause 4.2(d) of the Scheme provides for Council to vary (by an Absolute Majority decision) Scheme requirements for commercial development providing requirements of Clause 7.8 of the Scheme are considered, non-compliance will not have an adverse impact on occupiers or users of the development, the current inhabitants or future development of the locality. Clause 9.6(f) of the Scheme indicates that a Policy shall not absolutely bind the Council in respect of any application for planning approval, but the Council shall have due regard to the provisions of the Policy and shall be satisfied that the application is not prejudicial to the objectives of the Policy before making its decision.

The City of Melville is currently carrying out a study on the Riseley Street District Centre Precinct. A recent Study workshop focus group meeting identified a number of issues for the Centre inclusive of land use, traffic, parking and amenity. It is recognised that parking problems exist in the Centre (primarily during peak daytime hours) and that although technical provision of bays in Council parking facilities are available, proximity of these bays are problematic. It is expected that the Study will be finalised and presented to Council for consideration in late 2008/early 2009.

Parking Requirements

Site visits have confirmed that during normal daytime trading hours, there is a parking issue in the immediate locality as being identified under the Riseley Street Study. Site visits after normal business hours (being after 5pm) indicate that there is adequate access to public car parking within the locality and it is considered that relaxation of the parking restrictions during the evening will not prejudicially impact on the locality. Accordingly, it is considered that the requested variation in this regard satisfies the Scheme and may be supported.

It is necessary consider whether variation to Council Policy to relax the requirement to contribute cash-in-lieu for the reduced parking bays is warranted. The value of the approved parking reduction under the current approval of 6 bays is in the order of \$285,000 in accordance with the 2008/2009 Fee Schedule for Planning and Development Services. Notwithstanding, these bays are shared with other business proprietors in the locality during the day and it is understood that these business have not contributed to the cost of these bays. Whilst Council could legitimately require a proportional contribution to the bays by the applicant, it would appear unreasonable in the context of requirements on other businesses in the locality. Further, it may be argued that relaxation of the parking requirements in the evening provides for greater vitality in land uses in the Centre and therefore should be encouraged by Council without impediment on the businesses. In addition, it is noted that the applicant has expended considerable funds in paying for legal agreements and maintaining access rights for parking bays over the adjacent properties. Until such time as



**P08/3045 - RECONSIDERATION OF APPROVED USE FOR RESTAURANT LOT 2 (UNITS 3 & 4, No. 3) KEARNS CRESCENT, ARDROSS (AMREC) (ATTACHMENT)**

the Riseley Street study has been completed and any required subsequent investigation on provision public parking in the locality is completed, it may be inappropriate to charge the applicant cash-in lieu for the parking relaxation.

Lunchtime Restaurant Trading

The argument presented by the proprietors that they will serve the local businesses in the area has some merit, however the style of the Restaurant means it is unlikely that patrons would be able to enjoy a “quick lunch”. Furthermore, it cannot be substantiated that the majority of patrons are local business people or residents of the area. At this point in time, it is known that parking issues exist in the locality during day time and it is highly likely that approval of lunchtime restaurant trading will have an impact on both parking and management in the Centre. Notwithstanding, the Riseley Study may identify options for parking and traffic management (or identify the need for further studies in this regard) and accordingly it would be premature to favourably consider this part of the application at the present time. Accordingly, this part of the application is not supported until alternative traffic and parking options for the Centre are comprehensively addressed and a management plan implemented.

Seven Night Trading

The final consideration as requested by the proprietor seeks to be able to trade for 7 nights a week. In this instance there is no historical record for why the use was limited to not being able to trade on Mondays. Therefore, there is no relevant consideration for continuing this limitation. Accordingly this part of the application may be supported.

**CONCLUSION**

In this instance, it appears that the leased car bays have no benefit to the amenity of the precinct or the business during the evening. Furthermore, enforcing the limitation on the maximum number of patrons in accordance with the Planning Approval, places the business at risk and as a consequence may impact on the ability of the centre to provide vibrant and active day and night uses.

There is an acknowledged need to increase vibrancy in the area. Whilst the Riseley Street Study is being conducted into the Precinct by the City of Melville to address this and other issues, it is apparent that the existing street parking provides opportunity for more night time activities to establish greater vitality in the Centre. Likewise, relaxation of the requirement limiting the restaurant use of the premises for six (6) nights a week also has an impact on the vitality of the Centre. Accordingly the current approval requirements relative to evening parking and operation may be relaxed to contribute toward the future vitality of the Centre.

The same cannot be said for the operation of the restaurant at lunch times (with exception to Sunday) as it is apparent that parking and traffic management issues are a major consideration at this Centre. It is therefore recommended that this part of the application be refused.

**P08/3045 - RECONSIDERATION OF APPROVED USE FOR RESTAURANT LOT 2 (UNITS 3 & 4, No. 3) KEARNS CRESCENT, ARDROSS (AMREC) (ATTACHMENT)**

As the previous approvals involved Council consideration, it is appropriate that the matter be referred to Council for reconsideration of the subject conditions.

**OFFICER RECOMMENDATION (3045)****ABSOLUTE MAJORITY APPROVAL**

- 1. THAT COUNCIL RESOLVE, PURSUANT TO CLAUSE 4.2(B) AND 9.6 OF COMMUNITY PLANNING SCHEME NO. 5 TO APPROVE IN PART THE APPLICATION FOR RECONSIDERATION OF CONDITIONS OF APPROVAL FOR THE USE OF RESTAURANT ON LOT 2 (UNITS 3 AND 4, NO 3) KEARNS CRESCENT, ARDROSS AND VARY PARKING REQUIREMENTS SUBJECT TO THE FOLLOWING CONDITIONS:**
  - A THAT THE OPERATING HOURS BE FROM MONDAY TO SUNDAY AFTER 5.00PM AND BETWEEN 11.30AM AND 3.00PM ON SUNDAY.**
  - B SEATING FOR 50 PATRONS IS APPROVED.**
  - C THE DEVELOPMENT MUST COMPLY WITH STANDARD CONDITIONS FOR THIS FORM OF DEVELOPMENT.**
- 2. COUNCIL ADVISE THAT IT IS PREPARED TO RELEASE THE APPLICANT FROM THE EXISTING LEGAL AGREEMENT RELATIVE TO CAR PARKING ON LOTS 567 AND 568 KEARNS CRESENT, ARDROSS PROVIDING ALL COSTS ASSOCIATED WITH RELEASE BY COUNCIL'S SOLICITORS ARE PAID BY THE APPLICANT TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES.**
- 3. COUNCIL ADVISE THE APPLICANT THAT IT IS NOT PREPARED TO RELAX EXISTING LIMITATIONS ON LUNCH TIME TRADING OF THE RESTAURANT UNTIL FURTHER STUDIES ARE COMPLETED WHICH COMPREHENSIVELY ADDRESS ALTERNATIVE TRAFFIC AND PARKING OPTIONS FOR THE CENTRE AND A MANAGEMENT PLAN IS IMPLEMENTED.**

**FOOTNOTE**

**THE 6 CAR BAYS HAVE BEEN VALUED AT \$285,000.**

General discussion took place regarding this item and officer recommendation.

His Worship the Mayor requested that City of Melville officers go to Kearns Crescent to assess the parking situation before the August 2008 Council Meeting. In response the Manager Planning and Development Services advised that parking in the area did not pose a problem in the evening, however it is a problem during the day.

The Manager Planning and Development Services advised that an Elected Member could present an amendment at the August 2008 Council Meeting should they wish to allow 20 seats during the lunchtime period.

**P08/3046 - RESUMPTION OF PRIVATE RIGHT OF WAY, LOT 66 WADDELL ROAD, BICTON (AMREC) (ATTACHMENT)**

**At 7.46pm Mr Darren Miller presented a deputation. Mr Miller is the owner of Lot 66 Waddell Road, Bicton.**

Item presented by	: Mr Bruce Taylor Manager Information, Technology & Support
Ward	: Bicton / Attadale
Category	: Operational
Application Number	: Not applicable
Property	: Lot 66 Waddell Road, Bicton
Proposal	: To dedicate a private right of way
Applicant	: City of Melville
Owner	: D & N. M. Miller
Disclosure of any Interest	: No Officer involved in the preparation of this report has a declarable interest in this matter.
Responsible Officer	: David Vinicombe Manager Planning & Development Services
Previous Items	: Item P07/3018 Dedication of Private Road Lot 66 Waddell Road, Bicton - Ordinary Meeting of Council held 21 August 2007. Item P07/3020 – Two Storey Office Building Over and Existing Right of Way on Lot 66 (40D) Waddell Road, Bicton - Ordinary Meeting of Council held 21 August 2007

**AUTHORITY / DISCRETION**

- |                                     |                |   |
|-------------------------------------|----------------|---|
| <input type="checkbox"/>            | Advocacy       | <i>when Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>   |
| <input type="checkbox"/>            | Executive      | <i>the substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets</i>  |
| <input type="checkbox"/>            | Legislative    | <i>includes adopting local laws, town planning schemes &amp; policies.</i>  |
| <input type="checkbox"/>            | Review         | <i>when Council review decisions made by Officers.</i>  |
| <input checked="" type="checkbox"/> | Quasi-Judicial | <i>when Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i> |

**P08/3046 - RESUMPTION OF PRIVATE RIGHT OF WAY, LOT 66 WADDELL ROAD, BICTON (AMREC) (ATTACHMENT)**

**KEY ISSUES / SUMMARY**

- The land was created as a Private Right of Way, is constructed and has been in place for many years.
- The land is privately owned and has a Certificate of Title – Lot 66 Vol. 2651 Folio 357.
- The adjoining Lot 24 Waddell Road has a right of carriage way over the land.
- The land has been and is required to provide a service road between Stock and Waddell Roads, in particular to service the adjacent properties.
- A planning application was refused to develop the land for an office development in August 2007. In addition, Council resolved to dedicate the ROW under Section 56 of the Land Administration Act (LAA).
- An application for review of the refusal (“deemed” - at the time of lodging appeal) was lodged with the State Administrative Tribunal, however the application was subsequently withdrawn.
- The Hon. Minister for Planning and Infrastructure has indicated that she is not prepared to approve the dedication without the consent of the owner (consent from owner has not been forthcoming).
- Council’s Solicitors advise that the alternatives are –
  - (i) To do nothing in which case the present arrangement and access will be retained until such time as the Easement is surrendered by agreement or the owner gains approval for development on appeal,
  - (ii) Re-apply for dedication under Section 56 of the LAA to dedicate with owner’s agreement (unlikely to be achieved at this point),
  - (iii) Apply for formal dedication of the ROW under Common Law, (not recommended) or
  - (iv) Negotiate purchase from the owner or resume the ROW under Parts 9 and 10 of the LAA.
- The ROW is required for reasons of orderly and proper planning, traffic management and safety and has long term strategic significance for the redevelopment of properties facing Canning Highway.
- The resumption proceedings will require payment of compensation (to be negotiated with owner or determined by the Courts) to the landowner.

**BACKGROUND**

The Council at its Ordinary Meeting on 28 August 2007 resolved *“that pursuant to Section 56 of the Land Administration Act 1997 the Council is satisfied that Lot 66 Waddell Road Bicton is a private road to which the public has had uninterrupted use for a period of not less than 10 years and is constructed and maintained to the satisfaction of the local government and requests that the Minister dedicate the land as a road and undertakes to indemnify the Minister of costs as required by Subsection 4.”*

**P08/3046 - RESUMPTION OF PRIVATE RIGHT OF WAY, LOT 66 WADDELL ROAD, BICTON (AMREC) (ATTACHMENT)**

At the same meeting (Item P07/3020) the Council refused an application for an office building to be constructed over Lot 66. The owners of Lot 66, made an application to the State Administrative Tribunal (SAT) on 6 August 2007 for review of the refusal, which was subsequently withdrawn on 21 January 2008.

The City wrote to the Minister on 13 September 2007 and requested that the Right of Way (ROW) be dedicated as a Public Road pursuant to Section 56 of the Land Administration Act (LAA), in accordance with the Council's resolution of 28 August 2007.

The Minister's response of 29 October 2007 was to the effect that the powers available under Section 56 will only be used in non-contentious circumstances, and in this case the lawyers for the owners of the ROW had written to the Minister objecting to the dedication under Section 56. Accordingly the Minister was not prepared to proceed under Section 56.

The Minister also suggested the City ought to consider resuming the land under Part 9 - Compulsory Acquisition of Interest in Land and Part 10 - Compensation of the LAA, which would provide the owners with a right of compensation.

**Historical Context**

The subject Lot 66, together with land to the east, were created as rights-of-ways on subdivisional Diagrams of Survey. Lot 66 was previously shown as a ROW and included on the title for 394 Canning Highway on the corner of Waddell Road (the Shell service station) but has recently been issued with its own title and sold by Shell to the present owner.

The Certificate of Title to Lot 66 shows the property to be a Right of Way. This ROW, together with the adjoining ROW fronting Stock Road to the east form a continuous link between Waddell and Stock Roads, are paved and drained and have been available for the use of the public for a period well in excess of 10 years.

The City of Melville has undertaken both construction and maintenance works on the Rights of Way.

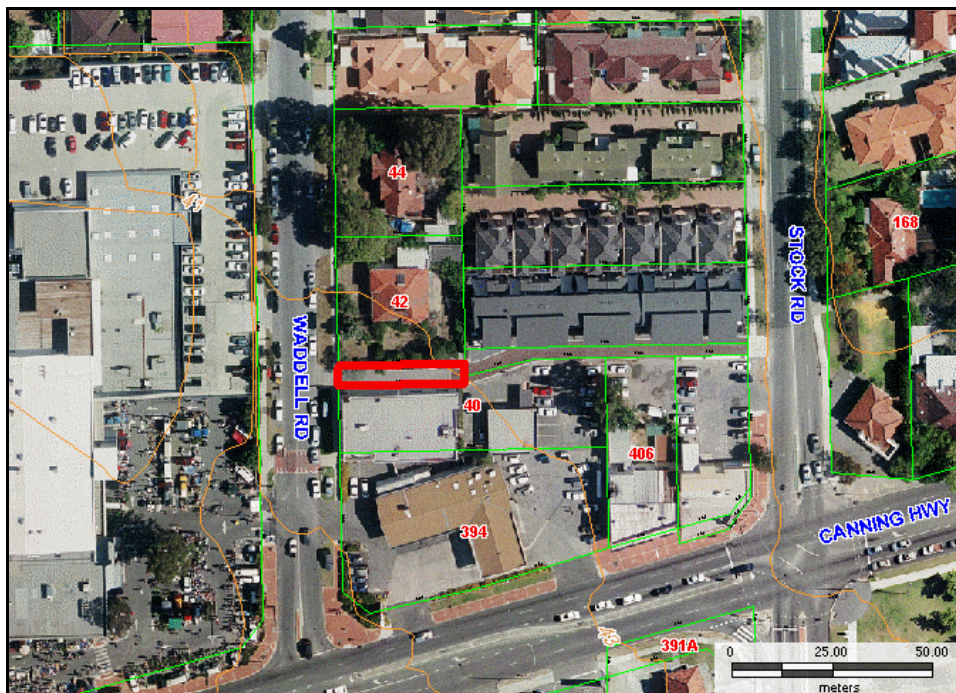
**Scheme Provisions**

MRS Zoning	: Urban
CPS 5 Zoning	: Commercial Centre Frame Melville Frame
R-Code	: R50
Use Type	: Not applicable
Use Class	: Not applicable

**P08/3046 - RESUMPTION OF PRIVATE RIGHT OF WAY, LOT 66 WADDELL ROAD, BICTON (AMREC) (ATTACHMENT)**

**Site Details**

Lot Area	:	159 sqm
Retention of Existing Vegetation	:	Not applicable
Street Tree(s)	:	Not applicable
Street Furniture (drainage pits etc)	:	Not applicable
Site Details	:	Refer to map below



The two Rights of Way have provided a convenient and unrestricted link between Waddell and Stock Roads for a period well in excess of 10 years. The ROW's together provide for direct road access to adjoining properties for parking and deliveries. For some properties it is their sole access point and for others it provides for rear service access and the only non-highway access available.

The ROWs have featured in recent planning approvals:

- Redevelopment of 165 Stock Road (former squash courts site – now containing residential units which gain access from the ROW). The approval required the ROW (north side) to be widened by an easement and the ROW being upgraded. The works have been completed.
- Redevelopment of 40 Waddell Road has conditions which require an easement to widen the ROW and upgrade the balance of the ROW. This site has been recently sold. The works have not been undertaken at this point.

**P08/3046 - RESUMPTION OF PRIVATE RIGHT OF WAY, LOT 66 WADDELL ROAD, BICTON (AMREC) (ATTACHMENT)**

The various portions of the ROWs are privately owned and generally the adjoining properties have an Easement which allows the owners (and their customers) to have access over the section of the ROW over which they have an Easement. The right to use the carriageway easement over Lot 66 does not extend to the general public, although the ROW has in fact been used by the public on an uninterrupted basis for many years, and the Council has cared and maintained the ROW. Because of this history it is arguable that the land may be dedicated for public use as a road under Common Law.

Lot 66 (the western portion of the ROW) is 5.03m wide, has a depth of 31.58m and an area of 159sqm.

**DETAIL**

A Planning Application to construct an office development above 4 ground level parking bays in the ROW was refused on Lot 66 in August 2007. If approved the development would have impeded the use of the ROW. Given the dimensions of the ROW, the fact it was created expressly for the purpose of providing a right of carriageway, and the function it has historically served, it is not considered that the ROW is suitable for development.

Notwithstanding Council's August 2007 refusal of the application, the owners of Lot 66, made an application to the State Administrative Tribunal (SAT) based on the City of Melville's Community Planning Scheme No. 5, Clause 7.11 deemed refusal, as no decision was made by the Council within 60 days of receiving the application. This application was subsequently withdrawn by the applicants.

The owner has indicated that he may lodge a new application for a commercial use (e.g – Consulting Rooms – permitted use) which can be approved on the property without discretion. Plans may provide a lift to elevate vehicles to a raised car parking area. Elevated parking of cars will provide for sufficient clearance for vehicles to traverse along the ROW. In this regard, the ROW is zoned CCF DC3 - Melville Centre (R50). It is apparent that this application is aimed at escalating the value of the property in the event of compensation proceedings. Such a proposal will however require discretion in the consideration of boundary walls. The Residential Design Codes prescribe that Acceptable Development standards for a boundary wall is not more than 3.5m in height (with an average of 3m) for 2/3 the length of the boundary. Accordingly, the above proposal is likely to require consultation and comments from the neighbour on the extent of variation. In addition, this use would require consideration of further discretion in terms of side and rear setbacks and would impact on any proposal to further widen the ROW including portion of the adjoining property at 42 Waddell Road.

**P08/3046 - RESUMPTION OF PRIVATE RIGHT OF WAY, LOT 66 WADDELL ROAD, BICTON (AMREC) (ATTACHMENT)**

It is noted that residents of the units at 165 Stock Road have raised concerns through a local politician objecting to any proposal to increase or consolidate the use of the ROW's. The future of the ROW has been referred to Strategic Urban Planning and the following comments have been provided:

- It is desirable that the ROW remain open to the public;
- The ROW is an important link between Waddell and Stock Roads and is required for both access and servicing of the adjoining properties; and
- The ROW should continue to be widened as opportunities arise to provide for both 2 way vehicle access and a footpath.
- The ROW is required for reasons orderly and proper planning, traffic management and safety and has long term strategic significance for the redevelopment of properties facing Canning Highway.

The ROW is required for reasons orderly and proper planning, traffic management and safety and has long term strategic significance for the redevelopment of properties facing Canning Highway.

An indicative plan has been developed to allow for future widening opportunities.

Any proposed development of Lot 66 would prevent the long term use of the ROW's in this location and would be contrary to the orderly and proper planning of the area.

The use of the ROW by the public at large is in the best interests of the broader community and the adjoining residents and owners. Any proposed development on the property will limit this from occurring.

It is appropriate that the ROW be set aside for public use and to enable the planned widening to be implemented.

Preliminary advice from Council's valuers, indicate that the property has limited value in the circumstances. At worst, the ROW could become a long term liability to the owners, if it proves to be the case that the development of the land is not possible or not viable. However it is possible that in the future the Lot 66 owners and the legal beneficiary of the easement could by agreement apply to Landgate to have the easement surrendered, which would defeat the longer term use of the ROW for access purposes.

A similar consideration to compulsorily acquire the eastern end and dedicate it as a road will need to be given to the balance of the ROW and will be presented to the September 2008 Council Meeting.

**OTHER CONSIDERATIONS**

Lot 66 was purchased by the current owner in April 2007 and is privately owned. Even though the land is a ROW, it will have some value and consideration of the extent of compensation to be paid to the owner will be determined as part of the resumption and related compensation processes.



**P08/3046 - RESUMPTION OF PRIVATE RIGHT OF WAY, LOT 66 WADDELL ROAD, BICTON (AMREC) (ATTACHMENT)****PUBLIC CONSULTATION/COMMUNICATION**

Public consultation was not specifically required with respect to this proposal, however the proposed development on Lot 66 was advertised and both adjoining owners objected to the development. In particular, the owners of 40 Waddell Road have objected to the development being over their easement. The owners of 40 Waddell Road have advised that they would support the dedication of the ROW as a road.

**REFERRALS TO GOVERNMENT AGENCIES**

Nil

**STATUTORY AND LEGAL IMPLICATIONS**

The Council has received legal advice confirming that the ROW can be taken or acquired for the public purpose of a road under Parts 9 and 10 of the Land Administration Act 1997.

In this instance the Council is required to make an assessment for compensation to the owners of the land and Easement holders. Commercial property Easement holders are unlikely to be compensated as the resumption process will continue to provide for public use.

**FINANCIAL IMPLICATIONS**

The ROW would become a public road and the Council would become responsible for the care and control of the road.

Compensation would be paid to the owners of Lot 66. A valuation provided by a private valuer experienced in these matters has determined the value of the property to be \$1,500. A copy of the confidential Valuation Report was distributed to Elected Members on Friday, 1 August 2008.

It is noted that the owner purchased the property in 2007 for \$49,500 and this is significantly higher than the above valuation. Accordingly, the owner is likely to be aggrieved with the valuation and seek arbitration under compensation processes. The likelihood of compensation to the easement holders is limited. Council may choose to pay more than the valuation on equity grounds if desired.

**P08/3046 - RESUMPTION OF PRIVATE RIGHT OF WAY, LOT 66 WADDELL ROAD,  
BICTON (AMREC) (ATTACHMENT)**

The Valuation Report considers the purchase price of \$49,500 and advises why this valuation should be discounted and not used. The report also refers to a very similar ROW dispute that was considered by the State Administrative Tribunal (SAT) which serves to confirm the value of the ROW and that a similar decision is likely should the valuation be disputed at SAT

**STRATEGIC AND RISK MANAGEMENT IMPLICATIONS**

Nil

**POLICY IMPLICATIONS**

Nil

**ALTERNATE OPTIONS & THEIR IMPLICATIONS**

There are several options available:

- Acquire or take Lot 66 for the purpose of a road. This will require compensation to be paid to both the owner and (to a lesser likelihood) Easement holders;
- Purchase Lot 66. Land would retain Easements, but the Council may or may not subsequently dedicate the ROW as a Road;
- Claim dedication of the ROW under Common Law. This is likely to be difficult and expensive (involving Supreme Court proceedings) and the outcome is uncertain, and therefore is not recommended; or
- Do nothing. This is not recommended as it does not guarantee long term use given the possibility of a later development approval (most likely on appeal) or closure approval based on beneficial landowner agreement.

**CONCLUSION**

The land was and still is a ROW and the Right of Carriageway Easement cannot be extinguished or use inhibited by some other purpose without the other Easement holders' approval. The dedication of the ROW (Lot 66) as a road is essential to ensure that the land is able to be used by the public at large for the purpose of access. This would enable the road to be widened for the benefit of the general community. It is therefore recommended that the Council commence resumption proceedings in accordance with the provisions of the Land Administration Act.

**P08/3046 - RESUMPTION OF PRIVATE RIGHT OF WAY, LOT 66 WADDELL ROAD, BICTON (AMREC) (ATTACHMENT)**

**OFFICER RECOMMENDATION (3046)**

**ABSOLUTE MAJORITY APPROVAL**

**THAT BY ABSOLUTE MAJORITY DECISION**

- A) THAT THE COUNCIL MAKE AN OFFER OF \$1,500 PLUS 10% TO THE OWNER OF LOT 66 WADDELL ROAD TO ACQUIRE THE RIGHT OF WAY FOR THE PUBLIC PURPOSE OF A ROAD.**
- B) IF THE OFFER NOT BE ACCEPTED THEN COUNCIL TO TAKE THE NECESSARY STEPS PURSUANT TO PARTS 9 AND 10 OF THE LAND ADMINISTRATION ACT 1997 TO COMPULSORILY ACQUIRE LOT 66 WADDELL ROAD FOR THE PUBLIC PURPOSE OF A ROAD.**
- C) THAT THE COUNCIL RESOLVE TO DELEGATE TO THE CHIEF EXECUTIVE OFFICER POWER TO TAKE ALL NECESSARY STEPS TO COMPLETE THE PROCESSES REQUIRED UNDER PART 9 AND 10 OF THE LAND ADMINISTRATION ACT INCLUDING FURTHER NEGOTIATION AND PAYMENT OF ANY APPROPRIATE COMPENSATION TO THE OWNERS.**
- D) THE OWNER AND EASEMENT HOLDERS BE ADVISED OF A), B) AND C) ABOVE.**

**General discussion took place regarding this item and officer recommendation.**

**The Chief Executive Officer advised Mr Miller that his response to the Officers report had been sent to Elected Members. In addition, Mr Miller's comments had been copied from his email response and a hard copy provided to Elected Members at the commencement of the Agenda Briefing Forum.**

**P08/5013 - PROPOSED AMENDMENT NO 51 TO COMMUNITY PLANNING SCHEME NO 5 – GOLDEN EGG FARM SITE AT LOTS 12 AND 20 LEACH HIGHWAY / MCGREGOR ROAD, PALMYRA – INDUSTRY TO RESIDENTIAL R35 AND R60 (REC)**

Disclosure of Interest

Item No.	P08/5013
Officer	Cr Ceniviva
Type of Interest	Interest under Code of Conduct 8.2.8
Nature of Interest	Financial Interest
Request	Stay
Decision of Council	Not Applicable

Disclosure of Interest

Item No.	P08/5013
Officer	Cr Subramaniam
Type of Interest	Interest under Code of Conduct 8.2.8
Nature of Interest	Code of Conduct – Industrial & Residential
Request	Stay
Decision of Council	Not Applicable

**At 8.36pm having declared an interest in this item Cr Subramaniam and Cr Ceniviva stayed and observed.**

**At 8.37pm the Director Customer and Corporate Services left the meeting.**

Item presented by	: Mr David Vinicombe Manager Planning and Development Services
Ward	: Palmyra/Melville/Willagee
Category	: Strategic
Application Number	: CPS5-51
Property	: Lots 12 and 20 Leach Highway / McGregor Road
Proposal	: Amend CPS No. 5 to provide Residential R35 and R60
Applicant	: Greg Rowe and Associates
Owner	: Western Australian Egg Marketing Board
Disclosure of any Interest	: No Officer involved in the preparation of this report has a declarable interest in this matter.
Responsible Officer	: David Vinicombe Manager Planning and Development Services
Previous Items	: Nil

**AUTHORITY / DISCRETION**

	<u>Definition</u>
<input type="checkbox"/> Advocacy	<i>when Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input type="checkbox"/> Executive	<i>the substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets</i>
<input checked="" type="checkbox"/> Legislative	<i>includes adopting local laws, town planning schemes &amp; policies.</i>
<input type="checkbox"/> Review	<i>when Council review decisions made by Officers.</i>
<input type="checkbox"/> Quasi-Judicial	<i>when Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>

**P08/5013 - PROPOSED AMENDMENT NO 51 TO COMMUNITY PLANNING SCHEME NO 5 – GOLDEN EGG FARM SITE AT LOTS 12 AND 20 LEACH HIGHWAY / MCGREGOR ROAD, PALMYRA – INDUSTRY TO RESIDENTIAL R35 AND R60 (REC)**

**KEY ISSUES / SUMMARY**

- Amendment proposes to modify CPS No. 5 to provide for the redevelopment of the Golden Egg Farm site at Lots 12 and 20 Leach Highway / McGregor Road, Palmyra by rezoning the site from “Industrial” to “Living Area” and inclusion of a new Precinct – P2-Palmyra 2 which is linked to a future Precinct Development Plan.
- Initial concerns raised at Planning Portfolio Meeting held on 24 July, 2007 with regard to density, lot sizes, orientation of lots towards POS, levels through site and access / parking requirements have been addressed with the revised plan.
- Proposal includes a preliminary Precinct Development Plan providing for the development of 57 lots (56 R35 lots – minimum 235 sqm and average of 244 sqm including one 4 unit grouped dwelling site with an area of 1057 sqm, and 1 R60 lot with an area of 3257 sqm providing for up to 18 grouped dwellings or 19 multiple dwellings – average 180 sqm per grouped dwelling and 166 sqm per multiple dwelling) with a total development yield of 77/78 dwellings.
- The preliminary Precinct Development plan provides road widening along Leach Highway, a crescent shaped main internal road linking with McGregor Road with internal service lanes to provide rear/side access for 35 lots.
- The final Precinct Development Plan is required to address a number of detailed design issues. This is proposed to be prepared in consultation with and adopted by Council prior to subdivision of the property.
- The final subdivision plan will require control fencing / retaining to all peripheral roads.
- No POS is proposed, however the proposal faces onto an existing parcel of POS and the applicant has indicated that cash in lieu will be paid. This may be subject to further discussion and negotiation during the preparation of the Precinct Development Plan.
- Recommended that the Amendment be initiated by Council.

**BACKGROUND**

On 24 July, 2007 a proposal to rezone the Golden Egg Farm site at Lots 12 and 20 Leach Highway / McGregor Road, Palmyra was presented to Elected Members at a Planning Portfolio Meeting. The initial proposal included a Precinct Development Plan providing for the development of 55 lots (53 R40 lots – minimum requirement 200 sqm and average requirement of 220 sqm, and 2 R80 lots – average 125 sqm per dwelling) with a total development yield of 83/84 dwellings.

A number of design concerns were raised at the Portfolio Meeting with regard to density, lot frontage and size, access, interface with adjacent POS, provision of POS, identification of trees to be protected in McGregor Street and potential for health impacts (noise and particulate pollution) on residents in proximity and on the lower side of Leach Highway.

A subsequent meeting was between with the applicant, Ward Councillors, the Chairman of the Planning Portfolio and Mayor on 22 April, 2008 to establish a way forward on the amendment proposal. The revised proposal as submitted is the applicant’s response to this meeting.

**P08/5013 - PROPOSED AMENDMENT NO 51 TO COMMUNITY PLANNING SCHEME NO 5 – GOLDEN EGG FARM SITE AT LOTS 12 AND 20 LEACH HIGHWAY / MCGREGOR ROAD, PALMYRA – INDUSTRY TO RESIDENTIAL R35 AND R60 (REC)****Scheme Provisions**

MRS Zoning	:	Urban
CPS 5 Zoning	:	Industrial
R-Code	:	Nil
Use Type	:	Residential
Use Class	:	Use not permitted

**Site Details**

Lot Area	:	2.6656 ha
Retention of Existing Vegetation	:	Unlikely
Street Tree(s)	:	Yes
Street Furniture (drainage pits etc)	:	N/A

The site is presently developed with an egg grading facility, which receives, grades, packages then distributes eggs to various retailers within the metropolitan area. In facilitating the distribution of the product, heavy vehicles (semi-trailers) frequent the subject site. Operational Underground Storage Tanks (UST's) are used to refuel these vehicles when required. In addition to the above, the Company's offices are also located at the subject site. The site also houses a furniture storage and distribution facility.

Land directly to the north, east and west of the site is zoned "Living Area" and located within Precinct "P1 – Palmyra" under the provisions of Community Planning Scheme No. 5. Land on the southern side of Leach Highway is zoned for Industrial purposes.

A portion of each of Lots 12 and 20 fronting Leach Highway is identified as Planning Control Area 80 (Government Gazette WA 16 November 2004). This is depicted in Appendix 3 – Planning Control Area 80. The intent of the Planning Control Area is to ensure that no development occurs on land that may be required for this purpose until the land is reserved as a Primary Regional Road in the Metropolitan Region Scheme. On this basis, the Precinct Development Plan depicts the road widening area as being set aside on a separate Title pending reservation and / or acquisition by the Western Australian Planning Commission (WAPC).

As the site has been used for industrial purposes, a site investigation into potential contamination has occurred as required by the rezoning process. Preliminary investigations identified a number of issues requiring further investigation including removal of and disposal of the underground storage tanks and further investigation into wash down drainage pits, stormwater sediment sumps, grease traps and solid waste

**P08/5013 - PROPOSED AMENDMENT NO 51 TO COMMUNITY PLANNING SCHEME NO 5 – GOLDEN EGG FARM SITE AT LOTS 12 AND 20 LEACH HIGHWAY / MCGREGOR ROAD, PALMYRA – INDUSTRY TO RESIDENTIAL R35 AND R60 (REC)****DETAIL**

The applicant has provided a detailed Scheme Amendment report as part of the application. Key points and issues raised in the report are summarised as follows:

Density

A preliminary Precinct Development Plan has been prepared to demonstrate the potential form of subdivision that may result from the proposed rezoning and associated densities. It is proposed that the Amendment will result in the preparation and submission of a Precinct Development Plan in accordance with the provisions of the proposed Amendment to be adopted by Council. The adopted Precinct Development Plan is proposed to be used to control subdivision and development within the new Precinct.

The proposed residential densities will provide a range of lot sizes catering for the diverse needs of the community in accordance with the requirements of Liveable Neighbourhoods. The proposed densities have been reduced from the initial R40 and R80 densities originally proposed in an attempt to address concerns raised at the Planning Portfolio Meeting held on 24 July, 2007.

The Development Plan consists of 55 “green title” lots with an R35 density ranging in size from 235 to 332 sqm, 1 R35 grouped dwelling with an area of 1057 sqm providing for up to 4 grouped dwelling units and 1 R60 grouped/multiple dwelling lot with an area of 3257 sqm providing for up to 19 multiple dwelling units or 18 grouped dwelling units.

The Residential Design Codes requires R35 lots to be a minimum of 235 sqm with an average of 260 sqm. R60 development requires an average area of 180 sqm for grouped dwellings and 166 sqm for multiple dwellings. It is noted that the preliminary Precinct Development Plan includes a reduced average lot size of 247 sqm over 55 of the proposed R35 lots. This is within the allowable 5% variation which may apply to average lot sizes as provided by the Residential Design Codes under the performance criteria. The applicant has addressed a number of options available under the performance criteria to enable consideration of the variation to the average lot size.

Development requirements for the R35 grouped dwelling and R60 grouped / multiple dwelling sites will be addressed with the finalisation of the Precinct Development Plan together with the preparation of Design Guidelines (which will form part of the Precinct Development Plan) and can address such matters as height restrictions and other design concerns. The proposed location for the R60 lot has been selected to improve the proposed road layout. The prominent location of this site presents the opportunity for a landmark site with high quality development. Development at this location will be screened from McGregor Road through the retention of the existing trees on the road verge. Photo examples of R60 developments throughout the Perth Metropolitan Area and a typical floor plan and elevations have been provided to demonstrate the potential form of this type of development. Ultimately, residential redevelopment of the site will result with an upgrade to the existing industrial development.

**P08/5013 - PROPOSED AMENDMENT NO 51 TO COMMUNITY PLANNING SCHEME NO 5 – GOLDEN EGG FARM SITE AT LOTS 12 AND 20 LEACH HIGHWAY / MCGREGOR ROAD, PALMYRA – INDUSTRY TO RESIDENTIAL R35 AND R60 (REC)**Lot Configuration

The proposed lots are predominantly orientated north / south, which achieve the most efficient use of the subject site for residential subdivision. The proposed lot configuration provides frontages which relate to adjacent residential properties. A number of lots are orientated east-west, including those fronting the POS to the west of the subject site, and those fronting the R60 site. Given the existing topography of the subject site, it is proposed to 'terrace' the lots from north to south, and east to west, accessing the available views (to the north east).

The frontages of the R35 lots range between 10m to 12.5m. It is noted that the existing dwellings located directly on the north side of McGregor Road have frontages of approximately 12m. The narrower widths accommodate garages located to the rear of properties and allowing vehicle access through the laneways where possible while orientating the dwelling frontage to McGregor Road. These laneways enhance the amenity of the development and reduce the impact of the subdivision on the neighbouring community. Given the role of the laneways is to provide rear access to the lots fronting McGregor Road, the need for crossovers to be constructed at McGregor Road is therefore negated. This arrangement will also allow for an uninterrupted landscaped area being established along the McGregor Road street verge.

Road Network and Access

The main access to the site will be provided through a 14m wide crescent shaped road linking with McGregor Road and a 6m wide rear laneway network. The north-south laneway located to the east of the site will provide a direct pedestrian connection to McGregor Road.

The indicative subdivision design includes lots with direct frontage to McGregor Road (ie. the front elevations and pedestrian entrances to these dwellings will be via McGregor Road) with vehicle access being obtained through rear laneways. Visitor parking will be accommodated through embayments along the McGregor Road verge.

The road layout has been designed to address concerns raised at the Portfolio Meeting of Council. The lot layout has been designed to provide lots with frontage overlooking the POS and any re-configuration of the existing road network at the intersection of McGregor and Baal Streets to accommodate the proposed road network will be addressed in detailed designs in consultation with the City's Engineering Department.

Public Open Space

The City of Melville POS Strategy has identified that the general area surrounding the site is currently deficient in POS. However, the site is located immediately between two adjoining POS reserves. In order to achieve a suitable distribution of POS throughout the suburb, it is proposed that a cash-in-lieu contribution will be made. Although not a requirement, the landowner has advised that they also intend on upgrading the McGregor Road verge with landscaping and parking embayments while retaining the existing significant trees in addition to the 10% cash in lieu contribution. The landscaping will also provide a treatment to soften the impact of retaining walls on the streetscape. A landscape concept plan is attached.



**P08/5013 - PROPOSED AMENDMENT NO 51 TO COMMUNITY PLANNING SCHEME NO 5 – GOLDEN EGG FARM SITE AT LOTS 12 AND 20 LEACH HIGHWAY / MCGREGOR ROAD, PALMYRA – INDUSTRY TO RESIDENTIAL R35 AND R60 (REC)**Design Guidelines

The Development Precinct Plan is also proposed to include provisions to guide development within the R35 and R60 site and will be prepared in accordance with the provisions proposed under this Scheme Amendment. The Precinct Development Plan for the development will prescribe the 'building envelope' for each lot, including the location of the garage. The Precinct Development Plan can be responsive to the proposed finished floor levels for each of the lots, as well as taking into consideration a range of other factors including the location of the on-street parking and the relationship with the built form of the dwelling and access.

The Precinct Development Plan proposes to provide modified setback requirements, designated building frontages to address the relevant streetscape, designated garage, balcony and courtyard locations, increased site coverage to allow larger dwellings, a requirement for store areas under the garage or main roof or the dwelling to negate requirements for separate outbuildings, and 'quiet house design principles' (double glazing, ceiling insulation, outdoor areas/openings orientated away from the Highway) will be implemented for dwellings closest to Leach Highway.

Additionally, the landowner is intending to erect a noise wall between the boundary of Planning Control Area No. 80 and the site to address any potential noise created from traffic on Leach Highway. Any necessary health reports can be prepared prior to subdivision.

Justification

This Scheme Amendment will put in place the legislative framework in which to develop residential allotments at the subject site following the cessation and relocation of existing industrial activities on site and remediation of the subject site (if required).

This Scheme Amendment considered appropriate for the following reasons;

1. The Amendment will correct the anomaly between CPS 5 and the MRS;
2. The landowner is willing to discontinue a use which is not considered 'desirable' adjacent to a residential neighbourhood;
3. The proposed medium residential density codings are consistent with the principles of Network City and the State Planning Strategy;
4. The Amendment includes provisions for the control of the form of future residential development through the implementation of design guidelines and Precinct Development Plan;
5. Development of the site will result with upgrades to the existing McGregor Road verge as well as a cash in lieu contribution for 10% POS; and
6. The design of the subdivision is consistent with Liveable Neighbourhoods and contemporary planning and urban design practice.

**P08/5013 - PROPOSED AMENDMENT NO 51 TO COMMUNITY PLANNING SCHEME NO 5 – GOLDEN EGG FARM SITE AT LOTS 12 AND 20 LEACH HIGHWAY / MCGREGOR ROAD, PALMYRA – INDUSTRY TO RESIDENTIAL R35 AND R60 (REC)****STATUTORY AND LEGAL IMPLICATIONS**

Part 5 of the Planning and Development Act 2005 provides for Council to initiate amendments to town planning schemes. Once initiated, Council must advertise the Amendment, consider submissions and forward the proposal to the Hon. Minister for Planning and Infrastructure for determination.

The decision from Council on whether or not to initiate the subject Amendment is final and no appeal rights exist.

**FINANCIAL IMPLICATIONS**

Nil

**STRATEGIC AND RISK MANAGEMENT IMPLICATIONS**

Nil

**POLICY IMPLICATIONS**

On conclusion of the Amendment, the formulation of a Precinct Development Plan and Design Guidelines will be required prior to subdivision as required by the proposed Scheme provisions.

**ALTERNATE OPTIONS & THEIR IMPLICATIONS**

Council could choose to refuse to initiate the subject Amendment on the grounds that it does not support the proposal in terms of the proposed density or insufficient detail in regard to a formal Precinct Development Plan and Design Guidelines. Should Council refuse to initiate an Amendment outright, it is likely that the applicant would make a submission on the proposal as part of the Scheme Review process and this would allow consideration of the proposal by the Minister for Planning and Infrastructure without Council maintaining a degree of control over the design process.

**COMMENTS**

The proposal has been significantly advanced since its inception and presentation to the Planning Portfolio Meeting in 2007. Notwithstanding, a number of matters have been raised with the applicant over design details. These matters are detailed below, however it is noted that they may be addressed in the design and approval of the proposed future Precinct Development Plan and Design Guidelines which would be required prior to subdivision and development of the site. Further details required to be addressed in this process by the applicant include the following:

**P08/5013 - PROPOSED AMENDMENT NO 51 TO COMMUNITY PLANNING SCHEME NO 5 – GOLDEN EGG FARM SITE AT LOTS 12 AND 20 LEACH HIGHWAY / MCGREGOR ROAD, PALMYRA – INDUSTRY TO RESIDENTIAL R35 AND R60 (REC)**

1. Parking and Access - The Precinct Development Plan is to detail access/crossover proposals for lots so as to incorporate street parking embayments and associated tree islands adjacent footpaths on both sides of main access road. The plan should identify that parking access off the access laneway be setback 2.5m.
2. Rubbish Collection - Concern is raised that the corners of the internal access laneway will be too tight to allow rubbish truck access. This will therefore require the Precinct Development Plan to provide through access from the allocated yard areas to the main access road and for those lots backing onto McGregor, provision of bin enclosures adjacent the steps at the lower street level.
3. POS - It is acknowledged that the proposal involves significant landscaping of the extensive McGregor Street verge and retention of significant street trees. It is also acknowledged that the provision of cash-in-lieu for Public Open Space (POS) contribution provides an opportunity to increase the spread of POS throughout the locality, particularly in the northern sector of Palmyra (A). It is noted that Council's POS Strategy indicates that the northern sector of Palmyra (A) is deficient of 13.74 ha POS and the southern sector (B) is deficient 0.62 ha. Further, it is noted that the current deficiency relates to the present residential land area. If the area of this proposal is included and cash-in-lieu is provided, the POS requirement would increase by 10% of that area and accordingly the deficiency in the southern sector will increase to 0.883 ha. Accordingly, the southern sector is better provided with POS than the northern and cash-in-lieu for POS could significantly benefit the northern sector. However, without identification of alternative POS sources within the northern catchment the provision of cash-in-lieu for may not represent value for money in this locality as land to be purchased for this purpose will most likely contain significant improvements which will form part of the purchase price. Accordingly, Council may choose to require the provision of POS within the subdivision, however this matter may be examined in detail during consideration of submissions should Council choose to initiate the Amendment.

Other matters which require detailed design considerations as part of the detailed design stage of the Precinct Development Plan are included in the Amendment documentation as follows:

- Residential Densities
- Lot configuration
- Building setbacks and orientation of dwellings
- Requirement for overall building design and development standards prior to construction
- Building height
- Landscaping design and maintenance standards
- Finished levels
- Fencing standards
- Provision of footpaths and parking embayments
- Crossover/access arrangements
- Servicing requirements including bin areas
- Proposed road layout and upgrades to abutting roads
- Retention of significant trees
- Preparation of a noise impact assessment

**P08/5013 - PROPOSED AMENDMENT NO 51 TO COMMUNITY PLANNING SCHEME NO 5 – GOLDEN EGG FARM SITE AT LOTS 12 AND 20 LEACH HIGHWAY / MCGREGOR ROAD, PALMYRA – INDUSTRY TO RESIDENTIAL R35 AND R60 (REC)**

It is noted that the provision of POS is not included in the above list, and given that this matter requires further consideration, the list should be expanded to include referenced to POS provision / cash-in-lieu. In addition, Design Guidelines for the grouped and Multiple Dwelling development sites should be included on this list.

**CONCLUSION**

The proposal will provide a significant opportunity to redevelop a new residential housing estate within the City of Melville and address a number of long standing incompatibility issues with the adjacent residential area. The provisions proposed under the Amendment provide Council with significant controls under the preparation of the Precinct Development Plan to guide the development of the site to form a high quality residential environment which is sympathetic to the surrounding residential area. Notwithstanding, some elements of concern are still raised with particular regard to the provision of public open space. Accordingly, it is recommended that the Amendment be initiated and that the applicant be advised that the issue of POS provision will require further detailed examination as part of the Amendment process and will ultimately need to be addressed as part of the preparation of the Precinct Development Plan to be adopted by Council.

**OFFICER RECOMMENDATION (5013)****APPROVAL****A) PURSUANT TO PART 5 OF THE PLANNING AND DEVELOPMENT ACT 2005, COUNCIL RESOLVE TO INITIATE AMENDMENT NO 51 TO COMMUNITY PLANNING SCHEME NO 5 BY:**

- 1 REZONING LOTS 12 AND 20 MCGREGOR ROAD, PALMYRA FROM “INDUSTRIAL” TO “LIVING AREA”;**
- 2. AMENDING THE SCHEME MAPS ACCORDINGLY;**
- 3. INSERTING A NEW LIVING AREA PRECINCT “P2 – PALMYRA” INTO PART 4.1 OF THE SCHEME AS FOLLOWS:**

**P2 – PALMYRA****STATEMENT OF INTENT**

**PRIMARILY RESIDENTIAL BUT MAY INCLUDE HOME OCCUPATIONS, PROVIDED THEY ARE NOT DEVELOPED TO SUCH INTENSITY THAT THEY DISTURB THE PRECINCT OR ARE OUT OF CHARACTER WITH THE PARTICULAR CHARACTER OF THE PRECINCT. HOME OCCUPATIONS SHALL BE DETERMINED IN ACCORDANCE WITH CLAUSE 5.6.**

**P08/5013 - PROPOSED AMENDMENT NO 51 TO COMMUNITY PLANNING SCHEME NO 5 – GOLDEN EGG FARM SITE AT LOTS 12 AND 20 LEACH HIGHWAY / MCGREGOR ROAD, PALMYRA – INDUSTRY TO RESIDENTIAL R35 AND R60 (REC)**

**DEVELOPMENT REQUIREMENTS**

<b>R CODE</b>	<b>R35 / R60, AS PER PRECINCT DEVELOPMENT PLAN ADOPTED BY COUNCIL</b>
<b>MINIMUM LOT AREA</b>	<b>AS PER THE R CODES</b>
<b>MINIMUM FRONT SETBACK</b>	<b>AS PER THE PRECINCT DEVELOPMENT PLAN</b>
<b>MINIMUM SIDE AND REAR SETBACKS</b>	<b>AS PER THE PRECINCT DEVELOPMENT PLAN</b>
<b>MAXIMUM BUILDING HEIGHT</b>	<b>AS PER THE PRECINCT DEVELOPMENT PLAN</b>
<b>MINIMUM CAR PARKING (RESIDENTIAL)</b>	<b>AS PER THE RESIDENTIAL DESIGN CODES</b>
<b>ADVERTISING CONTROL</b>	<b>FLASHING, TOWER AND ROOF SIGNS ARE PROHIBITED. AT THE DISCRETION OF COUNCIL, ONE NON-ILLUMINATED SIGN PER LOT MAY BE PERMITTED TO INDICATE BUSINESS OPERATIONS, GOODS SOLD ON PREMISES AND / OR NAME OF THE PROPERTY, BUILDING, OWNER OR OCCUPIER, NOT EXCEEDING 1.0 SQUARE METRE IN AREA, IN ACCORDANCE WITH CLAUSE 5.10. NO OTHER SIGNS ARE PERMITTED UNLESS APPROVED SUBJECT TO ADVERTISING IN ACCORDANCE WITH CLAUSE 7.5.</b>
<b>ADDITIONAL REQUIREMENTS</b>	<b>1. SUBDIVISION AND DEVELOPMENT WITHIN LIVING AREA PRECINCT P2 SHOULD GENERALLY BE IN ACCORDANCE WITH A PRECINCT DEVELOPMENT PLAN ADOPTED BY COUNCIL WHICH SPECIFIES:</b>

**P08/5013 - PROPOSED AMENDMENT NO 51 TO COMMUNITY PLANNING SCHEME NO 5 – GOLDEN EGG FARM SITE AT LOTS 12 AND 20 LEACH HIGHWAY / MCGREGOR ROAD, PALMYRA – INDUSTRY TO RESIDENTIAL R35 AND R60 (REC)**

- I) RESIDENTIAL DENSITIES
  - II) LOT CONFIGURATION
  - III) BUILDING SETBACKS AND ORIENTATION OF DWELLINGS
  - IV) REQUIREMENT FOR OVERALL BUILDING DESIGN AND DEVELOPMENT STANDARDS PRIOR TO CONSTRUCTION
  - V) BUILDING HEIGHT
  - VI) LANDSCAPING DESIGN AND MAINTENANCE STANDARDS
  - VII) FINISHED LEVELS
  - VIII) FENCING STANDARDS
  - IX) PROVISION OF FOOTPATHS AND PARKING EMBAYMENTS
  - X) CROSSOVER/ACCESS ARRANGEMENTS
  - XI) SERVICING REQUIREMENTS INCLUDING BIN AREAS
  - XII) PROPOSED ROAD LAYOUT AND UPGRADES TO ABUTTING ROADS
  - XIII) RETENTION OF SIGNIFICANT TREES
  - XIV) PREPARATION OF A NOISE IMPACT ASSESSMENT
  - XV) POS PROVISION / CASH-IN-LIEU
  - XVI) DESIGN GUIDELINES FOR THE GROUPED AND MULTIPLE DWELLING SITES
2. THE LOCAL GOVERNMENT MAY ADOPT A MINOR CHANGE TO OR DEPARTURE FROM THE PRECINCT DEVELOPMENT PLAN IF, IN THE OPINION OF THE LOCAL GOVERNMENT, THE CHANGE OR DEPARTURE DOES NOT MATERIALLY ALTER THE INTENT OF THE PRECINCT DEVELOPMENT PLAN AND; WHERE THE CHANGE OR DEPARTURE DOES NOT ALTER THE RESIDENTIAL DENSITY ALLOCATION.
3. IF THE COUNCIL RESOLVES THAT THE CHANGE OR DEPARTURE OF THE PRECINCT DEVELOPMENT PLAN MATERIALLY ALTERS THE INTENT OF THE PRECINCT DEVELOPMENT PLAN, THE CHANGE OR DEPARTURE IS REQUIRED TO BE ADVERTISED IN ACCORDANCE WITH CLAUSE 7.5.

**P08/5013 - PROPOSED AMENDMENT NO 51 TO COMMUNITY PLANNING SCHEME NO 5 – GOLDEN EGG FARM SITE AT LOTS 12 AND 20 LEACH HIGHWAY / MCGREGOR ROAD, PALMYRA – INDUSTRY TO RESIDENTIAL R35 AND R60 (REC)**

- 4. RESIDENTIAL DEVELOPMENT SHALL BE IN ACCORDANCE WITH STATE PLANNING POLICY NO. 3.1 RESIDENTIAL DESIGN CODES (AS AMENDED), EXCEPT WHERE VARIATIONS ARE SPECIFICALLY REFLECTED ON THE PRECINCT DEVELOPMENT PLAN.**
- 4. INSERTING A NEW PRECINCT PLAN INTO APPENDIX 1 OF THE SCHEME;**
- B) THAT HIS WORSHIP THE MAYOR AND THE CHIEF EXECUTIVE OFFICER BE AUTHORISED TO ENDORSE THE AMENDMENT DOCUMENT.**
- C) THAT THE CITY OF MELVILLE FORWARD A COPY OF THE AMENDMENT DOCUMENTATION TO:**
  - 1 THE ENVIRONMENTAL PROTECTION AUTHORITY IN ACCORDANCE WITH SECTION 81 OF THE PLANNING AND DEVELOPMENT ACT 2005.**
  - 2. THE WESTERN AUSTRALIAN PLANNING COMMISSION FOR INFORMATION.**
- D) THAT ON RECEIPT OF ADVICE FROM THE ENVIRONMENTAL PROTECTION AUTHORITY UNDER SECTION 48A OF THE ENVIRONMENTAL PROTECTION ACT INDICATING THAT THE AMENDMENT NEED NOT BE SUBJECT TO AN ENVIRONMENTAL ASSESSMENT, THE AMENDMENT BE ADVERTISED IN ACCORDANCE WITH THE TOWN PLANNING REGULATIONS FOR NOT LESS THAN FORTY-TWO (42) DAYS.**
- E) THE APPLICANT BE ADVISED OF A-D ABOVE AND THAT DETAILED REQUIREMENTS WITH REGARD TO THE PROVISION OF EITHER PUBLIC OPEN SPACE, CASH-IN-LIEU OR A COMBINATION OF THE TWO IS REQUIRED TO BE FURTHER NEGOTIATED WITH COUNCIL PRIOR TO PREPARATION OF THE PRECINCT DEVELOPMENT PLAN.**

**At 8.42pm Marten Tieleman returned to the meeting.**

**General discussion took place regarding this item and officer recommendation.**

**Cr Halton requested that officers investigate an amendment to ensure that sustainability options are recommended when setting out the guidelines for this development.**

**C08/8008 – FRIENDSHIP RELATIONSHIP PROPOSAL FROM HATOLIA, EAST TIMOR – AMENDMENT TO EXISTING FRIENDSHIP RELATIONSHIP MOU (REC)**

Item presented by	: Ms Christine Young A/Director Strategic Community Development
Ward	: All
Category	: Operational
Subject Index	: Multicultural
Customer Index	: Melville Friends of Letefoho
Disclosure of any Interest	: No Officer involved in the preparation of this report has a declarable interest in this matter.
Previous Items	: Report CO4/8012 Friendship Proposal between City of Melville and Letefoho Administration 7 September 2004
Works Programme	: Not Applicable
Funding	: Not Applicable
Responsible Officer	: Marcia Coelho A/Community Development Coordinator

**AUTHORITY / DISCRETION**

	<u>Definition</u>
<input type="checkbox"/> Advocacy	<i>when Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input checked="" type="checkbox"/> Executive	<i>the substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets</i>
<input type="checkbox"/> Legislative	<i>includes adopting local laws, town planning schemes &amp; policies.</i>
<input type="checkbox"/> Review	<i>when Council review decisions made by Officers.</i>
<input type="checkbox"/> Quasi-Judicial	<i>when Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>



**C08/8008 – FRIENDSHIP RELATIONSHIP PROPOSAL FROM HATOLIA, EAST TIMOR – AMENDMENT TO EXISTING FRIENDSHIP RELATIONSHIP MOU (REC)****KEY ISSUES / SUMMARY**

- The City of Melville Friendship Relationship with Letefoho in East Timor; included a five year Memorandum of Understanding which was signed in October 2005.
- As a result of the Friendship Relationship a community group Melville Friends of Letefoho (Inc) was established to facilitate the relationship and support activities in Letefoho
- Since 2005 limited achievements have been made in Letefoho due to communications difficulties
- A formal approach from the district of Hatolia has been made to the City of Melville and the Melville Friends of Letefoho (MFoLF) for inclusion in a friendship relationship
- The MFoLF requests an amendment in the current Memorandum of Understanding to add the new community of Hatolia.

**BACKGROUND**

At the Ordinary Meeting of Council held 7 September 2004, the City of Melville resolved to enter into a Friendship City Relationship with Letefoho, a sub-district in the Ermera region in East Timor.

The concept of Friendship Relationships came into fruition early in 2000 after the visit of then leader of CNRT (National Council of Timorese Resistance) and now the Prime Minister of Timor Leste, H. E. Kay Rala Xanana Gusmão. The aim of the Friendship Relationships is to develop friendship, support and cross-cultural understanding at a grass-roots level between the people of East Timor and the people of Australia and New Zealand through local governments. Local Governments have special expertise and knowledge about local issues, local governance, democratic processes, town planning and management, responsibility, accountability and all the facets of effective local government. Such areas are critical for East Timor as it emerges as a democracy.

There are currently more than thirty five friendship relationships between Local Governments and their communities in Australia and towns and districts in East Timor. These relationships are predominantly in the Eastern States with the City of Melville being the first (and only) such relationship in Western Australia.

The Friendship Relationship concept was originally championed to the Council by a group of residents who were keen to see their local government develop such a relationship.

In October 2005, a delegation from Melville, consisting of the Mayor, Director of Strategic Community Development, the Multicultural Officer and a member of the Melville Friends of Letefoho Inc. visited Letefoho and signed a Memorandum of Understanding (MOU). This MOU is a written agreement that

- recognises and promotes the rights of East Timorese people and the residents of Letefoho to manage their own affairs with input from the City of Melville when requested and relevant;
- the reciprocal sharing of information from Letefoho and the City of Melville.

**C08/8008 – FRIENDSHIP RELATIONSHIP PROPOSAL FROM HATOLIA, EAST TIMOR – AMENDMENT TO EXISTING FRIENDSHIP RELATIONSHIP MOU (REC)**

The friendship relationships work at two levels: government to government and community to community. In other words, the City of Melville has a relationship with the Letefoho administration and the MFoLF has a relationship with the community.

On the occasion of the visit in 2004, the administration of Letefoho requested help in rebuilding a community school. The group MFoLF agreed to fundraise for that cause and since then has raised more than \$20,000 to contribute to the project.

The lack of communications from the Letefoho community has frustrated the group in the last three years. The community school project was stalled due to uncertainty of the ownership of the land where the school is situated. This has only recently seen some progress.

Due to political unrest in the country, communications became more difficult. In December 2006, one member of the group visited Letefoho in the hope to reinitiate the communication process and re-establish the plans for the school project. It has been almost two years, since any direct communication occurred between both parties. However, a recent visit by the Melville Friends of Letefoho has seen improvements in communication.

The Melville Friends of Letefoho has now been approached by another community, Hatolia, who appear much more active and organised to enter into a Friendship Relationship. Their proposal includes the following actions:

- Melville Friends to consider funding a project to build a Secondary School, to include a Library, Laboratory, and Toilets.
- Melville Friends to consider supporting the development of a reasonable standard of accommodation in Hatolia for visitors from Australia. These visitors may include an ESL teacher for the Secondary School, members of Melville Friends coming to review projects, and fee-paying guests to bring in an income for the village.
- Melville Friends to assist in the development of locally-based ventures to bring income into the Hatolia sub-district. These could include sales in Australia of Hatolia coffee, and production of tree and vegetable crops.

A formal approach from the Hatolia administration has also now been received by the City of Melville for a Friendship Relationship. This was forwarded to the Mayor and Elected Members for their information.

**DETAIL**

Last year, the MFoLF partnered another friendship group linked to the City of Casey in Victoria (Friends of Ermera) in a water supply project in the Ermera region. The project was to benefit the whole region, including Letefoho and Hatolia.

**C08/8008 – FRIENDSHIP RELATIONSHIP PROPOSAL FROM HATOLIA, EAST TIMOR – AMENDMENT TO EXISTING FRIENDSHIP RELATIONSHIP MOU (REC)**

Hatolia is a large sub-district of Ermera with a population of 32,000. The community approached the MFoLF to initially help in the rebuilding of their secondary school. In April/May 2008, two members of the MFoLF, Mr Ari and Mrs Wendy Antonovsky visited Ermera in order to consult with the administration and community members. The trip was well detailed in a report presented to the group

Mr and Mrs Antonovsky brought back a letter of request of possible friendship relationship between the two communities and a proposal for the establishment of a secondary school in Hatolia. Currently, Hatolia does not have a secondary school and many students are not able to continue with their studies.

The establishment of a secondary school will not only benefit the Hatolia community but fit the MFoLF's prime commitment to education in East Timor. The community of Letefoho will also benefit from the new school as it will be located in the same region (Ermera).

Since the relationship with Letefoho was established Melville Friends of Letefoho Inc. has been working to fundraise and to work through informal channels to determine the local needs of the Letefoho community. Unfortunately they haven't been able to move forward in the relationship due to many reasons that seem to be of political nature.

Melville Friends of Letefoho is an incorporated group and have received grants from the City of Melville towards administration costs to support the development of the group.

The current MOU signed with the Letefoho administration is due for renewal in 2010. It would be advised that prior to this time the City of Melville assess the outcomes for both parties and either extend it or terminate the relationship.

**PUBLIC CONSULTATION/COMMUNICATION**

As previously stated, various attempts to re-establish communications with Letefoho have been conducted, with no success.

At the government to government level communications has been non-existent. All attempts of communications have failed. We have had no replies on all correspondence sent.

In June 2008, two members of the MFoLF attended a Friendship Conference in Dili, East Timor. These members: Mr Barry Mendelawitz and Mr Alan Peters (President), visited both sub-districts of Letefoho and Hatolia. They have returned with a formal letter of request from the Hatolia administration for the establishment of a friendship relationship. The communications with the Letefoho community have been re-established and the school project has commenced.

**C08/8008 – FRIENDSHIP RELATIONSHIP PROPOSAL FROM HATOLIA, EAST TIMOR – AMENDMENT TO EXISTING FRIENDSHIP RELATIONSHIP MOU (REC)**

The MFoLF group have confirmed that both the administration and community of Letefoho are aware of these new enterprises with Hatolia and appear to be comfortable with the possible inclusion of Hatolia as a second district. A letter is still to be received from Letefoho to confirm this agreement.

**CONSULTATION WITH OTHER AGENCIES / CONSULTANTS**

Not Applicable

**STATUTORY AND LEGAL IMPLICATIONS**

The MOU guides the friendship relationship between both parties, which are based on the principles of mutual respect, cooperation and local decision-making. It also clearly establishes that “the Letefoho community and the City of Melville continuously inform each other of developments and activities that occur between the two parties.” (2005, MOU). As noted before, communication between both parties has been limited.

The MOU has no legally enforceable effects, but it is based on informal shared democratic values.

**FINANCIAL IMPLICATIONS**

The MFoLF has received community grants to support the development of their group since the friendship has been established (2005). The funding has been granted to the MFoLF as part of the Cultural and Community Development grants Program.

MFoLF has developed as a strong community group and no further grants are necessary to support their current activities.

There has been no requirement from the City of Melville to provide financial resources in relation to the friendship relationship. Other local government authorities have provided resources for opportunities for activities that strengthen the skills of East Timorese in the areas of governance and democratic processes (ie hosting of East Timorese within their local government authorities). If such requests were received in the future these would be assessed at that time.

It is not anticipated that a second visit to the new district of Hatolia is warranted or expected by representatives from the City of Melville.

The Cultural Development Officer – Multicultural would continue to be the contact point between all parties in the friendship relationship.

**C08/8008 – FRIENDSHIP RELATIONSHIP PROPOSAL FROM HATOLIA, EAST TIMOR – AMENDMENT TO EXISTING FRIENDSHIP RELATIONSHIP MOU (REC)**

**STRATEGIC AND RISK MANAGEMENT IMPLICATIONS**

Based on the recommendation that a new friendship relationship with Hatolia takes place immediately and due in 2010 for further review, these are significant aspects to consider:

- The MFoLF group will be able to achieve their objectives and reciprocate further interests with both sub-districts.
- The Hatolia community will initially gain a secondary school and provide better accommodation for school teachers and other visitors to their community. Better accommodation will enable a long term commitment by teachers going to stay in the region.
- The City of Melville may be able to help by providing expertise in the areas of concern of Hatolia and Letefoho administration.

Risks for consideration:

<b>Risk Statement</b>	<b>Level of Risk*</b>	<b>Risk Mitigation Strategy</b>
Both Letefoho administration and community do not support the new relationship with Hatolia.	Low	Communication suggests that Letefoho is comfortable with the extension of the Friendship Relationship.  The City of Melville could give priority for projects that support that community (Letefoho) first.
The new relationship with Hatolia become difficult due to communications problems, as practise has shown with Letefoho to date.	Low	The COM will re-assess both friendship relationships considering its values before the end of the current MOU (2010).

\* As derived from using the Risk Assessment Matrix

**POLICY IMPLICATIONS**

Not Applicable

**ALTERNATE OPTIONS AND THEIR IMPLICATIONS**

Another option for consideration is to wait until the end of the current MOU (with Letefoho) and adopt the new friendship relationship (with Hatolia) after review of the existing agreement.

However this would delay projects that the Melville Friends of Letefoho are keen to pursue in Hatolia. As an incorporated group MFoLF could legitimately proceed to assist Hatolia however, this would be seen as contrary to the way that the Friendship Relationships are operated, particularly by the East Timorese.

**C08/8008 – FRIENDSHIP RELATIONSHIP PROPOSAL FROM HATOLIA, EAST TIMOR – AMENDMENT TO EXISTING FRIENDSHIP RELATIONSHIP MOU (REC)****CONCLUSION**

The City of Melville has an existing friendship relationship with Letefoho, a sub-district located in the Ermera district of East Timor. The Melville Friends of Letefoho Inc. (MFoLF) has found its work with Letefoho to be limited due to the nature of this community, communication issues and political unrest.

The MFoLF has now been approached by the district of Hatolia to enter into a Friendship Relationship. This district appears well organised and communication appears to be effective. The MFoLF are keen to support this request following recent visits to the district by its members.

Hatolia administration has now formally approached the City of Melville requesting a friendship relationship be considered. The management committee of the MFoLF has requested that the City of Melville extends the MOU to add Hatolia in the friendship relationship. It appears that this would be a good outcome for the district in East Timor, the MFoLF group, and the City of Melville. The MOU will also be reviewed prior to its expiry in 2010 to assess the benefits and outcomes for all parties.

**OFFICER RECOMMENDATION (8008)****APPROVAL**

**THAT CITY OF MELVILLE INCLUDES THE SUB-DISTRICT OF HATOLIA IN THE CURRENT MEMORANDUM OF UNDERSTANDING BETWEEN LETEFOHO AND CITY OF MELVILLE AND THAT A REVIEW BE CARRIED OUT BEFORE THE FRIENDSHIP RELATIONSHIP MEMORANDUM OF UNDERSTANDING IS DUE FOR RENEWAL IN 2010.**

**General discussion took place regarding this item and officer recommendation.**

**Cr Phelan expressed her support for all the effort that the Acting Director Strategic Community Development and the Community Development team had given this project and that it should be viewed as a long term commitment.**

**C08/5018 – MEMBERSHIP TO PERTH AIRPORTS MUNICIPALITIES GROUP (REC)**

Item presented by	: No presentation was required for this item
Ward	: All
Category	: Policy
Subject Index	: Elected Members Profile
Customer Index	: Elected Members
Disclosure of any Interest	: No Officer involved in the preparation of this report has a declarable interest in this matter.
Previous Items	: Item C07/5020 Election of Representatives to Occasional, Advisory, Local Government and Community Committees – 20 November 2007
Works Programme	: Not Applicable
Funding	: Not Applicable
Responsible Officer	: Bruce Taylor Manager Information & Corporate Support

**AUTHORITY / DISCRETION**

	<u>Definition</u>
<input type="checkbox"/> Advocacy	<i>when Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input checked="" type="checkbox"/> Executive	<i>the substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets</i>
<input type="checkbox"/> Legislative	<i>includes adopting local laws, town planning schemes &amp; policies.</i>
<input type="checkbox"/> Review	<i>when Council review decisions made by Officers.</i>
<input type="checkbox"/> Quasi-Judicial	<i>when Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>

**C08/5018 – MEMBERSHIP TO PERTH AIRPORTS MUNICIPALITIES GROUP (REC)****KEY ISSUES / SUMMARY**

- The City of Melville withdrew membership from the Perth Airports Municipalities Group in June 2006 and declined to rejoin the Group in January 2007
- The Council has again been asked to reconsider and renew its' membership.
- Report recommends that the City of Melville rejoin the Group to ensure that it is able to participate fully in matters arising from all Perth Metropolitan airports that impact the City's residents.

**BACKGROUND**

In June 2006 the City of Melville resigned from the Perth Airports Municipalities Group (the Group) and advised the Group that the Council was "of the opinion that the needs of the Melville community are best served by our membership of the Jandakot Airports Consultation Committee which provides sufficient opportunities for our input into matters concerned with the operations of Jandakot Airport".

In January 2007 Council was approached to rejoin the Group which was again declined as

*"...the operations of Jandakot Airport have the most effect on the City of Melville. The Jandakot Airport Consultation Committee has been operating for a number of years and its membership consists of Local Government, Community groups and members of the General Aviation industry. This committee provides adequate opportunities for open and frank discussion and consideration of airport activities and their impact on surrounding communities.*

*It is felt that the community's interests are best served by our continued membership of this committee which provides a cooperative forum for resolution of any issues that arise. Accordingly your offer is declined at this point in time"*

The Group has again approached the Council to rejoin.

**DETAIL**

The Chief Executive Officer, Dr Silcox has previously held the position of Treasurer for the Group. The Local Government Act 1995 at S5.63(1)(f) advises that such an interest need not be disclosed as the Group is a non-profit organisation.

In the interests of transparency, Dr Silcox wishes his former involvement to be noted by Elected Members .



**C08/5018 – MEMBERSHIP TO PERTH AIRPORTS MUNICIPALITIES GROUP (REC)**

The objects of the Group are -:

- (a) To provide a forum of meaningful discussion on issues which affect Metropolitan Airports and their environs;*
- (b) To investigate, report and formulate recommendations in respect of matters affecting or likely to affect the development of Metropolitan Airports;*
- (c) To monitor the use and environmental impact of Metropolitan Airports on neighbouring communities;*
- (d) To advise relevant State and Federal ministers, State and Commonwealth government departments, the Noise Management Committee, and the Owner/s of Perth and Jandakot airports on issues of major concern affecting airports and the surrounding communities;*
- (e) To establish and maintain a strong partnering relationship with the Owner/s of Perth and Jandakot airports for the purpose of open and effective dialogue to identify, discuss, advise, research and seek proactive resolutions to issues affecting the airports and the immediate local community;*
- (f) To provide a conduit and consultation mechanism for the expression of community views and a proper exchange of information with members of the community;*
- (g) To consider all proposals affecting airport development and operations before policy decisions are made and before changes are effected in relevant legislation and regulations;*
- (h) To liaise with the airport emergency procedures committees where necessary on matters involving emergency co-ordination and rescue response;*
- (i) To pursue active participation on AMAC and such other bodies that may come into existence for the purpose of fostering participation in the development, use and monitoring the impact of airports;*
- (j) To promote the economic benefits of civil aviation airports; and*
- (k) To liaise with local government on issues of concern to the community, and to provide a forum for discussion of planning and development issues affecting future communities close to the major municipal airports.*

His Worship the Mayor is the current Council representative on the Jandakot Airport Consultative Committee and Cr Bennett is the Deputy Member. The Mayor has expressed an interest in being the Council delegate on the Group. The Council may nominate two deputy delegates.

**C08/5018 – MEMBERSHIP TO PERTH AIRPORTS MUNICIPALITIES GROUP (REC)**

**PUBLIC CONSULTATION/COMMUNICATION**

No public consultation has been undertaken with regard to the matter.

**CONSULTATION WITH OTHER AGENCIES / CONSULTANTS**

No consultation has been undertaken with other agencies.

**STATUTORY AND LEGAL IMPLICATIONS**

Nil

**FINANCIAL IMPLICATIONS**

Minimal – The annual membership fee to be a full member of the Group is \$500 per annum.

**STRATEGIC AND RISK MANAGEMENT IMPLICATIONS**

Being involved and represented on the Group will allow the Council to be informed about impacts of aircraft activities from all Perth metropolitan airports that may impact on residents of the City.

**POLICY IMPLICATIONS**

Nil

**ALTERNATE OPTIONS AND THEIR IMPLICATIONS**

The alternative option is not to join the Group which may result in the Council not being informed about aircraft and airport activities.

**CONCLUSION**

The assessed benefits of involvement with the Perth Airports Municipalities Group and links held by the Group to other levels of Government provide an opportunity for the City to provide comment on matters relevant to the Melville community.

**C08/5018 – MEMBERSHIP TO PERTH AIRPORTS MUNICIPALITIES GROUP (REC)**

**OFFICER RECOMMENDATION (5018)**

**APPROVAL**

- 1. THAT THE CITY OF MELVILLE NOMINATE TO REJOIN THE PERTH AIRPORTS MUNICIPALITIES GROUP AND THAT THE COUNCIL DELEGATE BE HIS WORSHIP THE MAYOR.**
- 2. THAT COUNCIL NOMINATE COUNCILLOR (TO BE DECIDED) TO BE THE DEPUTY DELEGATE.**

General discussion took place regarding this item and officer recommendation.

His Worship the Mayor advised that he was happy to be the Council Delegate to the Group, however a deputy would be required and the deputy be nominated at the August 2008 Council meeting. It was noted that Cr Bennett has expressed an interest in airport matters in the past and in his absence be nominated for Deputy and that nomination be confirmed by him on his return from leave of absence.

**C08/5019 - COUNCIL MEETING CYCLE (AMREC) (ATTACHMENT)**

Item presented by	: Mr Marten Tieleman Director Customer and Corporate Services
Ward	: All
Category	: Operational
Subject Index	: Schedule of Meetings
Customer Index	: City of Melville
Disclosure of any Interest	: No Officer involved in the preparation of this report has a declarable interest in this matter.
Previous Items	: C06/6022 – Council Committee Structure – 18/7/2006 C06/5024 Occasional Committee and Portfolios – 19/09/2006
Works Programme	: Not Applicable
Funding	: Not Applicable
Responsible Officer	: Marten Tieleman Director Customer & Corporate Services

**AUTHORITY / DISCRETION**

	<u>Definition</u>
<input type="checkbox"/> Advocacy	<i>when Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input checked="" type="checkbox"/> Executive	<i>the substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets</i>
<input type="checkbox"/> Legislative	<i>includes adopting local laws, town planning schemes &amp; policies.</i>
<input type="checkbox"/> Review	<i>when Council review decisions made by Officers.</i>
<input type="checkbox"/> Quasi-Judicial	<i>when Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>

**C08/5019 - COUNCIL MEETING CYCLE (AMREC) (ATTACHMENT)****KEY ISSUES / SUMMARY**

Report proposes:-

- That the informal Portfolio Meetings be disbanded;
- That the current informal Council Workshop forums be utilised instead of Portfolios;
- That a four weekly Ordinary Council meeting cycle be adopted;
- That the Agenda Briefing Forum be retitled Ordinary Council Meeting Agenda Briefing and that it be held 1 week prior to the Council meeting instead of the current 2 weeks and it be chaired by the Deputy Mayor;
- That due to the informal Workshops consisting of information or education presentations by Council officers they be facilitated by the Chief Executive Officer.

**BACKGROUND**

Council reviewed the Standing Committee Structure in July 2006. The new structure disbanded the Community and Technical Services and the Development and Neighbourhood Amenity Standing Committees and introduced an Agenda Briefing Forum that was to occur on the second Tuesday of the month. The new Committee and meeting structure resulting from the review was implemented effective from 8 August 2006. The Agenda Briefing Forum has therefore occurred since August 2006. In addition to the Agenda Briefing Forum, there is a provision for two Standing Committees being the Financial Management, Audit, Risk and Compliance Committee and the Governance Committee. Both Committees have a Charter guiding their operation and functions.

Further refinements to that structure were introduced following another review in September 2006. This involved the deletion of various Occasional Committees and the implementation of a number of informal "Portfolios" being:

- 1 Community Planning
- 2 Planning and Development Services
- 3 Infrastructure and Operations
- 4 Financial Management, Audit, Risk and Compliance
- 5 Governance.

The Portfolios meet on Tuesday evenings on an as required basis. Specific Tuesdays in the months are therefore reserved to enable them to meet on a monthly basis or where five Tuesdays are available in any month, on two occasions in that month. The purpose of Portfolios is to bring information to Elected Members in a less formal environment than a Council Meeting. The current meeting timeframe is based on a calendar monthly cycle with the meeting cycle commencing from the first Tuesday in each month. The first Tuesday of each month is reserved for the Agenda Briefing Forum, the second Tuesday for a Council Workshop, the third Tuesday for the Ordinary Council Meeting and the fourth Tuesday for Portfolio meetings.

The meetings which are open to the public are the Agenda Briefing Forum and the Ordinary Council Meeting. Decision making by Council only takes place at the Ordinary Council meeting.

**C08/5019 - COUNCIL MEETING CYCLE (AMREC) (ATTACHMENT)**

This review questions whether there is a continuing need for Portfolios as the informal Council Workshops appear to fulfil the same purpose and this has created confusion about where items of information should be dealt with and also recommends a meeting cycle whereby the Ordinary Council meeting will be held once each four weeks with the Agenda Briefing Forum being moved to one week before the Ordinary Council Meeting.

**DETAIL**

Issues that have been identified with the current Committee, Portfolio and meeting structure and cycle include:-

- Confusion to Officers over whether to use the Portfolios or Workshops to present information to Elected Members;
- The need on occasion to hold 2 Portfolios on the same Tuesday evening which then causes concern and difficulties for Elected Members who wish to attend both;
- It was apparent that a high proportion of Elected Members desired to attend all Portfolios which then brings into question the need to separately identify them as such when the Workshops would provide the same result;
- The duplication of the Governance and Financial Management, Audit, Risk and Compliance Portfolios with the Committees of the same name and the lack of need for both a Portfolio and a Committee;
- Having 2 weeks between the Agenda Briefing Forum and the Ordinary Council Meeting whilst allowing time for additional information to be sought and added to reports created a lengthy period between when the report was explained and the decision finally made;
- As a result of the length of time between the Agenda Briefing Forum and the Ordinary Council meeting the close off for reports is in the previous month which results in reports that are written as at month end not being included in the Agenda at the time of the Agenda Briefing Forum.
- As a result of Council recess over January and only 1 Council meeting a month being held there are 11 Ordinary Council meeting i.e. decision making opportunities available unless special meetings are called. An additional Council meeting can easily be implemented without undue pressure on staff resources by moving to a Council meeting cycle in which a Council meeting is held once in each four weeks apart from the month of January when Council is in recess.

The Ordinary Council Meeting cycle of Perth metropolitan Local Government Authorities appear to range from a two week cycle to the existing monthly cycle. If a cycle which resulted in Council meeting each two weeks was to be adopted and Agenda Briefing Forums 1 week prior to each Ordinary Council Meeting maintained, other meetings and workshops would need to be held on an evening of the week other than Tuesday evening. It would also possibly require additional staffing resources to service the extra workload associated with the adoption of such a cycle. A three weekly Ordinary Council Meeting cycle would have similar impacts albeit to a lesser degree. The option of a four week cycle would provide an opportunity to bring matters to Council for decision a little sooner than the current monthly cycle without needing to reschedule other workshops and meetings and within current staffing resources. This change will also provide a benefit to Council's customers who wait for a decision before proceeding with significant development proposals and in the operational area where Council's decision is required for acceptance of tenders.

**C08/5019 - COUNCIL MEETING CYCLE (AMREC) (ATTACHMENT)**

An attachment showing the proposed meeting cycle has been prepared to inform Elected Members [5019 Calendar 2008.pdf](#) . It will be noted that specific dates have been set aside for the Financial Management, Audit, Risk and Compliance Standing Committee as the Charter/Terms of Reference of this Committee requires it to meet at least four times per annum. The Governance Committee is also required to meet at least four times per annum. A report proposing changes to the Charter will be presented to Council at a future time.

In order to resolve the above issues within existing resources this report proposes that:

1. The Ordinary Council Meeting cycle be changed to a four week cycle commencing on 9 September 2008 i.e. a Council meeting be held every four weeks.
2. That Agenda Briefing Forums occur in the week preceding the Ordinary Meeting of Council (rather than the current two weeks prior)
3. That the informal Workshop format replace all Portfolio Meetings and they continue to be conducted on as needs basis on Tuesday evenings when there is no Agenda Briefing Forum, Ordinary Council Meeting or Standing Committee meetings occurring.

The disadvantage of such a meeting cycle is that instead of there being a fixed Tuesday evening of the month on which Council meetings (currently the third Tuesday of each month) they would occur on different Tuesday evenings depending on the number of Tuesdays in each month.

Other than occurring one week instead of two weeks before the Ordinary Council Meeting, it is proposed that the Agenda Briefing Forums continue in their current format as determined by Council in July 2006 i.e..

That the Agenda Briefing Forum:-

1. Occur on the Tuesday evening 1 week prior to each Ordinary Council Meeting;
2. Be open to the public;
3. Be held in the Council Chambers (when Chambers can accommodate visual displays);
4. Be chaired by the Mayor or his/her delegate;
5. Be subject to the provisions of the Local Government Act 1995 and associated regulations in terms of public question time, deputations and the guidelines for "Agenda Briefing Forums" published by the Department of Local Government and Regional Development; and
6. Be conducted in accordance with the City of Melville Standing Orders Local Law 2003.

It is therefore proposed that the current Portfolios be disbanded and Workshops be used to present information to Elected Members in a workshop environment, with these occurring on an as needs basis on each Tuesday evening that is not required for an Agenda Briefing Forum, Ordinary Council, Special Council or Standing Committee Meeting.

**C08/5019 - COUNCIL MEETING CYCLE (AMREC) (ATTACHMENT)**

Additionally the provision of information to all Elected Members to inform them on matters relevant to the operations of the City or to provide background education on matters that will potentially come before Council, is a responsibility of the Chief Executive Officer. It is proposed that the Chief Executive Officer would facilitate Workshops. This will help ensure that it is clear that the Workshop is not a decision making forum, but one in which information or education is provided by the Chief Executive Officer, his Officers or other advisors. This arrangement would also provide an opportunity for all Elected Members to participate fully in Workshops. Matters that were previously taken to a Portfolio for information and discussion will be accommodated in the Workshop environment. As a number of different matters that may have required other Portfolio meetings to be called can be brought to a single Workshop, there is a potential saving in Elected Members' requirement to attend additional evening meetings or experience a clash of meeting times.

It is also proposed to maintain the current arrangements whereby all evening meetings commence at 6.30 pm and that meals continue to be provided to Elected Members and Officers required to attend the meetings, forums or workshops prior to the meeting.

**PUBLIC CONSULTATION/COMMUNICATION**

Council inform the public of its decision through the media, press releases and notices at the Civic Centre, Libraries and website.

**CONSULTATION WITH OTHER AGENCIES / CONSULTANTS**

Whilst no direct consultation has taken place with other agencies the views of the Department of Local Government and Regional Development as expressed in the Local Government Operational Guideline Number 05 relating to Council Forums operations and procedures have been taken into account in the preparation of this report.

**STATUTORY AND LEGAL IMPLICATIONS**

Section 5.3. Ordinary and Special Council Meetings of the Local Government Act 1995 provides that:-

- (1) A council is to hold ordinary meetings and may hold special meetings.
- (2) Ordinary meetings are to be held not more than 3 months apart.

Council must formally resolve by an absolute majority decision to amend its meeting schedule, any decision relating to the Agenda Briefing Forum and advertise the times and date for future meetings of Council and the Agenda Briefing Forum. Should Council resolve to adopt the proposed meeting cycle, Section 5.25(1) (g) of the Local Government Act 1995 requires that public notice of meetings is provided. The Local Government (Administration) Regulations 1995 require at Regulation 12(2), that the Local Government give local public notice of any change to advertised meetings date, time dates or place.



**C08/5019 - COUNCIL MEETING CYCLE (AMREC) (ATTACHMENT)****FINANCIAL IMPLICATIONS**

Other than the extra costs associated with preparing and printing one additional set of Agenda & Minutes each year, there are no direct financial implications if the proposal is implemented. Should a two or three weekly Ordinary Council Meeting cycle be adopted this would possibly require additional staff resources to be employed.

**STRATEGIC AND RISK MANAGEMENT IMPLICATIONS**

The proposed four week meeting cycle will bring matters to Council sooner than the current model. It is anticipated that a quicker turn around and decision on items will provide both strategic and risk management benefits.

The provision of information to inform and educate Elected Members in the proposed Workshop forum has the potential to increase the depth of knowledge for all Elected Members on each item before Council.

**POLICY IMPLICATIONS**

Amendments to procedures where appropriate that refer to either a meeting cycle or Portfolios will be made administratively.

**ALTERNATE OPTIONS AND THEIR IMPLICATIONS**

It is an option to continue with the current meeting cycle model and retain the existing Portfolios. In this event, a less effective process for the business of Council will continue and Elected Members will be expected to attend additional Portfolio meetings rather than a consolidated Workshop as proposed.

Additionally a more frequent cycle of Ordinary Council Meetings may be chosen which will have the effect of increasing the amount of decision making opportunities for Council, increase the timeliness of responses to customers awaiting Council decisions but will most probably require the additional of extra staff resources to service.

**CONCLUSION**

The proposed model of a Council Meeting occurring once each four weeks i.e. a four weekly Ordinary Council Meeting cycle, is intended to provide one more decision making opportunity for Council per annum, thus providing a shorter turn around time to customers waiting to take action and are depending on the results of a decision by Council. The use of the Workshop forum, which is facilitated by the Chief Executive Officer, is intended to provide a model that allows the full involvement of all Elected Members and to reduce the need for additional meetings required by the current Portfolio meeting structure.

**C08/5019 - COUNCIL MEETING CYCLE (AMREC) (ATTACHMENT)**

**OFFICER RECOMMENDATION (5019)**

**ABSOLUTE MAJORITY**

**THAT BY ABSOLUTE MAJORITY DECISION OF COUNCIL:**

- 1 THE ORDINARY COUNCIL MEETING CYCLE BE CHANGED TO A ONCE EACH FOUR WEEK CYCLE COMMENCING ON 9 SEPTEMBER 2008 EXCEPT FOR THE MONTH OF JANUARY WHEN COUNCIL WILL BE IN RECESS.**
- 2 THE ORDINARY COUNCIL MEETING AGENDA BRIEFING FORUMS OCCUR IN THE WEEK PRECEDING THE ORDINARY MEETING OF COUNCIL AND CHAIRED BY THE MAYOR OR HIS/HER DELEGATE.**
- 3 THE**
  - COMMUNITY PLANNING**
  - PLANNING AND DEVELOPMENT SERVICES**
  - INFRASTRUCTURE AND OPERATIONS**
  - FINANCIAL MANAGEMENT, AUDIT, RISK AND COMPLIANCE AND GOVERNANCE****PORTFOLIOS BE DISBANDED.**
- 4 INFORMATION PREVIOUSLY PRESENTED TO PORTFOLIO MEETINGS BE NOW PRESENTED TO THE WORKSHOP FORUMS.**
- 5 WORKSHOP FORUMS BE SCHEDULED TO OCCUR ON AS NEEDS BASIS ON ANY TUESDAY EVENINGS THAT ARE NOT REQUIRED FOR ORDINARY MEETINGS OF COUNCIL, ORDINARY COUNCIL MEETING AGENDA BRIEFINGS OR MEETINGS OF STANDING COMMITTEES.**
- 6 WORKSHOP FORUMS BE FACILITATED BY THE CHIEF EXECUTIVE OFFICER.**
- 7 THAT IN ORDER TO INFORM THE COMMUNITY ALL CHANGES TO COUNCIL'S MEETING CYCLE BE ADVERTISED.**

**General discussion took place regarding this item and officer recommendation.**

**T08/2000 - WIRELESS HILL BUSHLAND MANAGEMENT PLAN (REC) (ATTACHMENT)**

Disclosure of Interest

Item No.	T08/2000
Officer	Cr Everett
Type of Interest	Interest under Code of Conduct 8.2.8
Nature of Interest	Proximity Interest
Request	Stay
Decision of Council	Not Applicable

**At 9.27pm having declared an interest in this item Cr Everett chose to stay and requested that His Worship the Mayor take the position of Chair for the duration of this item.**

**At 9.27pm His Worship the Mayor took the position of chair for the meeting.**

Item presented by	: Mr Ian Davis Manager Infrastructure Services
Ward	: Applecross/Mount Pleasant
Category	: Policy
Subject Index	: Environment
Customer Index	: Wireless Hill
Disclosure of any Interest	: No Officer involved in the preparation of this report has a declarable interest in this matter.
Previous Items	: T08/2000
Works Programme	: 2008/09 to 2012/13
Funding	: Operational : \$264,387 over 5 years Capital: \$144,700 over 5 years
Responsible Officer	: Ian Davis Manager Infrastructure Services

**AUTHORITY / DISCRETION**

	<u>Definition</u>
<input type="checkbox"/> Advocacy	<i>when Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input checked="" type="checkbox"/> Executive	<i>the substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets</i>
<input type="checkbox"/> Legislative	<i>includes adopting local laws, town planning schemes &amp; policies.</i>
<input type="checkbox"/> Review	<i>when Council reviews decisions made by Officers.</i>
<input type="checkbox"/> Quasi-Judicial	<i>when Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>

**T08/2000 - WIRELESS HILL BUSHLAND MANAGEMENT PLAN (REC) (ATTACHMENT)****KEY ISSUES / SUMMARY**

- As part of the natural resource inventory staff have developed management plans for all priority one bushland areas. These management plans aim to provide a summary of existing features and issues in natural areas and provide recommendations for management in the future.
- A Bushland Management Plan for Wireless Hill Reserve in Ardross has been written by staff at City of Melville.

**BACKGROUND**

Wireless Hill Reserve has had two previous management plans – one written and approved in 1985 and one in 1999. Revision of the current management plan is overdue and the new plan will direct the maintenance and capital works for the reserve for the next five years.

**DETAIL**

This plan [2000 August 2008.pdf](#) has been produced to undertake active management of the bushland in this reserve with the aim to improve and protect the area for the future. The plan presents a summary of:

- Soil Types;
- Topography;
- History;
- Physical Environment;
- Existing Vegetation Condition;
- Tree Management;
- Current Weeds Present;
- Native and Introduced Fauna;
- Fire Management;
- Erosion;
- Vandalism and Security;
- Access and Track Management; and
- Environmental Education and Community Involvement.

Management recommendations that are consistent with the vision for the management of natural areas within the City of Melville were formed using this information to enhance and protect the bushland remaining at this site. Several of the major recommendations include:

- The Fencing of the Perimeter of the Whole Reserve;
- Weed Management Techniques and Recommendations;
- Fire Management Recommendations;
- Signage and Education;
- Feral Animal Control; and
- Support and Communication with the Friends Group.

**T08/2000 - WIRELESS HILL BUSHLAND MANAGEMENT PLAN (REC) (ATTACHMENT)**

See the attached copy of the Draft Wireless Hill Bushland Management Plan 2008 for specific details.

**PUBLIC CONSULTATION/COMMUNICATION**

Public consultation is part of the decision making process. This plan was released in a draft form for public comment from Tuesday, 8 April 2008 to Tuesday, 20 May 2008. Copies of the plan were available for review at the City of Melville, local libraries and digitally on the City of Melville's website. Specific draft copies were forwarded to interested neighbours in Applecross, Ardross, Booragoon and Alfred Cove.

Once the submission period closed, all comments were assessed as to their appropriateness for inclusion in the final management plan. One submission was received from the Friends of Wireless Hill. This submission was reviewed and the relevant changes were incorporated into this version of the management plan. Appendix 11 in the Management Plan provides a summary of the submission and relevant changes.

The Friends of Wireless Hill were consulted on key issues in the development of this draft.

**COMMENT**

The plan was released for public comment for a period of six weeks. This process allowed for more community input prior to the plan being finalised. The long-term implications of allowing the community an opportunity to comment are that it will ease future management, encourage support from volunteer organisations and ensure a smooth transition from development of the plan to implementation. Allowing for a community consultation process also prevents future discrepancies in management undertaken by the Council once the plans are finalised.

Once adopted by the Council the Draft Wireless Hill Bushland Management Plan will form a comprehensive work plan for this bushland over the next five years.

**STATUTORY AND LEGAL IMPLICATIONS**

Nil

**FINANCIAL IMPLICATIONS**

	<b>2008/09</b>	<b>2009/2010</b>	<b>2010/2011</b>	<b>2011/2012</b>	<b>2012/2013</b>
<b>Operating</b>	\$51,300	\$52,050	\$52,838	\$53,665	\$54,534
<b>Capital</b>	\$97,200	\$10,600	\$8,700	\$20,200	\$8,000

There is sufficient funding within the operating and capital budgets of Environmental Services to cover the costs of the management plan.

**T08/2000 - WIRELESS HILL BUSHLAND MANAGEMENT PLAN (REC) (ATTACHMENT)****STRATEGIC AND RISK MANAGEMENT IMPLICATIONS**

The implications for not implementing this management plan would include a lack of direction in planning to manage the bushland. Bushland condition would deteriorate due to lack of control of weed species and costs for remediation in the future would increase. Without a management plan the assets in the Reserve would deteriorate due to lack of regular maintenance resulting in the need for further capital works to replace or repair items.

The bushland management plan directs the most effective way of managing the reserve with the funds and resources available. The bushland management plan also helps direct the actions of community groups involved in protecting and preserving bushland reserves. The existence of a current management plan also assists the Council and community groups in applying for funding for natural resource management projects within the reserve.

**POLICY IMPLICATIONS**

*Vision 3: A City of people leading healthy lifestyles and enjoying access to a variety of natural and structured leisure and community service opportunities which meet their needs.*

*Vision 4: A City where the natural environment is preserved and the actions of today are taking account of the consequences for tomorrow.*

*Vision 4.1: Develop, implement and review management plans that help restore and preserve the natural assets in the City of Melville.*

**CONCLUSION**

The Draft Wireless Hill Bushland Management Plan (2008) sets out the management directions and actions for the preservation and restoration of the Reserves remnant bushland for the next five years. It reviews the previous management plan actions and implementation and details the current threats to the bushland. The Management Plan makes recommendations about the management of the bushland in the Reserve and links those recommendations to both maintenance and capital works budgets. Public comments have been received. The Management Plan will be used by City of Melville staff to undertake maintenance and capital works programmes over the next five years.

**OFFICER RECOMMENDATION (2000)****APPROVAL**

**THAT THE WIRELESS HILL BUSHLAND MANAGEMENT PLAN – AUGUST 2008  
[2000 AUGUST 2008.PDF](#) BE ADOPTED.**

It was requested by Council that the Manager Infrastructure Services circulate to Elected Members photographs of the style of the proposed fence, prior to August 2008 Council Meeting.

General discussion took place regarding this item and officer recommendation.

At 9.31pm Cr Everett resumed position as Chair of the meeting.

**9. CLOSURE**

There being no further business, the Presiding Member declared the forum closed at 9.32pm.