# CITY OF ARMADALE

# A G E N D A

OF **DEVELOPMENT SERVICES COMMITTEE** TO BE HELD IN THE **COMMITTEE ROOM**, ADMINISTRATION CENTRE, 7 ORCHARD AVENUE, ARMADALE ON **MONDAY, 11 JANUARY 2005**, AT **7:00 PM.**

*A meal will be served at 6:15 pm*

**PRESENT:**

**APOLOGIES:**

**OBSERVERS:**

**IN ATTENDANCE:**

## *DISCLAIMER*

The Disclaimer for protecting Councillors and staff from liability of information and advice given at Committee meetings to be read by the Chairman.

## *DECLARATION OF MEMBER'S INTERESTS*

## *QUESTION TIME*

*Minimum time to be provided – 15 minutes (unless not required)*

## *CONFIRMATION OF MINUTES*

**RESOLVED**

**Minutes of the Development Services Committee Meeting held on 13 December 2004, be confirmed.**

Moved Cr _____
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## *ITEMS REFERRED FROM INFORMATION BULLETIN – ISSUE No.1/2005*

The following items were included for information in the "Development Services Strategy section" –

*If any of the items listed above requires clarification or a report for a decision of Council, this item is to be raised for discussion at this juncture.*

# DEVELOPMENT SERVICES COMMITTEE

## INDEX

**11 JANUARY 2005**

# DEVELOPMENT SERVICES COMMITTEE

# BUILDING

# DEVELOPMENT SERVICES COMMITTEE

# HEALTH

## *LOCAL LAWS*

| | | |
|---|---|---|
| WARD | : | ALL |
| FILE REF | : | LAW/13 |
| DATE | : | 15 December 2004 |
| REF | : | PM |
| RESPONSIBLE MANAGER | : | HSM |

**In Brief:-**

- Council resolved on 18 October 2004 to advertise for public comment, as required by the *Local Government Act 1995*, the proposed *City Of Armadale Environment, Animals and Nuisance Amendment Local Laws 2005.*
- Advertising has been completed and 18 submissions have been received.
- Recommendation that the local laws, subject to minor amendments to the original draft, be adopted.

### Tabled Items

Nil.

### Officer Interest Declaration

Nil.

### Strategic Implications

Nil

### Legislation Implications

Power to make local laws provided under the *Local Government Act 1995*.

### Council Policy / Local Law Implications

The *City of Armadale Environmental Health Plan 2003-8* includes an annual review, in July of each year, of local laws within the Health Department's jurisdiction to ensure continuing relevance and consistency with other laws. Amendments are proposed to the *City of Armadale Environment, Animals and Nuisance Local Laws 2002*

### Budget / Financial Implications

Provision has been made in the 2004-5 Budget for advertising of amendments.

### Consultation

Ranger Services
Bush Fire Advisory Committee
City of Gosnells
Fire and Emergency Services Authority.

**BACKGROUND**

At its meeting of 18 October 2004 Council resolved to advertise for public comment, as required by the *Local Government Act 1995*, draft amendments to the *City of Armadale Environment, Animals & Nuisance Local Laws 2002*. The proposed amendments aim to address an anomaly in the existing local laws with respect to the keeping of animals in rural zones, maintain the amenity of the area known as the Araluen Estate, reduce the incidence of burning and its consequent pollution and smoke nuisance in residential areas and correct a typographical error.

**COMMENT**

The proposal was advertised in *The West Australian* and the *Comment News*, and a "flyer" publicising and seeking comment upon the proposed burning provisions particularly was distributed to residents of Mt Richon, Mt Nasura, Kelmscott hills areas and Roleystone through *The Examiner*.

**ANALYSIS**

Eighteen submissions were received, including one from the Department of Local Government (on behalf of the Minister) suggesting minor changes to the preamble, that suggestion being reflected in the draft now recommended for adoption. Of the remainder, fifteen referred to the proposed burning provisions (seven against and seven in favour, with one indicating qualified support) and two to the proposed prohibition on the keeping of cats in the Araluen Estate. Both submissions relating to cats were from residents of the Estate, those objecting to the burning provisions were from Kelmscott (2), Mt Nasura (1) and Roleystone (4) with those in support being from Mt Nasura (2) and Roleystone (5) and qualified support from Kelmscott (1). A summary of the main points raised within the submissions and comments upon them are set out in the table below.

| **1. Submissions objecting to prohibition on the keeping of cats in Araluen Estate (Total number of submissions – 2)** | | |
|---|---|---|
| **Issue** | **N$^{o}$ of submissions mentioning** | **Comment** |
| The covenant that the local law purports to replace does not prohibit the keeping of cats on the Estate but rather requires that they be desexed, identified with a collar and tag and have two bells attached. | 2 | This is quite correct and the original proposal was in error. The version now recommended has been amended to reflect covenant provisions. |

**2. Submissions objecting to proposed burning provisions.**
**(Total number of submissions – 7)**

| Issue | N° of submissions mentioning | Comment |
|---|---|---|
| Requiring permits prevents burning when perfect weather conditions arise. Restricting them to a specified day is not practicable because weather conditions may prevent burning at that time. | 3 | "Spontaneous" burning is not considered necessary, in the wetter months particularly. In current practice, alteration of the approved burning date when weather conditions have prevented burning occurs with respect to permits issued under the Bushfires Act, and the permit form constituting part of the proposal has been amended to facilitate a similar approach. |
| If burning is "banned" Council will need to provide more tip passes and green waste collections (monthly garden bag collections suggested by one submission) in rural-residential areas. Street verge collection for leaves, gumnuts etc is not practicable. | 6 | The proposal does not seek to "ban" burning but rather to control it to ensure that it is the means of last, rather than first, resort and that it is used only for genuine fuel reduction reasons.<br><br>Council (through City Strategy Committee) is currently reviewing its position with respect to fees for green waste disposal. |
| Transporting to waste disposal sites not an option for some due to cost, time constraints on individuals, inadequate opening hours of the Roleystone site, lack of suitable vehicles, etc. | 5 | Again, the proposal seeks to make burning the means of last resort for fuel reduction. It is not envisaged that permits would be withheld where an alternative means is clearly not practicable. |
| Advance notice of the scheduling of green waste collections is not adequate to facilitate full usage. | 1 | Accurate advance notification of green waste collections is dependent upon progress with preceding areas and so long term notice is not possible. |
| Rubbish bins are not big enough to accommodate disposal of garden refuse in hills areas. | 4 | This was only one of a number of alternative means available. It is not intended that permits would be withheld where an alternative means is clearly not practicable. |
| Most dangerous pollutants in terms of health risk are diesel and other fossil fuel emissions and Council should consider a ban on diesel vehicles. | 2 | Accepted, but this issue is outside of the scope of the proposed amendments. The recommendations arising from the Report of the Parliamentary Select Committee on Perth's Air Quality and directly related to reduction in vehicle emissions were directed at the State Government and industry rather than local government. |

| Issue | N° of submissions mentioning | Comment |
|---|---|---|
| Burning is the most efficient means, in terms of time and money, of disposal of the quantity of additional waste vegetation generated on the larger lots in the hills areas. | 2 | This may be the case but it is widely accepted that there are costs associated with improving urban air quality. |
| Introduction of the purposed local laws will deter residents from maintaining their properties in a manner that will minimise fire risk. Council should do nothing to discourage residents from reducing fuel load. | 3 | It is to be hoped that such is not the case because residents have obligations under the Bushfires Act and the proposals seek only to limit burning to those circumstances in which fuel reduction is an issue and there are no other reasonable means. |
| Wood smoke has nothing to do with pollution and has no long term effect as plants reabsorb the smoke. | 1 | This is simply not the case. Studies nationwide have found that wood smoke has a major negative effect on urban air quality, it having up to three times the impact of vehicle emissions during the winter months in some places, and it is a significant contributor to ill health. |
| Most smoke pollution is caused by CALM. | 2 | It is not possible to quantify the relative extent of contribution to urban haze caused by CALM controlled burns, back yard burning or wood fired heaters. Although Council cannot control the activities of CALM it has made its position clear to that organisation, and has examined the practicalities of control over solid fuel heaters. |

**3. Submissions offering qualified support to proposed burning provisions. (Total number of submissions – 1)**

| Issue | N° of submissions mentioning | Comment |
|---|---|---|
| Prohibition on burning will work well in higher density urban areas. | 1 | Agreed. |
| Consideration should be given to redistribution of tip passes so that people in higher density areas get less than four passes with those living in semi rural areas get more. | 1 | Council (through City Strategy Committee) is currently reviewing its position with respect to fees for green waste disposal. |
| Caring residents who take responsible, environmentally sound measures in looking after their land and minimising fire risk should not be denied a permit when it is needed. | 1 | The proposals seek only to limit burning to those circumstances in which fuel reduction is an issue and there are no other reasonable means. |

**4. Submissions supporting proposed burning provisions.**
**(Total number of submissions – 7)**

| Issue | N$^{o}$ of submissions mentioning | Comment |
|---|---|---|
| Every request for a permit should be physically checked by an officer to ensure that burning is absolutely necessary. Permits should be issued as the exception rather than the rule. | 2 | Staff resources are not adequate to physically check every burning permit application. The onus will rest on the applicant to truthfully answer the questions in the application form and it is intended that random checks will be made. |
| There should be a total ban on back yard burning in residential areas as there is in some other local government districts. No permits should be issued for land under 4,400 $m^2$ in area as mowing is an option. | 3 | Extensive consultation with FESA and the local Bush Fire Brigades in development of the proposal has confirmed that, given the fire prone nature of localities such as Roleystone, it is not practicable to totally prohibit back yard burning. Granting of permits is intended only when the required criteria are deemed to have been met and the purpose of the burning is genuine fire hazard reduction, as opposed to a de facto means of refuse disposal. |
| Enforcement should be rigorous. | 4 | It is envisaged that officer will work towards achieving a cultural change, with offences such as making a false statement on an application, burning without a permit or burning other than in accordance with the conditions of a permit resulting in the first instance in a formal warning, in the case of a second offence by issue of an Infringement Notice imposing a modified penalty and consideration of prosecution of the offence through the Courts only in the event of third or subsequent offences. |
| Fire should be attended until out. | 1 | Agreed. An amendment has been made to the Permit Form within the version of the proposed amendment forming the recommendation reflecting this requirement. |
| A list of Permits issued should be placed on the web site or a dedicated phone line provided so that people can always check whether a fire is legitimate. | 4 | Listing of permits on the web site may be an option in the future. At present it is difficult to quantify the work load impact of the proposed local law changes. |
| Notifying neighbours of intended burning is not adequate because the effects of smoke drift are sometimes wide spread. | 2 | Agreed, but extension of an obligation to notify beyond the immediate neighbourhood is hardly practicable. |

**OPTIONS**

Options open to Council are:

1. Adopt the Amendment Local Laws in the form recommended.

2. Amend the recommended draft to retain the existing burning provisions, except for the correction of some anomalies in subclause 49(2) by deleting Clause 7 from the proposed Amendment Local Laws and substituting it with:

"**Clause 49 deleted and substituted**

7 Clause 49 of the principal local laws is amended by deleting subclause (2) and substituting it with:

(2) An owner or occupier of land in an industrial zone may set fire to refuse or rubbish in an incinerator located on that land provided that:

(a) the incinerator's emission levels have been certified by a laboratory accredited by the National Association of Testing Authorities as meeting the standards specified within Tables 1 and 2 of the latest version of the document entitled National Guidelines for Control of Emission of Air Pollutants from New Stationary Sources, first published by the Commonwealth Government in 1985 and amended from time to time;
(b) the use of the incinerator has been approved by the Council, subject to such other conditions as it considers appropriate;
(c) the incinerator is used strictly in accordance with the approval referred to in paragraph (b); and
(d) the material that is burnt will not result in the emission of gases or vapours in such quantities or of such nature as to be likely to have an adverse effect upon the environment or human health.

**CONCLUSION**

Other than those areas indicated, namely the preamble, the restrictions upon the keeping of cats in the Araluen Estate, (Clause 5) and inclusion of the facility to alter the permitted time and date of burning, together with the provision that a fire must be attended at all times (Clause 8, Schedule 8B), submissions received are not considered to have presented a compelling case for change to the draft of the *City of Armadale Environment, Animals & Nuisance Amendment Local Laws 2005* from that put before Council last October. Option 1 is therefore recommended.

**RECOMMEND**

**That under the powers conferred by the *Local Government Act 1995* and all other powers enabling it, the Council of the City of Armadale resolves to make the following local laws:**

***Citation***

**1 These Local Laws may be cited as the *City Of Armadale Environment, Animals and Nuisance Amendment Local Laws 2005.***

***Principal Local Laws***

**2 In these Local Laws, the *City Of Armadale Environment, Animals And Nuisance Local Laws 2002* (published in *Government Gazette* (Special) No. 36 of 1st March, 2002 and amended in *Government Gazettes* 190 of 22nd Oct 2002 and 174 of 4th November 2003) are referred to as the principal local laws.**

***Clause 3 amended***

**3 Clause 3 of the principal local laws is amended by:**

**(a) inserting immediately after the definition of "building site" the definition "'bush' has the same meaning as is given to it in *the Bush Fires Act 1954";***
**(b) inserting immediately after the definition of "refuse" the definition "'residential zone' means and includes any area zoned 'Residential' or 'Special Use' under the City's Town Planning Scheme; and**
**(c) deleting the definition of "rural zone" and inserting in its place "'rural zone' means and includes any area zoned 'Agricultural Protection', General Rural', or Rural B, C, D, E or X, with or without numerical suffixes, under the City's Town Planning Scheme.**

***Clause 30 amended***

**4 Clause 30 of the principal local laws is amended by deleting from the words "other than in a rural zone" and replacing them with the words "other than where animals are kept in a rural zone in accordance with the City's Town Planning Scheme or under authority of a development approval under the *Town Planning and Development Act 1928*".**

***Clause 38 amended***

**5 Clause 38 of the principal local laws is amended in sub clause (3) by deleting paragraphs (a) and (b) and replacing them with:**

**"(a) cat; unless it is:**

**(i) desexed; and**

**(ii) fitted with a collar to which are attached at least two bells and a tag bearing the name, address and telephone number of the animal's owner;**

**(b) horse; or**

**(c) other farm animal or poultry for commercial purposes."**

***Division 4 added to Part 3***

**6 Part 3 of the principal local laws is amended by adding immediately following Division 3 the following new Division:**

**"Division 4 – Special Water Conservation Provisions**

***Prohibition on the sinking of wells or bores in specified area***

**45A Within the area described in the City's Town Planning Scheme Nº 2 as Special Use Zone 66, and shown shaded in Schedule 11, no person shall sink any water bore or well, other than for the purpose of providing water to the golf course."**

***Clause 49 deleted and substituted***

**7 Clause 49 of the principal local laws is deleted, and the following new Clause 49 inserted in its place:**

**"49 (1) Nothing in this Clause shall be construed as being in derogation of the *Bush Fires Act 1954* or any regulations or local laws made there under, and if there is any inconsistency between the provisions of this Clause and that Act or its regulations or local laws, the provisions of the Act prevail to the extent of the inconsistency.**

**(2) Except when specifically authorised to do so for purpose of fuel reduction by a bush fire control officer appointed by Council under the provisions of the *Bush Fires Act 1954*, an owner or occupier of land shall not set fire to, or cause or allow to be set on fire, any bush, rubbish or refuse whatsoever on that land:**

**(a) on a Sunday or a day that is a public holiday; or**

**(b) except as provided in this Clause.**

**(3) An owner or occupier of land in an industrial zone may set fire to refuse or rubbish in an incinerator located on that land provided that:**

**(a) the incinerator's emission levels have been certified by a laboratory accredited by the National Association of Testing Authorities as meeting the standards specified within Tables 1 and 2 of the latest version of the document entitled *National Guidelines for Control of Emission of Air Pollutants from New Stationary Sources,* first published by the Commonwealth Government in 1985 and amended from time to time;**

**(b) the use of the incinerator has been approved by the Council, subject to such other conditions as it considers appropriate;**

**(c) the incinerator is used strictly in accordance with the approval referred to in paragraph (b); and**

**(d) the material that is burnt will not result in the emission of gases or vapours in such quantities or of such nature as to be likely to have an adverse effect upon the environment or human health.**

**(4) The owner or occupier of land upon which there is an incinerator the use of which has been approved by the Council pursuant to subclause (3)(b) shall ensure either that:**

**(a) the incinerator is certified:**

**(i) annually by the manufacturer as operating to the manufacturer's recommended specifications; and**

**(ii) each five years in accordance with subclause (3)(a)and that in each case a copy of the laboratory's or manufacturer's certificate is forwarded to the Council's Managing or Principal Environmental Health Officer, to reach him or her within fourteen days of the relevant anniversary of the approval date; or**

**(b) if other certification is required under an alternative emission assurance regime stipulated in writing by the Council as a condition of its approval, that certification is provided by the dates specified within the approval conditions; and**

**(c) dark smoke is not emitted for in excess of five minutes in any period of one hour.**

**(5) If an owner or occupier fails to comply with the requirements of subclause (4) or any other conditions of approval for use that have been imposed by the Council under the provisions of subclause (3), the Council may in writing withdraw its approval.**

**(6) Except as provided in sub clause (3) an owner or occupier of a lot of land whose area does not exceed 1,200 square metres shall not set fire to, or cause or allow to be set on fire, any bush, rubbish or refuse whatsoever on that land.**

**(7) An owner or occupier of land in a rural zone shall not set fire to, or cause or allow to be set on fire, any bush, rubbish or refuse on that land, in an incinerator or on the ground, whether under authority of a permit to do so issued under the *Bush Fires Act 1954* or outside the period when such permit is required, if:**

**(a) the material to be burnt -**

**(i) includes any plastic, rubber, food scraps, wet or green garden materials or other material which is likely to cause the generation of smoke or odour in such quantity as to cause a nuisance to any other person; or**

**(ii) is of such quantity or nature as to be suitable for removal by the Council's refuse collection services; or**

**(b) there are other practicable means of disposal.**

**(8) An owner or occupier of land in a residential zone that is not a lot to which sub clause (6) applies shall not set fire to, or cause or allow to be set on fire, any bush, rubbish or refuse on that land, whether in an incinerator or on the ground, unless he or she has been issued with a permit to do so under the *Bush Fires Act 1954* or these local laws.**

**(9) An application for any permit to set fire to any bush, rubbish or refuse under the *Bush Fires Act 1954* or these local laws shall be in the form prescribed by Schedule 8A.**

**(10) An owner or occupier of land in a residential zone who applies for a permit under the *Bush Fires Act 1954* or these local laws shall, in support of that application, truthfully:**

**(a) complete the application form; and**

**(b) answer such other questions and complete such declarations as an authorised person may from time to time require to satisfy himself or herself that issue of a permit will not result in contravention of the provisions of sub clause (12).**

**(11) A permit under these local laws shall be in the form prescribed by Schedule 8B, and may be issued by an authorised person who is satisfied that no contravention of the provisions of this Clause will arise as a consequence of such issue, and may be subject to such additional conditions as the authorised person believes necessary to ensure that no such contraventions will arise.**

**(12) A permit issued under these local laws may be revoked by an authorised person by giving notice to the holder of the permit in the form prescribed by Schedule 8C if the authorised person is satisfied that:**

**(a) the permit was issued wholly or partly as a consequence of a false statement or false statements made in, or in association with, the application;**

**(b) contravention of the provisions of this Clause or the conditions of the permit has occurred; or**

**(c) contravention of the provisions of this Clause or the conditions of the permit would occur if setting fire to any bush, rubbish or refuse in accordance with the permit were allowed to take place**

**provided that the notice must clearly state the reason or reasons for the revocation of the permit.**

**(13) An owner or occupier of land in a residential zone who has been granted a permit under the *Bush Fires Act 1954* or these local laws shall not set fire to, or cause or allow to be set on fire, any bush, rubbish or refuse on that land, whether in an incinerator or on the ground if:**

**(a) the material to be burnt -**

**(i) includes any plastic, rubber, food scraps, wet or green garden materials or other material which is likely to cause the generation of smoke or odour in such quantity as to cause a nuisance to any other person; or**

**(ii) is of such quantity or nature as to be suitable for removal by the Council's refuse collection services; or**

**(b) there are other practicable means of removal or disposal, whichever is applicable.**

**(14) An owner or occupier of land in a residential zone who has been granted a permit under the *Bush Fires Act 1954* or these local laws shall, at least 24 hours before setting fire to, or allowing to be set on fire, any bush, rubbish or refuse on that land, notify the occupiers of all properties adjoining the land upon which burning is to take place of his or her intention so to do.**

**(15) Burning shall not take place during any period for which the Western Australian Bureau of Meteorology has issued an air dispersion or haze alert."**

**Schedules 8A, 8B and 8C added**

**8 Immediately following Schedule 8, the following new Schedules 8A, 8B and 8C are added:**

**Clause 49(9)**

**Schedule 8A**
**City of Armadale**
**Local Government Act 1995**

**Application for permit to set fire to bush, rubbish or refuse in a residential zone**

**NB: The City of Armadale strongly discourages burning in residential areas. A permit will be issued only when other options are not practicable and when burning is necessary for fire hazard prevention or reduction. Refusal by the City to issue a permit does not negate the landowner's responsibilities under the provisions of the *Bush Fires Act 1954*.**

| | | | | | |
|---|---|---|---|---|---|
| **Given Names** | | | **Family Name** | | |
| **Address** | | | | | |
| **Post Code** | | **Home telephone** | | **Work telephone** | |
| **Address of the land where burning is proposed** | | | **Lot Nº** | **St Nº** | |
| **Street** | | | **Suburb** | | |
| **Is there a house on the land?** | **Yes/No** | **Area of lot** | | | **m2** |
| **Is the material to be burnt entirely standing vegetation?** | | | | **Yes/No** | |
| **If so, have alternatives (eg slashing, mowing etc) been considered?** | | | | **Yes/No** | |
| **Please explain why these are not suitable or practicable** | | | | | |
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| **If the material to be burnt is not entirely standing vegetation, please describe it** | | | | | |
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| | | | | | |
| **Have alternatives (eg: mulching, use of Council's green waste collection, disposal in your rubbish bin, carting to Council's waste sites etc) been considered?** | | | | **Yes/No** | |
| **Please explain why these are not suitable or practicable** | | | | | |
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| | | | | | |
| **Estimated volume of material** | **m3** | **Date of proposed burn** | | | |
| **Approximate time** | **am/pm** | **Anticipated duration** | | **hrs** | |
| **What measures will be taken to minimise the potential for pollution or nuisance?** | | | | | |
| | | | | | |
| | | | | | |

**I understand that the material to be burned may be inspected by a Council officer and that:**

- **making a false statement in connection with this application;**
- **burning any plastic, rubber, food scraps, green or wet garden waste or other material likely to cause smoke or odour in such quantity as to cause a nuisance to any person; or**
- **burning during any period for which the Western Australian Bureau of Meteorology has issued an air dispersion alert**

**are offences that may lead to an Infringement Notice imposing a modified penalty being issued against me or my prosecution.**

| | | | |
|---|---|---|---|
| **Signature** | | **Date** | |

**Clause 49(11)**

**Schedule 8B**
**City of Armadale**
**Local Government Act 1995**

**Permit to set fire to bush, rubbish or refuse in a residential zone**

**Subject to the *City of Armadale Environment, Animals and Nuisance Local Laws 2002*, the provisions of the *Bush Fires Act 1954* and any regulations or local laws made there under and to the due observance of the conditions endorsed on this approval permission is hereby granted to:**

| | | | | | |
|---|---|---|---|---|---|
| **Given Names** | | **Family Name** | | | |
| **Address** | | | | | |
| **to set fire to material detailed in Application Nº at:** | | **Lot Nº** | | **St Nº** | |
| **Street** | | **Suburb** | | | |
| **on the** | **day of** | **2** | **at** | | **am/pm*.** |

**Note: An authorised person is not compelled to inspect an area or material to be burnt before issuing an approval to burn. The onus lies on the applicant not only to comply with the provisions of the Local Laws and the Bush Fires Act, but also to minimise pollution and ensure there is no danger of the fire escaping. The issue of this approval in no way affects that responsibility.**

**CONDITIONS & LOCAL LAWS TO BE OBSERVED**

1. **Only the material described in the application for a permit may be burnt, and it shall not include any plastic, rubber, food scraps, wet or green garden materials or other material which causes the generation of smoke or odour in such quantity as to cause a nuisance to other persons.**
2. **Occupiers of adjoining properties are to be notified at least 24 hours beforehand of the day and time that burning is planned.**
3. **No burning is permitted on Sundays or public holidays.**
4. **Burning may proceed only in weather conditions in which smoke drift is not likely to impact upon adjoining properties or streets in the area.**
5. **No burning may occur when there is an atmospheric inversion or haze alert current.**
6. **The permit holder must ensure that a responsible person attends the fire for the duration of the burn.**
7. **Burning time to be kept to a minimum.**

**OTHER CONDITIONS**

*** In the event that circumstances prevent burning on the specified date or time this permit may be amended to specify an alternative date and time upon telephone or verbal application to the issuing officer or other authorised person.**

| | | | |
|---|---|---|---|
| **Signature of Authorised Person** | | **Date** | |

**Clause 49(12)**

**Schedule 8C**
**City of Armadale**
**Local Government Act 1995**

**Revocation of a permit to set fire to bush, rubbish or refuse in a residential zone**

**Subject to the *City of Armadale Environment, Animals and Nuisance Local Laws 2002*, Permit Nº granted to*:***

| | | | | | | |
|---|---|---|---|---|---|---|
| **Given Names** | | | | **Family Name** | | |
| **Address** | | | | | | |
| **to set fire to material at** | **Lot Nº** | | **St Nº** | | **Street** | |
| | | | **Suburb** | | | |

**is hereby revoked.**

| **REASON(S) FOR REVOCATION** |
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|---|---|---|---|
| **Signature of Authorised Person** | | **Date** | |

**Schedule 14 amended**

**9 Schedule 14 to the principal local laws is amended by:**

**(a) inserting in the table immediately following the description of the offence against Clause 45(1) and its modified penalty the following:**

| | | |
|---|---|---|
| **45A** | **Sinking a bore or well other than for the purpose prescribed** | **250** |

**(b) inserting immediately following the description of the offence against Clause 49 ", other than burning in a residential zone without a permit"; and**

**(c) inserting in the table immediately following the description of the offence against Clause 49 and its modified penalty the following:**

| | | |
|---|---|---|
| **49(8)** | **Burning in a residential zone without having been issued with a permit** | **250** |
| **49(10)** | **Making a false statement on an application form or making a false declaration or statement in connection with an application for a permit** | **100** |

**(d) deleting the term "59(b)" appearing in last position in the column headed "Clause" and replacing it with "59(1)(b)".**

**** SPECIAL MAJORITY REQUIRED**

Moved Cr _____
Carried/Lost ( )

## *STATUTORY RESPONSIBILITY FOR APPROVAL OF RISK MANAGEMENT PLANS FOR LARGE PUBLIC EVENTS*

WARD : ALL

FILE REF : HLT/23

DATE : 20 December 2004

REF : PM

RESPONSIBLE MANAGER : HSM

**In Brief:-**

- The Department of Health has advised that the public buildings provisions of the Health Act require organisers of public events at which more than 5,000 attendees are expected to prepare a Risk Management Plan and submit it to local government for approval.
- It is not considered that the Act is clear on that issue, and the Health Services Manager has represented that point of view to the Department.
- Recommend that Council endorse the action taken by the Health Services Manager and direct him to continue to work with WALGA to resolve this matter.

### Tabled Items

Nil.

### Officer Interest Declaration

Nil.

### Strategic Implications

Strategic Plan:

Aim: to have in place the range of services to enhance the well being and safety of the community.

New Initiative: Facilitate initiatives to improve the safety and security of the community.

### Legislation Implications

Relates to the provisions of the *Health Act 1911* and the *Health (Public Buildings) Regulations 1992.*

### Council Policy / Local Law Implications

Nil.

### Budget / Financial Implications

Nil.

### Consultation

WA Local Government Association
Department of Health
Other Local Governments

**BACKGROUND**

In 2003 and early this year, the Department of Health (the Department) ran a series of seminars, some of which were attended by the City's Senior Environmental Health Officer, on the preparation and use of risk management plans for large public events. At these seminars the view was promoted that preparation of such plans by event organisers and their submission to and approval by local government was mandatory for events expected to be attended by more than 5,000 people.

This view was predicated upon:

- Section 173 of the *Health Act 1911* (the Act) which defines a public building as:
  (a) a building **or place** or part of a building **or place** where persons may assemble for
    (i) civic, theatrical, social, political or religious purposes;
    (ii) educational purposes;
    (iii) entertainment, recreational or sporting purposes; and
    (iv) business purposes;
  (b) any building, structure, tent, gallery, enclosure, platform **or other place** or any part of a building, structure, tent, gallery, enclosure, platform **or other place** in or on which numbers of persons are usually or occasionally assembled;
- Section 176 of the Act, which requires that any person proposing to **construct, extend or alter** a public building shall make application for that purpose to the local government;
- Regulation 4(2) of the *Health (Public Buildings) Regulations 1992* (the Regulations) which states that an application for the purposes of section 176 of the Act that is in respect of a building or place or part of a building or place where 5 000 or more persons may assemble for religious, entertainment, recreational or sporting purposes (but, for reasons which appear to defy logic, not for civic, theatrical, social, political, educational or business purposes, those uses also being included within the definition at Section 173 of the Act) shall also be accompanied by a risk management plan that has been developed in accordance with AS/NZS 4360.

Despite the wording of the definition of "public building" in the Act, the contention that any gathering of (an anticipated) 5,000 or more people would require "an application for the purposes of Section 176 of the Act" (that is, constituted construction, extension or alteration of a public building) seemed at best tenuous, and raised concerns with respect not only to resource and competency issues but also at the attempted imposition upon local governments of duties not clearly articulated or defined by legislation. This seemed to have the potential to expose local governments to very serious legal liabilities.

Legal advice on the Department's interpretation of the Act was therefore sought. That advice was essentially that, although it may seem that by including the words "or place" in the definition of "public building", the way had been left open for a very broad definition, unrestricted to any form of physical structure or limit, principles of statutory construction would strongly suggest that the general words (eg: "or other place") must be limited to the same kind of "place" as the particular words (eg: building, structure, tent, gallery, enclosure, or platform), each of those words imparting notions of physicality/tangibility, leading to the conclusion that general words such as "or other place" must be read as also importing notions of physical structure. The advice detailed a number of areas of the Act as well as the Regulations that tended to support this interpretation.

On 29th September 2004 a document entitled *Guidelines for Concerts, Events and Organised Gatherings – September 2004* together with a covering letter requesting implementation was received from the Department. A reply was forwarded indicating that, on the basis of the City's legal advice as well as the tenuous contention that planning a gathering amounts to construction, extension or alteration of a public building, therefore requiring an application under Section 176 of the Act, it was not intended to either seek application, demand the supply of a Risk Management Plan or issue an approval for any event where there is not a clear legal requirement that that be done, although the City was quite willing to promote and publicise the Guideline document (should the occasion arise). It was made clear that the reason for the assumption of that position was because the City needs not only to ensure that it exercises its legal obligations but equally that it does not act outside of its authority and possibly issue approvals that it has no power to issue.

A reply was received over the signature of the Executive Director Public Health (EDPH) on 15th December. In essence, it argued that:

- *the Interpretation Act 1984*, in indicating what extrinsic material may be used in interpreting a provision of a written law, allows consideration of the speech made in Parliament by the Minister moving the Bill containing the provision;
- in order to facilitate some form of control over "rave parties", the State Government introduced the *Acts Amendment (Assemblies and Noise) Bill 1996*, and it was this that saw the words "or other place"; and
- in his Second Reading Speech, the Minister said "*Clause 4 of the Bill amends Section 173 to extend the definition of 'public building' to cover places other than buildings, structures, tents, galleries, enclosures or platforms. This amendment will provide for the regulation of events that are intended to be held at venues other than buildings*".

On those bases, the EDPH contended that the public buildings provisions of the Act and Regulations have application to places other than buildings.

While this advice was accepted (albeit reluctantly, given that, when seen in the context of the remainder of the relevant provisions, that interpretation seemed incongruous), the question of an application under Section 176 of the Act to construct, extend or alter a public building appeared to remain unanswered, the concept of constructing, extending or altering a mere 'place' (without reference to physical structure or form) making no sense at all.

The EDPH was therefore advised by letter on 15th December that the Health Services Manager remained of the view that existing legislative provisions do not effectively impose either a requirement for Risk Management Plans or a responsibility upon local governments to approve them, unless there are physical constructions, alterations or extensions to buildings involved. That being the case, local governments that were to demand submission of such Risk Management Plans and purport to approve them pursuant to the provisions of the Act and its Regulations may well be exposing themselves to great risk, and it was not intended at that time to either seek application, demand the supply of a Risk Management Plan or issue an approval for any event where there is not a clear legal requirement that that be done.

At the time of writing no reply to that letter has been received.

In the meantime, the Health Services Manager became aware that the Western Australian Local Government Association (WALGA) and forwarded detailed advice of his concerns and action taken to the responsible officer by email on 9th December. WALGA responded with advice that:

- the position taken by the City appeared to get to the heart of the issue;
- WALGA had correspondence from the Minister acknowledging that the current public building definition was unworkable and would be seeking further legal advice; and
- the work done by WALGA and the working group on public buildings remained with the EDPH and that a letter to her early in December asking her intentions at that stage remained unanswered.

**COMMENT**

While Council has, pursuant to Section 26 of the Act, authorised the Health Services Manager as its deputy, and in that capacity to exercise a range of powers and functions, including the public buildings provisions of the Act and the attendant Regulations, this does not affect the discharge by Council itself of those powers and functions.

Council is therefore free to determine a direction different from that taken to date by the Health Services Manager, and it is so that Council may be fully informed that the issues involved have been explained in relative detail.

**ANALYSIS**

There are two distinct aspects to this issue, these being:

- the role of local government as an operator of some public events (eg: the Minnawarra Festival); and
- the role of local government Environmental Health Officers) as a regulator, with specific responsibilities under the Act.

It is considered that, for reasons of conflict of interest, these two roles need to be kept quite separate and "at arm's length" from one another. This report, and the concerns and opinions expressed within it, relate solely to the regulatory role.

There is no issue taken with the need for properly devised risk management plans, which are arguably long overdue. In accordance with legal advice received, however, it is strongly believed that further legislative amendment is needed to remove any uncertainty. The subject matter is simply too important to allow that to remain. If Risk Management Plans (and other powers and controls) are desired for mere places, those powers and controls ought to be made separate and distinct (but in harmony with) public buildings legislation.

The underlying principle behind the argument to date has been one of legislative clarity. The law should simply clearly state what it means to say in a way that can be easily understood by those bound by it. A reading of the public buildings provisions of the Act and the Regulations would never be interpreted by a layman (or indeed, clearly, by at least some lawyers) as having the meaning attributed to them by the Department. WALGA shares this view. The basic problem is that an attempt has been made to amend laws to achieve ends that were never envisaged at the time of their promulgation.

On the other hand, enquiries have indicated that most local governments appear to be pursuing the course advocated by the Department.

**OPTIONS**

Council's options are:

1. Endorse the action taken by the Health Services Manager and direct him to continue to work with WALGA to resolve this matter.
2. Determine that it will accept the interpretation put upon Sections 173 and 176 of the *Health Act 1911* and Regulation 4(2) of the *Health (Public Buildings) Regulations 1992* by the Department of Health and direct that the Health services Manager take such action with respect to that legislation as promoted by the Department.

**CONCLUSION**

In light of:

- Council's own legal advice;
- the position taken by WALGA; and
- advice that WALGA says it has received from the Minister

Option 1 is seen as more sound and is recommended.

**RECOMMEND**

**1. That Council endorse the action taken to date by the Health Services Manager with respect to interpretation of Sections 173 and 176 of the *Health Act 1911* and *Health (Public Buildings) Regulations 1992*.**

**2. That the Health Services Manager continue to work with the Western Australian Local Government Association and the City's legal adviser to be certain that all regulatory actions taken with respect to these provisions by the City are legally sustainable.**

Moved Cr _____
Carried/Lost ( )

# DEVELOPMENT SERVICES COMMITTEE

# PLANNING

## *DEVELOPMENT ENVELOPE MODIFICATION AND SHED, LOT 173 (5) KIMBER RISE, BEDFORDALE*

| | | |
|---|---|---|
| WARD | : | ARMADALE |
| FILE REF | : | A239765 |
| DATE | : | 21 December 2004 |
| REF | : | RVD |
| RESPONSIBLE MANAGER | : | PSM |
| APPLICANT | : | SJ & Y Jordan |
| LAND OWNER | : | SJ & Y Jordan |
| SUBJECT LAND | : | Property size 4516m² Map 23-05 |
| ZONING | | |
| MRS/TPS No.2 | : | Rural/ Special Use No. 69 |
| DRAFT TPS No.4 | : | Special Residential with Development (Structure Planning) Area No. 11 Special Control Area. |

**In Brief:-**

- Application for development envelope modification that extends to approximately 12.5m from the rear and 5m from the side boundary in the south-east corner of the subject land to accommodate a shed.
- Advertising of proposal raised one objection. Plan modified and readvertised, with one objection received.
- Analysis of issues raised concludes proposal could be acceptable with conditions.
- Recommend that proposal be approved subject to appropriate conditions.

**Tabled Items**

Nil.

**Officer Interest Declaration**

Nil.

**Strategic Implications**

Development - "To balance the need of development with sustainable economic, social and environmental objectives".

**Legislation Implications**

Town Planning and Development Act 1928
Metropolitan Region Town Planning Scheme Act 1959
Metropolitan Region Scheme
Town Planning Scheme No. 2

**Council Policy / Local Law Implications**

Policy 4.3.11 Establishment of Variation of Development Envelope Locations.

**Budget / Financial Implications**

Nil.

**Consultation**

- Development Control Unit
- Surrounding landholders
- Churchmans Brook Estate. The applicant received conditional approval from Churchmans Brook Estate to modify the Development Envelope and construct a shed on the lot as indicated on the original application.

**BACKGROUND**

Council received an application to extend the development envelope to accommodate a shed on Lot 173 (5) Kimber Rise, Bedfordale (the subject land) in September 2004. Additional information necessary to assess the proposal was received soon after. The proposal was advertised to neighbours from 26 October 2004 to 10 November 2004, and one objection was received.

A meeting was held on-site with a City officer and the applicant on 6 December 2004. The applicant agreed to amend the proposal by relocating the shed further east so it would be better screened and re-orientated so the long axis is north-south rather than east-west. The applicant subsequently provided a revised plan. The applicant also verbally agreed to lower the building pad for the shed as much as practicable subject to not encountering rock, and to revegetate cleared areas outside of the approved development envelope modification.

The revised application was re-advertised on 6 December 2004 for 14 days to surrounding landholders.

The applicant has cleared and spread yellow sand over the area where the shed is proposed.

The application has been referred to Council because an objection has been received.

**DETAILS OF PROPOSAL**

The applicant proposed to extend the development envelope in the south-east corner of the subject land as shown on the Site Plan, and to construct a shed within the development envelope. The development envelope is set back 12.5m from the rear boundary and the shed will be 13.5m from the rear boundary.

The proposed shed is 8m by 6.1m, 2.4m high to the eaves with a roof pitch of 25 degrees and would be “Pale Eucalypt” in colour. The applicant plans to plant a large variety of native trees and shrubs around the perimeter to reduce the visual impact of the shed.

Vehicular access to the shed is required by the applicant, although the applicant stated that the shed will not be used for vehicle storage.

**COMMENT**

***Development Control Unit***

The Development Control Unit had no objection to the proposal.

***Submissions received***

The proposal was advertised to two adjacent landholders from 6 December 2004 to 22 December 2004.

| | | |
|---|---|---|
| Total number of responses received | : | 2 |
| Number opposed | : | 1 |
| Number in favour/ no objections | : | 1 |

***Refer to Confidential Attachment "B>>" of the Agenda for location of respondents.***

The objection received is considered in the Analysis section below.

**ANALYSIS**

***Objections raised in submission***

Points raised by the objector summarised in italics below, with the officer's response provided thereafter.

*The revised plan locates the shed about 4m from our boundary which will impact on our views decreasing our property values. The shed is far too close to our outdoor living area where we live most of the time and would should not be expected to look at it all the time. The proximity of the shed will prevent effective screening of the shed and the shed will be a source of noise and vehicular traffic. Trees and shrubs are slow growing and it will take years to grow, so will be useless at screening the shed.*

The actual separation distance is 12.5m to the development envelope and 13.5m to the shed, not 4m as suggested in the objection.

It is expected that the shed will be well below the horizon when viewed from the outdoor living area of the objector. It is recommended that the applicant's intention to locate the shed as low as possible at the site be reflected in a condition requiring a revised plan showing existing ground levels and the finished floor levels for the shed.

The proposed 'pale eucalypt' colour of the shed roof should help it blend in well with the landscape. However, it is recommended that a condition requiring a colour schedule be placed on the approval.

The revised plan locates the shed behind denser vegetation than occurs at the original location, but screening is still recommended. Fast-growing local native trees such as Coojong (*Acacia saligna)* could be planted between the shed and the objector's property which would be expected to fully screen the shed within two to three years even with the soil conditions prevalent on the subject land. However, like many other fast growing natives Coojong only lives for seven to ten years after which it is no longer effective for screening so it is important to establish the slower growing but long-living species at the same time. It is recommended that a landscaping plan that screens the shed be required and the applicant be advised to use a combination of quick growing and other local native species.

Overall it is considered that the visual impact is not significantly increased by not locating the shed within the existing development envelope.

Given normal domestic use of the shed, noise and vehicular traffic are not expected to adversely affect neighbours.

*It is with great frustration that people do not respect their building envelopes and extend them and fell trees.*

The applicant has undertaken clearing and works outside the development envelope prior to gaining relevant approval. The City's compliance officer advised that in such situations offenders are given the choice of revegetating the cleared area or the prospect of going to court, and this advice was conveyed verbally to the applicant. The applicant has indicated a preference to revegetate. It is recommended that a condition requiring revegetation with local native species to revegetate bushland in the cleared area be applied as part of a landscaping plan for the site.

***Town Planning Scheme No. 2***

The subject land is zoned Special Use Zone No. 69 Rural Residential which, amongst other things, identifies that:

- Clause 5.10.8 "Development Envelope" applies; and
- Development shall comply with the Rural Zone Development Standards of the Scheme.

An existing development envelope applies to the subject land. Policy 4.3.11 (below) details the information requirements and assessment to be undertaken when a development envelope variation is considered.

The Rural Zone Development Standards do not specifically identify development standards for sheds, but for a Single House states that "Sub-Category Setbacks shall be as per Residential Planning Codes – R2.5". Side and rear setbacks under the Residential Planning Codes - R2.5 are 7.5m, but these can be varied by Council. The proposed rear setback complies. The proposed side setback of the shed is 6m, and the eastern side neighbours' submission states they have no complaints regarding the proposal. Therefore it is considered that the side setback variation is acceptable.

***Policy 4.3.11 Establishment of Variation of Development Envelope Locations***

The information requirements of the policy, namely appropriate site plans, a letter stating the reasons for the proposed variation, and approval of any covenanting body have been met. The proposal meets the assessment criteria of the policy.

It is concluded therefore that the proposed development envelope variation is acceptable.

***Draft Town Planning Scheme No. 4***

The subject land is zoned Special Residential with Development (Structure Planning) Area No. 11 Special Control Area under draft Town Planning Scheme No. 4.

Assessment of this proposal would result in the same outcome under draft Town Planning Scheme No. 4 and the associated policies.

**OPTIONS**

1. Council could approve the proposed development envelope variation and shed, subject to conditions regarding finished floor level, colour scheme and landscaping to provide screening and revegetation.

2. If Council is of the view that the visual impact of the shed is significantly aggravated by extending the development envelope it could refuse the proposal under Policy 4.3.11.

**CONCLUSION**

The proposed shed located in the proposed development envelope is not considered to significantly aggravate the visual impact of the building provided compared to that which would arise if the shed was located within the existing development envelope, provided that existing vegetation is maintained and screening vegetation is planted. The applicant has indicated that endeavours will be made to locate the building as low as practicable, further reducing the potential visual impact. All of the other assessment criteria for varying a development envelope are clearly satisfied. Therefore Option 1 is recommended.

**RECOMMEND**

**1. That Council approve the proposed development envelope modification and shed at Lot 173 (5) Kimber Rise, Bedfordale, subject to the following conditions:**

**a) Submission of a revised plan of the shed showing finished floor levels in relation to existing ground levels to the satisfaction of the Executive Director Development Services. The shed is to be installed in accordance with the revised plan.**

**b) A schedule providing details of the colour scheme and building materials relative to the external appearance of the shed, to be submitted and approved by the Executive Director Development Services. The development to be completed and maintained thereafter in accordance with the approved schedule to the satisfaction of the Executive Director Development Services.**

**c) Submission of a landscape plan to indicate planting to screen the shed from the south and east, and revegetation of the cleared area adjacent to and west of the approved development envelope modification that accommodates the shed to the satisfaction of the Executive Director Development Services. Landscaping to be installed and continuously maintained thereafter, in accordance with the approved landscape plan.**

**2. That the applicant be advised:**

**a) With regard to condition a) the finished floor level is to be as low as practicable, having regard for investigations as to the occurrence of rock beneath the soil. The investigations necessary for Condition a) are expected to be completed prior to the issue of a building licence.**

**b) With regard to condition b), please be advised that "Trimdeck Pale Eucalypt" roof colour is acceptable.**

**c) With regard to condition c) planting to screen the shed is to include a mixture of fast growing and long living local native species. Revegetation of the cleared area is to utilise only local native species and seek to re-instate the bushland as near as practicable to its original condition.**

**d) All buildings and/or structures to be confined to the designated development envelope as shown on the enclosed plan. Please note that the area of land excluded from the building envelope shall not be developed, cleared or built upon.**

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Carried/Lost ( )

***LATE ITEMS***

***COUNCILLORS' ITEMS***

***EXECUTIVE DIRECTOR DEVELOPMENT SERVICES REPORTS***

In view of likely confidential aspects of this Report, public and staff in attendance, other than Chief Executive Officer and Executive Director Development Services, may be requested to retire from the meeting.

**MEETING DECLARED CLOSED AT _____**

# DEVELOPMENT SERVICES COMMITTEE

## SUMMARY OF "A" ATTACHMENTS

**11 JANUARY 2005**