

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 TUESDAY, 13 DECEMBER 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 15 November 2005, to be confirmed.

Moved Cr _____

Carried/Lost ()

ITEMS REFERRED FROM INFORMATION BULLETIN – ISSUE No.23/2005

The following items were included for information in the “Development Services” section -

- Report on Outstanding Matters – Development Services Committee
- Health Services Manager’s Report for October 2005
- Planning Services Manager’s Report for October 2005
- Comment provided by Officers without prior consideration of Council
- Town Planning Scheme No.2 – Amendment Action Table
- Planning Applications Monthly Statistics – October 2005
- Subdivision Applications – WAPC Approvals/Refusals – October 2005
- PAW Closure Report – Significant Actions during October 2005
- Compliance Officer’s Report for October 2005
- Minutes – Community Heritage Advisory Committee Meeting
- Building Services Manager’s Report & Building Statistics – October 2005
- Building Applications Monthly Statistics – October 2005

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

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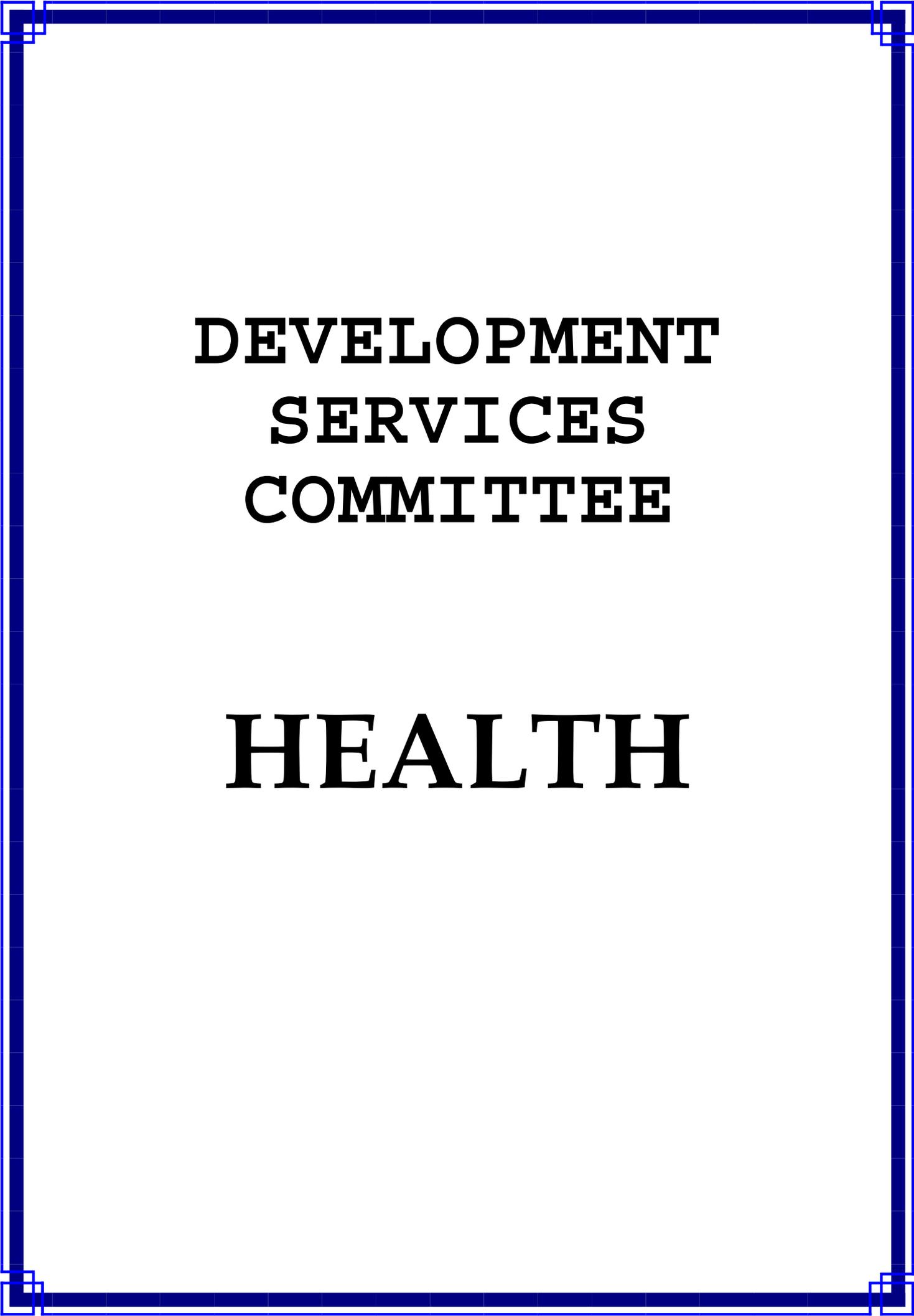
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**DEVELOPMENT
SERVICES
COMMITTEE**

HEALTH

REVIEW OF PESTICIDES LEGISLATION AND POLICIES

WARD : ALL
FILE REF : HLT/16
DATE : 1 December 2005
REF : PM

In Brief:-

- A discussion paper on a review of Pesticides Legislation and Policies in WA has been released for public comment by the Department of Health.
- Comment is offered on the various questions canvassed within the Paper.
- WALGA has circulated a briefing paper seeking local government input.
- Recommend that a response consistent with the report be forwarded to the Department of Health, with a copy to WALGA.

Tabled Items

Nil.

Officer Interest Declaration

Nil.

Strategic Implications

Pesticides are partially regulated under the Health Act, which underpins the *City of Armadale Environmental Health Plan 2003 – 2008*, itself an integral part of Council's Strategic Plan.

Legislation Implications

Deals with provisions of the:
Health Act 1911;
Health (Pesticides) Regulations 1956; and
Agricultural and Veterinary Chemicals (Western Australia) Code Act 1995

Council Policy / Local Law Implications

Nil.

Budget / Financial Implications

Nil.

Consultation

- ◆ Environmental Health Officers
- ◆ Planning Department

BACKGROUND

In 2004, the Western Australian Pesticides Advisory Committee decided to conduct a review of pesticide legislation and policies, with a view to ensuring that they are workable, nationally uniform and provide certainty to the community that pesticides are regulated and handled in a manner which safeguards health and the environment. The decision was taken at that time as a consequence of:

- ◆ the *Health Act 1911* being under review;
- ◆ concern that control of use of pesticides in Western Australia was falling behind that of other jurisdictions;
- ◆ spray drift incidents that had highlighted deficiencies in the legislation, and
- ◆ the last review having been over 10 years ago when the (then) National Registration Authority was formed to assume responsibility for pesticide registration.

As a first step in the process, the Department of Health has circulated a Discussion Paper (the Paper) to enable local government, industry and the wider community to comment on a range of issues associated with pesticide use. The Western Australian Local Government Association has also circulated a briefing paper seeking local government input to the various issues.

COMMENT

The Paper points out that responsibility for the legislative management of pesticides in Australia is shared between the Commonwealth and the States/Territories, with the Commonwealth being responsible for regulation from their import or manufacture up to the point of retail sale, through the Commonwealth *Agricultural and Veterinary Chemicals Code Act 1994*, which is administered by the Australian Pesticides and Veterinary Medicines Authority (APVMA) in Canberra. The Code is enabled in Western Australia through the *Agricultural and Veterinary Chemicals (Western Australia) Code Act 1995*.

The main role of the APVMA (assisted by other Government agencies) is the registration of agricultural and veterinary chemicals. This process involves the scientific evaluation of each chemical product for:

- ◆ human, occupational and environmental safety;
- ◆ potential impact on trade; and
- ◆ crop safety and efficacy on the pest.

Inclusion on the approved label of the product (and any accompanying material when sold) of precise instructions for use, information on safety precautions and restrictions on disposal is an integral part of registration, as is an opportunity for public comment on registration applications and invitations to members of the public to participate in programs such as reporting adverse chemical experiences and contributing to chemical reviews. The APVMA also sets maximum residue limits for pesticides in agricultural commodities (normally set well below the lowest level that would harm health) and works with Food Standards Australia New Zealand to ensure that the use of chemical products and the level of any residues in food are safe.

The Western Australian Departments of Agriculture and Health provide significant input into the national registration process by co-ordinating efficacy reviews, reviewing permit applications for use in WA, and providing input into chemical reviews.

The role of the States and Territories is to regulate controls over the use of pesticides from the point of retail sale to the point of use of the chemical and its disposal. The legislative bases for this regulatory activity vary considerably, with most jurisdictions controlling pesticide use through legislation administered by their respective Departments of Agriculture or Primary Industry, or equivalent agencies. In NSW, however, the *Pesticides Act 1999* is administered by the Department of Environment and Conservation and in WA, the *Health (Pesticides) Regulations 1956* made under the *Health Act 1911* are administered by the Department of Health and local governments.

ANALYSIS

The Paper poses a number of specific questions which are set out below, together with brief commentary and suggested response.

- 1. What is an appropriate model for regulating the future use of pesticides in Western Australia?**
- 2. If a model for government/industry co-regulation is favoured, to what extent might each of these sectors be involved?**
- 3. How can legislation strengthen industry self-regulation schemes?**

While there is increasing demand for pesticides to be used responsibly, the Paper argues that “contemporary industry and community attitudes” are moving away from total reliance on government regulation where there is a capacity for some form of industry self-regulation. It provides no evidence of the claimed community support for self regulation, but cites industry driven quality assurance systems for the production of safe food and the successful *Agsafe* Accreditation Scheme, which it claims regulates the agricultural and veterinary chemical retail and distribution industry, as good examples of industry self regulation.

It concludes that reliance on regulation of pesticide use by government may not be the most effective way of meeting the objectives of responsible chemical use, although it acknowledges the likelihood that some form of legislation will always be required, particularly when community or environmental protection is needed.

It is suggested that, contrary to the view put by the Paper, there is in fact considerable community scepticism about self regulation by industry, and a general belief that it is the job of government, not industry, to govern. Further, it is not accurate to say that the *Agsafe* Accreditation Scheme regulates the agricultural and veterinary chemical industry. While it was designed largely by industry, it is administered, through regulation, by the Australian Pesticides and Veterinary Medicines Authority.

In summary, although industry designed quality assurance systems may well be effective, and are no doubt often adequate in themselves where it is protection of the industry itself that is at stake, protection of the health and safety of the community and the environment demands government involvement.

Suggested response: It is acceptable for legislation to call up industry codes of practice or similar 'best practice' mechanisms to manage operational issues such as training and accreditation and spray drift control, but government involvement is fundamental to ensuring both adequacy of the codes and compliance with their requirements.

It is essential that any codes developed by industry and considered for incorporation into legislation are properly evaluated by appropriately qualified and competent persons within government. If those codes are to be adopted into legislation, regulations, as a minimum, should:

- ◆ specify that pesticides must be used according to particular approved codes of practice;
- ◆ create offences where they are not so used and if any damage resulted as a consequence of inappropriate use; and
- ◆ set penalties.

Government must also ensure that there are adequate properly qualified staff to disseminate information where needed and enforce any such legislation.

4. **Would regulatory control over pesticides in WA be improved by amendments to the *Health Act 1911* (or its replacement) or by the development of new stand alone 'Pesticide' legislation?**
5. **If new legislation is preferred, should it be used to consolidate other relevant agricultural/pesticide legislation, such as the chemical regulations in the *Bio-Security and Agriculture Management Bill* etc?**

The predominant legislation for control of use of pesticides in WA is the *Health Act 1911* and the *Health (Pesticides) Regulations 1956*. Certain provisions of the *Poisons Act 1964* and *Poisons Regulations 1965* also have application, while other pieces of 'control of use' legislation include the *Aerial Spraying Control Act 1966*, the *Agricultural Produce (Chemical Residues) Act 1983*, and the *Agriculture and Related Resources (Spraying Restrictions) Regulations 1979*, all of which are to be subsumed into the *Bio-Security and Agriculture Management Bill*, to be introduced into State Parliament in the Spring session of 2005. The Bill will provide for some new pesticide control provisions.

Controls over use are also imposed by legislation governing storage and transport of dangerous goods (administered by the Department of Industry and Resources) and occupational safety and health (administered by the Department of Consumer and Employment Protection).

The Paper argues that the advantage of using the Health Act as the legislative vehicle for pesticide controls is that it provides comfort to the community that the use of pesticides is being managed for public health and safety, while the major disadvantage is that the current Act is limited to regulatory controls that protect and safeguard public health, and cannot be used for environmental or agricultural reasons. Agricultural industries account for most of the pesticide used in WA, and authorised officers under the Health Act, including local government Environmental Health Officers (EHOs), are relatively unfamiliar with agricultural practices and may not be able to effectively ensure that growers comply with regulations.

It points out that the new Health Act will facilitate the declaration of certain activities (eg: pesticide use) 'a risk to health'. This should open up the prospect of a broader range of controls, through Orders, Policies or Codes drawn up under the new Act, so that they operate to minimise risk.

In determining whether legislative reforms should be made to the Health Act, either in its existing or new form, or whether new stand alone pesticide legislation should be developed, the critical issue is how any legislative provisions are to be enforced, and that officers charged with that responsibility have appropriate competency.

The Paper has observed that EHOs are relatively unfamiliar with agricultural practices and may not be able to effectively ensure that growers comply with regulations, and practical experience has revealed a host of shortcomings in terms of EHOs' ability to provide detailed advice on appropriate pesticide practice. Indeed, the Code of Practice for the Use of Agricultural and Veterinary Chemicals in WA, an excellent document, has been prepared not by the Department of Health but the Department of Agriculture.

Yet the Paper appears to support continuation of the Health Act as the prime controlling legislation. It would seem to make more sense to develop purpose specific legislation (with the capacity to delegate certain powers to local government EHOs if need be). This would at least provide an environment which encourages more detailed thought about how legislation can be effectively and responsibly enforced (rather than just assuming that local government will take care of it) and need not preclude the issuing of Orders to minimise health risk under the proposed new Health Act if necessary.

Suggested response:

The development of 'stand alone' legislation seems the more efficient option in addressing this matter. Such an approach would facilitate the consolidation of other legislation, such as the agricultural chemicals parts of the proposed *Biosecurity and Agriculture Management Bill*, into a new Act, while not necessarily precluding delegation of powers to local government or the issuing of Orders to minimise health risk under the proposed new Health Act.

One option that could be considered is incorporation of pesticides provisions into a broadened Poisons Act, which already operates outside of the Health Act jurisdiction. Obvious advantages of this approach are that:

- ♦ although the Poisons Act is independent of the Health Act, it is within the jurisdiction of the Minister for Health, with the Commissioner for Health is its principal statutory office holder;

- ◆ Section 6 prescribes that it is to “be read and construed as being in aid and not in derogation of the provisions of the *Health Act 1911*”;
- ◆ it already contains provision for ‘cross authorisation’, with “authorised officer” being defined as an environmental health officer; a police officer; or any person so declared by the Minister by notice published in the *Gazette*;
- ◆ the existing constitution of the Poisons Advisory Committee is similar but broader than that of the Pesticides Advisory Committee (constituted under the Health Act), with representation including the Commissioner of Health or a medical practitioner nominated by him or her, the Chemistry Centre of WA, a pharmacologist nominated by the University of Western Australia, a medical practitioner with specialist qualifications in occupational health employed by the State, two medical practitioners nominated by the AMA, one of whom is a specialist physician, the Department of Agriculture, two persons nominated by the CCI, one of whom shall represent wholesale dealers, the Veterinary Surgeons' Board, the Pharmaceutical Society of WA and the Pharmacy Guild of Australia; and
- ◆ pesticides are, for the most part at least, ‘poisons’ within the usual understanding of the word, and there simply does not appear to be a sensible reason to separate them from the jurisdiction of purpose specific poisons legislation.

6. What should be the roles of various State government agencies in the investigation (and possibly prosecution) of pesticide incidents?

7. Is cross-authorisation a realistic option to handle pesticide incidents and utilise government resources efficiently? What alternative options are possible?

Agencies currently exercising responsibilities relating to pesticide control include:

<ul style="list-style-type: none"> ▪ Department of Health: 	control of use of pesticides and poisons; licensing pest control operators; and provision of advice on the safe use of pesticides;
<ul style="list-style-type: none"> ▪ Department of Agriculture: 	provision of advice on the safe use of pesticides and the control of agricultural pests; issuing of pilots' chemical rating certificates; and some (agricultural) aspects of control of use of pesticides;
<ul style="list-style-type: none"> ▪ Department of Industry and Resources: 	control of, and provision of advice on, the storage and transport of dangerous goods; and provision of analytical services for pesticide residues through the Chemistry Centre;
<ul style="list-style-type: none"> ▪ Department of Consumer and Employment Protection: 	control of, and provision of advice on, occupational safety in the workplace; and protection of consumer interests through fair trading legislation;
<ul style="list-style-type: none"> ▪ Local Government: 	control of use of pesticides through application of the provisions of the <i>Health (Pesticides) Regulations 1956</i>

The Departments of Fisheries and Environment also exercise peripheral roles.

Currently, most of the compliance work associated with pesticides (predominantly incidents in urban areas involving the pest control industry and related to human health or consumer protection) is carried out by Department of Health officers or local government EHOs. These officers also usually investigate the relatively few reported incidents originating from agricultural use, with it being uncommon for officers of the Department of Agriculture or the Department of Environment to become involved despite the fact that there may be environmental and crop damage aspects to be considered.

The problem with the current approach is that not all agencies have power to intervene under appropriate legislation, with the consequence that expertise in managing a response may be diluted.

Suggested response: The existing lack of capacity for 'cross-authorisation' actually strengthens the case for either stand alone legislation or an expanded Poisons Act under which, as well as department of Health and local government EHO's, officers from the Departments of Agriculture, Environment, Conservation and Land Management and Fisheries could be authorised. The most technically appropriate agency would be responsible for responding to incidents with, for instance, crop damage being the responsibility of the Agriculture, environmental damage the Department of Environment, occupational health a Worksafe issue and public health cases the responsibility of local government or the Department of Health.

- 8. Is there a continuing role in WA for a high level advisory Committee?**
- 9. If there is, what should be its future purpose?**
- 10. How should the membership of such a Committee be structured?**
- 11. What performance indicators would provide an effective measurement of the pesticide regulatory system?**

The Pesticides Advisory Committee is established and constituted under Section 246 of the *Health Act 1911* and chaired by the Executive Director, Public Health (EDPH). It provides advice on matters concerning pesticides, including recommendations for legislative change and regulatory controls. As well as the EDPH, it is comprised of the Directors General of the Departments of Agriculture, Environment, Consumer and Employment Protection (Worksafe Division), and the Chemistry Centre (or their nominees).

The Committee may co-opt other people as required from time to time, and used to meet monthly when its main role was to register pesticide products for use in Western Australia. With the creation of the APVMA (then the National Registration Authority) in 1995 this ceased and the Committee now meets quarterly and is concerned with control of use issues.

‘Performance measurement’ - that is, the measurement of how well the pesticide regulatory system is working to manage the risks of pesticide use – is suggested by the Paper as a possible new role for the Committee.

When contemplating the new Public Health Act Discussion Paper in August and the Caravan Parks and Camping Grounds legislation Discussion Paper last month, Council formed the view that, while there is an argument for community and expert involvement and input into the development and operation of legislation and wider policy questions, and there may be some benefit in terms of transparency in enshrining statutory committees in legislation, such committees may be administratively burdensome, with volume of business not always justifying meetings. The contemporary approach in which the legislation provides a general power to create advisory committees was considered to better serve the interests of flexibility, and this is recommended as the preferred option in the event that new ‘stand alone’ legislation is developed.

The national Product Safety and Integrity Committee (PSIC), of which WA is a member, is currently developing performance indicators to measure the effectiveness of the regulatory system and, although the work is still in draft form, is understood to have identified ten performance measurements.

Suggested response: Although there are benefits in terms of transparency in the establishment of statutory committees and community and expert involvement in the development of legislation, the contemporary approach in which legislation provides a general Ministerial power to create advisory committees probably better serves the interests of flexibility. Continuation of a statutory Pesticides Advisory Committee in any future ‘stand alone’ legislation is therefore not supported.

On the other hand, any consideration of incorporation of pesticides provisions into the Poisons Act should include a review of the Poisons Advisory Committee so that there is representation from Worksafe and the Department of Environment.

No benefit is seen in proposing performance indicators to measure the effectiveness of legislation until the details of the work of the Product Safety and Integrity Committee, which has been focussed on this matter and is reported to have resulted in the development of ten performance measurements, is released.

- 12. Should pesticide legislation allow any flexibility to users in the way the pesticide is used and for what purposes?**
- 13. If so, what variations from the label should be permitted?**

The Paper discusses the restrictions on pesticide use imposed by the *Agricultural and Veterinary Chemicals Code Act 1994*, under which the APVMA approves and registers label instructions and is able to issue a permit for “off-label” use, on application, for trial, emergency and minor use purposes.

Regulation 20C of the Pesticides Regulations prohibits the application of pesticides - with respect to frequency and rate of application or nature of use - other than in accordance with the approved label except with the permission in writing of the EDPH or in accordance with a permit issued under the Agvet Code.

The Paper argues that Regulation 20C is ambiguous, and while some would hold that it is legal to use a pesticide at a lower rate of application, a lower concentration and at a lower frequency of application than specified as long as all the other conditions on the label are met, this view is by no means universally shared. It proposes that it may be possible to liberalise some of the prohibitions on pesticide use without increasing the risk of causing an adverse effect, basing that proposal largely on the assumption that everyone that applies chemicals must take responsibility for the use of that chemical, including any unintended effects.

While acknowledging that for urban pest control it is important for public health reasons that the label be followed exactly, (ie: that the chemical is registered for the pest and the situation, and that rates of application not be reduced), it suggests that, in the agricultural context, the prohibition of using a pesticide for an unregistered pest could be removed, so long as it was used only on a registered crop, and that lower than label rates of application be permitted. Economic benefits would result for agricultural users and there also may be environmental benefits through using the lowest rates possible, particularly in the case of broad scale use of herbicides for weed control.

Although there is some substance in that position, other factors that need to be taken into account include that registered rates of application for agricultural herbicides used in Australia are already low by world standards, and that this practice will have the potential to increase chemical resistance in any target pest. The Paper proposes that the management of resistance should be left to the farmer through implementation of integrated pest management regimes such as using animal grazing or using a different chemical group each time the paddock is cropped, and not using the same chemical continuously. It claims this approach is used in most other states.

The fact that other states adopt particular practices does not necessarily mean they are better, and endorsement of this approach ignores the fact that once resistance is established it becomes not a single farmer's but a State wide and possibly nation wide problem, requiring firstly ever heavier rates of application and then yet more chemical solutions. It also doesn't seem to acknowledge that there is already flexibility within existing legislation, in that 'off-label' use may be permitted upon application.

Suggested response: Any proposal to increase flexibility of use of pesticides should be approached with extreme caution, largely because of the potentially disastrous consequence in the development of resistance by agricultural pests, and on balance a regulatory regime similar to that existing is preferred.

14. **Should training commercial applicators be made mandatory by regulation?**
15. **What length of time should elapse before such training becomes enforceable?**
16. **At what level should such training be set?**
17. **Should training be restricted to any class of chemical?**
18. **How should people with non-English speaking backgrounds be trained or receive sufficient and effective safety information?**

19. What do you believe would be the impact of such requirements?

In putting the case for mandatory training of commercial users of pesticides the Paper rightly points out that increasing the level of competency of pesticide applicators, particularly their understanding of the principles of responsible pesticide application, the occupational hazards involved and the environmental damage that could result from misuse, is one of the most effective ways of reducing the potential risks of using pesticides.

Commercial pest control operators, crop spraying contractors and aerial spraying operators are all required to be trained to a high level before they can be licensed under their respective legislation. Other commercial applicators, such as farmers, local and state government employees and professional gardeners, who collectively account for the great majority of pesticide application events, are not required to be trained, although over 18,000 people in WA and over 250,000 nationally (mainly farmers) have been accredited under non compulsory training provided by ChemCert WA Inc, which provides a number of courses in the safe and effective application of pesticides.

In 1997, the then Minister for Agriculture agreed to implement the recommendations of a report from Murray Criddle MLC (the Criddle Report) following his review of agricultural chemical legislation and their effects on diversification in agriculture. These recommendations form the basis for new regulations which are soon to be introduced into the State Parliament under the *Biosecurity and Agriculture Management Bill*.

Among other things, the Report recommends that it should be mandatory for everyone who applies pesticides (except home gardeners) to be trained to a minimum level (prescribed in the new regulations).

Mandatory training is already a requirement to a greater or lesser degree in New South Wales and South Australia, and in Victoria users of restricted chemicals must hold an Agricultural Chemical Users Permit issued by the Department of Natural Resources and Environment. The WA Department of Health has also been considering mandatory training for certain pesticide users.

It is estimated that up to 20,000 more people would be trained if mandatory training were introduced. The obvious advantage of mandatory training is that it reaches those chemical users who would not seek voluntary training, and who could be responsible for a disproportionate share of undesirable pesticide impacts, although there is no doubt that some would see it as imposing a time and financial cost burden on individuals and industries and another example of government interference in their activities.

Suggested response: Training commercial applicators should be made mandatory by regulation. The length of time that should elapse before such training becomes enforceable will be dictated largely by the availability of trainers and facilities. It is not considered appropriate to restrict such training to any particular class of chemical, although more focus is obviously needed on those of higher toxicity and with the greatest potential for environmental or ecological harm, and the level of training should determine the range of chemicals the particular operator is accredited to use.

While training of people whose first language is not English presents special problems, and discrimination of any sort should be avoided at all costs, competence to at least read the pesticide label well enough to be fully aware of the risks and safety precautions they should take is an unavoidable prerequisite for any sort of accreditation. Courses in which the basic subject matter is covered in other languages should nevertheless form part of any training regime.

- 20. How should spray drift offences be created and prosecuted in WA?**
- 21. Are the provisions of the Environmental Protection Act sufficient? Or should additional specific offences be created?**
- 22. What do you believe are the advantages and disadvantages of regulating prior notification of neighbours of pesticide use?**
- 23. How should a neighbour be defined for this purpose in the legislation?**
- 24. How best could a notification scheme be implemented in the event that a party was not available to notify or be notified?**
- 25. Should a notification scheme be limited to agricultural use of pesticides or should it include urban use as well?**
- 26. Are there other methods that could be adopted in legislation to effect a satisfactory notification scheme?**

In discussing public concern over pesticides spray drift and the effects of human and non-target crop exposure, the Paper is sympathetic to landholders who become concerned when neighbours, without their knowledge, spray pesticides that may be injurious to the landholder or his enterprise.

It points out that licensed spray operators, such as crop spraying contractors and aerial spraying operators, have a responsibility under their respective licensing regulations to minimise the incidence of spray drift and therefore the potential for damage, and holds that landholders who apply pesticides on their own property have a duty of care to minimise the effects on neighbouring properties.

Many voluntary codes of practice and quality assurance systems have strict guidelines to address this issue but not all growers adopt these codes or systems and cannot be compelled to do so. Consequently, there have been increasing calls for government to take a tougher stance on pesticide applicators who cause non-target spray drift.

The APVMA has produced a draft policy paper entitled "*Operating Principles and Proposed Registration Requirements in relation to Spray Drift Risk*". When completed, this policy will require pesticide registration applicants to assess the spray drift risk of their product, having regard to a number of factors, such as method of application, and make spray drift mitigation statements on the product label. This information will assist users of the pesticide to adjust their application practices to minimise spray drift.

The paper's argument that creating an offence under regulations of 'causing spray drift' could cause problems in gathering sufficient evidence to support a prosecution seems spurious. The aim of any law is not primarily to prosecute but to effect a formal statement of the community's (and hence the State's) position and thus encourage or discourage a particular course of action. While clearly prosecution is sometimes necessary, it is by far more often the exception than the rule, and gathering of sufficient evidence is difficult in a myriad of cases – notably those involving other discharges such as smoke, fumes, even effluent. That in itself should not be an impediment to the creation of a law.

It does acknowledge that regulatory action may be possible, and cites spray drift, prior notification of neighbours, buffer or awareness zones and incident reporting as potential topics for consideration. It also outlines the varying approaches taken in other jurisdictions.

One of the issues identified in the Criddle Report was that people, ranging from marron farmers who were concerned about pesticides drifting from the vineyard next door to people with health concerns, living close to others who applied pesticides on their property often could not get information on the chemicals that were being applied to allow them to take precautionary action. The Report recommended drafting a regulation that would require a person to provide his immediate neighbour, on written request, with information on his spraying program, the details of which would be as agreed between the parties.

The Spray Drift Protocol developed by the Blue Gum timber industry in the southern part of WA is reported to have had the effect of greatly improving relations between the industry and the community, which had expressed concerns about the impact of the plantations and aerial spraying.

Suggested response: The simplest approach to this whole issue is for regulations to adopt a Code of Practice, such as the *Code of Practice for the Use of Agricultural and Veterinary Chemicals in Western Australia* (appropriately modified if it is considered that it is insufficiently strong or detailed), which includes sections on:

- ◆ duty of care;
- ◆ choice of chemicals;
- ◆ storage;
- ◆ environmental protection;
- ◆ management of spray drift;
- ◆ notification of neighbours;
- ◆ minimising residues in agricultural produce; and record keeping.

Once adopted, the Code would be enforceable and so, with an offence created for breach of the regulations, failure to abide by the Code in any detail would constitute such an offence and incur liability for a penalty.

With respect to the definition of 'neighbour', as a starting point the term could be defined as including all adjoining and contiguous properties, as well as other properties whose nearest boundary is within a specified distance of the subject property (to include properties on the opposite side of the road, for instance). This should be sufficient in most cases, and could be amended at a later date if found to be inadequate.

The problem identified within the Paper of notification when there is an urgent need to control a pest on a crop when the weather conditions are suitable, thus making prior notification difficult, is an issue, but not a problem of the magnitude that is suggested. Urgencies such as this are infrequent, and when weather conditions are suitable for spraying they will, by definition, be such as to minimise the risk of drift. It would not seem an enormous difficulty to devise a statutory form of notification, however short the notice period, which would be deemed to satisfy the regulated notification requirement in that circumstance.

Finally, provisions within new legislation dealing with activities such as agricultural spraying which adversely affects any person (as used in Tasmania) together with concepts such as 'environmental harm', 'material environmental harm', and 'serious environmental harm' recently introduced into the *Environment Protection Act 1986* can deal with those circumstances in which has been technical compliance with the Code, but where a 'reasonable person' could have foreseen such effects. That sort of approach is common in law, and it is ultimately for a Court to determine whether a 'reasonable person' should have taken a different course of action.

- 27. Should legislation prescribe mandatory buffer zones?**
- 28. If so, please explain how these would be imposed in practice, and what their minimum dimensions should be?**
- 29. What are the advantages and disadvantages of the SDAZ concept, in comparison to buffer zones?**
- 30. How could SDAZs be mandated? Through legislation, or through a Code of Practice, as it is currently?**
- 31. How can planning laws/schemes be used to minimise spray drift risk?**

The Paper notes calls for implementation of mandatory buffer zones, but claims that it is questionable whether they are either effective or practicable in overcoming all spray drift problems, their very presence implying that pesticides will not drift beyond the buffer, and that spraying up to the boundary of the zone is safe.

It goes on to say that, in fact, the effectiveness of a buffer zone is dependent upon many factors other than the distance from the spraying, such as the height and density (if it is vegetated) of the buffer, the terrain, local wind speeds and directions, the susceptibility of the crop, and the nature of the pesticide itself. Further, compliance with a mandatory buffer zone requirement may, in the case of existing and established property boundaries, be very difficult, if not impossible, and it is only in new subdivisions that it could be possible.

The impact of a regulated buffer zone requirement on local government planning schemes, and the legitimacy of creation of such zones as a planning tool is recognised and an alternative approach, that of Spray Drift Awareness Zones (SDAZs) is proposed. A SDAZ is established by each landholder based on the chemicals he/she uses, the sensitivity of the human, structural, agricultural and environmental components within the immediate vicinity of the property. It should be mapped on a paddock by paddock basis as the focus of the Zone shifts across the property. It is, in effect a method of conducting a spray drift risk management assessment for the property.

This concept is introduced in the “*Code of Practice for the Use of Agricultural and Veterinary Chemicals in Western Australia*”. It may include the use of buffer zones (both linear and vegetated) if appropriate, but it is not limited by prescribed distances as these will depend entirely on the specific circumstances of each Zone.

Suggested response: Because prescription of buffer zones by regulation is relatively impracticable, inflexible and unlikely to produce an outcome that is effective in overcoming spray drift problems, and also because setting of buffer zones more properly belongs within planning law, that approach is not supported.

Creation of Spray Drift Awareness Zones is likely to be a more successful approach, provided that there is a requirement for a newly establishing agricultural pursuit that may be, to a greater or lesser degree, incompatible with surrounding land uses but permitted under the relevant planning scheme, to notify the local government of its SDAZ so that it can be taken into account in the planning process.

32. **What is the role of government in the provision of advice to minimise spray-drift?**
33. **What are your views on the need for a ‘single desk’ pesticide incident reporting service in WA?**
34. **Which government agency should be responsible for managing such a Unit?**
35. **Should such a Unit charge fees, at least in part?**
36. **Has the Unit in Tasmania features that would be worth evaluating for adoption in WA?**
37. **How should the government continue to administer the *Agricultural Practices (Disputes) Act 1995*, or at least the mediation process it covers?**

As the Paper points out, there are currently a number of avenues through which the public may pursue a complaint about a pesticide application, dependent upon circumstance. Departments and agencies involved include the Departments of Health, Community and Employment Protection, Agriculture, Fisheries, Environment and Conservation and Land Management, as well as the Australian Pesticides and Veterinary Medicines Authority and local government.

The consequence of these disparate approaches is that the Government does not know whether there is any real pesticide problem, significant under-reporting because most people do not know who to contact or lack of proper recording or coordination by agencies.

The Paper proposes a single, one stop point of contact for members of the public to report a pesticide mishap or register a complaint, irrespective of the agency with the legislative responsibility for the problem. It holds that it is preferable that the same officers investigate all reports, so that they can build up a level of expertise in the area, and bring to bear their accumulated experience across a number of investigations.

It canvasses the case for investigation reports, not only for evidence of non-compliance under legislation, but also where one or more parties are planning civil action through the courts, in which case investigation reports may be made available.

It is in that context that funding options, including:

- ◆ provision of a fully taxpayer funded service;
- ◆ provision of a taxpayer funded service for investigations used to prosecute an offender under legislation, but charging a fee for service to complainants who wish to take civil action against the alleged perpetrator;
- ◆ charging a fee-for-service for all investigations; or
- ◆ encouraging the private consulting industry to investigate complaints.

Generally, it is considered that government responsibility extends not only to legislating but also to adequately enforcing any legislation promulgated, and providing the resources for such enforcement. That is not a (private) service for which a fee for service should be charged (or even contemplated) but a legitimate function that is expected of government in the public interest. Accordingly, it should be publicly funded.

While there may appear to be an argument for imposition of a 'penalty' (by way of charging a fee) where a frivolous complaint is made, on face value such an approach is fraught with risk. Similarly, consideration could be given to provision of investigation reports for a fee where civil action by a person against an alleged perpetrator is contemplated, but existing evidential provisions are considered adequate, and provision of truthful information by any government agency in a Court of Law would again seem to fall within the usual expectations of the community.

Suggested response: The concept of a 'single desk' pesticide incident reporting service is supported, and would fit well with the idea of either new, comprehensive pesticides legislation or incorporation of pesticides provisions into the Poisons Act, both of which were mentioned earlier. There would seem to be considerable advantage in creation of something similar to (but not the same as) the Tasmanian Spray Information and Referral Unit (mentioned within the Paper) to administer legislation applying to spraying operations and the codes of practice adopted by such legislation and, while also playing a negotiation and mediation role between pesticide users and affected parties.

There is no definitive answer as to which government agency should have responsibility for managing such a unit, but it is important that:

- ◆ the agency is adequately resourced;
- ◆ the same agency assumes responsibility for administration of the *Agricultural Practices (Disputes) Act 1995*;
- ◆ there is capacity for authorising officers from other government departments and agencies and local government to act under some parts of any new legislation;
- ◆ any legislation specifies that an operators licence may be withdrawn under specified circumstances; and
- ◆ licensing of pest control operators is undertaken by the same agency (thus facilitating withdrawal of licence(s) when appropriate).

The fact that the majority of spray drift and other pesticides incidents are generated by agricultural enterprises may create a case for management by the Department of Agriculture, but there are a number of other factors that need thorough consideration before a firm position can be established. There may, for instance, be an equally good case for merging the Drugs, Poisons and Therapeutic Goods Control and the Pesticides Safety Sections of the Environmental Health Directorate of the Department of Health (and possibly seconding officers from other Departments), particularly if pesticides provisions are incorporated into the Poisons Act.

There should not be a fee charged for the investigation of incident reports. Enforcement of the law is not a (private) service for which a fee for service should be charged, but a legitimate function that is expected of government in the public interest and so should be publicly funded. Extreme caution should be used even in contemplating imposition of a 'penalty' (by way of charging a fee) where a frivolous complaint is made.

While consideration could be given to provision of investigation reports for a fee where civil action by a person against an alleged perpetrator is contemplated, generally speaking it is considered that existing evidential provisions are adequate. The appropriate course in that event would be for the person taking the action to have a *subpoena* issued calling the officer concerned to give evidence in Court and to produce relevant documents. For a government agency to conduct an investigation for the purpose of civil action by a third party seems improper.

- 38. Should legislation be used to regulate pesticide use in pesticide-sensitive situations?**
- 39. If so, what criteria should be used to select such situations, and how should this be achieved?**

A number of situations and places are identified as sensitive to exposure to pesticides and justify some level of protection. These include situations where:

- ◆ total prohibition of pesticide use is warranted, such as organic farms (which must, by definition, be pesticide free);
- ◆ approved pesticides may be used internally under certain conditions but where prohibition of application from external sources is appropriate, such as schools, hospitals, nursing homes, aquaculture farms and residential dwellings; and

- ♦ conditional protection is needed, such as in water catchment areas, where specific pesticides can be approved for use, either generally or on a case by case basis.

Suggested response: Defining every such situation within a regulatory framework does not seem feasible, and it is probably more practicable for the most part to incorporate such prohibitions or restrictions as are required within the operating conditions of the particular enterprises.

A general protection from pesticides from external sources for schools, hospitals, nursing homes, aquaculture farms, residential dwellings and the like can probably best be achieved by a regulatory obligation upon any users to take all practical means to ensure that no pesticides escapes from the premises on which it is being applied. It is likely this is best achieved by development of a Code of Practice and its adoption by regulation.

40. Should record keeping of pesticide applications be required by legislation, or can it be left to QA schemes and industry Codes of Practice?

41. What should a prescribed minimum set of information to be recorded consist of?

The Paper identifies good record keeping of all commercial spraying activities as one of the most effective ways of reducing risk, pointing out that not only may it assist in the event that an alleged spray drift damage report is investigated but also benefits the farmer or operator in making good management decisions on the property.

Quality assurance schemes operating on farms require record keeping of all operations, not just pesticide applications, in order to maintain accreditation, and industry codes of practice also require accurate and comprehensive records to be kept.

Mandatory record keeping of pesticide spraying activities is required or proposed to a greater or lesser degree in NSW, and conditionally/partially in all other states, but in Western Australia only aerial operators are required to keep records of spraying activities. The proposed *Biosecurity and Agriculture Management Bill* will require this for all commercial operations.

In all jurisdictions domestic pesticide users are exempt from mandatory record keeping.

Suggested response: As indicated in response to the questions related to spray drift management and notification of neighbours, the simplest approach to this issue is for codes of practice such as the *Code of Practice for the Use of Agricultural and Veterinary Chemicals in Western Australia* (and, for that matter, appropriate Australian Standards) to be adopted by regulation. This would leave the appropriate codes or Standards to be developed and incorporate the detail of all requirements while adoption would give them regulatory effect.

The mentioned Code includes in the details to be recorded:

- ♦ date and time of application;
- ♦ name(s) of pesticides used;

- ◆ weather conditions at time of application and any changes that occurred;
- ◆ crop or area details;
- ◆ any incidents or accidents; and
- ◆ any symptoms of ill health shortly after spraying.

Consideration could be given to expanding record keeping to include:

- ◆ reason for application; and
- ◆ effectiveness of application (after the appropriate time)

so that there is some assurance that chemicals are not used unless they are fulfilling their purpose.

- 42. How should the competency of aerial pesticide applicators be determined?**
- 43. Should regulations require applicators to hold third party damage insurance?**
- 44. What other licensing requirements would you like to see imposed upon aerial spraying operators?**

Commercial pest control operators (anyone who applies a pesticide for reward, including agricultural crop sprayers and those green keepers requiring access to *Schedule 7* chemicals) have been required to be licensed since the inception of the *Health (Pesticides) Regulations 1956*.

Aerial spraying operators are excluded from this requirement, being currently regulated by the Department of Agriculture under the *Aerial Spraying Control Act 1966*. The Criddle Report recommended that, for administrative efficiency and uniformity, the 'licensing' of these pilots should be transferred to the Department of Health which already licences other pest control operators. The Departments of Agriculture and Health are discussing the practical implications of this.

The Paper advises that aerial spraying contractors obtain their Certificate by studying a manual supplied by the Department of Agriculture and passing a written examination. Both the manual and examination are becoming dated, and the proposal to transfer the licensing function to the Department of Health is a good opportunity to introduce a better method of assessing the competency of the applicant.

Industry training schemes and the difficulty of ensuring nationally uniform standards are discussed, but for the most part the issues to be considered are beyond the competence of the layman and so no comment is offered.

The exception is the question of third party damage insurance. Current requirement in Western Australia are for aerial contractors to hold such insurance to a minimum of \$30,000, this amount having been set in 1966 when the Act was passed and not amended since. There is no requirement for ground based crop spraying contractors to hold insurance under the *Health (Pesticides) Regulations 1956*.

While it could be argued that insurance is a matter for the individual company and not for government to mandate, there is equally a case that victims of pesticide spray damage need to be assured that any claims for compensation can be met. Carrying of comprehensive third party and public liability insurance is sound business practice, and a reasonable regulatory requirement in an industry in which the capacity for damage resulting from accident or negligence is substantial.

Suggested response: No comment is offered on the determination of capabilities of aerial pesticide applicators or particular licensing requirements because these issues are considered to be beyond the competency of persons without extensive training in those areas.

It is, however, believed that the need for aerial contractors (indeed all pesticide operators) to hold comprehensive third party and public liability insurance is patent. It is suggested that the Regulation refer to “---insurance to the value specified in Schedule X ---” or words to similar effect, and that the Schedule, together with that containing the various licence and registration fees, would be amended each year by an amount equal to the Perth CPI increase for the preceding year.

- 45. Should the Department of Health continue to regulate and license the Pest Control Industry, or should that responsibility be undertaken by a Registration Board or by some other mechanism?**
- 46. How can legislation ensure that the Pest Control industry, including agricultural and aerial spraying contractors, complies with the conditions of licence of its members?**

Complaints about the pest control industry relate not just to issues of public health, but also to consumer and customer concerns over the effectiveness of the work performed, and the activities of salespersons. While these matters should be addressed by the Department of Consumer and Employment Protection, the Paper points out that it is often difficult to separate the issues and ensure that a complete response is provided to the complainant.

In addition, the Department of Health has not always been technically able to address complaints about agricultural crop spraying contractors because very few, if any, of these complaints have health implications. The addition of a number of aerial spraying operators to the licensing system will only add to the complexity of that task.

Creation of a Registration Board to control the pest control industry is proposed. The Paper, however, maintains that the Board should be ‘industry driven’, being comprised of a ‘majority of industry representatives’ with relevant government agencies and would deal only with matters involving licensing and any issues of non-compliance by licensed people, referring technical issues to the relevant government agency for investigation and, if necessary, prosecution.

It concludes that the advantage of this proposal is that “it would allow a significant level of industry self regulation, without government losing the ability to prosecute for legislative breaches”.

To that extent, the Paper seems to confuse the roles of industry and government, and persist with the earlier expressed view that contemporary community attitudes are moving away from reliance on government regulation where there is a capacity for some form of industry self regulation, although evidence for that belief is not presented. It does concede, however, that Boards may have the disadvantage of being directed by their members independently of the strategic policy direction of the government of the day and can become focussed on industry needs rather than the needs of the wider community.

The option of development of a code of conduct under the *Fair Trading Act 1987* in conjunction with the Pest Control Industry is also canvassed. While the Paper argues that such codes have been readily accepted by some industries as a flexible and workable method of establishing minimum standards of service and behaviour, experience suggests that formal regulation, where there is a consequence for non compliance, remains the most effective means of behaviour modification.

Suggested response: The creation of a Registration Board to control the pest control industry is not supported, for the very reasons mentioned within the Paper, namely the capacity for Boards' being directed by their members independently of the strategic policy direction of the government of the day and being focussed on industry needs rather than the needs of the wider community.

It is important that the roles of industry and government not be confused. It is government's job to govern (regulate), not industry's. While industry is entitled to consultation on legislative change, it cannot be seen to 'own' the legislation or the means by which it is administered, but once it is promulgated it must comply with it. In fact, many of the examples quoted within the Discussion Paper and elsewhere are not examples of industry *self* regulation at all, but of industry *response* to government regulation.

Further, the model proposed, in which the Board would deal with matters involving licensing and any issues of non-compliance by licensed people, referring technical issues to the relevant government agency for investigation, seems cumbersome.

As mentioned earlier, far better that the same Department undertake licensing and enforcement, provided that it is adequately resourced and there is capacity for authorising officers from other government departments and agencies and local government to act under some parts of relevant legislation. It is not possible at this time to be definitive as to whether that role should be taken by the Department of Health or some other Department or agency.

47. How can a regulatory scheme assist the industry led waste pesticide disposal process?

The Paper notes that the *Health (Pesticides) Regulations 1956* provides details of the approved methods of disposing of waste pesticides and pesticide containers, and the process for seeking approvals for other disposal methods, and mentions that the majority of waste pesticide containers generated by agricultural industries are now disposed of through the *DrumMuster* scheme administered by *Agsafe* in conjunction with local government authorities in all jurisdictions.

The scheme has been in operation for over 6 years and is quite successful, having arrangements with 99% of all local governments and having disposed of over 6.5 million used pesticide containers, with a total weight of almost 9200 tonnes.

Agsafe also recently launched an industry led scheme for the disposal of waste pesticides.

The Paper describes these schemes as good examples of industry led programs that comply with regulatory requirements and do not rely on government resources to make them work and says schemes should be promoted where possible.

WALGA has commented that DrumMuster audits on returns have estimated that 30% of single-trip pesticide containers are returned through their program, and that a substantially higher rate of return (in excess of 50%) may require some kind of financial incentive.

It suggests that in recognising the good progress made, the Review should also consider whether capturing less than half of single trip sales has significant health and environment implications and, if so, whether initiatives such as container deposit scheme should be pursued as an alternative. It further proposes that to improve management of pesticide container waste, burial of containers should become an offence and this prohibition should be reflected in appropriate labelling.

Suggested response: While it is quite right that these excellent schemes, which are examples of industry response to regulation mentioned above, should be commended and supported, it is doubtful whether it is practical, appropriate or necessary that they be given legislative backing, although consideration could be given to making burial of containers an offence with this prohibition reflected in product labelling.

It is difficult to see how further regulation can legitimately contribute to this process.

OPTIONS

1. Council could offer comment consistent with that indicated within the body of the report.
2. Council may wish to take a different position with respect to:
 - ◆ local government having any role in the pesticide regulation process;
 - ◆ the capacity for industry self regulation;
 - ◆ the relationship between the licensing and enforcement process; and
 - ◆ which particular Government Department ought be responsible for pesticide regulation (or indeed whether that responsibility ought lie with one department).
3. Council may choose not to comment on the Discussion Paper.

CONCLUSION

Option 1 is preferred for the reasons indicated within the report.

RECOMMEND

- 1. That a response consistent with that indicated within the body of the report be forwarded to the Department of Health.**
- 2. That a copy of that response be forwarded to the Western Australian Local Government Association.**

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***UNPAID INFRINGEMENT NOTICE –
MS D KUCYNSKI, 620 BROOKTON HIGHWAY, ROLEYSTONE***

WARD : JARRAH
FILE REF : A117908
DATE : 28 November 2005
REF : JQ
RESPONSIBLE : HSM
MANAGER
SUBJECT LAND : Area: 3260m²
ZONING Residential (R5)

In Brief:-

- An Infringement Notice was issued on 30th September 2005 for keeping a goat in a residential zone contrary to the provisions of *City of Armadale Environment, Animals and Nuisance Local Laws 2002*.
- The modified penalty imposed by that Notice has not been paid.
- Recommendation for the institution of legal proceedings.

Tabled Items

Nil.

Officer Interest Declaration

Nil.

Strategic Implications

Nil.

Legislation Implications

Provision for the imposition of modified penalties for breaches of local laws is under subsections 9.16 and 9.17 of the *Local Government Act 1995*.

Council Policy / Local Law Implications

Clause 59 of the *City of Armadale Environment, Animals and Nuisance Local Laws 2002* prescribes modified penalties for offences.

Budget / Financial Implications

Nil.

Consultation

Nil.

BACKGROUND

On the 2nd September 2005 a complaint was received about a property at 620 Brookton Hwy, Roleystone, with respect to:

- ◆ barking and aggression of two dogs;
- ◆ early morning crowing of a rooster;
- ◆ noise caused by a goat tethered on the property; and
- ◆ riding of an unlicensed off road quadricycle on Brookton Highway.

The issue concerning the dogs was subsequently dealt with by Rangers and the complainant was advised that he would need to contact the Police with regard to the road use of the unlicensed vehicle.

On 6th September, a visit was made to the property and the occupier, Ms Kuczynski, was informed of Council's local law requirements relating to the keeping of animals on residential property. She said that she did not intend to get rid of the rooster or goat as they were pets.

A letter forwarded to Ms Kuczynski on the 8th September provided the full text of the relevant local laws, including that a rooster may not be kept other than in a rural zone and that a farm animal (the local law definition of which includes a goat) may not be kept other than in a rural zone except in accordance with a permit issued by Council. The letter included advice that if the rooster and goat were not removed from the property by Friday 23rd September 2005, an Infringement Notice imposing a modified penalty of \$100 may be issued for each offence. A copy was forwarded to Perth Management Services, which manages the property on behalf of Main Roads WA.

The complainant was contacted on 23rd September and reported that the animals remained on the property, and so a second letter was sent to Ms Kuczynski on that day extending the time for removal of the animals until 30th September 2005 but warning that if the animals were found to be on the property at the time an Infringement Notice would be issued for each animal that remained. Again a copy was forwarded to Perth Management Services.

On the 30th September 2005 a follow-up inspection was undertaken. When asked if she had removed the rooster and the goat Ms Kuczynski said that she had got rid of the rooster and the goat had been removed, but it was back on the property, 'visiting'. The animal was sighted and an Infringement Notice issued.

Ms Kuczynski expressed annoyance that a Notice had been issued in view of her contention that the goat was only visiting, and was told she had been warned that if it remained on the property a Notice would be served. She then said she was dissatisfied that a fine had been imposed although she was trying to get rid of the goat.

On the 1st November a letter was sent to Mr Kuczynski reminding her that the deadline for payment of the penalty imposed by the Infringement Notice (28 days from the time of issue – 28th October) had passed. The letter included advice that, if the penalty was not paid by close of business on 14th November legal action would be instituted without further notice.

At the time of writing no payment has been made. The goat has now been removed from the property.

COMMENT

While there is an argument that, the central problem having been resolved, there is little to be gained by pursuing the matter further, in principle the issue is no different from the issue of Infringement Notices for a range of other offences such as parking and traffic infringements which in all cases refer to offences that took place at a specific time and are no longer occurring. It is also important that those people who have paid the penalties imposed by such Notices see that there is procedural fairness and an even handed approach.

ANALYSIS

Imposition of a modified penalty by issue of an Infringement Notice is an alternative to prosecution for an offence that has been committed, and is intended to simplify the enforcement process. The Notice carries with it advice to the effect that an offender may pay the penalty in lieu of having the case heard by a Court. The fact that the goat has now been removed does not have direct relevance to the reason for the issuing of the Notice.

In April 2004, Council resolved to proceed to prosecution in a similar case.

OPTIONS

Options are limited to:

1. Take no further action; or
2. Institute legal proceedings.

CONCLUSION

It is considered that failure to pursue the case in instances when offenders do not pay tends to undermine effective enforcement of Council's local laws, and consequently Option 2 is preferred.

RECOMMEND

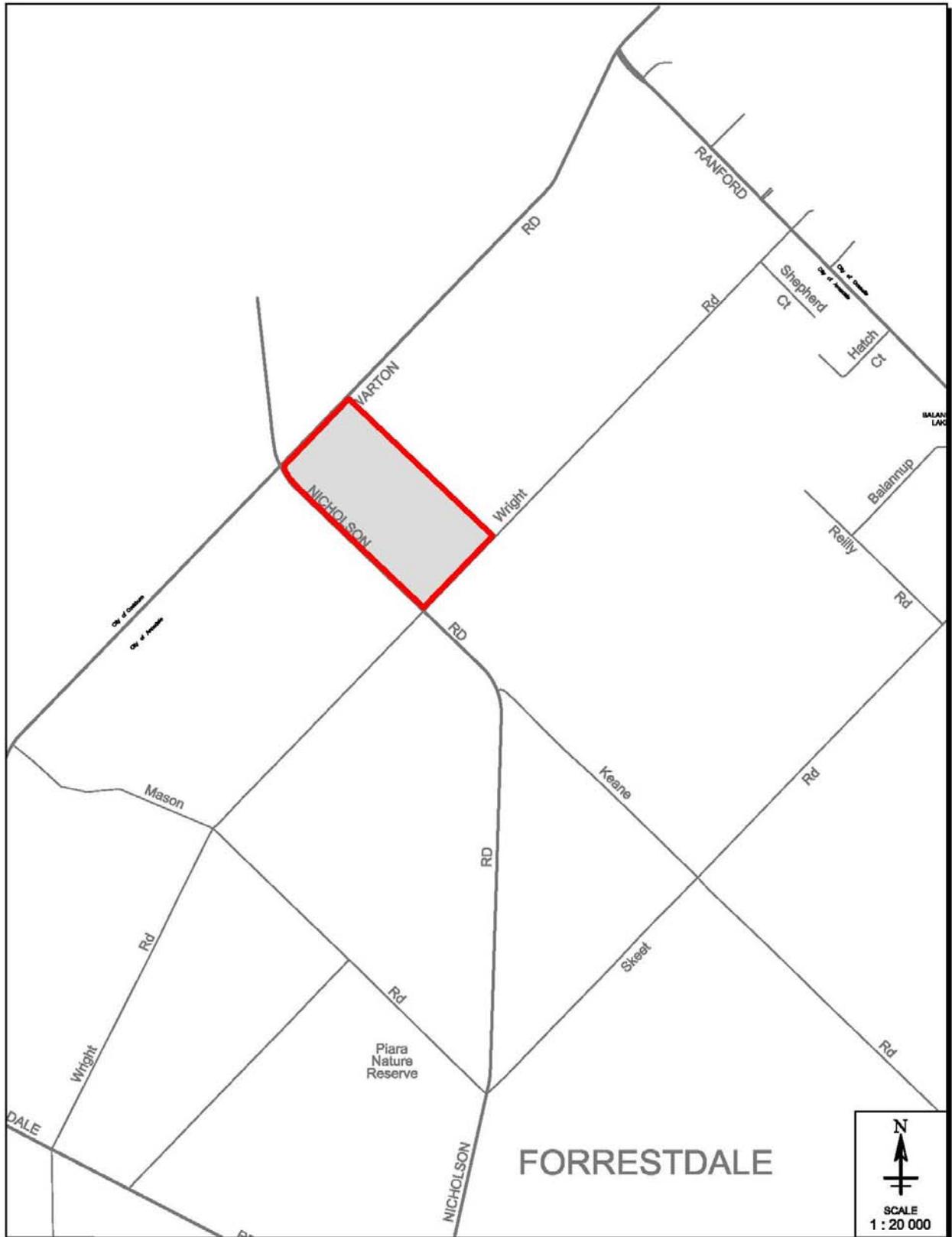
- 1. That legal proceedings be instituted against Ms D Kuczynski of 620 Brookton Highway, Roleystone, if the penalty imposed by Infringement Notice 60051 is not paid by 31st December 2005.**
- 2. That Ms D Kuczynski be advised accordingly.**
- 3. That Environmental Health Officer Ms Jane Quan be authorised to swear the appropriate Complaints on behalf of Council.**

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**DEVELOPMENT
SERVICES
COMMITTEE**

PLANNING



**LOCATION PLAN
LOT 388 WRIGHT ROAD, FORRESTDAL**

**ROAD NAMING –
LOT 388 WRIGHT ROAD, FORRESTDAL (ARION ESTATE SUBDIVISION)**

WARD : LAKE
FILE REF : NAM/2
DATE : 2 December 2005
REF : SEN
RESPONSIBLE MANAGER : PSM
APPLICANT : Chappell & Lambert
LAND OWNER : Fetherstone Holdings P/L
SUBJECT LAND : Property size 32.03ha approx.
Map 17.08
ZONING MRS : Urban
TPS No.4 : Urban Development Zone

In Brief:-

- Council has received a proposal to name new road reserves within the Arion Estate on Lot 388 Wright Road, Forrestdale.
- Proposed names have an Equine theme to acknowledge the historic significance of the land being developed and comply with the Geographic Names Committee (GNC) criteria.
- Recommend that Council approach the Geographic Names Committee seeking approval for the following new road names in the Arion Estate: Archer Brace, Trainers Lane, Randwick Bend, Cheltenham Approach, Northerly Drive, Willoughby Ramble, Baystone Parade, Oakleigh Pass, Derby Lane, The Grandstand, Kersley Loop, MacDougal Way, Binnia Mews, Arion Avenue, Chariot Turn, Ascot Lane, Coronet Lane, Tenterfield Green and Canterley Trail.

Tabled Items

Nil.

Officer Interest Declaration

Nil.

Strategic Implications

Relates to the aim for developing our City to:

- ♦ Sustain and maintain the distinctive character of the City; and
- ♦ Maintain Armadale as a special place.

Legislation Implications

Land Administration Act 1997.

Council Policy / Local Law Implications

Nil.

Budget / Financial Implications

Nil.

Consultation

- ◆ Geographic Names Committee

DETAILS OF PROPOSAL

Council has received a proposal for the naming of road reserves for new streets which are being created by a subdivision proposed for Lot 388 Wright Road, Forrestdale (SUB/128177). The developers are calling the development the Arion Estate and following an equine theme derived from the historic significance of the land in relation to horse training, breeding and racing.

The applicant proposes the following names to be allocated to the new road reserves in the positions indicated in the subdivision plan:

- | | | |
|-----------------------|-------------------|---------------------|
| ▪ Archer Brace | ▪ Trainers Lane | ▪ Randwick Bend |
| ▪ Cheltenham Approach | ▪ Northerly Drive | ▪ Willoughby Ramble |
| ▪ Baystone Parade | ▪ Oakleigh Pass | ▪ Derby Lane |
| ▪ The Grandstand | ▪ Kersley Loop | ▪ MacDougal Way |
| ▪ Binnia Mews | ▪ Arion Avenue | ▪ Chariot Turn |
| ▪ Ascot Lane | ▪ Coronet Lane | ▪ Tenterfield Green |
| ▪ Canterley Trail | | |

COMMENT

ANALYSIS

Informal consultation with officers of the Geographic Names Committee (GNC) suggests the names will meet the GNC criteria for road naming. Each of the road names are duplicated less than 5 times in the metropolitan area and are more than 10 kilometres from existing duplications.

The property was previously owned by the Kersley family, who are well known in horse training, breeding and racing circles. The proposed road names are taken from word associations with equine connotations, particularly relevant to horse racing as follows:

- ◆ Archer Brace – Archer was a race horse trained by Fred Kersley.
- ◆ Cheltenham Approach – Cheltenham in England has a famous race course.
- ◆ Baystone Parade – Baystone was a race horse trained by Fred Kersley.
- ◆ The Grandstand – a part of each race course.
- ◆ Binnia Mews – a winning horse that Fred Kersley Snr rode in 1940.
- ◆ Ascot Lane – derived from Ascot Racecourse.
- ◆ Canterley Trail – based on a certain gait of a horse.
- ◆ Trainers Lane – Trainers are a vital part of the horse racing industry.
- ◆ Northerly Drive – Northerly is a famous horse trained by Fred Kersley.
- ◆ Oakleigh Pass – One of the first horses to race in the Perth Cup, competing in 1886.
- ◆ Kersley Loop – in honour of Fred Kersley's father who died in 2001. A previous owner of the property, Mr Kersley snr was involved in the WA horse circuit from 1936.
- ◆ Arion Avenue – Arion is a mythical horse.
- ◆ Coronet Lane – The part of the hoof that connects to the horses 'ankle'.
- ◆ Randwick Bend – derived from Randwick Racecourse.

- ◆ Willoughby Ramble – named after one of WA’s best race horses.
- ◆ Derby Lane – derived from Derby Day (in line with the horse racing theme).
- ◆ MacDougal Way – MacDougal was a race horse trained by Fred Kersley.
- ◆ Chariot Turn – a light 2 or 4 wheeled horse-drawn ceremonial carriage.
- ◆ Tenterfield Green – Tenterfield is a town in NSW famously associated with horses.

OPTIONS

1. Approve the road names as submitted.
2. Not approve the names and request the developer to provide alternative road names complying with GNC criteria.

CONCLUSION

The Equine theme, chosen by the developer is in keeping with the historic significance of the land to be developed, should meet GNC criteria and appears to be an appropriate proposal for Council to approve. Option 1 is recommended.

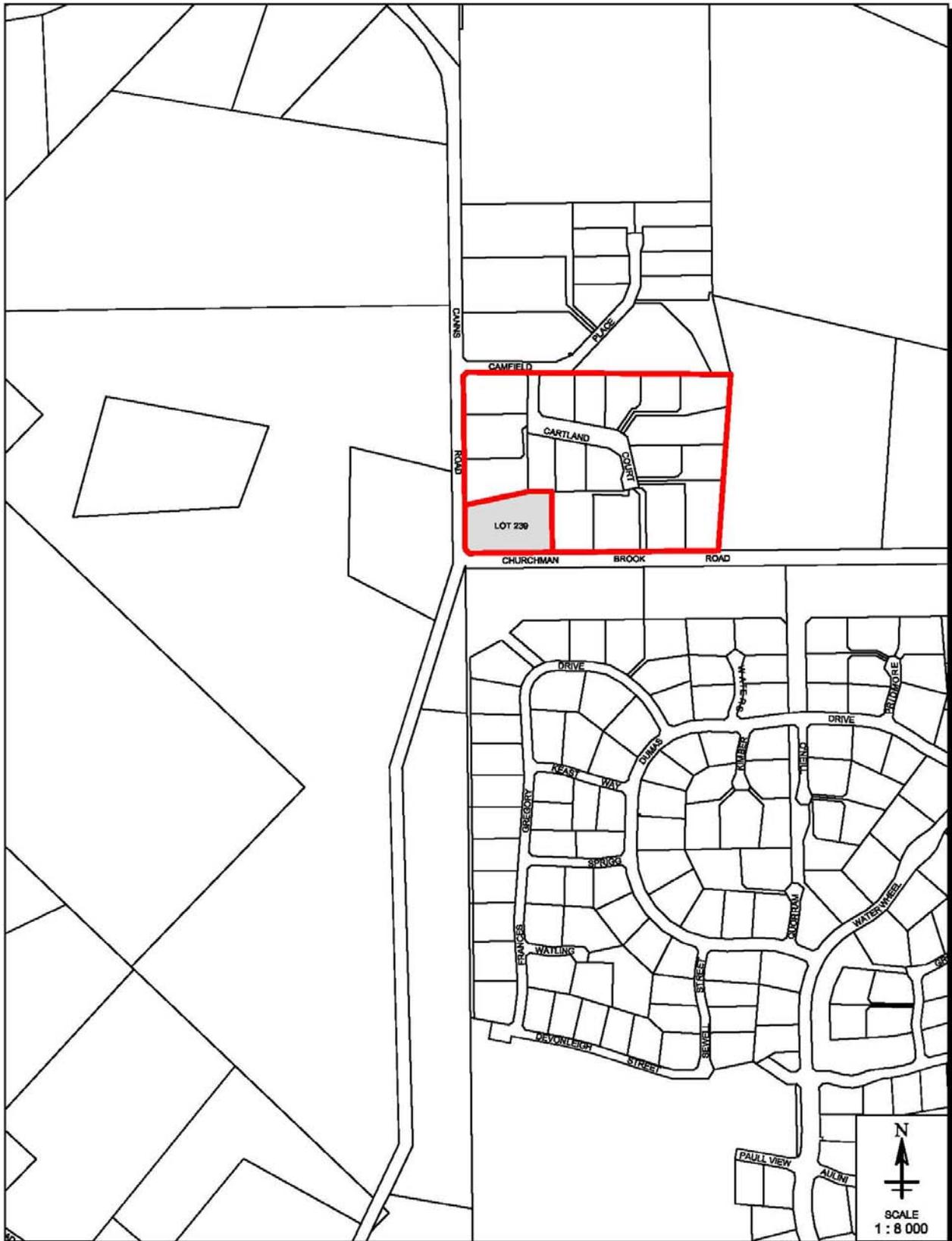
RECOMMEND

That Council approach the Geographic Names Committee seeking approval for the following new road names (or suitable road types acceptable to the GNC) in the Arion Estate subdivision on Lot 388 Wright Road, Forrestdale:

- ◆ **Archer Brace;**
- ◆ **Cheltenham Approach;**
- ◆ **Baystone Parade;**
- ◆ **The Grandstand;**
- ◆ **Binnia Mews;**
- ◆ **Ascot Lane;**
- ◆ **Canterley Trail;**
- ◆ **Trainers Lane;**
- ◆ **Northerly Drive;**
- ◆ **Oakleigh Pass;**
- ◆ **Kersley Loop;**
- ◆ **Arion Avenue;**
- ◆ **Coronet Lane;**
- ◆ **Randwick Bend;**
- ◆ **Willoughby Ramble;**
- ◆ **Derby Lane;**
- ◆ **MacDougal Way;**
- ◆ **Chariot Turn; and**
- ◆ **Tenterfield Green.**

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**LOCATION PLAN
FORMER LOT 55 CANNIS ROAD AND
LOT 239 CANNIS ROAD, BEDFORDALE**

ADOPTION OF A CHANGE / DEPARTURE TO THE STRUCTURE PLAN FOR THE FORMER LOT 55 CANNIS ROAD, BEDFORDALE

WARD : NEERIGEN
FILE REF : SCH/2/191
DATE : 1 December 2005
REF : RVD
RESPONSIBLE MANAGER : PSM
APPLICANT : Dykstra & Associates
LAND OWNER : Lomos Nominees Pty Ltd
SUBJECT LAND : Lot 239 (a portion of former Lot 55) Cannis Road, Bedfordale
Property size - about 1.3ha
Map 25-03
ZONING : Rural/ Special Residential & Development (Structure Planning) Area No.11
MRS/TPS No.4

In Brief:-

- The proposal is to change the Structure Plan for the former Lot 55 Cannis Road, Bedfordale to allow subdivision of Lot 239 Cannis Road into two 6,415m² lots with development envelopes.
- Two submissions were received during the advertising period. One expressing concern about the proposal.
- Consideration needs to be given to maintenance of rural amenity along Churchman Brook Road and fire protection.
- Recommend that Council adopt the proposed modification to the Structure Plan with modifications to reduce the size of the development envelope to reduce intrusion into the Priority Landscape Protection and Revegetation Area and additions to the Notes identifying the need for landscaping the road verge, dense landscaping to screen the development envelope on the easternmost lot, and the need for notification on titles regarding fire.

Tabled Items

Nil.

Officer Interest Declaration

Nil.

Strategic Implications

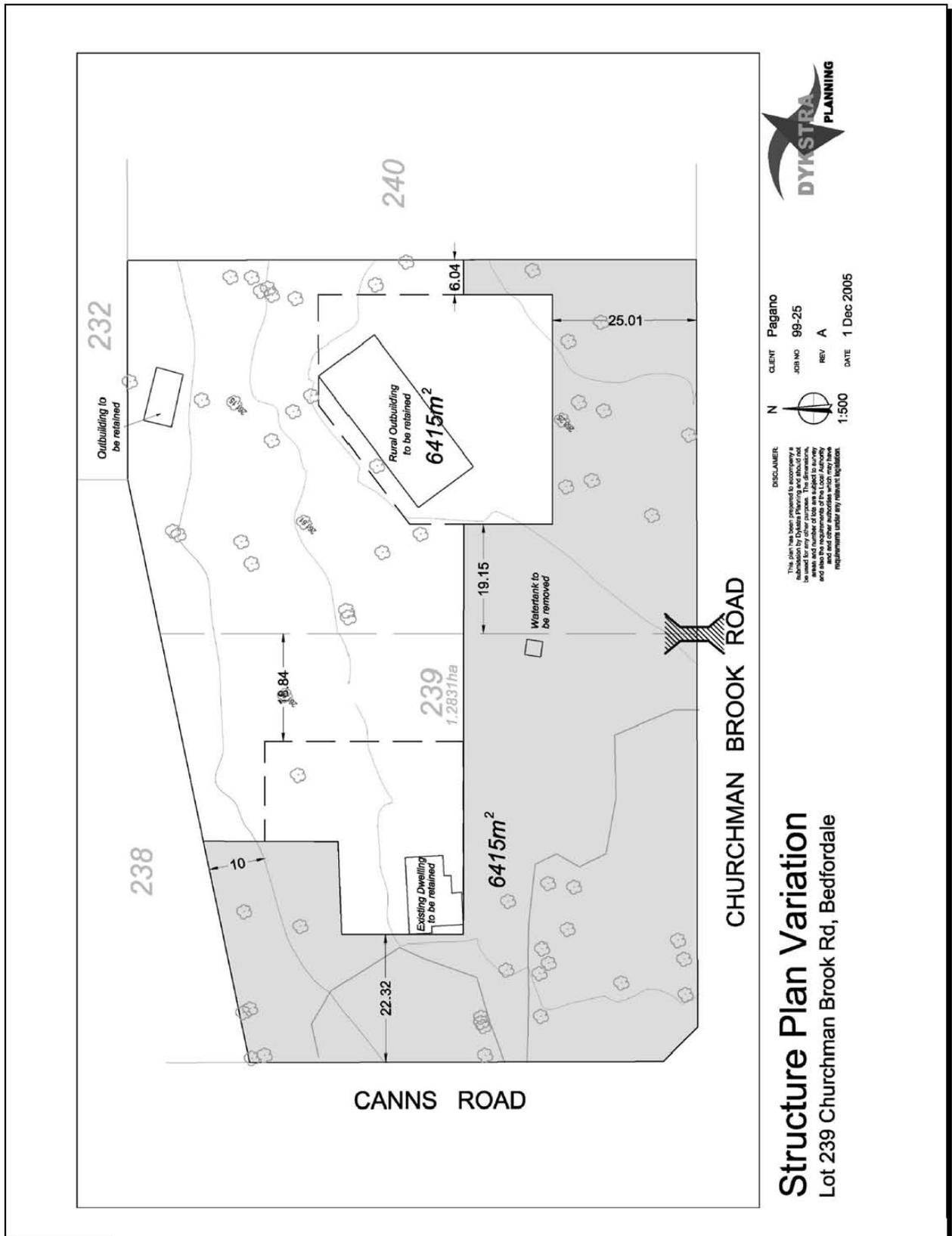
Developing our City “balance the needs of development with sustainable economic, social and environmental objectives”.

Legislation Implications

Town Planning and Development Act 1928
Metropolitan Region Town Planning Scheme Act 1959
Metropolitan Region Scheme
Town Planning Scheme No.4

Council Policy / Local Law Implications

Nil.



**STRUCTURE PLAN EXTRACT SHOWING
 SITE SURVEY DETAILS
 LOT 239 CANN'S ROAD, BEDFORDALE**

Budget / Financial Implications

Nil.

Consultation

- ◆ Development Control Unit
- ◆ Surrounding landholders and relevant community groups

BACKGROUND

The Structure Plan under consideration is within the “Indicative Structure Plan – Canns Road Churchman Brook Road Precinct” which was adopted by Council at the same time as an amendment to Town Planning Scheme No.2 was initiated in 1997. An intention of the Indicative Structure Plan was to maintain a rural setting by having large lots along Canns Road and Churchman Brook Road. Council’s final adoption of the proposed amendment and endorsement of a revised Subdivision Guide Plan occurred in April 2001 and the amendment was subsequently gazetted in January 2002. The amendment required lots along Canns Road and Churchman Brook Road to be a minimum of 1.5 hectares (ha) and required the establishment of a 40 metre wide Priority Landscape Protection Area and Revegetation Area.

In December 2002 Council considered a proposal for Tearooms, Arts/ Craft Studios and an incidental kiosk on Lot 239 Canns Road, and approved the Tearooms and Arts/ Craft Studios. However, this approval has lapsed as it was not substantially implemented within two years of approval.

In March 2004 Council adopted Amendment No.191 to Town Planning Scheme No.2 to reduce the minimum lot sizes outside of the proposed clusters (i.e. the lots along Canns Road and Churchman Brook Road) to 7000m² and adopted a Subdivision Guide Plan showing smaller lots along Canns Road and Churchman Brook Road. The former Lot 55 has now been subdivided to its maximum potential under the approved Subdivision Guide Plan.

In November 2005, Town Planning Scheme No.4 came into effect. The Scheme repealed provisions relating to lot size but Schedule 12 requires that comprehensive planning for the area be undertaken by the preparation of a Structure Plan to guide subdivision and development. The term Subdivision Guide Plan no longer appears in Town Planning Scheme No.4, and Structure Plans have now taken their place.

DETAILS OF PROPOSAL

The applicant has provided a Subdivision Guide Plan variation that is to become the required Structure Plan (hereinafter referred to as the Plan). The Plan proposes to amend the Structure Plan to permit subdivision of Lot 239 Canns Road into two lots each of about 6415m² and identifies the location of proposed development envelopes.

COMMENT

Development Control Unit

The Development Control Unit supported the location of the crossover shown on the Plan and expressed concern regarding the location of the development envelopes. The location of development envelopes is addressed under the Analysis Section of this report.

Department of Environment

The Department of Environment has no objections to the proposal.

Public submissions

The proposal was advertised to adjacent landholders and relevant State Government agencies on 7 October 2005. Submissions closed on 31 October 2005. Two submissions were received in response to the proposal.

Total number of responses received	:	2
Number expressing concern at change	:	1
Number in favour/no objections	:	1

The submission raising various concerns was from the Bedfordale Residents Association and is summarised and responded to under the Analysis section of this report below.

ANALYSIS

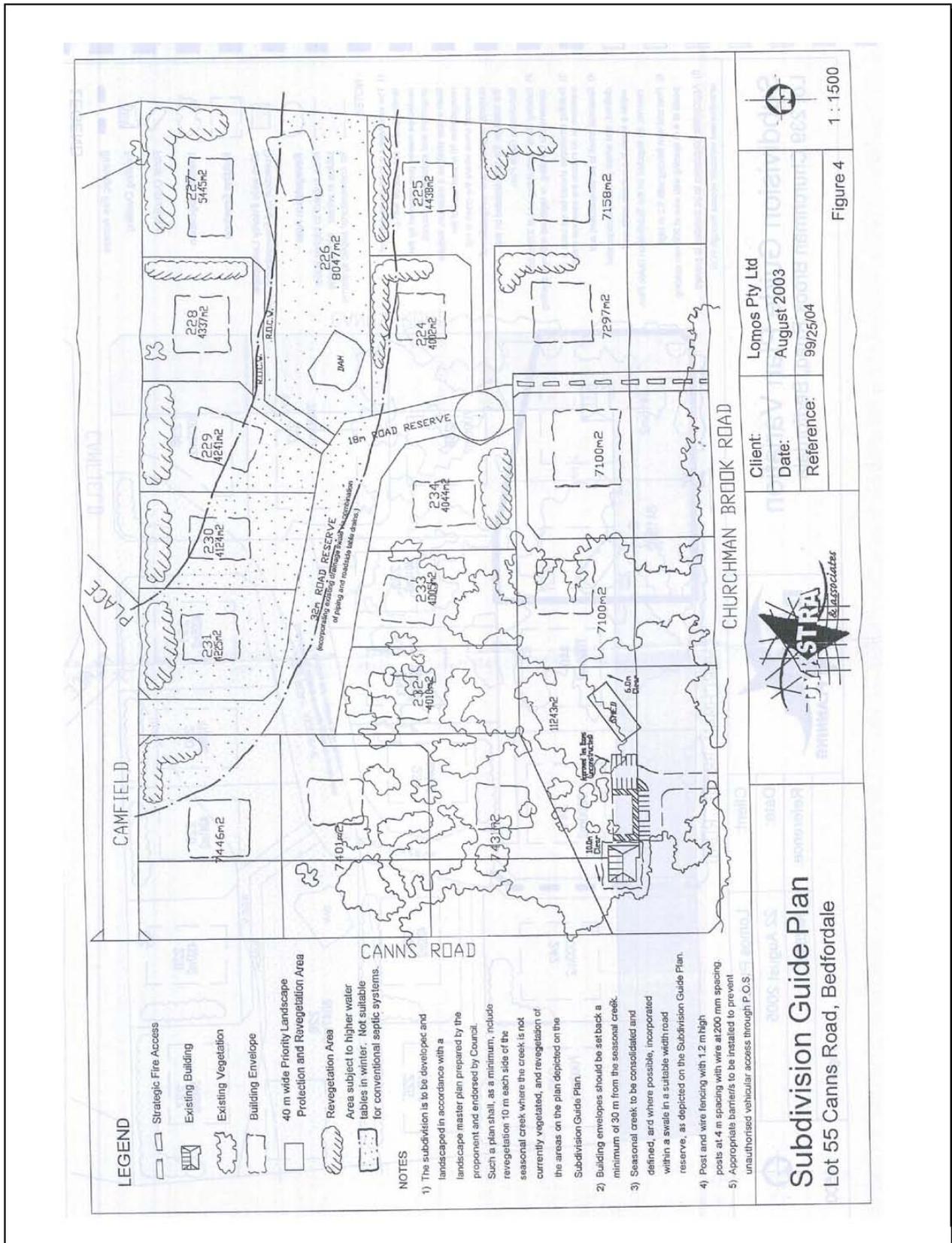
Issues arising from Submission

The issues raised in the submission are summarised in italics below and followed by a recommended response.

Concerned about the propensity for developers to obtain permission for a minimum size block and then at a later date request a reappraisal to allow blocks of a smaller size. We believe this is the third time this strategy has been applied in this area. The Committee are strongly of the opinion that once a plan has been approved, developers should not be permitted to seek reappraisal for smaller blocks for a minimum of five to ten years. We are concerned that this approach seems to transgress Council's promulgation of "Heritage Country".

The proposal that once a Structure Plan is approved it cannot be changed for five to ten years is difficult to support because each application needs to be considered on its merits, having regard to the planning and policy framework current at the time. In this instance, the modified Plan is being considered in the context of the original objectives set in the Indicative Structure Plan of 1997, which is discussed further below.

In terms of transgressing Council's promulgation of Heritage Country, it is assumed that the submission is concerned about the need to keep a rural aspect. The issue of maintaining a rural aspect is considered under "Indicative Structure Plan (1997) and maintenance of rural character along Canns and Churchman Brook Road frontage" section of this report.



**EXISTING APPROVED STRUCTURE PLAN
FORMER LOT 55 CANS ROAD AND
LOT 239 CANS ROAD, BEDFORDALE**

Town Planning Scheme No.4

The subject land is zoned ‘Special Residential’ in Town Planning Scheme No.4, which does not specify maximum or minimum lot sizes for this zoning. Schedule 12 requires that comprehensive planning for the area to be undertaken by preparation of a Structure Plan to guide subdivision and development, and permits Council to consider a convenience store. The Structure Plan guides the development and subdivision of the land.

The process for the consideration, advertising and adoption of Structure Plans and modification of a Structure Plan is set out in Part 6A of Town Planning Scheme No.4. The proposal has been advertised for public comment, therefore the Council is now required to adopt the change/departure to the Structure Plan with or without modifications or refuse to adopt the proposal. The proposal will then be forwarded to the Western Australian Planning Commission for its consideration for adoption.

Local Planning Strategy

The Local Planning Strategy includes as a strategy - “*Ensure that biodiversity and the natural environmental values of the City are protected and conserved for existing and future generations*”. Although the large marri trees are not part of a functioning natural bushland, it is recognised that these trees are of value to the native birds, reptiles and insects that may be utilising these trees for habitat. Marri trees are one of the most productive trees in this region, and it is considered that in this instance efforts should be made to protect the large trees on this site. Fortunately Marri trees are relatively easy to propagate and can be included in the revegetation, but they do grow relatively slowly.

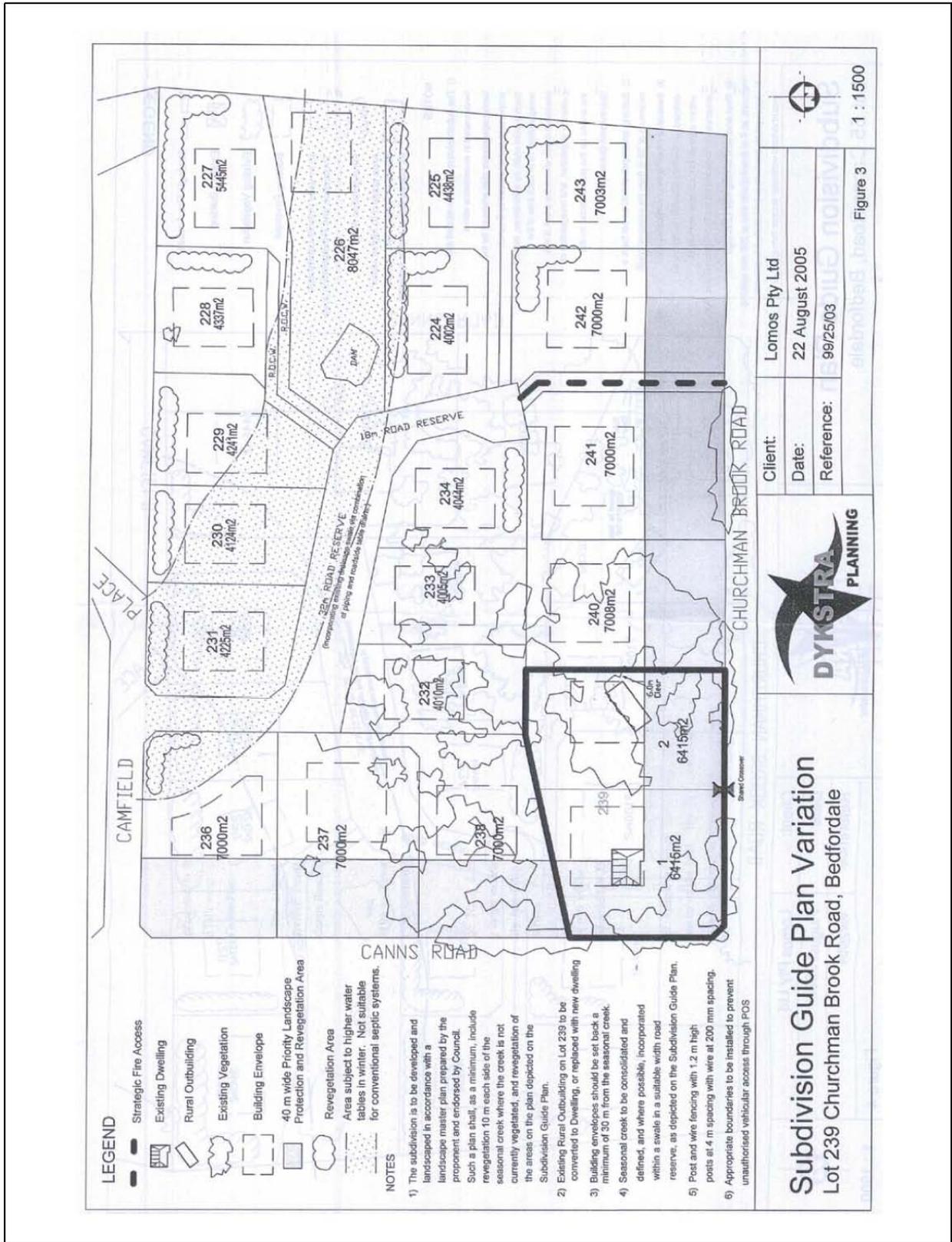
Location of development envelopes

In the Plan that was advertised, the easternmost proposed development envelope was located in the major stand of large marri trees in the Structure Plan area and would have resulted in significant clearing. The westernmost development envelope extended for 20 metres into the 40 metres wide Priority Landscape Protection and Revegetation Area. In response to concerns about this situation from the Development Control Unit and following a site inspection with the applicant, the applicant was requested to do a site survey of trees on the site and to relocate the development envelopes in response to the site survey findings and discussions held with officers of the City on-site.

Easternmost lot

The applicant has amended the proposal to include a 950m² development envelope on the proposed easternmost lot which intrudes 15 metres into the Priority Landscape Protection and Revegetation Area for a distance of 40 metres. Using this arrangement only one large marri tree would need to be cleared at the rear of the existing rural outbuilding.

In selecting a site for the development envelope on the easternmost lot, there is a need to weigh up the size of the development envelope with the protection of the large marri trees and the extent of intrusion into the 40m wide Priority Landscape Protection and Revegetation Area.



**STRUCTURE PLAN AS ADVERTISED
FORMER LOT 55 CANNS ROAD AND
LOT 239 CANNS ROAD, BEDFORDALE**

It is considered preferable that there be some intrusion into the currently un-vegetated portion of the Priority Landscape Protection and Revegetation Area, provided dense planting occurs in the remaining portion to provide screening. It is recommended that the development envelope be reduced to 630m² so as to provide a 33 metres wide strip for revegetation to preserve visual amenity. This would result in the development envelope intruding 7 metres into the Priority Landscape Protection and Revegetation Area. It is considered that the identified development envelope would provide sufficient space for a dwelling and that if a future owner wished to erect an outbuilding elsewhere on the property a small development envelope could probably be established between the trees in the area behind the currently proposed development envelope.

Westernmost lot

The development envelope on the proposed westernmost lot has been modified from that advertised plan to reduce the extent to which it intrudes into the Priority Landscape Protection and Revegetation Area. The new northern boundary coincides with the lawn area associated with the existing dwelling.

Indicative Structure Plan (1997) and maintenance of rural character along Canns and Churchman Brook Road frontage

The Indicative Structure Plan (1997) identified a Landscape Buffer which is identified as the Priority Landscape Protection and Revegetation Area on the Plan and identified Lot 239 Canns Road as being in the ‘balance of area suited to conventional Rural Subdivision only (2ha)’. It is understood that this was intended to maintain rural character along the Canns Road and Churchman Brook Road frontage. It is also understood that Churchman Brook Estate is set back about 80m from Churchman Brook Road to maintain the bushland/ rural character of the road.

At the former Lot 53 Churchman Brook Road, which is also covered by the Indicative Structure Plan (1997), lot sizes down to 8000m² were approved by Council. The currently approved Subdivision Guide Plan (now a Structure Plan) for Lot 53 Churchman Brook Road has three lots fronting the road which are 1.84ha, 1.58ha and 1.13ha respectively.

Determining whether or not the rural character is maintained if Lot 239 Canns Road is subdivided into two 6,415m² lots is a judgement that cannot be made using objective criteria. When the first Subdivision Guide Plan for the area was approved, 1.5ha lots fronted Canns and Churchman Brook Roads. The second revision reduced this to 7000m² lots and argued that visual amenity impacts would be minor as the lots were located behind the Priority Landscape Protection and Revegetation Area and access to all the lots was internal. The Plan proposes one driveway access point to service both lots although the existing lot has two access points, and it can be argued that the difference between 6,415m² and 7,000m² lots in terms of visual impacts is insignificant.



**AERIAL PHOTOGRAPH
LOT 239 CHURCHMAN BROOK ROAD, BEDFORDALE**

City of Armadale Rural Strategy

The subject land lies in the Canns Rural Planning Area Precinct that has “an assumption of encouragement for rural residential development in most sectors of the precinct, other than areas mapped as Low Potential or Unsuitable”. The new lots that would be created through this Plan are mapped as suitable for rural residential development. Key recommendations of the Rural Strategy that apply to the Canns Rural Planning Area Precinct include:

- ◆ Retain as much bush as possible;
- ◆ An assumption, particularly along major transport linkages, that visual impact will be an overriding concern;
- ◆ Consideration of residential development with lot sizes between 2000m² and 1ha in the context of Western Australian Planning Commission’s Policy DC 2.5; and
- ◆ Landscaping and revegetation of principal rural road verges.

It is recommended that infill planting be required along the road verge to assist with screening the development.

Other relevant Canns Rural Planning Area recommendations will be met either through enforcement of Town Planning Scheme No.4 provisions or conditions of subdivision that reflect the Structure Plan requirements.

Western Australian Planning Commission Policies

Policy DC 2.5 Special residential zones (i.e. residential areas with lot sizes between 2000m² and 1ha)

Policy DC 2.5 identifies location, design and servicing requirements for special residential zones. Locational requirements include proximity to existing and planned residential areas so that schools, community and other urban facilities can be reached. The policy also states that special residential zones will generally be approved only for land which is zoned Urban in the Metropolitan Region Scheme except where “the proposal is for development with a rural residential theme in a rural setting”. All the other locational requirements of the policy are clearly met by the proposal.

The design and servicing requirements of the policy can be met by appropriate conditions at subdivision.

Policy DC 3.7 Fire Planning

The City’s Ranger Services consider that the proposal is located in a “high” bush fire hazard area due to its proximity to Armadale Settlers Common and the bushland along Churchman Brook Road. However, no specific setback is recommended for buildings from high bush fire hazard zones by the Policy.

Under the “*Planning for bushfire protection*” guidelines associated with the policy it is recommended that subdivision and development design incorporate building protection zones around all buildings in low, medium and high bush fire hazard areas, and a 20m Building Protection Zone is identified as an “acceptable solution”. This cannot be achieved on the existing Lot 239 and will not be able to be achieved on the newly created lots, particularly as revegetation is proposed in the Priority Landscape Protection and Revegetation Area which is adjacent to the development envelopes.

It is recommended therefore that there be a requirement that a notification be put on the titles warning of the high fire risk, the inability for a 20m Building Protection Zone to be created and the need to comply with Australian Standards for fire protection in constructing any building. This could be achieved by including a note on the Structure Plan which would help ensure an appropriate condition is placed on future subdivision.

OPTIONS

1. Council could adopt the proposed modification to the Structure Plan with modifications relating to the size of the development envelope, denser landscaping in front of the development envelope on the easternmost lot, landscaping of the road verge and notification on the title regarding fire risk.
2. Council could refuse the proposed modification to the Structure Plan on the following grounds:
 - (a) the City’s Rural Strategy identifies that visual impact will be an overriding concern and the visual impact from the proposed change to the Structure Plan will adversely affect the maintenance of rural character along a major transport linkage in the City, noting that visual impact on the south of Churchman Brook Road has been made negligible through an 80m buffer;
 - (b) a reduction in lot sizes from the 7000m² previously approved is unacceptable, given the existing approved lot sizes along Churchman Brook Road in the area covered by the Indicative Structure Plan (1997); and
 - (c) compliance with Western Australian Planning Commission Policy DC 3.7 Fire Planning and the associated guidelines cannot be achieved leading to unacceptable fire risks for dwellings on the additional lots.

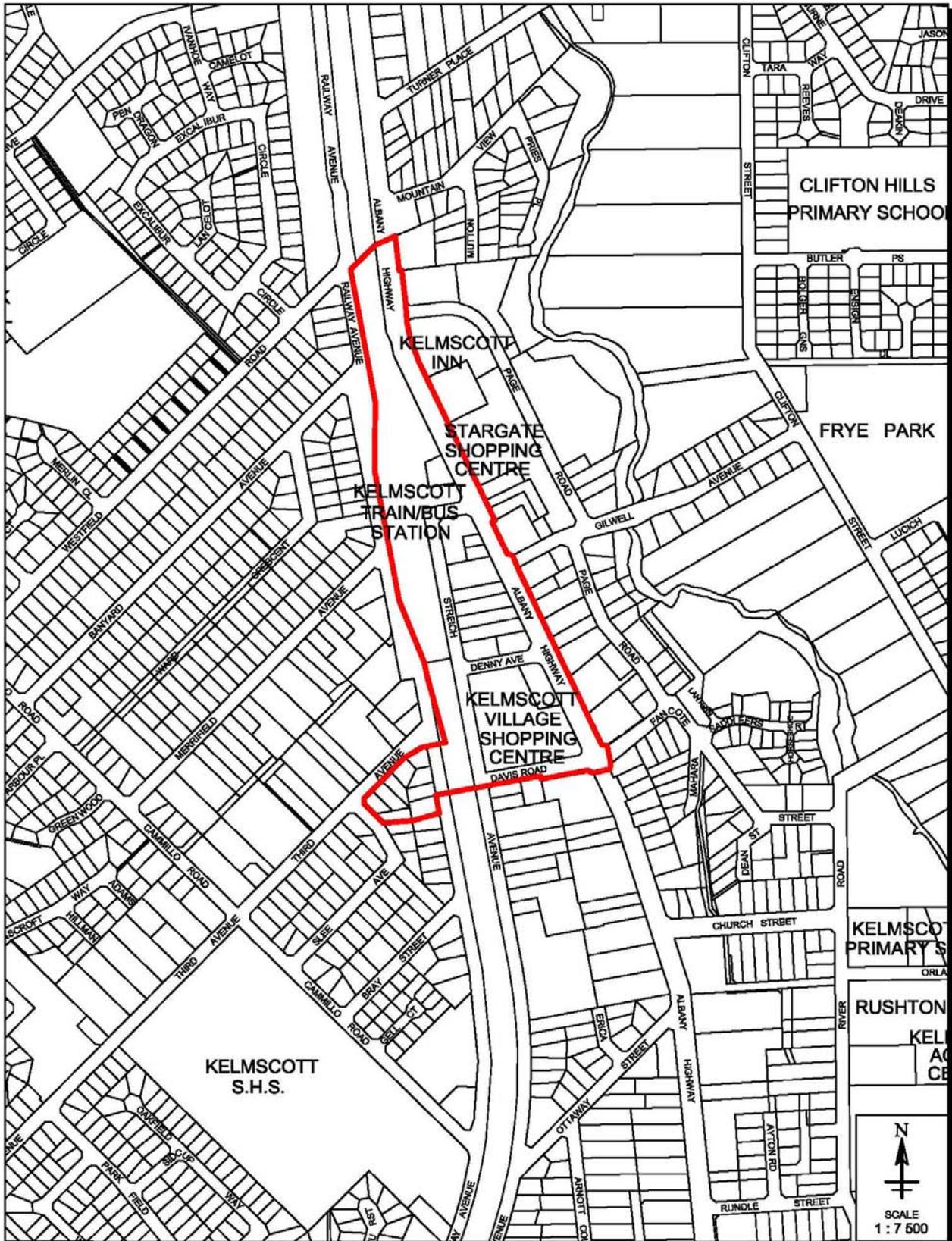
CONCLUSION

The proposed change to the Structure Plan creates one additional lot and the building envelopes have been carefully sited to minimise the impact on the existing large marri trees, whilst maintaining maximum setback and providing screening along Canns and Churchman Brook Road to ensure the rural character of the area is maintained. Therefore Option 1 is recommended.

RECOMMEND

- 1. That Council pursuant to Clauses 6A.4 and 6A.3.7 resolve to adopt proposed modification to the Canns Road Churchman Brook Roads Precinct Structure Plan over Lot 239 Canns Road, Bedfordale, subject to the following modifications being undertaken by the proponent:**
 - a) The development envelope on the easternmost lot being reduced in size so it does not intrude more than 7m into the Priority Landscape Protection and Revegetation Area; and**
 - b) The inclusion of the following additions to the Notes:**
 - i) Landscaping of the road verge and Priority Landscape and Revegetation Area will be required at the subdivision stage;**
 - ii) Dense landscaping will be required to screen the easternmost development envelope; and**
 - iii) Notification on the titles will be required at the subdivision stage to alert purchasers that the recommended 20m Building Protection Zone for fire protection will not be able to be achieved, that the lots are located in a High fire hazard area, and that all buildings will need to be constructed to meet Australian Standards in regard to fire protection.**
- 2. That upon receipt of the structure plan documents modified in accordance with 1. above, that Council pursuant to Clauses 6A.4 and 6A.3.9 of Town Planning Scheme No.4 forward the proposed modification to the Canns Road Churchman Brook Roads Precinct Structure Plan to the Western Australian Planning Commission for approval under Clauses 6A.4 and 6A.3.10.**
- 3. That Council endorses the comments made in this report regarding the submissions received on the proposed modification to the Structure Plan for inclusion in the schedule of submissions to be forwarded to the Western Australian Planning Commission and advises the submitters of its decision.**

Moved Cr _____
Carried/Lost ()



**LOCATION PLAN
KELMSCOTT REDEVELOPMENT AREA**

ARMADALE REDEVELOPMENT SCHEME AMENDMENT NO.6 – KELMSCOTT

WARD : RIVER
FILE REF : PSC/38
DATE : 1 December 2005
REF : IM
RESPONSIBLE : EDDS
MANAGER

In Brief:-

- The ARA proposes to advertise an amendment to its Scheme regarding the Kelmscott centre to enable it to exercise planning control.
- The Scheme will be guided by a Concept Plan which sets out the broad traffic circulation and disposition of uses.
- Recommend that Council support the advertising of the Amendment for public comment and request a forum be held during the advertising period.

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

Armadale Redevelopment Act 2001
Armadale Redevelopment Scheme 2004

Council Policy / Local Law Implications

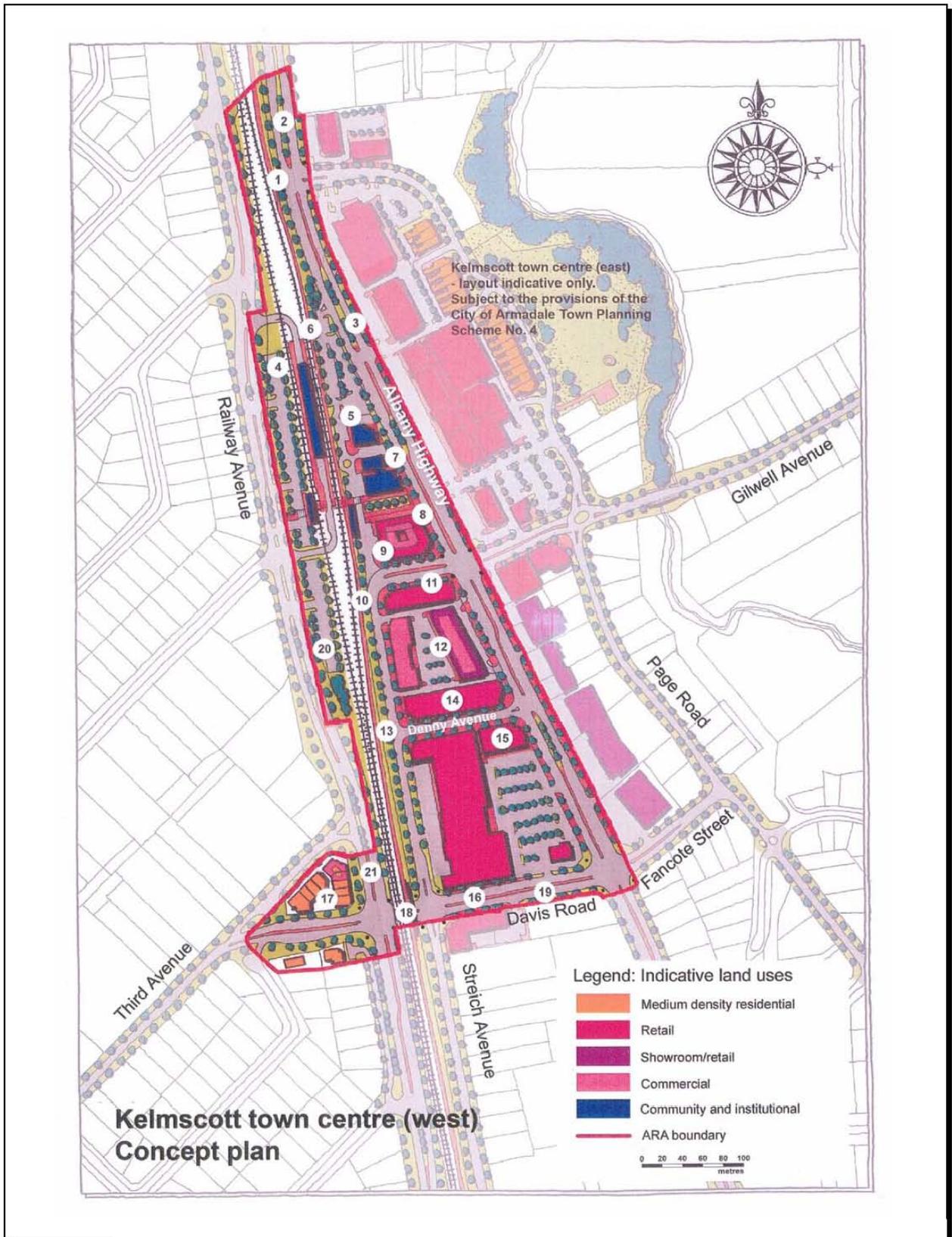
Nil.

Budget / Financial Implications

The taking over of planning control over the designated area by the ARA will result in planning application fees not coming to the City.

Consultation

- ♦ ARA’s Kelmscott Working Group



**CONCEPT PLAN
KELMSCOTT TOWN CENTRE (WEST)**

BACKGROUND

In November 2004 Council considered a request from the Minister for Planning and Infrastructure to extend the ARA's responsibility to parts of central Kelmscott and resolved that:

1. the City would support the involvement of the ARA in facilitating the achievement of the infrastructure works identified in the Kelmscott Enquiry by Design for the grade separated crossing of the railway and the improvements to Albany Highway, and the redevelopment of land between the Railway and the Highway north of Davis Road;
2. the new ARA area be confined to the area indicated on the above plan; and
3. this support is subject to sufficient resources being allocated to the ARA to ensure that the nominated tasks can be actioned in the short term, and the duration of the arrangements being limited to three years.

The Kelmscott town centre (west of Albany Highway) was introduced into the Armadale Redevelopment Area by Regulation in January 2005.

In April 2005 a resolution was gazetted pursuant to Clause 32 of the Metropolitan Region Scheme to require development over \$100,000 to be approved by the Western Australian Planning Commission. However, the City has retained planning control over the Kelmscott locality through its town planning scheme.

The ARA has now initiated an amendment to formally introduce the Kelmscott Redevelopment Precinct into the ARA Scheme. The Authority is required to formally consult with the City prior to seeking the consent of the Minister to advertise the amendment.

DETAILS OF PROPOSAL

The purpose of the proposed amendment is to remove the area from the current town planning schemes (the MRS and TPS No.4) to be replaced by the Armadale Redevelopment Scheme 2004.

The amendment will provide a table of permitted uses and will be accompanied by a non statutory concept plan.

The redevelopment scheme will allow for future road reservations to set aside land for the extension of Gilwell Avenue to the west, a grade separated rail crossing at Davis Road connecting to Third Avenue and minor road widenings on Davis Road and Albany Highway. The intent will also be to improve urban context for the proposed upgrade to the Kelmscott rail station and for the underutilised areas of public and private land north of Denny Avenue.

It is proposed to include the Kelmscott ARA area within the Scheme Reserves Map, the Development Contribution Areas Map, Structure Plan Areas map and to Code the area R60. Include an additional objective in the ARA Scheme relating to revitalising Kelmscott.

An additional column is to be provided to the land use table to identify the uses which are permitted and not permitted.

Planning decisions under the Scheme will be guided by the Concept Plan which has also been prepared in draft.

The Concept Plan (**see overleaf**) shows the desired disposition of retail and community uses in the ARA area. The significant surrounding areas are shown half tone as the ARA will not have planning control over these areas but their future development (guided by the City) will be equally important to the redevelopment of Kelmscott. Some of these areas are being designed through the City-sponsored Canning River Precinct Study.

The main features of the Concept Plan provide for:

- ◆ traffic lights at Page Road (1);
- ◆ general improved streetscape and widening to improve medians along Albany Highway (2) and (3);
- ◆ improved parking west of the railway (4) and (20);
- ◆ a community precinct to include station masters house opposite the station (7);
- ◆ Streich Ave closed to create new public plaza (8);
- ◆ Commercial development fronting public areas with some showrooms (9), (12) and (14);
- ◆ the extension of Gilwell Avenue west of Albany Highway (11);
- ◆ the railway underpass at Davis Road (18) with signals at Railway and Streich intersections;
- ◆ Medium density residential development on residual land created by underpass (17).

COMMENT

The land uses to be permitted within the precinct will be more limited than those currently permitted under TPS No.4. In addition in most part it is proposed that a greater level of control be exercised. For instance, while under TPS No.4 Child Care Premises, Consulting Rooms, Hotel, Lunch Bar, Office, Restaurant and Shop were “P” uses these will all be “D” (Discretionary) under the ARA Scheme. Some uses will be excluded that would otherwise be permitted (such as Cinema, Hospital, Motel, Service Station, and Trade Display). The precinct covers a much smaller area than the TPS No.4 District Centre Zone and it is to be expected that there should be a more limited range of uses permitted. The ARA generally seeks greater control on development than would be the case for the City and this is reflected in the manner in which the permitted uses are dealt with on the Table.

The most difficult planning issues associated with the Concept Plan have been guided by the results of traffic modelling. This has indicated that the Davis Road underpass will definitely be required and that while traffic lights at Page Road will be functional in the short term and will be installed between January and March 2006, in the medium term it is important to provide lights at Gilwell and Albany Highway to avoid Page Road becoming a highly trafficked route. The extension of Gilwell Avenue provides a desirable calmed mainstreet – albeit a short one.

The initiatives foreshadowed in the Concept Plan should be welcomed and the manner in which the planning has been undertaken with the involvement of the City has ensured that the proposals have not been developed in isolation from the surrounding areas which remain in the City’s control.

OPTIONS

1. Council could support the advertising of the proposed Amendment and Concept Plan.
2. Council could offer specific comments/objections to the Amendment.

CONCLUSION

The Concept Plan provides a sound basis for guiding planning decisions and its release for public comment, particularly from the affected landowners, should be encouraged.

Notwithstanding the fact that the Davis Road underpass will be expensive to complete, it is important to plan on the basis of its provision and the studies undertaken to date lend support to the necessity of its provision by the State Government.

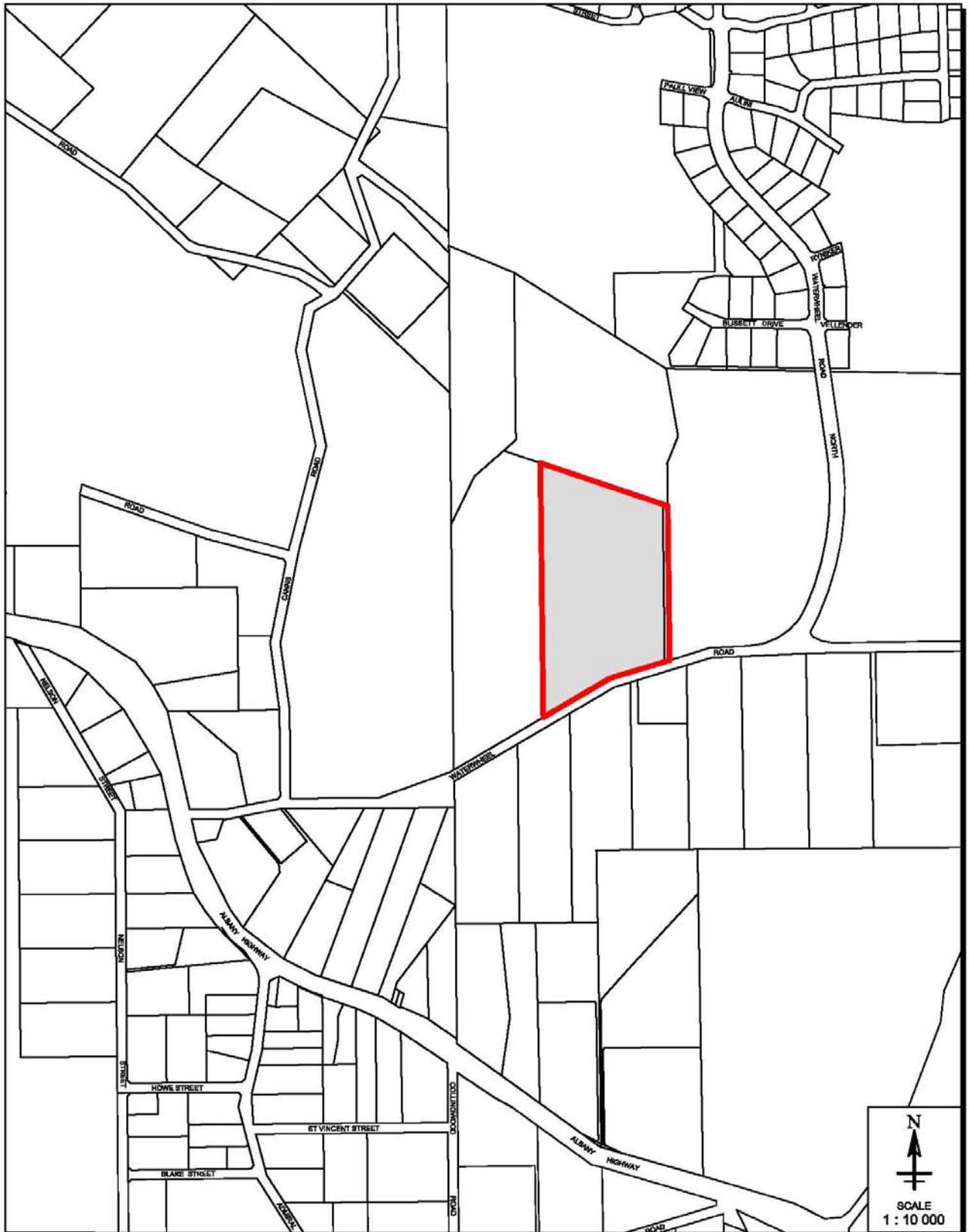
While there may be differing views on particular land uses, the proposal has been well considered and should be advertised for public comment. As the rationale behind some of the features of the Concept Plan, in particular the implications of the traffic modelling, may not be readily apparent it would be appropriate to provide a workshop for interested residents and landowners during the advertising period.

RECOMMEND

- 1. That Council advise the Armadale Redevelopment Authority that it supports the advertising of Amendment No.6 and the associated Concept Plan.**
- 2. That Council recommend that the Armadale Redevelopment Authority provide a forum to explain the features and implications of the Concept Plan for interested residents and landowners during the advertising period.**

Moved Cr _____

Carried/Lost ()



**LOCATION PLAN
LOT 101 WATERWHEEL ROAD, BEDFORDALE**

***PROPOSED SCHEME AMENDMENT –
LOT 101 WATERWHEEL ROAD, BEDFORDALE***

WARD : NEERIGEN
FILE REF : A173178
DATE : 29 November 2005
REF : PRR
RESPONSIBLE MANAGER : PSM
APPLICANT : Taylor Burrell Barnett
LAND OWNER : AL, R, JL Paton and Wholesalers (Morley)
SUBJECT LAND : Property size 10ha
Map 25.01
ZONING
MRS/TPS No.4 : Rural / Rural Living 4

In Brief:-

- Council received an application for a proposed scheme amendment in April 2005.
- The impending gazettal of TPS No.4 has delayed the application. TPS No.4 was gazetted on 4 November 2005, so the amendment can now proceed.
- Recommend that Council initiate the proposed amendment and seek the Western Australian Planning Commission's consent to advertise.

Tabled Items

Nil.

Officer Interest Declaration

Nil.

Strategic Implications

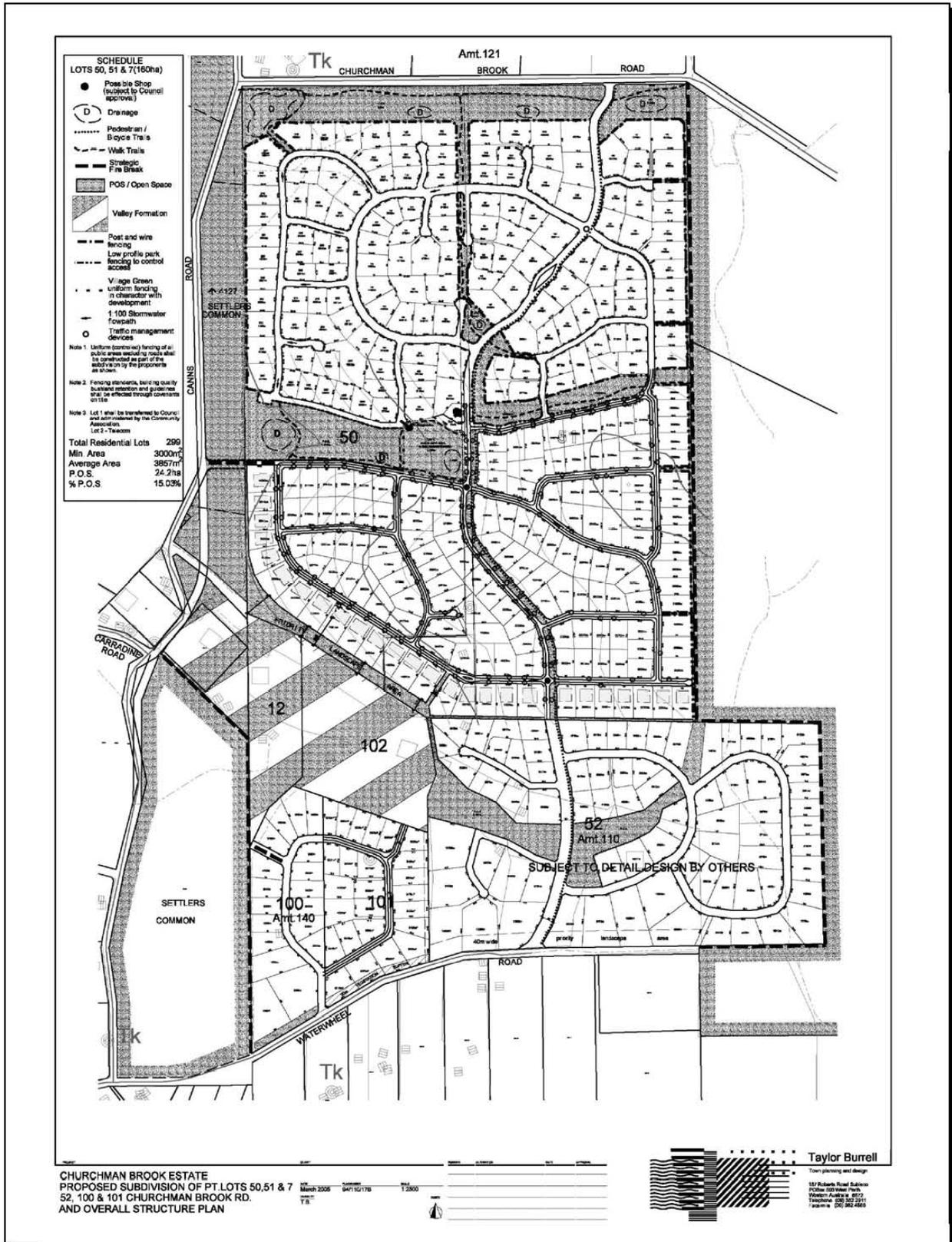
Development – “To balance the needs of development with sustainable economic, social and environmental objectives”.

Legislation Implications

Town Planning and Development Act 1928
Metropolitan Region Town Planning Scheme Act 1959
Metropolitan Region Scheme
Town Planning Scheme No.4

Council Policy / Local Law Implications

Rural Strategy 1999
Local Planning Strategy 2005
Development Control Policy 2.5 – Special Residential Zones (WAPC)



**STRUCTURE PLAN
 CHURCHMAN BROOK ESTATE**

Budget / Financial Implications

Nil.

Consultation

- ◆ Development Control Unit

BACKGROUND

In 1994, Amendment No.94 to Town Planning Scheme No.2 rezoned several large lots from 'Rural X' to 'Special Use: Rural / Residential' and included a Structure Plan to guide subdivision of the land to create the Churchman Brook Estate. In 1996, Council resolved to adopt an amended Structure Plan for this estate that included Lots 100 and 101 Waterwheel Road due to issues associated with the location of the main north/south spine road for the estate. However, these lots were not rezoned at that time.

In 2004, Council as part of its Scheme Review resolved to make some changes to the text and maps relating to draft Town Planning Scheme No.4 (TPS No.4), based on the public submissions received during a three (3) month public advertising period. One submission was from the applicant in relation to the subject lot, who requested a change to the zoning of Lot 101 from 'Rural Living 10' (as indicated in the draft TPS No.4) to 'Special Residential'. The Council did not support this submission, as Lot 101 had not been the subject of an environmental assessment, which has been required for the balance of the Churchman Brook Estate. The Council resolved to rezone the land to 'Rural Living 4' under TPS No.4 as a compromise.

The City received the application to rezone Lot 101 Waterwheel Road, Bedforddale from 'Rural Living 4' to 'Special Residential' on 8 April 2005. Due to the imminent finalisation of TPS No.4 and the time period required for an amendment to be finalised, this proposal could not be progressed as a scheme amendment under TPS No.2. As TPS No.4 was gazetted on 4 November 2005, the request is now referred to Council for consideration.

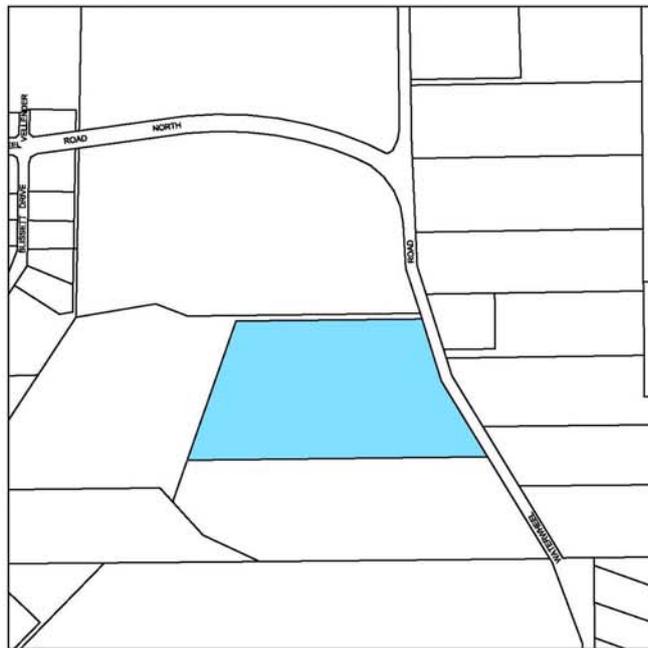
DETAILS OF PROPOSAL

The applicant proposes to rezone Lot 101 from 'Rural Living 4' to 'Special Residential', which is a logical extension of the Churchman Brook Estate. The rezoning of Lot 101 has been delayed pending the completion of the planning for the southern connecting road for the Churchman Brook Estate and the upgrading of Waterwheel Road.

The rezoning would allow Lot 101 to be subdivided on the basis of the adopted Structure Plan into 25 lots ranging in size from 3000m² to 5403m², with an average size of about 3580m². A 20 metre wide vegetated buffer is proposed along Waterwheel Road to reduce visual impact from the street. This area will need to be revegetated at the subdivision stage by the developer.

It is proposed that restrictive covenants similar to those applied on lots within the Churchman Brook Estate would be applied. The applicant has also noted that development envelopes could be utilised to retain vegetation on-site. The City could recommend that the Western Australian Planning Commission (WAPC) impose a condition requiring development envelopes on any subdivision approval.

CITY OF ARMADALE
TOWN PLANNING SCHEME No. 4
AMENDMENT No. 9



PROPOSED ZONING



EXISTING ZONING



SCALE
1 : 7 500

ZONES		RESERVATIONS		PUBLIC PURPOSE MISCELLANEOUS SUB CATEGORIES	
RESIDENTIAL including Residential Planning Density Codes	SPECIAL USE	PRIMARY REGIONAL ROADS	CG	Commonwealth Government	High School
MIXED BUSINESS / RESIDENTIAL	ADDITIONAL USE	OTHER REGIONAL ROADS	TS	High School	Primary School
DISTRICT CENTRE	RU No.2	PUBLIC PURPOSE (Region)	PS	Hospital	Water Authority of WA
LOCAL CENTRE	RESTRICTED USE	PUBLIC PURPOSE (Local)	H	Hospital	Water Authority of WA
GENERAL RURAL	OUTER EDGE DENSITY CODE IN RESIDENTIAL AND RURAL LIVING	STATE FOREST	WSD	Water Supply Commission	Water Supply Commission
GENERAL INDUSTRY	OUTER EDGE OF SCHEME	WATERWAYS	SEC	State Energy Commission	Telstra
INDUSTRIAL BUSINESS		WATER CATCHMENTS	T	Telstra	

NOTE: The reservations are shown diagrammatically and do not support to represent the road reservations shown in the Metropolitan Region Scheme and information is mapped to road widening requirements for these roads should be obtained from DPI.

COMMENT

Development Control Unit (DCU)

At its meeting of 9 June 2005, the DCU held no objections to the proposed amendment.

ANALYSIS

Proposed Rezoning

The proposed amendment seeks to rezone Lot 101 Waterwheel Road, Bedforddale from 'Rural Living 4' to 'Special Residential'. This would effectively bring the lot into line with those immediately east and west and allow subdivision in-accordance with the adopted Structure Plan.

The 'Rural Living' zone entails lots ranging in size from 1 hectare (ha) to 20ha. The objectives of the zone are:

- ◆ *“To provide for a variety of rural living environments based on defined lot sizes, land form and natural environmental characteristics.*
- ◆ *To provide for a range of associated compatible development, consistent with the environmental opportunities and constraints applicable to individual sites.*
- ◆ *To ensure development is sited, designed and managed in harmony with the natural environment and so as to protect the rural landscape and amenity”.*

The 'Special Residential' zone would still be rural by nature in terms of the current Metropolitan Region Scheme zoning, but allows lots at a minimum size of 2000m² (and a maximum of 1ha) in line with the WAPC's Development Control Policy 2.5. The objectives of the 'Special Residential' zone are:

- ◆ *“To provide for low density residential development in a rural setting, in which natural environmental values are conserved as far as possible for the enjoyment of residents as well as the maintenance of ecological and landscape values.*
- ◆ *To ensure development is sited and designed to achieve an integrated and harmonious character within each of the estates”.*

The land is currently vacant, apart for low intensity sheep grazing. The land has previously been used for more intensive grazing purposes, however this ceased some years ago. The applicant argues that grazing is no longer a viable rural pursuit on the land given the small amount of land available and changed rural practices. The City acknowledges that a rural residential land use is a more suitable land use for this site.



**AERIAL PHOTOGRAPH
LOT 101 WATERWHEEL ROAD, BEDFORDALE**

WAPC Policy DC 2.5 – Special Residential Zones

The WAPC's Development Control Policy 2.5 – Special Residential Zones (the Policy) outlines several matters that need to be considered in making a decision regarding the initiation of this proposed amendment including location, design and servicing requirements. The objectives of the Policy are:

- ◆ *“To provide for the creation of lots of between 2000m² and one hectare in suitable locations;*
- ◆ *To ensure that the use and development of such lots are subject to appropriate standards and controls;*
- ◆ *To protect the character and amenity of adjacent rural areas”.*

Location Requirements

The Policy outlines that ‘Special Residential’ zones should generally be located within areas zoned ‘Urban’ under the Metropolitan Region Scheme (MRS). This is not the case for Lot 101, or indeed the remainder of the Churchman Brook Estate. The Policy indicates that exceptions to this situation may be acceptable where:

- ◆ *“The proposal is for a rural residential themed development in a rural setting;*
- ◆ *The proposal relates to land that will be in the ‘Rural’ zone under the MRS for the long term and is unlikely to be required for future urban purposes;*
- ◆ *Provision is made for land use and management controls to ensure development is consistent with the predominantly rural character of the area”.*

The Churchman Brook Estate complies with these three (3) criteria. Indeed it is unlikely that the first stages of the estate would have proceeded, if it had not been demonstrated that these criteria could be addressed from the outset. Some of the more general location criteria of the Policy include:

- ◆ *“Consideration of the topography, soil, climate and impact on the environment;*
- ◆ *The site being adjacent to land zoned ‘Residential’ with good access to schools and community facilities;*
- ◆ *Avoidance of agricultural land, water catchment areas, State forests and mineral or stone deposits;*
- ◆ *Landscapes worthy of protection and / or which is clearly visible from roads of regional or national importance is to be avoided”.*

Whilst the proposal complies with the first, third and four criteria above, the subject land and the Churchman Brook Estate is not adjacent to a residential area or near to any schools. However, the estate does contain community facilities.

Design and Servicing Requirements

Some of the design and servicing criteria of the policy include:

- ◆ *“Lots in the Special Residential zone should have a range of sizes;*
- ◆ *Lot sizes should reflect topographical and environmental characteristics of the land concerned;*
- ◆ *Special Residential zones should be provided with the type and standard of services typical of normal Residential zones;*
- ◆ *Land for public open space will be required when recreational open space is considered desirable;*
- ◆ *Road networks should take account of the topography and long cul-de-sacs should be avoided;*
- ◆ *Lots should be designed to capitalise on the topography of the area;*
- ◆ *As far as practicable, direct access to a major road should not be permitted;*
- ◆ *Building setbacks to main frontage and subdivisional roads should be varied to create a more interesting environment;*
- ◆ *Connection to underground power will normally be required”.*

The proposal seems to meet the majority of the requirements of the WAPC’s Policy. It is noted that the amendment will require the WAPC’s consent to advertise, therefore further examination of the WAPC’s policies will be undertaken by the WAPC, prior to the proposal being advertised for public comment.

Adopted Structure Plan

Lot Layout

The rezoning proposal includes reference to the Structure Plan adopted by Council over the subject area, which allows for the subdivision of Lots 100 and 101 Waterwheel Road into 42 lots, once appropriate zonings are in place. Of those 42 lots, 25 are situated on Lot 101, the subject site. No significant change is proposed to the Structure Plan. It is noted that Lot 101 is dependant on the subdivision of Lot 100 for access to Waterwheel Road and similarly, Lot 100 is dependant on the subdivision of Lot 101 for a reticulated water supply from the main estate area. The rezoning of Lot 101 as proposed will allow the subdivision of both lots to proceed in an orderly manner.

The proposal also includes the deletion and amalgamation of the battleaxe leg on Lot 102, which is proposed to be included in the new special residential lots. A new subdivisional road on Lot 101 will provide Lot 102 with more appropriate road access and gazetted road frontage. The portion of Lot 102 (battleaxe leg) proposed to be included in the special residential lots will need to be rezoned to Special Residential zone at same time of the rezoning of Lot 101.

Traffic Generation

With respect to potential traffic generation, the applicant notes that previous traffic studies submitted by their office and accepted by the City included calculation for traffic to be generated by the subject lot. The alignment of the north/south spine road (Waterwheel Road North) was reconsidered at Council's meeting of 17 May 1999 through an amendment to the Structure Plan. The report to Council acknowledged and accepted traffic information provided by the applicant at that time, so the statement made by the applicant in relation to the current application is acknowledged.

Deed of Agreement

A Deed of Agreement currently exists between the developers and Council with respect to Lot 101, prescribing the construction of Waterwheel Road North and the provision of several community facilities including a community hall, tennis courts and a village green. The southern connecting road for the Churchman Brook Estate (Waterwheel Road North) was constructed on the adjoining lot to the east on a more appropriate alignment, than the original alignment. The community facilities have also been constructed near the centre of the estate, therefore the rezoning and subdivision of Lot 101 can be supported.

Rural Strategy

Lot 101 is situated within the Canns Rural Planning Area, the principal policy objective of which is "*to preserve the scenic and environmental quality of the area*". Rural residential land uses are listed within the Desirable / Conditional land uses for that area. The Subdivision and Development Guidelines for the Canns Rural Planning Area make several assumptions including the need for environmental assessment, the encouragement of rural residential development within most sectors of the precinct, that visual impact will be the overriding concern and due consideration will be given to the WAPC's Policy (as outlined previously). Therefore, the proposal is consistent with the objectives in the Rural Strategy for this area.

Building Design

The applicant has stated that restrictive covenants are to be used within the subject area similar to those provided within the Churchman Brook Estate. This will maintain the standard of development within the area.

Impact on Amenity

The elevated nature of Lot 101 and the fact that it is partially cleared mean that the site can be seen from Waterwheel Road and at some distance, from Albany Highway. A 20 metre wide vegetated buffer is proposed adjacent to Waterwheel Road to restrict visibility of the future lots from that public vantage point and four (4) larger lots (in excess of 5000m²) are located along that frontage to reduce visible building bulk. The applicant maintains that the imposition of development envelopes (at the subdivision stage) and future revegetation as the subdivision matures will assist in softening the impact of the proposal on the landscape.

Soil Capability

The applicant has indicated that extensive soil investigation has taken place in the immediate vicinity of Lot 101 to determine whether the soil is suitable for the disposal of effluent on-site without any impact on the groundwater. Studies undertaken in 1993 on adjacent Lot 52 (Mackie Martin report) and in 2000 on Lots 50 and 51 (PPK Environmental and Infrastructure Consultants) indicate that the soil is suitable for on-site effluent disposal, as the soil type (Dwellingup Unit 2Da) is described as well drained, shallow to moderately deep, gravely brown sands, pale brown sands overlying lateritic duricrust with a high phosphorous retention index. This is accepted, but as such a study has not been carried out specifically for the subject lot, it is anticipated that further environmental investigation would be undertaken if the proposed amendment is initiated. Further discussion will occur between the applicant and the City on this issue, prior to the rezoning being considered for final approval by the Council.

Drainage Control

The applicant indicates that drainage will be managed in part by the installation of drainage basins, the locations of which have been determined by a detailed drainage study and shown on the Structure Plan. In the event of a higher order storm an overland flow path is available. The final details would be determined by consulting engineers in conjunction with the City of Armadale should the amendment proceed.

Bush Fire Management

The Structure Plan layout has formed residential cells surrounded by roads to conform to accepted bush fire management practice. Fire hydrants would be installed at regular intervals within the road reserve and all new purchasers and subsequent purchasers are required to be fully aware of the fire management guidelines within the Homeowners Bushfire Survival Manual. Individual lot owners would be responsible for all buildings being constructed in accordance with Australian Standard 3559 “Construction of Buildings in Bushfire Prone Areas” and strategic fire breaks will be put in place at the subdivision stage. The applicant has satisfactorily addressed this issue and the City accepts the undertakings provided.

Servicing

It is likely that the developer would be required to connect all lots to a reticulated water supply and underground electricity as conditions of a subdivision approval. It is likely that on-site effluent disposal would be acceptable and the Department of Environment and Health Department of Western Australia would need to confirm this as part of advertising of the proposed rezoning, should Council resolve to initiate the amendment.

OPTIONS

1. Council may resolve to initiate a Scheme Amendment to amend the zoning of Lot 101 and a portion of Lot 102 Waterwheel Road, Bedforddale from ‘Rural Living 4’ to ‘Special Residential’.
2. Council may resolve not to initiate the Scheme Amendment in respect of Lot 101 and a portion of Lot 102 Waterwheel Road, Bedforddale on the basis that it believes the proposal is contrary to some of the criteria of the WAPC’s Development Control Policy 2.5 – Special Residential Zones.

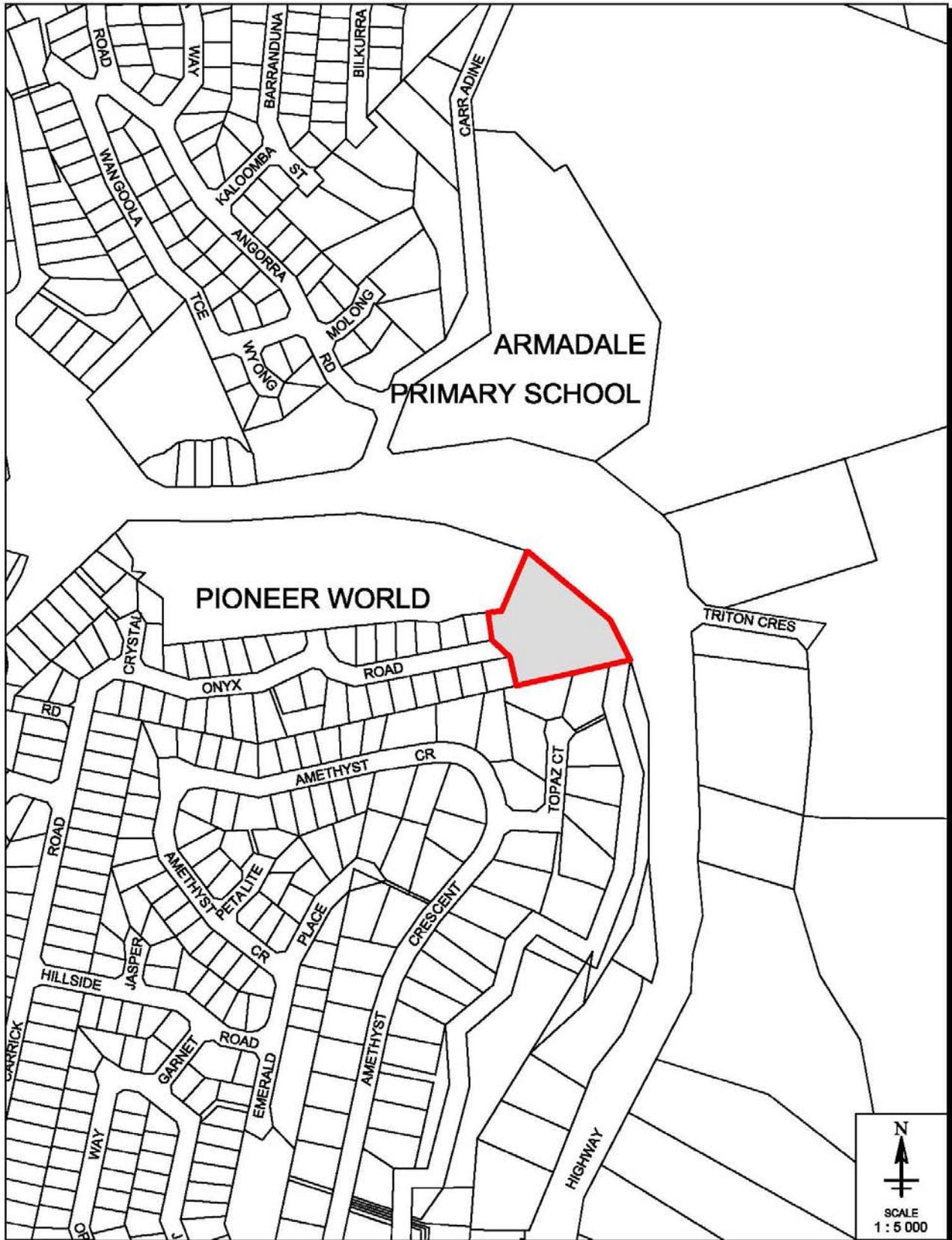
CONCLUSION

The proposed amendment is a logical extension of the Churchman Brook Estate, as proposed in the Structure Plan adopted by Council. The ‘Special Residential’ zone has already been established on adjoining Lot 100 and the Structure Plan clearly indicates the intention for both lots to be developed for special residential purposes in a coordinated manner. Given the work that has already been undertaken in the previous stages of the estate, such as traffic studies, environmental studies and the overall Structure Plan, it is recommended that the Council resolve to initiate the proposed amendment in accordance with Option 1.

RECOMMEND

1. **That Council, in pursuance of Section 7 of the *Town Planning & Development Act 1928* (as amended), resolve to initiate an amendment to Town Planning Scheme No.4 by:**
 - a) **Amending the zoning of Lot 101 and a portion of Lot 102 Waterwheel Road, Bedforddale from ‘Rural Living 4’ to ‘Special Residential’;**
 - b) **Amending the Scheme Maps accordingly.**
2. **That Council seek consent from the Western Australian Planning Commission to advertise the proposed Scheme Amendment for public comment, and refer the proposal to the Environmental Protection Authority for environmental assessment, prior to advertising the proposal in accordance with the Town Planning Scheme Regulations 1967 (as amended).**
3. **That the Mayor and Chief Executive Officer be authorised to execute the Amendment documents.**

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LOCATION PLAN
LOT 186 ONYX ROAD, MOUNT RICHON

PROPOSED SCHEME AMENDMENT - LOT 186 ONYX ROAD, MOUNT RICHON

WARD : NEERIGEN
FILE REF : A 157235
DATE : 28 November 2005
REF : EP
RESPONSIBLE MANAGER : PSM
APPLICANT : Dykstra & Associates
LAND OWNER : Mount Richon Investments Pty Ltd
SUBJECT LAND : Property size 1.073 ha
Map 23-03

ZONING
MRS : Urban
TPS No.4 : Residential R5

In Brief:-

- An application was received to recode a portion of Lot 186 Onyx Road, Mount Richon from Residential R5 to Residential R15/25.
- The proposal is consistent with the intent and purpose of the residential zone and the existing zoning pattern of the street.
- Recommend that Council resolve to initiate the amendment as proposed and proceed to advertising, following the receipt of EPA advice.

Tabled Items

Nil.

Officer Interest Declaration

Nil.

Strategic Implications

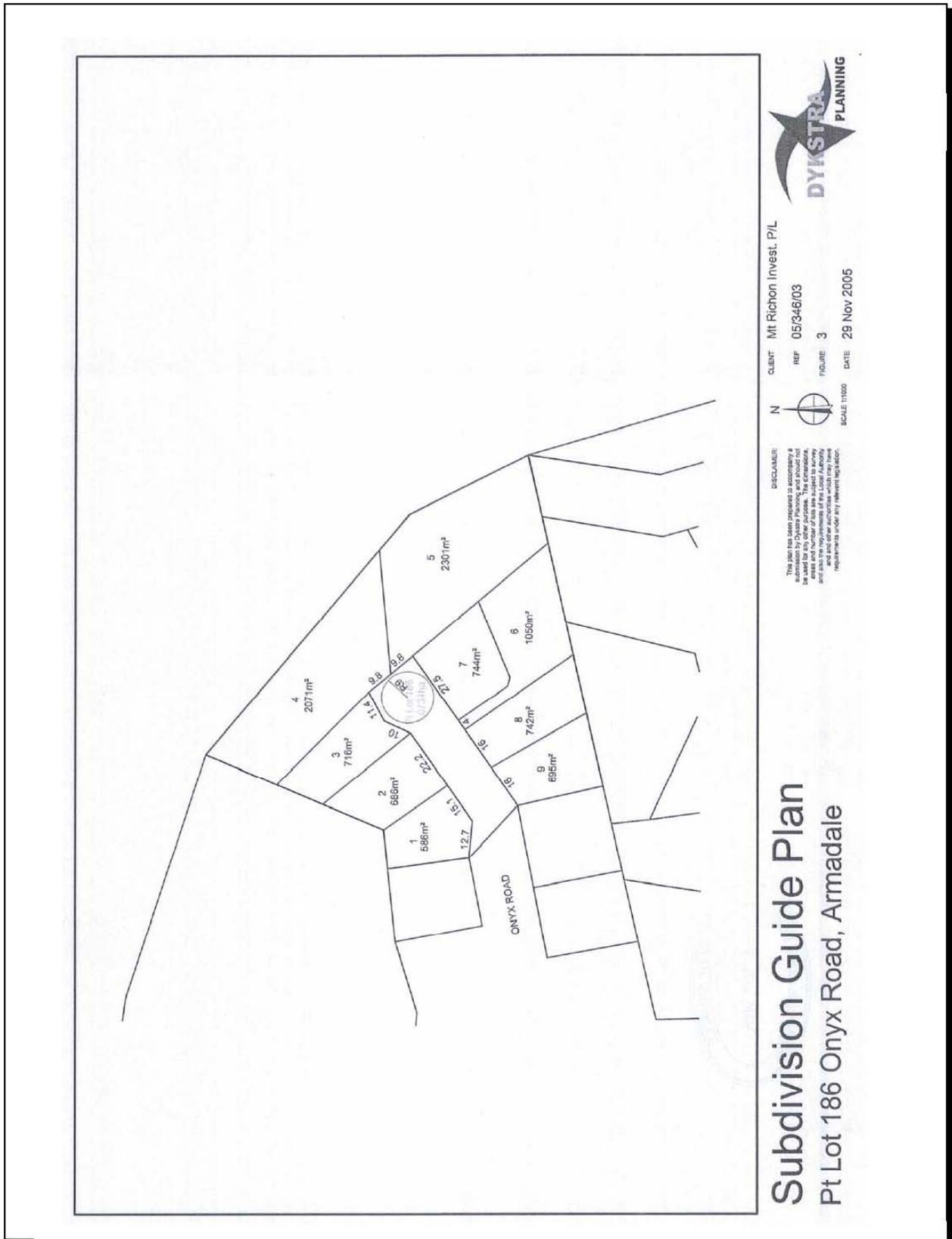
Development – “To balance the needs of development with sustainable economic, social and environmental objectives”.

Legislation Implications

Town Planning and Development Act 1928
Metropolitan Region Town Planning Scheme Act 1959
Metropolitan Region Scheme
Town Planning Scheme No.4

Council Policy / Local Law Implications

Draft Residential Neighbourhood Strategy 1999
Local Planning Strategy 2005



**SUBDIVISION GUIDE PLAN
 LOT 186 ONYX ROAD, MOUNT RICHON**

Budget / Financial Implications

Nil.

Consultation

- ◆ Development Control Unit.

BACKGROUND

Council at its meeting in July 1998 considered an application to establish 15 grouped dwellings on this site and resolved to approve the application subject to a number of conditions (D315/98). The proposal did not progress.

DETAILS OF PROPOSAL

The applicant originally requested the recoding of all of Lot 186 Onyx Road Mt. Richon to R15/25, however officers of the City requested the applicant to reconsider their recoding request. The City was concerned about the creation of R15/25 sized lots at the rear of the property abutting Albany Highway, which would have a significant impact on existing vegetation on the land, the streetscape along Albany Highway and rubbish collection, given the limited road frontage proposed.

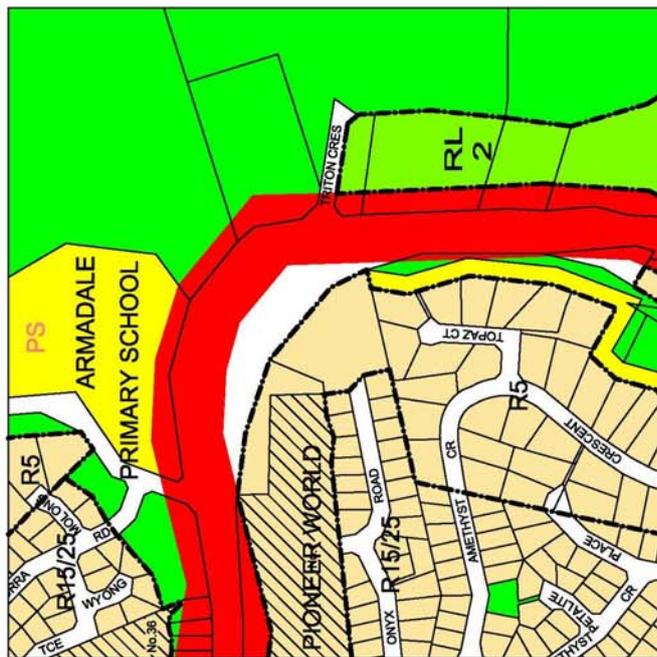
The applicant has agreed to modify their recoding request to only include the western portion (5627m²) of Lot 186 Onyx Road Mt. Richon and retain the R5 coding over the eastern portion of the land, which interfaces with Albany Highway.

The subject site is situated at the cul-de-sac head of Onyx Road and is the only property that has a R5 coding on this street. The revised proposal is to facilitate the subdivision of this land to create seven (7) R15/25 coded residential lots and two (2) R5 zoned single residential lots abutting Albany Highway. All lots will have access via an extension of Onyx Road and construction of a cul-de-sac head. A Subdivision Guide Plan has also been submitted in association with the rezoning proposal demonstrating the proposed lot sizes and configurations.

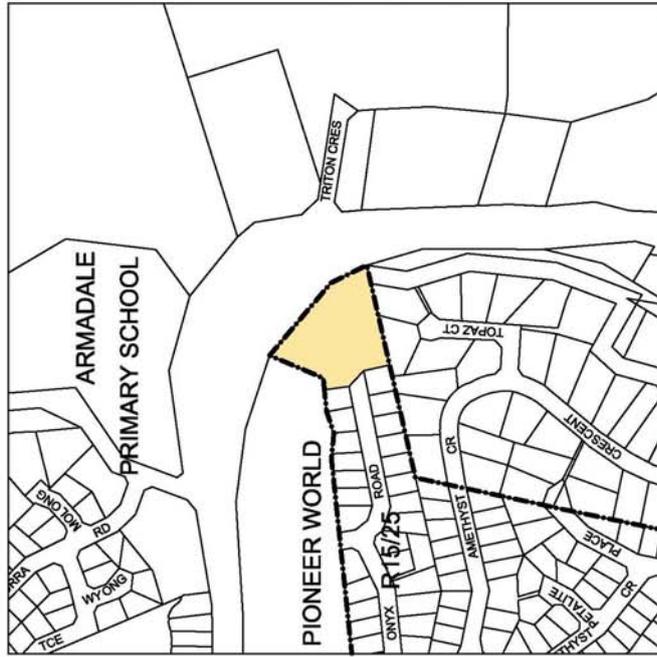
EXISTING SITUATION

The subject land is situated at the end of Onyx Road and is located approximately 1.0km from the Armadale City Centre. This currently undeveloped site contains several clusters of remanent vegetation and is fairly rocky in nature. The site overlooks Albany Highway to the east and slopes downwards towards this major road. It lies immediately adjacent to a developed Residential R15/25 area to the west, R5 area to the south and the Pioneer World Tourist site to the northwest.

**CITY OF ARMADALE
TOWN PLANNING SCHEME No. 4
AMENDMENT No. 8**



EXISTING ZONING



PROPOSED ZONING



SCALE
1 : 5 000

ZONES		RESERVATIONS		PUBLIC PURPOSE MISCELLANEOUS SUB CATEGORIES	
RESIDENTIAL <small>Including Residential Planning Density Codes</small>	SPECIAL USE No.1	PARKS & RECREATION (Region)	PRIMARY REGIONAL ROADS	CG Commonwealth Government	TS Technical School
MIXED BUSINESS / RESIDENTIAL	ADDITIONAL USE No.7	PARKS & RECREATION (Local)	OTHER REGIONAL ROADS	HS High School	PS Primary School
DISTRICT CENTRE	RESTRICTED USE RU No.2	RAILWAYS	PUBLIC PURPOSE (Region)	H Hospital	WSD Water Authority of WA
LOCAL CENTRE	OUTER EDGE DENSITY CODE IN RESIDENTIAL AND RURAL LIVING	STATE FOREST	PUBLIC PURPOSE (Local)	W Water Authority of WA	SECC State Energy Commission
RURAL LIVING - 1,2,4,10,20,X	OUTER EDGE OF SCHEME	WATERWAYS	<small>NOTE: The reservations are shown diagrammatically and do not support to represent the real reservations shown in the Metropolitan Region Scheme and information is subject to most widening requirements for these roads should be obtained from DPA.</small>	T Tollfree	
GENERAL RURAL		WATER CATCHMENTS			
SPECIAL RESIDENTIAL					

COMMENT

Development Control Unit

At its meeting on 22 November 2005, DCU discussed issues relating to site drainage, topography, waste collection and the streetscape interfacing Albany Highway. Given that the applicant has acknowledged the issues involved, advised that such matters have been given careful consideration and that the proposal is a rounding off the R15/25 zoning of Onyx Road, no objections were raised to the proposal.

ANALYSIS

Residential Design Codes of Western Australia

The R5 and R15/25 density codings are both considered low density in the RD-Codes document. A different set of standards applies to each R-Code, the main difference between R5 and R15/25 RD-Codes being the minimum site area per dwelling which is 2000m² for the R5 and only 580m² (with an average of 666m²) for the R15 Code.

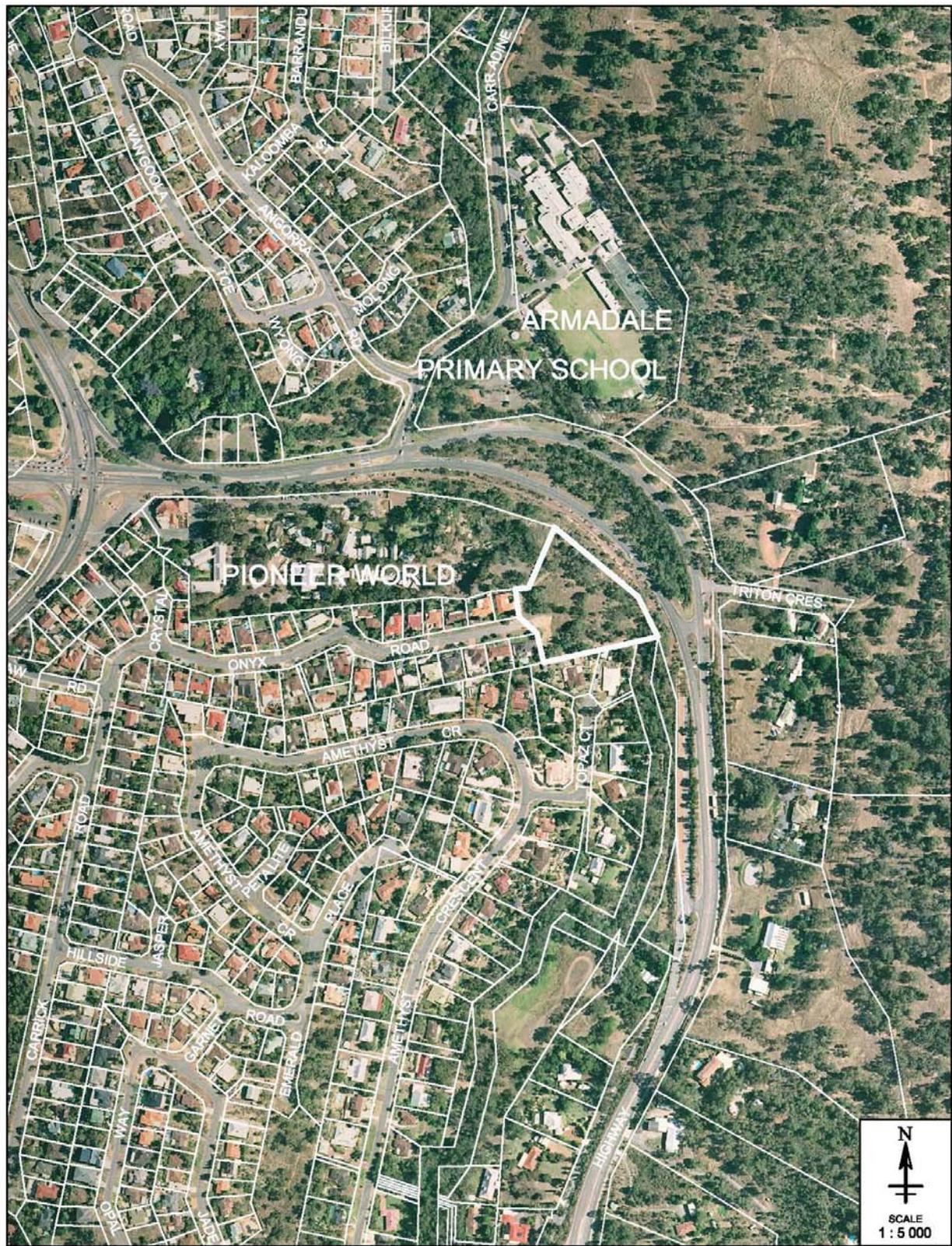
Other elements outlined by the RD-Codes that would be affected by this proposal and that require consideration include a reduced amount of open space per site (50% under R15/25 in place of 70% under R5), reduced primary street setbacks (6m under R15/25 in place of 12m under R5) and reduced site frontage (12m for R15/25 instead of 30m under R5).

Proposed Recoding

The applicant asserts that the proposed recoding is a logical completion of the residential development pattern within this precinct, as all other landholdings in Onyx Road are coded at R15/25 and that the site is within a well established area with adequate means of servicing available. A report prepared by J A Bradley Engineering Consultants was also included in the application, which provides a description on how the land will be serviced.

The proposed recoding will result in the front portion of Lot 168 Onyx Road being coded R15/25, while the rear of the property will retain the existing R5 coding and be subdivided into two lots over 2000m² in area. The proposal could be considered as a rounding off the existing R15/25 zoning on Onyx Road as this is the only property zoned R5 on this street.

It should be noted that the site's potential for an increased development was recognised by the Council by approving a fifteen (15) unit development over the land in 1998.



**AERIAL PHOTOGRAPH
LOT 186 ONYX ROAD, MOUNT RICHON**

Subdivision Guide Plan (SGP)

The applicant's proposed Subdivision Guide Plan includes the following key features:

- ◆ Subdivision of this 1.07ha property into nine (9) lots;
- ◆ The front portion of the land proposed to be recoded to R15/25 to be subdivided into seven (7) lots ranging from 586m² to 1050m² while the rear of the site would retain the existing R5 coding and be subdivided into two lots of 2071m² and 2301m² with reduced frontage;
- ◆ All lots to have direct access off Onyx Road;
- ◆ An extension of the Onyx Road cul-de-sac narrowing to a width of 15m and the construction of a new cul-de-sac head.

As the proposed SGP demonstrates that subdivision could occur in an orderly fashion, it is believed that it is not necessary to adopt the SGP separately as the RD-Codes provisions should be sufficient to guide subdivision and development for the new lots and the plan is for subdivisional purposes only, rather than a SGP or Structure Plan, which would normally be adopted by the Council.

Residential Neighbourhood Strategy / Local Planning Strategy

The Residential Neighbourhood Strategy and the Local Planning Strategy are strategic documents associated with the Town Planning Scheme. The Residential Neighbourhood Strategy focuses on the long term direction for residential development within the City, whilst the Local Planning Strategy covers that and other strategic issues. The subject land is located within the Coastal Plain South residential neighbourhood precinct which includes the Armadale City Centre and the surrounding residential suburbs. Key strategies for this precinct focus on ensuring that the design of new development is respectful of the natural environment, heritage and cultural values of the area. Encouraging residential development of this currently vacant land, which is in close proximity to the City Centre, is considered consistent with the objectives of both Strategies.

Impact on Amenity and Streetscape

Whilst the proposal will result in the removal of existing vegetation on the lot, the creation of the additional lots and dwellings is not likely to have a significant impact on the character of the area or amenity, as the proposal will be consistent with the R15/25 lots that are already the dominant form of development in Onyx Road.

Maintaining the existing R5 coding at the rear of the site which interfaces with Albany Highway would facilitate the retention of the existing streetscape character from Albany Highway by maintaining the vegetation buffer. This is also consistent and provides continuation of the R5 zoned strip of land along this western section of the Highway.

Services

The applicant has indicated that the subject lots have connections to water, sewer, power, telecommunications and drainage and that the proposed recoding will not substantially alter demands on these services nor exceed the current capacity. A preliminary engineering investigation that has been undertaken for the site has confirmed that the new lots will not be constrained by servicing requirements. Council's Technical Services has confirmed the same. The Consulting Engineers report has indicated that a small portion of land abutting the quarry in the northern portion of the site will require fill and a retaining wall.

10% Public Open Space (POS) Provision

The Western Australian Planning Commission's DC Policy 2.3 – *Public Open Space in Residential Areas* specifies that subdividers in new residential areas should provide 10% POS. The City has not been able to determine whether this land has previously made a POS contribution. The City will discuss this matter with the applicant and investigate this issue further during the advertising period. Should a POS contribution be required, then the City should agree to a POS cash-in-lieu payment by the subdivider, so the funds can be used to provide facilities in nearby parks, rather than require the subdivider to give up a small POS area as part of the subdivision.

OPTIONS

1. Council may resolve to initiate a Scheme Amendment to recode a portion of Lot 186 Onyx Road, Mount Richon from 'Residential R5' to 'Residential R15/25'.
2. Council may resolve not to initiate the Scheme Amendment in respect of the recoding of a portion Lots 186 Onyx Road, Mount Richon under TPS No.4 on the basis that it believes that the proposed recoding does not represent the orderly and proper planning of the area and the minimum frontage of 30 metres is not met with respect to the proposed R5 coded lots.

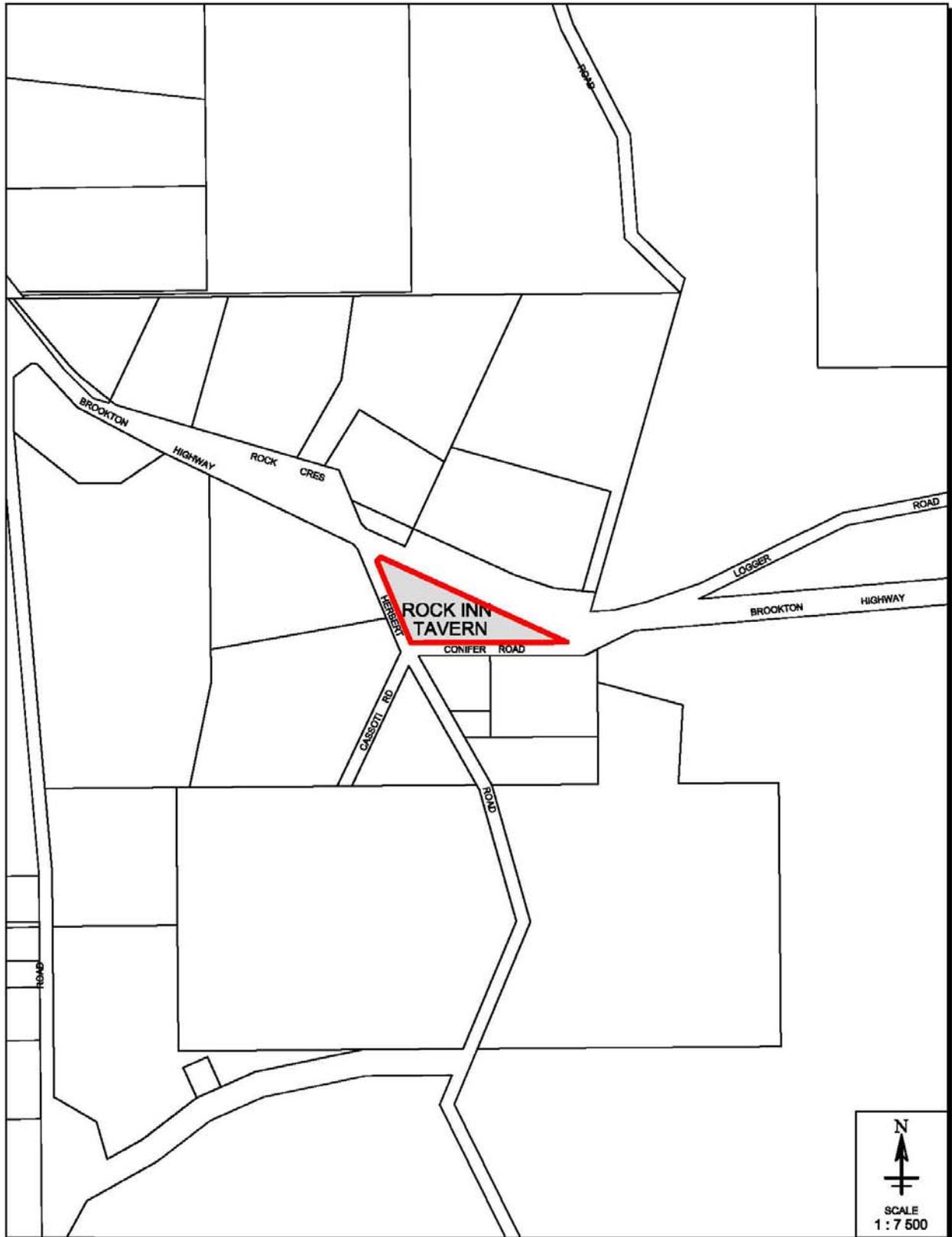
CONCLUSION

The creation of the additional lots and dwellings is not likely to have a significant impact on the character of the area or streetscape of this area, as the proposal will be consistent with the R15/25 lots that are already the dominant form of development in Onyx Road. The proposed recoding is considered as a logical extension of the existing R15/25 coding of this street. The proposal is not likely to have any adverse visual impact from Albany Highway perspective given that the existing character would be maintained along this section of the highway through the larger R5 lots. Therefore, it is recommended that Council resolve to initiate the amendment in accordance with Option 1.

RECOMMEND

1. That Council, pursuant to Section 7 of the *Town Planning & Development Act 1928* (as amended), resolve to initiate an amendment to Town Planning Scheme No.4 by recoding a portion of Lot 186 Onyx Road, Mount Richon from ‘Residential R5’ to ‘Residential R15/25’.
2. That Council further resolves:
 - a) that the Scheme Amendment is consistent with those purposes for which Schemes may be made in accordance with the First Schedule of the Town Planning and Development Act (1928) and therefore will proceed directly to advertising;
 - b) to advertise the proposal in accordance with the Town Planning Regulations 1967 (as amended) including referral to the Environmental Protection Authority for environmental assessment; and
 - c) to forward a copy of the amendment to the Western Australian Planning Commission for information.
3. That the Mayor and Chief Executive Officer be authorised to execute Amendment documents.

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LOCATION PLAN
LOT 70 BROOKTON HIGHWAY, KARRAGULLEN

***PROPOSED SCHEME AMENDMENT –
LOT 70 BROOKTON HIGHWAY, KARRAGULLEN***

WARD : JARRAH
FILE REF : A118423
DATE : 30 December 2005
REF : EP
RESPONSIBLE MANAGER : PSM
APPLICANT : E L Bright
LAND OWNER : Conville Pty Ltd
SUBJECT LAND : Property size 1.59ha
Map 29-08
ZONING MRS : Rural
TPS No.4 : General Rural - Additional Use

In Brief:-

- Application proposes to incorporate a “Pub TAB” use into the existing “Additional Use 13 -Tavern” at Lot 70 Brookton Highway, Karragullen.
- The proposal is viewed as an incidental use to the existing Tavern use of the site.
- Recommend that Council resolve to initiate the amendment as proposed and proceed to advertising, following the receipt of EPA advice.

Tabled Items

Nil.

Officer Interest Declaration

Nil.

Strategic Implications

Development – “To balance the needs of development with sustainable economic, social and environmental objectives”.

Legislation Implications

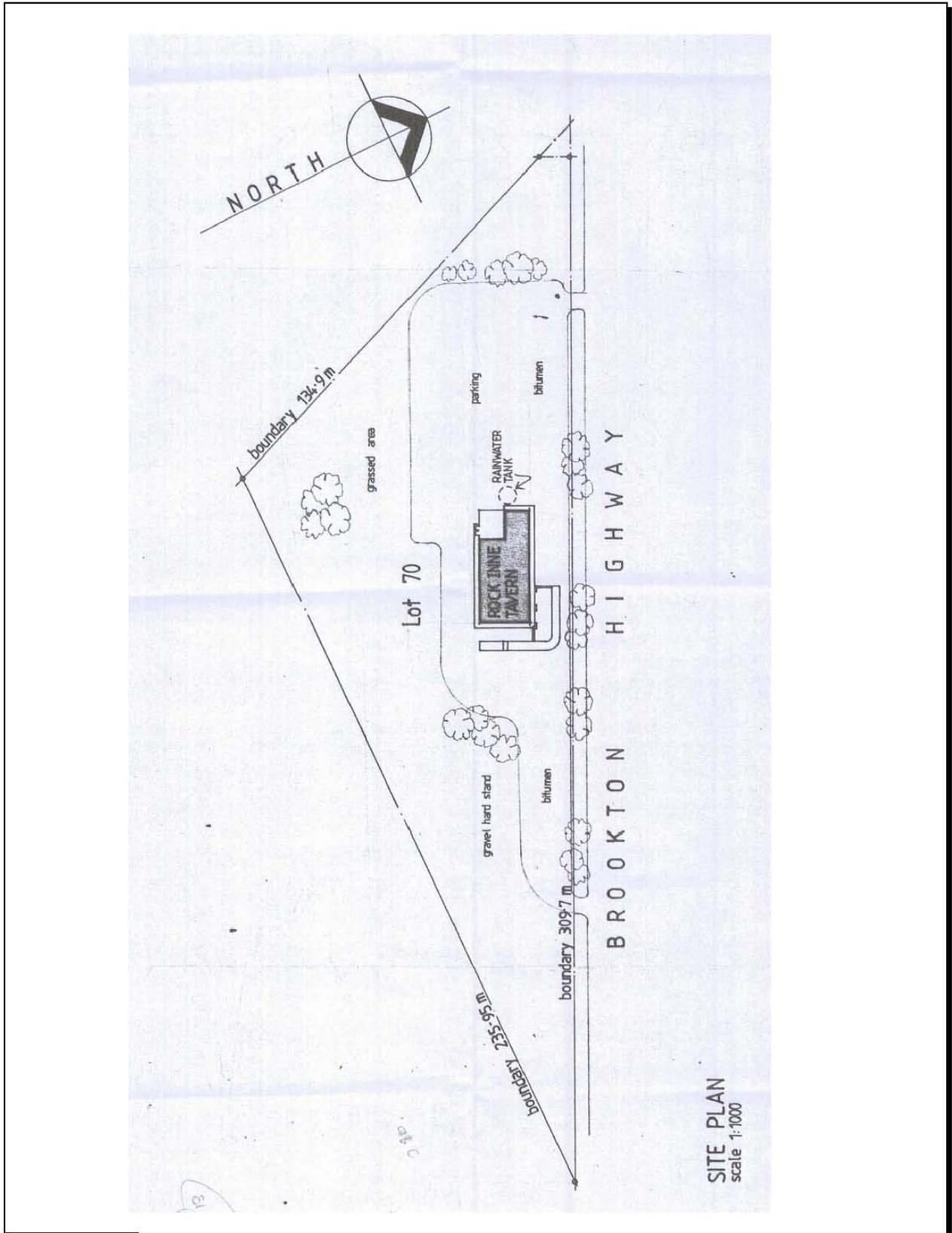
Town Planning and Development Act 1928
Metropolitan Region Town Planning Scheme Act 1959
Metropolitan Region Scheme
Town Planning Scheme No.4

Council Policy / Local Law Implications

Local Planning Strategy 2005

Budget / Financial Implications

Nil.



**SITE PLAN
LOT 70 BROOKTON HIGHWAY, KARRAGULLEN**

Consultation

- ◆ Development Control Unit

BACKGROUND

Lot 70 Brookton Highway, Karragullen contains the existing Rock Inne Tavern. The subject land was zoned “Special Use - Tavern” under Town Planning Scheme No.2. Under Town Planning Scheme (TPS) No.4 this land is now been zoned “General Rural” with an “Additional Use - Tavern”.

DETAILS OF PROPOSAL

The applicant has requested an amendment to Town Planning Scheme No.4 to allow a Pub TAB use on the land. The applicant intends to install TAB betting machines at the existing bar counter with a few tables and monitors mounted on an existing wall. The proposal is to be an incidental use to the predominant tavern use of the site and will utilise an area of approximately 15m² of the existing 448m² building.

COMMENT

Development Control Unit (DCU)

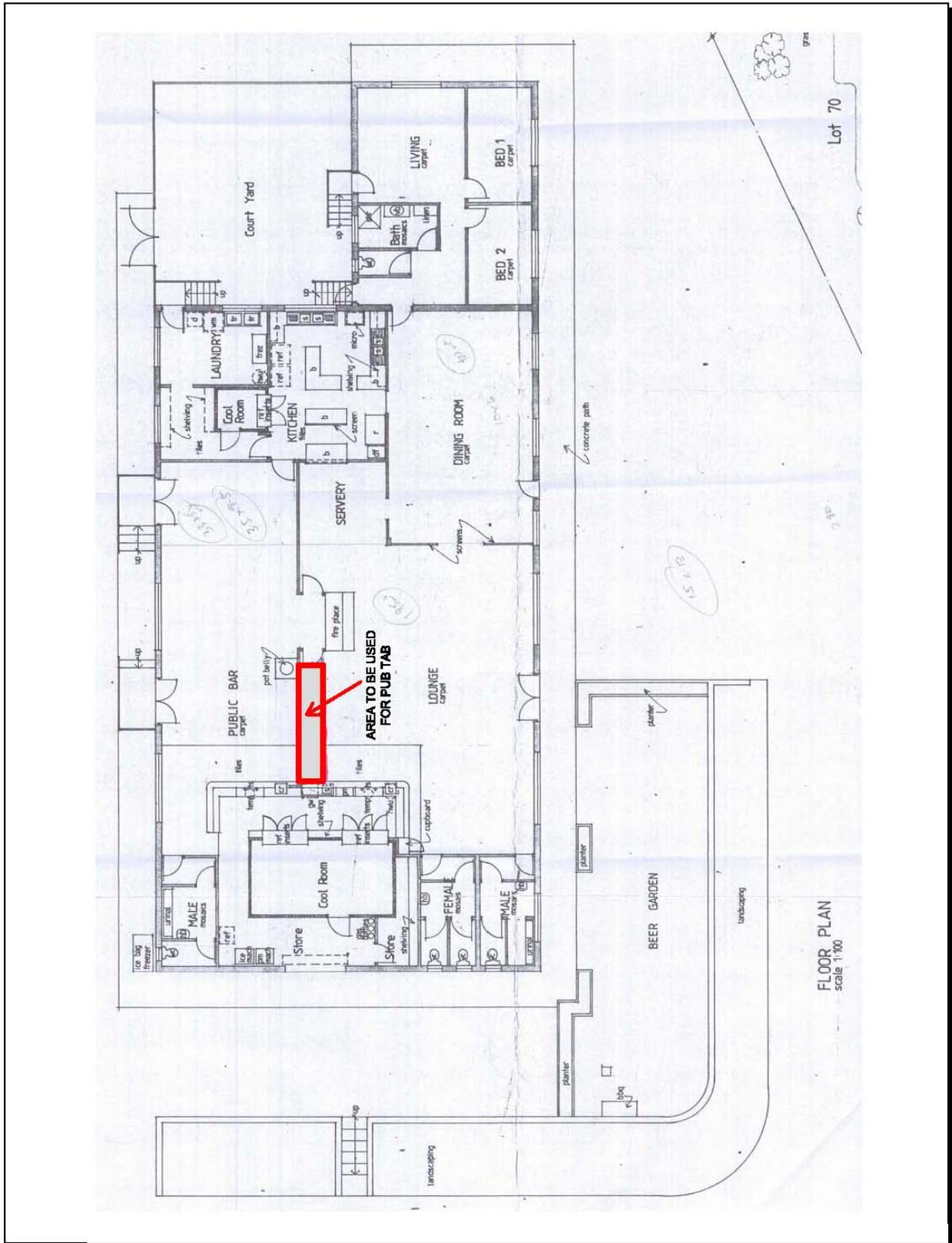
DCU considered the application at its meeting on 1 December 2005. As the use would be incidental to the tavern use of the site and given its low scale nature, no objection was raised to the proposal.

ANALYSIS

Town Planning Scheme No.4 (TPS No.4)

Under TPS No.4, a TAB use falls within the definition of “Betting Agency” which is defined as “*an office totalisator agency established under the Totalisator Agency Board Betting Act 1960*”. It is a use not permitted (“X”) by TPS No.4 in the General Rural zone which is the base zone of the subject site. However, given the Additional Use zone provision enjoyed by this site for the Tavern use, a Pub TAB could be considered as an incidental use in this circumstance.

If the proposal is considered an appropriate use, it will require an amendment to the TPS No.4 text only.



FLOOR PLAN
LOT 70 BROOKTON HIGHWAY, KARRAGULLEN

Local Planning Strategy 2005

The City's Local Planning Strategy sets out the long term-term planning directions for the City. The subject land is located within the Roleystone and Karragullen (Hills North Precinct) where the low-density character of the precinct is to be maintained with no further outward expansion of the town site. Karragullen functions as a small settlement to support those working in the cool store and the associated orchards. The key strategies for this precinct are to protect the agricultural areas and maintaining the rural landscape, while supporting the development of appropriate tourist activities. The proposal is viewed as providing this area with an additional recreation facility and will assist with the commercial viability of the existing Tavern operation.

Impact on Amenity and Surrounds

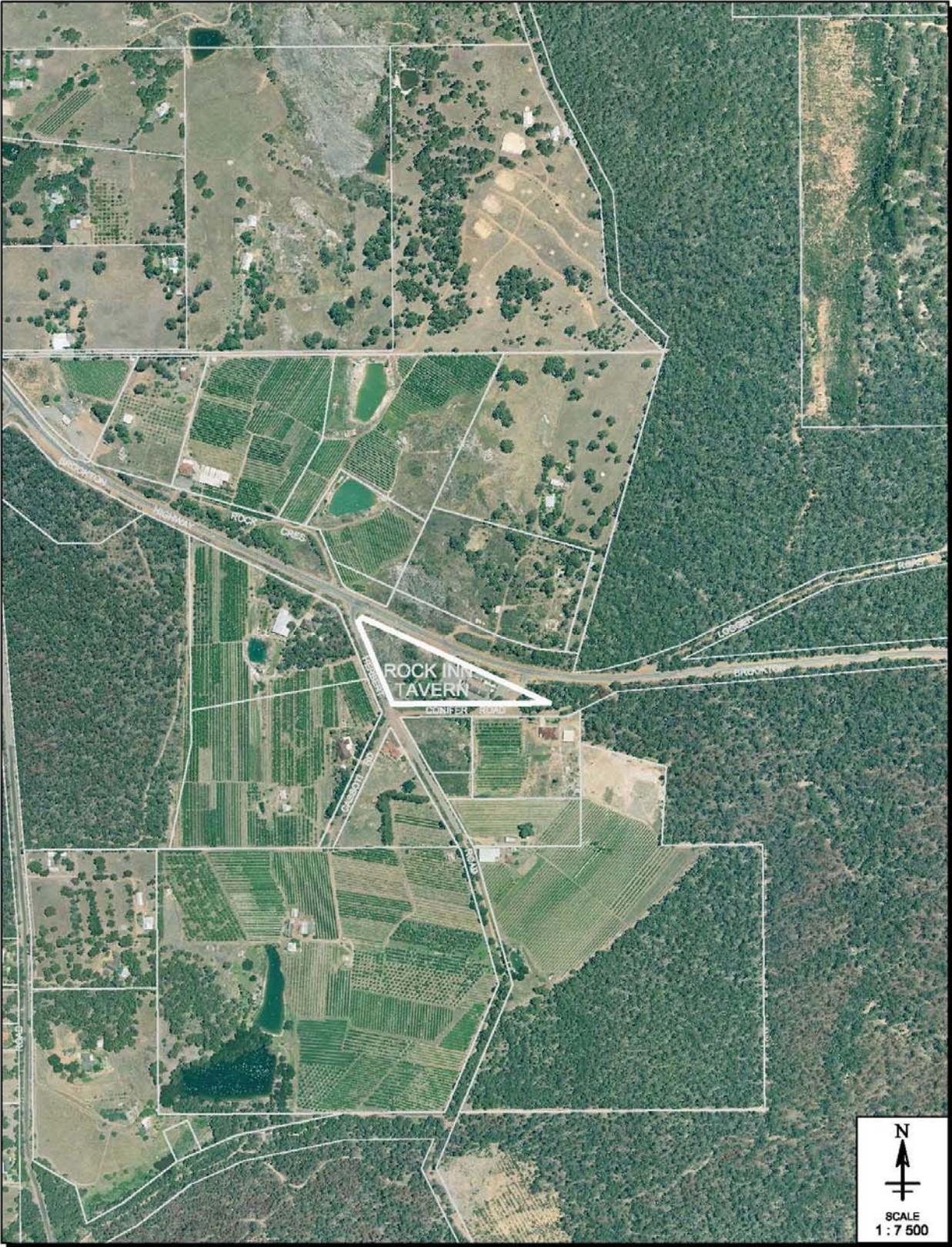
This triangular shaped block is bounded by Brookton Highway, Conifer Road and Herbert Road, and is situated in an isolated location in Karragullen where the tavern mainly caters for the local population. The site is surrounded by orchards and heavily vegetated General Rural zoned properties with the nearest residence situated to the southeast being approximately 100 metres away. No structural changes are proposed to the existing building as the required machines will be located within the existing tavern building. It is unlikely that this proposal will have any significant impact on the area or amenity, in terms of noise, odours, parking, traffic, etc.

Notwithstanding the above, as no definition exists for a Pub TAB use under TPS No.4 it is suggested that a floor area restriction of 15m² (maximum) is imposed to ensure that the Pub TAB would be operated only from the existing building and that the tavern remains the predominant use of the building.

Compatibility with the Tavern Use

TPS No.4 conditions and requirements for this "Additional Use 13 –Tavern" stipulates that "*in determining any planning application for development approval the City shall have regard to the compatibility of proposed uses with the existing use of the site and any additional uses, which are permissible under the Additional Use provision*".

The applicant asserts that the proposed Pub TAB facility will only cater for the local population who patronises the tavern and attract passing trade on Brookton Highway. It is advised that given the isolated location of the tavern and the small number of patrons it is increasingly becoming difficult to sustain the existing business without a supplementary income. It is also advised that there is support from local farming community / current patrons of the tavern to establish a Pub TAB as the nearest TAB facility is in Kelmscott, which is 18 km away from this location.



**AERIAL PHOTOGRAPH
LOT 70 BROOKTON HIGHWAY, KARRAGULLEN**

Given the small scale nature of the proposal as opposed to a purpose built TAB facility in a commercial area, this could be considered as an incidental and compatible use to the existing tavern use of the site. It could also be viewed as assisting a small local business to make it more economically viable while providing the local community with an additional recreation facility.

Parking

TPS No.4 stipulates a parking requirement of 6 spaces for every 100 m² net lettable area (NLA) for a “Betting Agency”. The area proposed to be used for the Pub TAB is approximately 15 m², which would require 1 parking bay. Currently there is an oversupply of parking on-site for the tavern and given the large size of the block, this is not considered an issue.

OPTIONS

1. Council could initiate the Scheme Amendment to include the addition of a new permissible use into Schedule 2 – “Additional Use No.13” to include a “Pub TAB” use at Lot 70 Brookton Highway, Karragullen with an appropriate condition and proceed to advertising.
2. Council could decline to initiate the Scheme Amendment if it is of the view that the proposed use is not considered compatible with the existing Tavern use of the site and the use is likely to have a detrimental impact on the surrounding neighbourhood.

CONCLUSION

The existing tavern on the land has been operating for a considerable number of years providing a service to the Karragullen residents without any significant concerns. Given the low scale nature of the proposed Pub TAB, it could be considered as an incidental and compatible use to the existing predominant tavern use of the property. The proposal will assist in maintaining the commercial viability of a local business and provide an additional facility to a relatively isolated farming population in Karragullen. The Council could restrict the floor area for the TAB to 15m² of the tavern building, so as to ensure that the TAB operation is low scale. It is recommended that Council resolve to initiate the amendment in-accordance with Option 1 above.

RECOMMEND

1. That Council, pursuant to Section 7 of the Town Planning and Development Act 1928 (as amended), resolve to initiate an amendment to Town Planning Scheme No.4 by:-

a) Amending Schedule 2 - Additional Uses by inserting a new Additional Use “Pub TAB” on Lot 70 and an additional Condition and Requirement as specified in italics below:

No.	Description of Land	Additional Use	Conditions and Requirements
13	Lot 70 Brookton Highway, Cassoti Road, and Conifer Road, Karragullen	Permitted (P) Use <ul style="list-style-type: none"> ▪ Tavern ▪ <i>Pub TAB</i> 	<p>13.1 All P use classes listed for the base zone shall be D (discretionary) uses notwithstanding that they are P in the Zoning Table.</p> <p>13.2 In determining any planning application for development approval the City shall have regard to the compatibility of proposed uses with the existing use of the site and any additional uses, which are permissible under the Additional Use provisions.</p> <p>13.3 <i>The Pub TAB use is to be operated from the existing building only and not to exceed a maximum floor area of 15m².</i></p>

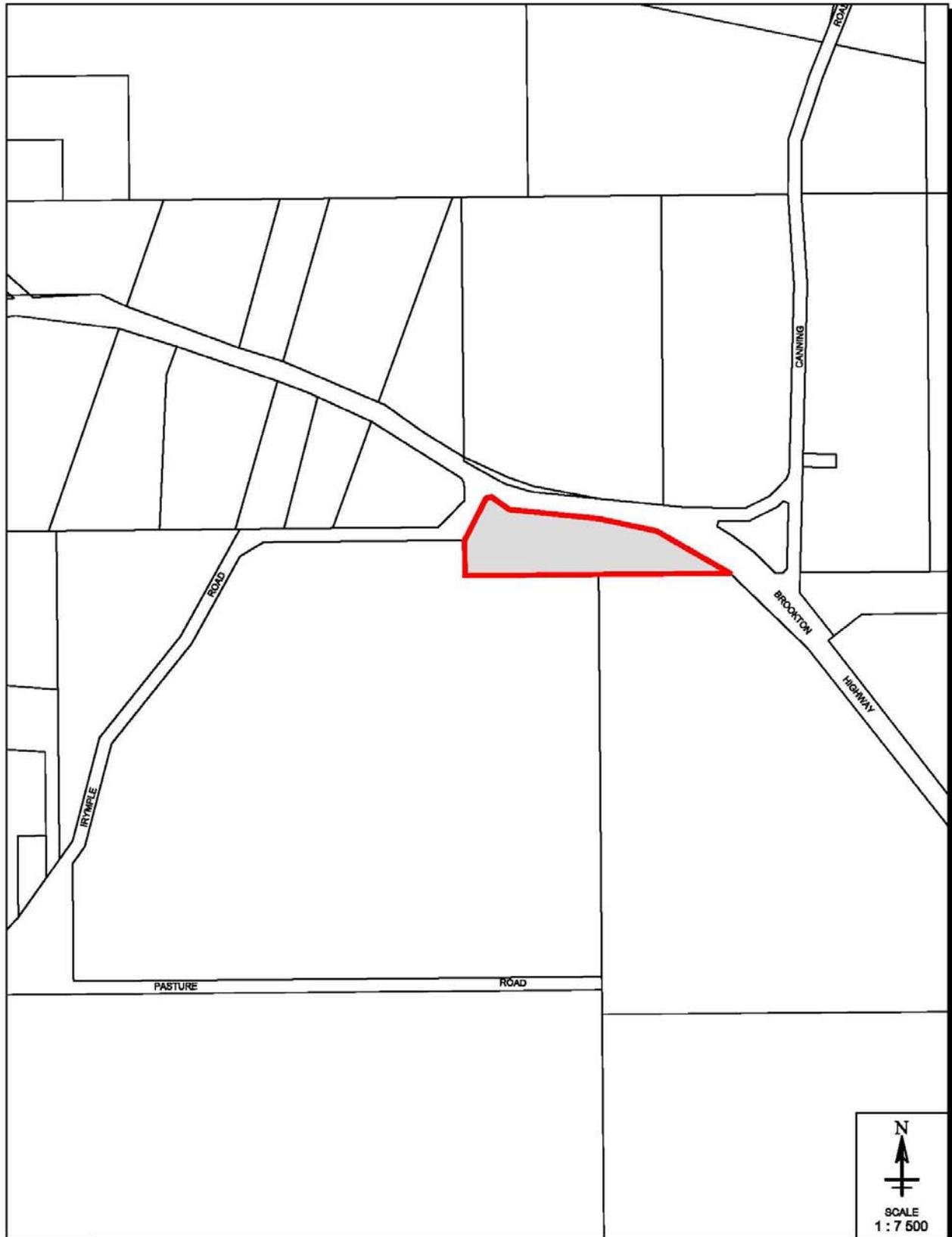
2. That Council further resolves:

- a) that the Scheme Amendment is consistent with those purposes for which Schemes may be made in accordance with the First Schedule of the Town Planning and Development Act (1928) and therefore will proceed directly to advertising;
- b) to advertise the proposal in accordance with the Town Planning Regulations 1967 (as amended) including referral to the Environmental Protection Authority for environmental assessment; and
- c) to forward a copy of the amendment to the Western Australian Planning Commission for information.

3. That the Mayor and Chief Executive Officer be authorised to execute Amendment documents.

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**LOCATION PLAN
LOT 14 IRYMPLE ROAD, KARRAGULLEN**

PROPOSED SCHEME AMENDMENT – PT LOT 4 IRYMPLE ROAD, KARRAGULLEN

WARD : JARRAH
FILE REF : A117403
DATE : 30 November 2005
REF : PRR
RESPONSIBLE MANAGER : PSM
APPLICANT : Dykstra & Associates
LAND OWNER : N & V M Civa
SUBJECT LAND : Part Lot 4 Irymple Road,
Karragullen
Property size 2.9568ha
Map 28.09
ZONING
MRS : Rural
TPS No.4 : General Rural

In Brief:-

- Council received an application for a proposed scheme amendment in August 2005.
- The impending gazettal of TPS No.4 has delayed the application. TPS No.4 was gazetted on 4 November 2005, so the amendment can now proceed.
- Recommend that Council initiate the proposed amendment and seek consent from the Western Australian Planning Commission to proceed to advertising. The Council should also consent to the advertising of the Change/Departure to the Structure Plan under Part 6A, subject to various modifications.

Tabled Items

Nil.

Officer Interest Declaration

Nil.

Strategic Implications

Development – “To balance the needs 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.4

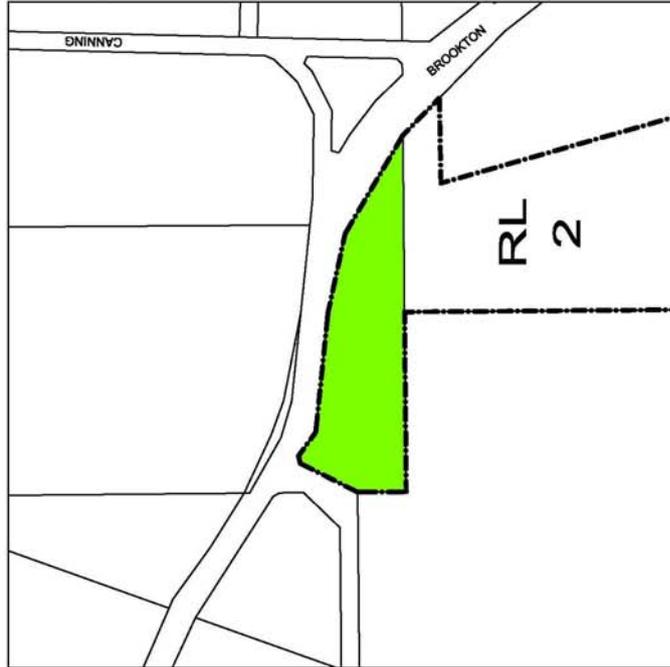
Council Policy / Local Law Implications

Rural Strategy 1999
Local Planning Strategy 2005
Policy DC 3.7 – Fire Planning (WAPC)

CITY OF ARMADALE
TOWN PLANNING SCHEME No. 4
AMENDMENT No. 7



SCALE
1 : 5 000



EXISTING ZONING

PROPOSED ZONING

ZONES		RESERVATIONS		PUBLIC PURPOSE MISCELLANEOUS SUB CATEGORIES	
RESIDENTIAL Planning Residential Planning Density Codes	MIXED BUSINESS / RESIDENTIAL	PRIMARY REGIONAL ROADS	CG	Commonwealth Government	Technical School
URBAN DEVELOPMENT ZONE	DISTRICT CENTRE	OTHER REGIONAL ROADS	TS	High School	Primary School
RURAL LIVING - 1,2,4,10,20,X	LOCAL CENTRE	(MRS) PUBLIC PURPOSE (Region)	HS	Hospital	Water Authority of WA
GENERAL RURAL	GENERAL INDUSTRY	PUBLIC PURPOSE (Local)	H	WSD	Special Use
SPECIAL RESIDENTIAL	INDUSTRIAL BUSINESS	NOTE: The reservations are shown diagrammatically and do not purport to represent the actual reservations shown in the Metropolitan Region or other local planning schemes. Existing reservations for these roads should be obtained from DPL.	SU	SEC	State Energy Commission
		PARKS & RECREATION (Region)	T	T	Tenants
		PARKS & RECREATION (Local)			
		RAILWAYS			
		STATE FOREST			
		WATERWAYS			
		WATER CATCHMENTS			
		SPECIAL USE			
		ADDITIONAL USE			
		RESTRICTED USE			
		OUTER EDGE DENSITY CODE IN RESIDENTIAL AND RURAL LIVING			
		OUTER EDGE OF SCHEME			

Budget / Financial Implications

Nil.

Consultation

- ◆ Development Control Unit.

BACKGROUND

Amendment No.180 to Town Planning Scheme No.2 (gazetted in March 2004) rezoned Lot 102 and Part Lot 103 Brookton Highway, Karragullen from ‘General Rural’ to ‘Special Use: Rural / Residential’. The amendment included a Subdivision Guide Plan (SGP) demonstrating how the two (2) lots, which total about 31 hectares (ha) in area, would be subdivided into six (6) 2ha lots with the balance (approximately 17ha) retaining an existing orchard on site.

In February 2005, an application was received to modify the SGP (now termed a ‘Structure Plan’ under Town Planning Scheme No.4 (TPS No.4)) to include Part Lot 4 Irymple Road to allow a total of eight (8) 2ha lots to be created and a new aligned for the subdivisional road. The proposed subdivisional road originally derived access from Gardiner Road, however a new subdivisional road was proposed from Irymple Road.

Council resolved at its meeting of 23 May 2005 “*defer the proposed amendment to the Subdivision Guide Plan for Lot 102 and Part Lots 103 and 4 Brookton Highway, Karragullen until such time as a scheme amendment (under Town Planning Scheme No.4) with respect to Part Lot 4 has been considered*” (D49/5/05), due to the General Rural zoning of Part Lot 4 which prevents subdivision.

The City received an application to rezone Part Lot 4 Irymple Road, Karragullen from ‘General Rural’ to ‘Rural Living 2’ on 25 August 2005. Due to the imminent introduction of TPS No.4 and the time period required for an amendment to be finalised, this proposal could not be progressed as a scheme amendment under TPS No.2. As TPS No.4 was gazetted on 4 November 2005, the request is now referred to Council for consideration.

DETAILS OF PROPOSAL

The applicant proposes to rezone Part Lot 4 from ‘General Rural’ to ‘Rural Living 2’ consistent with Lot 102 and Part Lot 103 Brookton Highway. Part Lot 4 is about 3ha in area and currently heavily vegetated. The applicant has argued that Part Lot 4 is not suitable for agricultural purposes and is more suited to rural-residential use through provision of a Land Capability Study, which is discussed later in this report.

The proposed SGP modification received separately earlier in the year now forms part of the amendment process as a Structure Plan. The Structure Plan proposes the creation of a further two (2) lots of 2ha each, making a total of eight (8) 2ha lots and one (1) larger lot of 16ha to retain the orchard on-site. A 40m vegetation buffer is proposed between the orchard and development on the proposed lots.

A 100m separation distance between the adjacent reserve and development is also in place on all lots (except one (1) lot which cannot physically achieve that distance) in respect of fire separation. The access road that was proposed in the original SGP to intersect with Gardiner Road has been realigned to meet with Irymple Road, as it represents an easier route in terms of associated earthworks.

COMMENT

Development Control Unit (DCU)

At its meeting of 8 September 2005, the DCU raised no objection to the proposed amendment.

ANALYSIS

Proposed Rezoning

Part Lot 4 is currently zoned ‘General Rural’ under TPS No.4. The objectives of the zone are:

- ◆ *“To provide for a wide variety of productive farming activities, ranging from broadacre grazing to intensive horticulture, depending on the defined lot sizes, land form and natural resource base;*
- ◆ *To provide for a range of associated compatible activities and development to complement the primary productive use of the land while preserving the rural character and amenity”.*

The property is proposed to be rezoned to ‘Rural Living’, which includes lots ranging in size from 1ha to 20ha. The applicant has requested a lot size of 2ha in line with land immediately south of the subject site. The objectives of the zone are:

- ◆ *“To provide for a variety of rural living environments based on defined lot sizes, land form and natural environmental characteristics.*
- ◆ *To provide for a range of associated compatible development, consistent with the environmental opportunities and constraints applicable to individual sites.*
- ◆ *To ensure development is sited, designed and managed in harmony with the natural environment and so as to protect the rural landscape and amenity”.*

A Development (Structure Planning) Area (No.17) exists over Lot 102 and Part Lot 103 and this would need to be extended to include Part Lot 4 should the amendment proceed. As such, Special Control Area Map 3 and Schedule 12 of TPS No.4, which details particulars of each Structure Planning Area, would need to be amended to include Part Lot 4.

Special Control Area Map 1 also identifies Part Lot 4 as a ‘Prime Agricultural Land Protection Area’. Clause 6.6 of TPS No.4 indicates that this area is defined based on the horticultural resource values of the Karragullen locality, to take account of the need for appropriate buffers, to provide a basis for their ongoing and sustainable use, to prevent incompatible land uses from being established and to ensure the impact on human health and amenity is considered.

Where land is identified within the ‘Prime Agricultural Land Protection Area’, the City is to have regard to the following in determining any application for planning approval:

- ◆ *“The potential impact of the proposal on the value and continued productive agricultural use of the resource; and*
- ◆ *The contribution (if any) of the proposed development to the on-going productive use of the land resource”.*

The City has requested the applicant prepare a Land Capability Study in this regard. The study has been provided and is discussed later in this report.

Rural Strategy

The subject lots are located within the Karragullen Rural Planning Area under Council’s Rural Strategy, the objective of which is to *“preserve the orchard uses of the area and to expand these to suitable areas while permitting the development of rural residential living on suitable land”*. The applicant has argued that the site falls within a ‘Class 2 – High Capability’ area under the Rural Strategy for rural-residential development. It also is covered by a ‘Level 1 – High Potential (No Constraints)’ area in terms of land suitability for rural-residential development. The City therefore requested a Land Capability Study in regard to the subject lot to confirm its potential.

Western Australian Planning Commission Policy SPP 2.5

Policy SPP 2.5 - Agriculture and Land Use Planning - applies to all rural land in Western Australia and its key objectives are as follows:

- ◆ Protect agriculture land resources where possible;
- ◆ Plan and provide for rural settlement where possible;
- ◆ Minimise the potential for land use conflicts;
- ◆ Management of natural resources.

The land is identified in the policy maps as being within an Agricultural Priority Management Area.

The subject site is considered more suitable for rural living as opposed to intensive agriculture pursuits (refer to “Land Capability Study” section of this report). Specific criteria noted in Appendix 2 of the Policy relating to “Planning of Rural Settlements” are addressed under relevant headings in this report. In this regard, the proposal is considered to be consistent with the intent of the SPP Policy 2.5.

Western Australian Planning Commission Policy DC 3.7

The WAPC’s Policy DC 3.7 – Fire Planning (the Policy) sets out guidelines to minimise fire risk for new development. Through the original amendment process for Lot 102 and Part Lot 103 it was determined that a 100m distance from the reserve to the development envelopes on site should be maintained to decrease fire risk. Only one (1) lot cannot achieve this distance on the proposed Structure Plan due to the width of the lot.

It is noted that the fire access point at the south-western corner of the subject site that goes through to the development known as ‘Araluen Heights’ on Lot 532 Irymple Road, Karragullen has been retained and reflected on the proposed Structure Plan, as was the original intent.

The SGP for Lot 102 and Part Lot 103 Brookton Highway included a small vegetated link (road reserve) between the two adjoining conservation reserves that are managed by CALM. This link is not included in the new Structure Plan. This link could provide important fire and management access, whilst also providing for pedestrian (walk trail) movement between the two bushland reserves. The Council could require the Structure Plan to be amended to provide such a link as condition of its consent to advertise the Change/Departure to the Structure Plan. The Council should also require the battleaxe leg width to be widened.

Land Capability Study

The applicant has submitted a land capability study by Landform Research in respect of Part Lot 4. The study indicates that soil types found on-site have a high capability for on-site effluent disposal, that vegetation is typical of the area, that landslip risk is very low to low, that foundation stability is good, that the site is well drained and that tests on Stinton Creek revealed slightly elevated salinity, nitrogen and phosphorus and a 1/1000 trace of the limit of pesticides, presumably from the nearby orchard. As such the report concludes that the land in question is suitable for rural-residential purposes.

It is noted that Part Lot 4 could be used for intensive agricultural purposes given its size, but this would require large scale clearing. The use of the subject site for rural residential purposes would limit any clearing to new road reserves, firebreaks and development envelopes, which would produce a better result in respect of the amenity of the area. The City accepts that the findings of the Land Capability Study, which support the indications of the Rural Strategy.

Impact on Amenity

Whilst Lot 102 and Part Lot 103 Brookton Highway and Part Lot 4 Irymple Road are not indicated as having significant landscape qualities within Council’s Rural Strategy, the document does identify that the lots have remnant vegetation and Part Lot 4 in particular is located in a visually prominent location on a Primary Regional Road (Brookton Highway). Development envelopes were required on the original SGP to protect the remaining vegetation outside the envelope. Indicative envelopes have been shown on the amended Structure Plan in this regard. Whilst an appropriate condition to implement them should be recommended to the WAPC at the subdivision approval stage, the Council could require the location and size of the building envelopes on the northernmost lots to be modified as condition of its consent to advertise the Change/Departure to the Structure Plan to minimise any potential impacts.

Subdivision Guide Plan / Structure Plan

The proposed SGP modification received separately earlier in the year now forms part of the amendment process. With the introduction of TPS No.4, SGP's are now known as Structure Plans. Should the amendment proceed, the Change/Departure to the Structure Plan would need to be considered, advertised and adopted by the Council and the Western Australian Planning Commission under Part 6A of the TPS No.4 to form the future subdivision and development layout in respect of Lot 102 and Part Lot 103 Brookton Highway and Part Lot 4 Irymple Road. The following section addresses some specifics of the proposed Structure Plan.

Orchard Buffer

A 40m vegetated buffer to the orchard on the land was deemed necessary as part of the original amendment process through a vegetation plan. The buffer has been shown on the amended Structure Plan and should be installed as was the original intent.

Access Road

The new access road was proposed to gain access from Gardiner Road in the original SGP, however topography dictated that a route from Irymple Road may have less impact in terms of earthworks and potential for erosion. However the T-intersection with Irymple Road is much closer to where Irymple Road intersects with Brookton Highway than would have been the case if it was deriving access from Gardiner Road. Whilst the distance (approximately 80m) appears to be adequate, it is recommended that the Council require the Structure Plan to be modified, prior to advertising, to ensure that proposed intersection and road reserve are appropriately depicted for road design and safety standards, including any traffic calming, prior to advertising.

OPTIONS

1. Council may resolve to initiate a Scheme Amendment to amend the zoning of Part Lot 4 Irymple Road, Karragullen from 'General Rural' to 'Rural Living 2' and determine that the proposed Change/Departure to the Structure Plan is not to be advertised until further modifications are undertaken as specified.
2. Council may resolve not to initiate the Scheme Amendment in respect of Part Lot 4 Irymple Road, Karragullen on the basis that it believes the proposal is contrary to the intention of TPS No.4, which includes the site within a 'Prime Agricultural Land Protection Area' and determine that the proposed Change/Departure to the Structure Plan is not satisfactory for advertising.

CONCLUSION

The proposed amendment is logical given the zoning of Lot 102 and Part Lot 103 Brookton Highway to the south and the capability of the land for rural-residential development as shown by Council's Rural Strategy and the applicant's Land Capability Study. This clearly conflicts with Special Control Area Map 1, which identifies Part Lot 4 as a 'Prime Agricultural Land Protection Area'. Given the size of Part Lot 4 at 2.9568ha and the location of Stinton Creek, a case can be made in favour of rural-residential land use instead of agricultural. It is therefore recommended that the Council resolve to initiate the proposed amendment and require the proponent to modify the proposed Change/Departure to the Structure Plan, prior to advertising in-accordance with Option 1.

RECOMMEND

1. **That Council, in pursuance of Section 7 of the *Town Planning & Development Act 1928* (as amended), resolve to initiate an amendment to Town Planning Scheme No.4 by:**
 - a) **Rezoning Part Lot 4 Irymple Road, Karragullen from 'General Rural' to 'Rural Living 2';**
 - b) **Amending the Scheme Maps accordingly;**
 - c) **Amending Special Control Area Map 1 to remove the 'Prime Agricultural Land Protection Area' from Part Lot 4 Irymple Road, Karragullen;**
 - d) **Amending Special Control Area Map 3 to include Part Lot 4 Irymple Road, Karragullen into Development (Structure Planning) Area No.17;**
 - e) **Amending Schedule 12 to include Part Lot 4 Irymple Road, Karragullen in Development (Structure Planning) Area No.17.**
2. **That Council seek consent from the Western Australian Planning Commission to advertise the proposed Scheme Amendment for public comment, and refer the proposal to the Environmental Protection Authority for environmental assessment, prior to advertising the proposal in accordance with the Town Planning Scheme Regulations 1967 (as amended).**
3. **That the Mayor and Chief Executive Officer be authorised to execute Amendment documents.**

- 4. That Council pursuant to Clauses 6A.3.2 and 6A.4.3 of Town Planning Scheme No.4 determines that the proposed Change/Departure to the Structure Plan should not be advertised until the following specified matters have been included in the Structure Plan documentation or have otherwise been attended to by the proponent:**
- a) The proposed intersection and road reserve being appropriately depicted for road design and safety standards, including any traffic calming to the satisfaction of the City;**
 - b) The battleaxe leg being widened to the satisfaction of the City;**
 - c) The location and size of the building envelopes on the northernmost lots being modified to the satisfaction of the City;**
 - c) The Structure Plan being modified to provide a link between the two CALM reserves abutting the subject land to the satisfaction of the City; and**
 - d) The Structure Plan documents being formatted to be consistent with Part 6A.**
- 5. That upon the matters specified in 4 above, being included in the Structure Plan documentation or otherwise attended to by the proponent, the proposed Change/Departure to the Structure Plan to be advertised under the provisions of Clauses 6A.3.5 and 6A.4.3 of Town Planning Scheme No.4 for a period of 42 days, concurrently with the above amendment.**

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HERITAGE PLAQUES FOR BUILDINGS ON THE MUNICIPAL HERITAGE INVENTORY

WARD : JARRAH, LAKE,
MINAWARRA,
NEERIGEN & RIVER

FILE REF : GOV/47

DATE : 29 November 2005

REF : HC

RESPONSIBLE : PSM
MANAGER

APPLICANT : Community Heritage
Advisory Committee

LAND OWNER : Various

In Brief:-

- Council resolved in May 2003 to prepare a specific heritage plaque and to undertake an annual program of presentations to private and public building owners of properties listed on the Municipal Heritage Inventory (MHI).
- The Community Heritage Advisory Committee has proposed eight “A” listed and two “B” listed heritage buildings for plaques for the 2005/2006 year.
- Recommend that heritage plaques be presented to the owners of the proposed properties, the Executive Director Development Services in conjunction with the Mayor approve the wording on the plaques, and the plaques be presented to the various owners in ceremonies arranged at a time convenient to the Mayor and the owners.

Tabled Items

Nil.

Officer Interest Declaration

Mr Carder is a member of the Community Heritage Advisory Committee and there may be a perception on the basis of this non-financial interest that his impartiality may be affected. He declares that he has put aside that association and considered the matter on its merits.

Strategic Implications

Relates to the aim for Developing our City to sustain and maintain the distinctive character of the City.

Legislation Implications

Heritage of Western Australia Act 1990.
Town Planning Schemes No.4.
Municipal Heritage Inventory.

*Note: Legislation does not
require the erection of plaques
nor legislate on shape or style.*

Council Policy / Local Law Implications

Nil.

Budget / Financial Implications

Approximately \$3,100 for 10 plaques. Budgeted for in the 2005/2006 budget.

Consultation

- ◆ Community Heritage Advisory Committee (CHAC)

BACKGROUND

At its meeting of 19 May 2003, Council resolved (D90/5/03):

1. That Council undertake an annual programme of plaque manufacture for both private and public “A” Management Category buildings in Council’s Municipal Heritage Inventory.
2. That Council:
 - ◆ Adopt the Council Crest as the basis of a heritage plaque;
 - ◆ Agree that the heritage plaques are to be of bronze and at least 24 centimetres in diameter with the words “City of Armadale” and “Historic Site” prominent;
 - ◆ Agree that the heritage information for individual plaques is to be imprinted on a separate plate to be attached to the centre of the main plaque.
3. That the Mayor formally presented plaques to private owners at appropriate times throughout the year.

At its meeting on 16 February 2004, Council resolved that heritage plaques be prepared for presentation to:

- ◆ Dale Cottages (Site No.A05 in the MHI);
- ◆ The Old Narrogin Inn (A17);
- ◆ The Armadale District Hall (A02);
- ◆ The St Mary-in-the-Valley Cemetery at Kelmscott (K23);
- ◆ St Matthew's Anglican Church, Armadale (A01 & A30);
- ◆ St Francis Xavier Church, Armadale (A29);
- ◆ Buckingham Cottage - Coolgiebrie, Bristol Road, Roleystone (R03);
- ◆ The site of the Kelmscott swimming pool (K12 & K13);
- ◆ The site of the endless winding gear tower in the Grove at Dale Cottages (A05);
- ◆ Willow Heights (B05).

Plaques have been presented by the Mayor to most of the private owners at times over the last year. Arrangements are in train for the presentation of the final plaque to a private property and for plaques to properties owned by the City.

DETAILS OF PROPOSAL

The Community Heritage Advisory Committee, at its meeting on 21 October 2004, recommended that the following properties in the City’s Municipal Heritage Inventory (MHI) be considered for the provision of heritage plaques for the 2005/2006 year:

Property	MHI Number	Management Category
Old Railway Hotel, Jull Street, Armadale	(A21)	A
Old Roads Board Building, Jull Street, Armadale	(A22)	A
Wirra Willa Gardens, Albany Highway, Armadale	(A43)	A
Paradise Cottage, Albany Highway, Bedforddale	(B04)	A
Haydock’s Existing Homesite, Allen Road, Forrestdale	(F01)	B
Congregational Church, Rundle Street, Kelmscott	(K07)	A
Old Station Master’s Residence Kelmscott	(K20)	A
Poplar Homestead and Mill Site Cairn, cnr Brookton Highway and Mount Street, Kelmscott	(K21)	A *
Araluen Botanic Park, Croyden Road, Roleystone	(R01)	A
Roleystone Theatre Hall, Brookton Highway, Roleystone	(R10)	B

* *The Committee suggested that a stylised map of the early area and a diagrammatic representation of the house and mill on a larger plaque would complement the site.*

ANALYSIS

CHAC Proposals

The properties proposed by CHAC, apart from Haydock’s Existing Homesite and Roleystone Theatre, are all “A” Management Categories in the MHI. Paradise Cottage is the oldest man-made dwelling in the Armadale area and a worthy recipient of a heritage plaque. The other “A” Management category buildings are also extremely important in the Armadale historical context.

Haydock’s Existing Homesite and Roleystone Theatre have been recommended for heritage plaques to ensure that there is a spread of the recognition across all the localities represented in the MHI.

Haydock’s Homesite is the only man-made structure in Forrestdale currently in the MHI. It was built circa 1900 and the MHI notes that it is the only historical house in its original condition left in Forrestdale.

The Roleystone Theatre was built as a district effort around 1922 and continues to play an important part in the cultural and social life of Roleystone.

Presentation of plaques to private owners should be the subject of negotiation with the owners.

OPTIONS

Council can:

1. Approve the list of properties proposed by CHAC and prepare plaques for presentation at times suitable to the Mayor and recipients.
2. Decline to approve the list or elements of the list and nominate other properties considered as important for earlier plaque presentation.

CONCLUSION

The properties proposed by CHAC for heritage plaques include some important and impressive heritage properties in the Municipality and ensure a “spread” of recognition to all localities in the MHI. It is recommended that, after appropriate consultation with private owners, plaques be prepared for the properties and presented by the Mayor at times convenient to all parties.

RECOMMEND

1. **That Council resolve that heritage plaques be presented (after appropriate consultation with private owners) to the owners of:**
 - ♦ **Old Railway Hotel, Jull Street, Armadale;**
 - ♦ **Old Roads Board Building, Jull Street, Armadale;**
 - ♦ **Wirra Willa Gardens, Albany Highway, Armadale;**
 - ♦ **Paradise Cottage, Albany Highway, Bedfordale;**
 - ♦ **Haydock’s Existing Homesite, Allen Road, Forrestdale;**
 - ♦ **Congregational Church, Rundle Street, Kelmscott;**
 - ♦ **Old Stationmaster’s Residence, Albany Highway, Kelmscott;**
 - ♦ **Poplar Homestead and Mill site, cnr Brookton Highway and Mount Street, Kelmscott;**
 - ♦ **Araluen Botanic Park, Croyden Road, Roleystone; and**
 - ♦ **Roleystone Theatre Hall, Brookton Highway, Roleystone.**
2. **That Council authorise the Executive Director Development Services in conjunction with the Mayor to approve the wording on the plaques.**
3. **That Council authorise the plaques to be presented to the various owners in ceremonies arranged at a time convenient to the Mayor and the owners.**

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UNAUTHORISED USE - LOT 266 COMMERCIAL ROAD, FORRESTDAL

WARD : LAKE
FILE REF : A16815
DATE : 1 December 2005
REF : CHE
RESPONSIBLE MANAGER : PSM
LAND OWNER : TM Hine
SUBJECT LAND : Lot 266 Commercial Road,
Forrestdale. Property size
7.699 hectares
Map 17.02
ZONING MRS : Rural
TPS No.4 : RL 4

In Brief:-

- A considerable collection of materials and objects is being stored on the subject site without the consent of Council.
- Parking of a commercial vehicle on the premises is occurring without the consent of Council.
- Depositing of soil on the subject site and in conservation category wetlands has occurred, without the consent of Council.
- Approaches to the owner by the City have not resulted in the property reverting to a condition befitting the Rural zone.
- The City has prosecuted the owner on two previous occasions for similar matters.
- Recommend that officers be authorised to institute legal action against the owner of the property and the CEO be authorised to issue a Direction Notice under Section 10 of the Town Planning and Development Act 1928.

Tabled Items

Nil.

Officer Interest Declaration

Nil.

Strategic Implications

Sustain and maintain the distinctive character of the City and maintain Armadale as a special place.

To balance the needs of development with sustainable economic, social and environmental objectives.

Legislation Implications

Breach of Clause 11.4 of Town Planning Scheme No.4
Breach of Clause 7.1 of Town Planning Scheme No.2
Town Planning and Development Act 1928 (as amended)

Council Policy/Local Law Implications

Nil



Current photograph of stored motor vehicles and limestone blocks on Lot 266 Commercial Road, Forrestdale



Current photograph of stored items and commercial vehicle on Lot 266 Commercial Road, Forrestdale

Budget/Financial Implications

- ◆ Costs to budget allocation for legal expenses in seeking a legal remedy via prosecution proceedings. Usually, the actual cost to Council of legal action is not reflected in fines and penalties imposed.
- ◆ Given that Mr Hine has been successfully prosecuted in the past, the penalties are likely to be considerable, if Council is successful. The maximum penalty under the Town Planning and Development Act is \$50,000, with a daily penalty \$5,000 per day for each offence.
- ◆ Should the terms of a Direction Notice not be complied with, costs associated with conducting the remedial work will, in the first instance, be borne by the City.

CONSULTATION

- ◆ Department of Environment Enforcement Unit.

BACKGROUND

The land has been owned by Mr Hine and (until fairly recently) his wife since March 1993. In December 1993 Council considered an application to fill the majority of the property to establish a gum tree plantation and to construct a shed to house commercial vehicles. Council resolved to refuse the application in view of the sensitive environmental circumstances of this site adjacent to the Forrestdale Lake Reserve (P497/93).

In May 1994 Council considered the matter of unauthorised use of the property for various activities and resolved to institute legal proceedings against the owners of the land for unauthorised truck parking, unauthorised filling operations and storage of large quantities of fuel on-site (201/94). Following a meeting with Council Officers, an undertaking from the landowner was provided that was to satisfy Council's requirements. The property was brought into compliance, therefore the legal action did not proceed.

In August 2000, Council was informed that soil was being deposited on the subject land. After investigation by officers an application to deposit soil to create a paddock and to build a shed was submitted. However, prior to Council making a determination of the application, further reports were received of unauthorised land filling.

In November 2000 the City successfully prosecuted Mr Hine for conducting a development (depositing and spreading soil) on the property without the consent of Council.

In response to an application to conduct topdressing/land filling on the property, on 23rd April 2001 Council determined, amongst other things, that:

1. The landfill, outside the acceptable area for development on this site (as identified by the Environmental Officer), is not consistent with the objectives and purpose of this Rural zone and therefore refuse the application for landfill on Lot 266 Commercial Road, Forrestdale for the following reasons:
 - a) The landfill site is part of an area, which is of regional environmental and conservational significance.



Current photographs of landfill in the Conservation Category Wetland
Lot 266 Commercial Road, Forrestdale

- b) The proposal is not compatible with the international significance of Forrestdale Lake, which is listed as a RAMSAR site.
2. That the landfill within the acceptable area for development on this site (as identified by the Environmental Officer), be approved subject to the Department of Environment Protection's (DEP) licence for inert landfill.

Mr Hine was again successfully prosecuted in February 2002, one of the five (5) charges being for not obtaining a licence for inert landfill from the Department of Environmental Protection.

COMMENT

On 28th October 2005, whilst officers were dealing with another matter, it was observed that soil was being deposited on the subject site. The City's Liaison and Compliance Officer investigated and found that numerous piles (at least 42 truck loads) of soil had been deposited on a portion of the land, including land within the conservation category wetland. Also numerous derelict motor vehicles and motor vehicle parts, a commercial vehicle, bricks and a collection of what is best described as junk, was observed on the premises.

The owner of the property was contacted by letter detailing the observed items and Council's determination dated 23rd April 2001 relating to approval to land fill within designated areas. The letter also sought applications for a number of unauthorised activities and the requirement to remove various items including the deposited and spread soil.

An inspection of the property was conducted on 30th November 2005 where it was observed that in essence the property remained in the same condition as previously observed and the required applications had not been received.

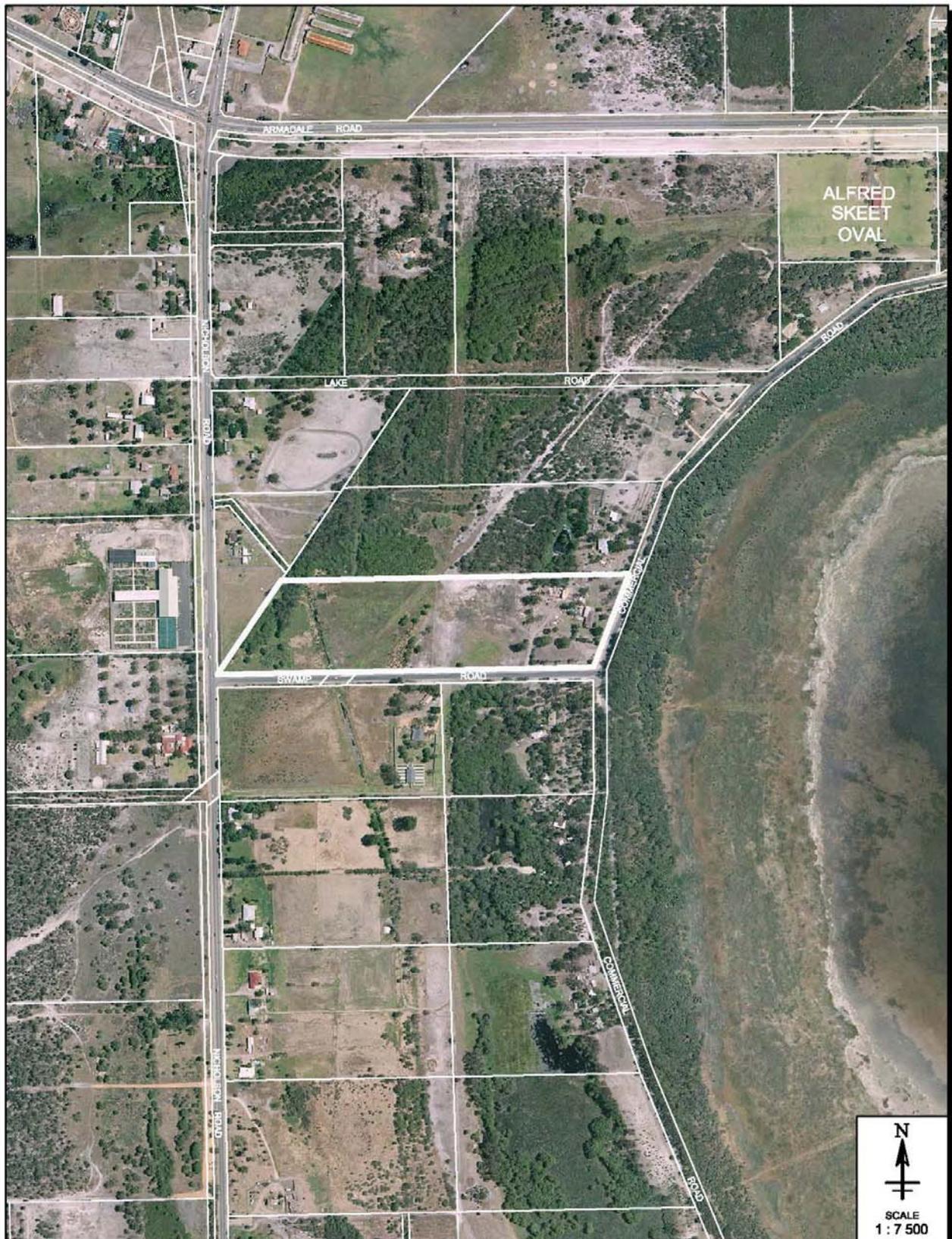
ANALYSIS

The subject site is in a sensitive location being affected by Bushplan No.345 and Conservation Category Wetlands.

A number of activities are being conducted on the property including the storage of materials, land filling (outside of the designated areas) and parking a commercial vehicle, none of which are being undertaken with the consent of Council.

Clause 7.1 (Application for Planning Consent) of Town Planning Scheme No.2 (TPS No.2) requires:

“Any persons who desire to develop land zoned or reserved under the Scheme for any purpose other than for the purpose of erecting a single house on land zoned Residential or General Rural by the Scheme, shall make application to the Council for planning consent to the development before applying for a Building License. The application shall be in the form in Appendix 1 and such further particulars as the Council may consider necessary to enable the Council to determine the application”.



**AERIAL PHOTOGRAPH
LOT 266 COMMERCIAL ROAD, FORRESTDALE**

Clause 11.4 of Town Planning Scheme No.4 (TPS No.4) requires:

11.4.1 A person must not –

- (a) contravene or fail to comply with the provisions of the Scheme or with a notice issued under the Scheme;*
- (b) use any land or commence or continue to carry out any development within the Scheme area –*
 - (i) otherwise than in accordance with the Scheme;*
 - (ii) unless all approvals required by the Scheme have been granted and issued.*

The provisions from both TPS No.2 and TPS No.4 have been quoted because the investigation began whilst TPS No.2 was still valid. Should Council resolve to institute legal proceedings, Prosecution Notices will be issued for the breaches under TPS No.2 up to the date of the gazettal of TPS No.4 (4 November 2005) and then separate Prosecution Notices will be issued from the gazettal date of TPS No.4 onwards.

Unauthorised activities have taken place on the subject property on several occasions over many years and it would appear that being convicted and fined has not ceased such activities. Therefore, it is suggested that not only should legal proceedings be instituted but also a Direction Notice from the Chief Executive Officer be served on the owner of the property. It is also suggested that the terms of the Notice include provision for the City to remove the offending items/material in the event that the property owner fails to do so within the time frame of the Notice and seek reimbursement of the cost of the work from Mr Hine (the landowner).

OPTIONS

1. As the owner of the property continues not to comply with the relevant legislation, Council could resolve to institute legal proceedings immediately for breaching the provisions of TPS No.2 and TPS No.4 and authorise the issuing of a suitably worded Direction Notice from the Chief Executive Officer to require the remediation of the site.
2. Permit a further period of grace (i.e. two weeks) for the clearance of the various materials and objects from the site.
3. Resolve not to pursue the matter at this stage.

CONCLUSION

Verbal and written advice given by the City's Officers to the landowner has clearly presented Council's position and requirements to the owners of the property. Unfortunately, these efforts have failed to encourage voluntary compliance with the legislation under Council's administration. Given that considerable effort has been expended without affecting compliance and given that the Court cannot order the site to be remediated, it is recommended that the Council authorise both legal proceedings to be instituted against the owners of the land and authorise the issuing of a suitably worded Direction Notice from the Chief Executive Officer in-accordance with Option 1.

RECOMMEND

1. That Council resolve to institute legal proceedings, subject to legal advice, against the owner, Mr TM Hine, of Lot 266 Commercial Road, Forrestdale for contravening the provisions of the City of Armadale Town Planning Scheme No.2 and Town Planning Scheme No.4 for:
 - a) conducting development, land filling, on the property without the consent of Council;
 - b) conducting a storage use on the property without the consent of Council;
 - c) parking a commercial vehicle on the premises without the consent of Council.
2. That Council authorise the Chief Executive Officer to institute further legal proceedings against any person or Company with an interest in Lot 266 Commercial Road, Forrestdale until such time as the offending materials and items are removed from the subject properties.
3. That Council authorise the Chief Executive Officer to issue a Direction Notice under Section 10 of the Town Planning and Development Act 1928 to require that Lot 266 Commercial Road, Forrestdale to be cleared of all of the items detailed in the Notice within 60 days, following which failure to comply will result in Council clearing the site at the cost of Mr TM Hine (the landowner).
4. That Council authorise the Liaison and Compliance Officer or Senior Liaison and Compliance Officer to swear the appropriate Prosecution Notices on behalf of Council.

Moved Cr _____
Carried/Lost ()

JULL STREET CITY CENTRE – SAFE PEDESTRIAN ACCESS

BACKGROUND

The matter of safe pedestrian access across Jull Street in the City Centre for all pedestrians of all ages and physical abilities was referred to the Technical Services Committee by Cr Pat Hart.

Cr Hart provided the following information to the Technical Services Committee:

“Concerns have been expressed to me by older residents and also those with disabilities with the current arrangements for pedestrian access near the “Subway” store. With the two way flow they are feeling very intimidated as they cross over at the corner that is not a formal cross walk but identified as the avenue for pedestrians through the brick paving.

We have parking studies and road studies but we have not had pedestrian studies. With the proposed new shopping precinct at Woolworths site plus the Movie Theatre and the large shopping centre complex we now have on the other side, it is vital that the ability for pedestrians to be able to freely move back and forwards between these two precincts and feel safe is critical to success”.

At its Meeting on 24 October 2005 the Technical Services Committee resolved that:-

“The City of Armadale in conjunction with the ARA require safe pedestrian movement in the CBD for residents of all ages and physical abilities and the matter be referred to the Development Services Committee”.

COMMENTS

In November 2005 the ARA approved an application to extend and redevelop the Woolworths supermarket and the Cinema complex adjacent to the Armadale Plaza subject to a number of conditions including the following condition relating to pedestrian amenity:

“Preparation by the applicant of detailed pedestrian and bicycle movement analysis to justify the proposed location and treatment of pedestrian and cycling links incorporating the “Principal Shared Pathway”, to the ARA’s satisfaction (a pedestrian/cycling movement and amenities plan)”.

In relation to the above condition, an advice note was provided, which included specific reference to the need for the applicant to address “movement of pedestrians across Jull Street and Orchard Avenue”.

At a recent meeting between the developers/consultants, the ARA and the City, it was confirmed that the pedestrian and bicycle movement analysis will be undertaken and that a report will be submitted to the ARA/City for consideration.

With regards to the issue of providing disability facilities, the City's Disability Advisory Committee has over the last twelve months identified and raised various issues of concern related to disability access and inclusion in its CBD area. Arrangements have been made with the ARA and Technical Services to involve representatives from Community Services at workshop/meetings with the developers to discuss the possibility of including such concerns as an element to the pedestrian planning studies.

RECOMMEND

That Council note the current actions regarding pedestrian movements in the Armadale CBD area.

Moved Cr _____
Carried/Lost ()

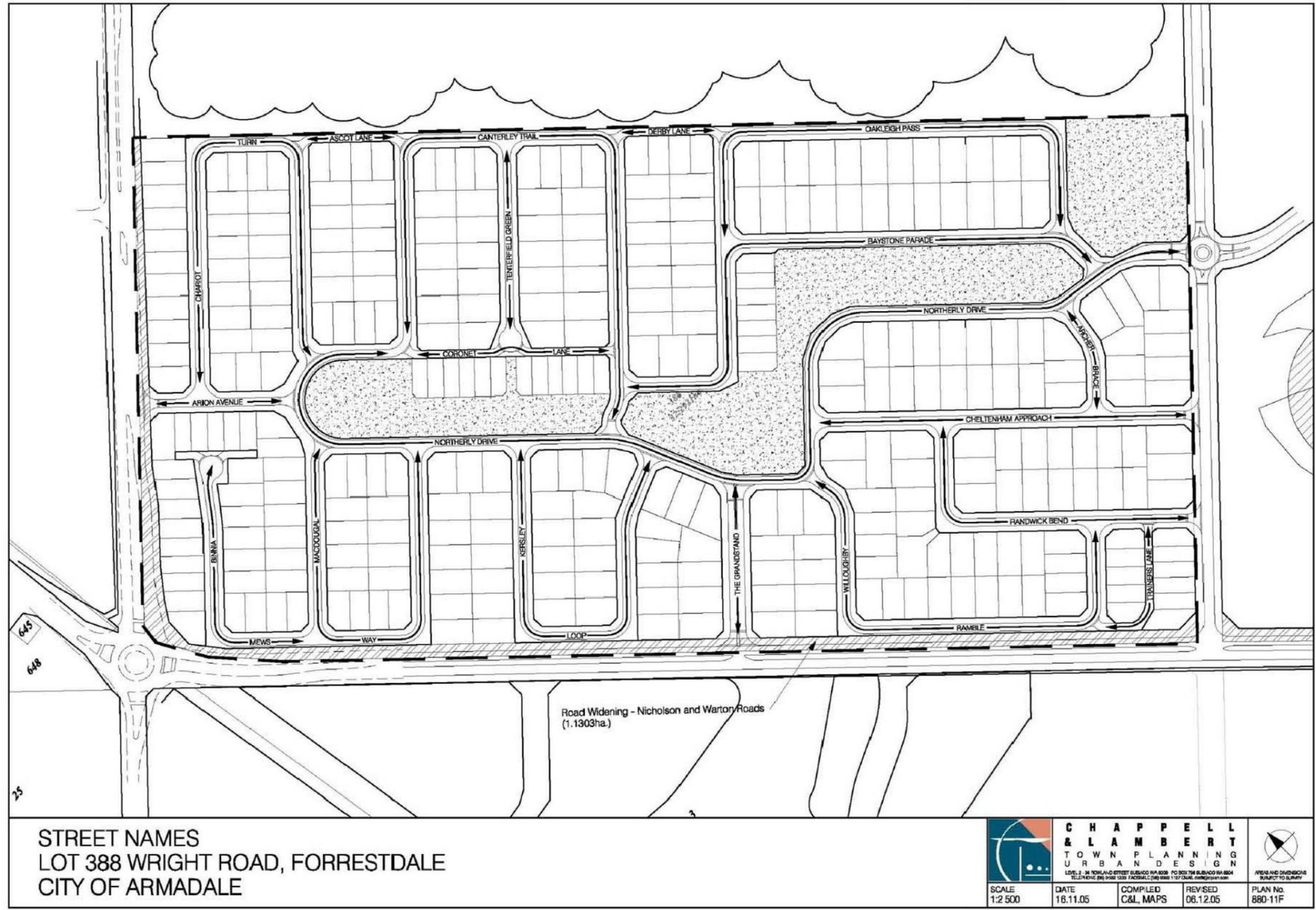
LATE ITEMS

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 _____



**PROPOSED ROAD NAMES
 LOT 388 WRIGHT ROAD, FORESTDALE**