
Shire of Kalamunda

Planning Services Committee

MINUTES FOR 12 APRIL 2010



SHIRE OF KALAMUNDA

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Minutes of Planning Services Committee Held in the Council Chambers 2 Railway Road, Kalamunda 12 April 2010

1. OFFICIAL OPENING

- 1.1 The Chairman opened the meeting at 7.00pm and welcomed Councillors, Staff and Members of the Public Gallery.

2. APOLOGIES AND LEAVE OF ABSENCE

Present

Councillors

D McKechnie	(SHIRE PRESIDENT) NORTH WARD
S. Bilich	NORTH WARD
M Thomas	(CHAIRPERSON) NORTH WARD
N. Townsend	SOUTH WEST WARD
A Morton	SOUTH WEST WARD
M Robinson	(DEPUTY CHAIRMAN) SOUTH WEST WARD
G. Stallard	SOUTH EAST WARD
C Everett	SOUTH EAST WARD
F Lindsey	SOUTH EAST WARD
M Cresswell	NORTH WEST WARD
P Heggie	NORTH WEST WARD
D. O'Connor	NORTH WEST WARD

Officials

J Trail	CHIEF EXECUTIVE OFFICER
C Higham	DIRECTOR PLANNING & DEVELOPMENT SERVICES
K O'Connor	DIRECTOR COMMUNITY DEVELOPMENT
M Singh	DIRECTOR ENGINEERING SERVICES
A Fowler-Tutt	MANAGER STRATEGIC PLANNING
D Tomlinson	MANAGER STATUTORY PLANNING
D Forrest	MANAGER GOVERNANCE
D McPherson	MINUTE SECRETARY

Apologies	Nil
Observers	8
Newspapers	Nil

3. PUBLIC QUESTION TIME

A period of not less than 15 minutes is provided to allow questions from the gallery on matters relating to the functions of this Committee. For the purposes of Minuting, these questions and answers are summarised.

3.1 Nil.

4. PETITIONS

4.1 Nil.

5. CONFIRMATION OF MINUTES OF PREVIOUS MEETING

5.1 That the Minutes of the Planning Committee Meeting held on 8 April 2010 be confirmed as a true and correct record of the proceedings.

Moved: Cr Cresswell

Seconded: Cr Stallard

CARRIED UNANIMOUSLY

6. ANNOUNCEMENTS BY THE PERSON PRESIDING WITHOUT DISCUSSION

6.1 Nil.

7. MATTERS FOR WHICH MEETING MAY BE CLOSED

7.1 Nil.

8. DISCLOSURE OF INTERESTS

Disclosure of Financial and Proximity Interests

- (a) Members must disclose the nature of their interest in matters to be discussed at the meeting. (Sections 5.60B and 5.65 of the Local Government Act 1995)
- (b) Employees must disclose the nature of their interest in reports or advice when giving the report or advice to the meeting. (Sections 5.70 and 5.71 of the Local Government Act 1995).

Disclosure of Interest Affecting Impartiality

- (a) Members and staff must disclose their interest in matters to be discussed at the meeting in respect of which the member or employee has given or will give advice.

8.1 Item 9.23 Proposed Closure of Right of Way – Stanhope Road Kalamunda

Cr Thomas declared an interest affecting impartiality as family own property abutting the Right of Way.

8.2 Item 9.25 Lot 23, 50, 9001 Kalamunda Road, High Wycombe – Cahs-in-Lieu for Public Open Speance and Progress of Subdivision and Developments Associated with the High Wycombe Town Centre

Cr Heggie declared a financial interest as he has two leases at this complex, Lot 9001 Kalamunda Road, High Wycombe.

9. REPORT TO COUNCIL

Declaration of financial/conflict of interests to be recorded prior to dealing with each item.

9.20 Proposed Amended Policies for the Planning & Development Directorate

Previous Items:	N/A
Service Area:	Planning Development Services
File Reference:	OR-CMA-016
Applicant:	N/A
Owner:	N/A

PURPOSE

1. The purpose of this report is for Council to consider amendments to various Planning and Building Policies as contained in the Shire's Policy Register.
2. To consider whether to advertise draft amended local planning policies that seek to provide guidance on the assessment and determination of applications for Planning Approval for radio, television, transmission and communication facilities and requests for variations to the number of car parking bays.

BACKGROUND

3. Local Planning Scheme No. 3 (LPS 3) foreshadows the development of policies to guide decision-making.
4. The Policy Register is currently being reviewed and, where considered necessary, amendments and draft policies are being presented for Council consideration.
5. Amended and draft policies are being considered for a number of reasons including consistency with updated legislation and Shire functions, recognition of the changing needs of the community and potential ambiguity or interpretation issues.
6. When Council adopted Local Planning Policy DEV26 - Radio, Television, Transmission and Communication Facilities, there is no subsidiary legislation, however, this now exists (e.g. *Telecommunications Code of Practice 1997* and *Telecommunications (Low Impact Facilities) Determination 1997*).

DETAILS

7. Council is requested to consider amendments to the following policies:
 - DEV26 - Radio, Television, Transmission and Communication Facilities. ***(Refer to Attachment 1)***
 - DEV41 - Framework for Assessing Requests for Variations to the Number of Car Parking Bays. ***(Refer to Attachment 2)***

STATUTORY AND LEGAL IMPLICATIONS

8. LPS 3 allows the Shire to prepare policies in respect to any matter related to the planning and development of the Shire. Policies may apply to a particular case or matter and throughout the Scheme area or in one or more parts of the Scheme area. The Scheme allows Council to amend or rescind its Planning Policies.
9. Clause 5.8.2 of LPS 3 allows Council to apply at its discretion, a greater or lesser requirement for car parking than that stipulated as the minimum requirement in Table 3 of the Scheme if, in its opinion, the proposed use is likely to demand a greater or lesser need for car parking bays having due regard to the scale and nature of the intended uses.
10. A Local Planning Policy is not part of the Scheme and does not bind the Council in its decision making, however, Council is to have due regard to the policy when making a decision.

POLICY IMPLICATIONS

11. If Council adopts the local planning policies, they will be included in the Shire's Policy Register.

PUBLIC CONSULTATION/COMMUNICATION

12. LPS 3 prescribes the procedure for advertising a Local Planning Policy. It will be necessary to advertise the policies once a week for two consecutive weeks in a newspaper circulating in the Scheme area with a submission period of 21 days. The policies will also be on display at the Administration office and libraries.
13. Following the advertising period, the policies will be presented to Council for consideration of adoption, with or without modification.

FINANCIAL IMPLICATIONS

14. There will be a cost involved in the advertising of the proposed policies, however this is covered in the adopted budget.

STRATEGIC AND SUSTAINABILITY IMPLICATIONS

15. **Strategic Planning Implications**
 - The amended policies will assist in the procedural and governance aspects of the Shire's development control responsibilities.
16. **Sustainability Implications**
 - Social implications**
 - The amended policies stipulate Shire requirements which will be applied so that the amenity of an area is not significantly impacted by a proposed land use.
 - Economic Implications**
 - Nil

Environmental Implications

- Nil

OFFICER COMMENT

17. DEV26 - Radio, Television, Transmission and Communication Facilities
When Council adopted Local Planning Policy DEV26 - Radio, Television, Transmission and Communication Facilities – there was no subsidiary legislation, however, this now exists (e.g. *Telecommunications Code of Practice 1997* and *Telecommunications (Low Impact Facilities) Determination 1997*).
18. DEV41 - Framework for Assessing Requests for Variations to the Number of Car Parking Bays
LPS 3 allows Council to apply, at its discretion, a greater or lesser requirement for car parking than that stipulated as the minimum requirement in Table 3 of the Scheme. The proposed amended Local Planning Policy DEV41 - Framework for Assessing Requests for Variations to the Number of Car Parking Bays - provides guidance on when this will be applied.
19. The amended policies seek to provide a balance between the needs of residents, as well as the need to retain the prevailing character of an area, without unreasonable intrusion.
20. The amended policies will assist in the procedural and governance aspects of the Shire's development control responsibilities. It is therefore recommended that they be advertised for public comment.

MEETING COMMENT

21. Nil.

COMMITTEE RECOMMENDATION TO COUNCIL PS-20/2010

1. That Council agrees to advertise the following planning policies for public comment, in accordance with provision 2.4 of Local Planning Scheme No. 3:
 - DEV26 - Radio, Television, Transmission and Communication Facilities.
 - DEV41 - Framework for Assessing Requests for Variations to the Number of Car Parking Bays.

Moved: Cr Everett

Seconded: Cr McKechnie

CARRIED UNANIMOUSLY

REGISTER OF COUNCIL POLICIES

Title:	Radio, Television, Transmission and Communication Facilities – Local Planning Policy		
Policy No.:	DEV 26		
Date Adopted:		Date Reviewed:	Last Unknown

Objective:	<ul style="list-style-type: none"> To provide guidelines for the assessment of communication, receiver and transmission facilities including television, radio broadcasting, commercial communication, mobile telephone, not low impact and amateur radio facilities. To protect the quality of the streetscape and the amenity of nearby residents by minimising the visual impact of television, radio broadcasting, commercial communication, mobile telephone, not low impact and amateur radio facilities.
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SCOPE

This policy should be read in conjunction with the following:

1. Council's Local Planning Scheme;
2. WAMA Telecommunications Kit;
3. Telecommunications Code of Practice 1997 (as per Schedule 3 of the Telecommunications Act 1997); and
4. Telecommunications (Low-Impact Facilities) Determination 1997.

APPLICATION CRITERIA

In the Telecommunications (Low-Impact Facilities) Determination 1997, telecommunication facilities are categorised into classifications including 'Low Impact' facilities. Development approval from the Shire is not required for the installation of 'Low Impact' facilities under the Telecommunications Code of Practice, however applicants are encouraged to submit details to the Shire for its information.

Any application for any communication, receiver and transmission facilities (and associated facilities) deemed as 'Medium' or 'High' Impact, requires referral to the Shire for determination.

The Shire will not consider or determine any application until the applicant has submitted all of the required information as stipulated in the Telecommunication Code of Practice.

Applications for new facilities will only be considered where the applicant has provided adequate evidence and justification that all opportunities for co-location of the new facility

with existing facilities have been investigated, and that co-location alternatives are not feasible for technical or aesthetic reasons.

This policy does not include:-

- a) Mobile communication facilities temporarily located at any one specific place;
- b) State Emergency Services communication equipment, and
- c) Any other emergency service authority acting within the scope of its statutory responsibilities, and any mast or antenna used in association with a domestic television or radio.

ASSESSMENT OF APPLICATIONS

Satellite Dishes

An application for "Approval to Commence Development" is required prior to the issuing of a Building Licence for the erection of a satellite dish except when:

- The diameter of the dish is less than 1m;
- The dish is not located on the façade or roof of a building fronting a public street or place;
- The dish is not within the setback area to a street;
- The dish does not project above the ridgeline of the building to which it is attached;
- If mounted on the roof and visible from nearby properties the dish is painted a similar colour to the roof; and
- Subject to compliance with foregoing criteria there are no existing satellite dishes or microwave antennas on the property.

Antennas and Towers

An application for "Approval to Commence Development" is required prior to the issuing of a Building Licence for the erection of a microwave antenna except when:

- The circumference of the antenna is less than 500mm;
- The antenna does not project higher than 2m above the ridge line of the roof of the building to which it is attached;
- Subject to compliance with foregoing criteria there are no existing towers or antennas on the property.

Design

1. Free standing facilities (antennas) are to be constructed of a single slimline

monopole with flush mounted antenna packs.

2. All communication, receiver and transmission facilities will be required to be painted a neutral non-reflective colour to blend with the immediate local surroundings and minimise the potential of visual intrusion.
3. The visual impact of all communication, receiver and transmission facilities including television, radio broadcasting, commercial communication, mobile telephone, not low impact and amateur radio facilities, is to be mitigated wherever possible by the retention of existing local trees. Where existing local trees do not exist, or their retention is not adequate, the planting of advanced specimens of trees approved by the Council shall be required.
4. Facilities wherever possible shall utilise existing commercial or industrial buildings/structures or replace an existing structure. New towers (or base stations) should not be located within 500m from sensitive areas (residential, child care centres, schools and similar uses determined by the Shire).
5. If existing structures are proposed to be upgraded or replaced by new structures, all obsolete telecommunication infrastructure is to be removed from the site within three (3) months of the cessation of use, and the land reinstated with vegetation endemic to the surrounding area.

COMMUNITY CONSULTATION

The Shire will consult with nearby landowners in regard to the impact of a proposal if:

Satellite Dishes

- The satellite dish exceeds 3m in diameter;
- The support height from the ground to the centre of a satellite dish exceeds 2m;
- The combined height of any support structure and the dish exceeds 3.5m;
- If the setback is exceeded by the combined height of the support structure and the dish; or
- Motorised systems are to be employed for the directional change of the dish.

If any of the above applies, the application will be advertised for comments from the adjoining landowners and those landowners whose view of the proposed dish will be unobstructed from their property.

Antennas and Towers

- The antenna exceeds 2m in diameter;
- The support height from the ground to the top of an antenna or tower exceeds 10m;

- If the setback is exceeded by the height of the antenna or tower; or
- The antenna or tower projects higher than 4m above the ridge line of the roof of the building to which it is attached.

If any of the above applies, the application will be advertised for comments from nearby landowners. For every metre the proposed antenna's or tower's height and/or diameter is in excess of the above, the application will be advertised to landowners within an additional 100m radius of the subject property (e.g. if the antenna projects 5m above the ridge line of the roof all landowners within 100m will be required to be consulted, antennas projecting 6m above the roof's ridge line requires a 200m advertisement radius etc.).

The Shire reserves the right to liaise or consult with other telecommunication carriers to establish whether similar facilities are proposed in the immediate area and whether opportunities exist for co-location.

CROSS REFERENCES (If any):

Admin Policy/Procedure:		Delegation:	
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LEGAL REFERENCES

Legislation:	Local Planning Scheme No. 3
Local Law:	
Notes:	Previous policy PS 1.10

REGISTER OF COUNCIL POLICIES

Title:	Framework for Assessing Requests for Variations to the Number of Car Parking Bays – Local Planning Policy		
Policy No.:	DEV 41		
Date Adopted:		Date Reviewed:	Last Unknown

Objective:	To provide guidance to proponents and the Shire for considering requests for the reduction of the number of car bays prescribed under Local Planning Scheme No. 3.
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POLICY

Local Planning Scheme No. 3 allows the Shire to apply, at its discretion, a greater or lesser requirement for car parking bays than that stipulated as the minimum in Table 3 for any zone (except Residential).

The Shire will consider variations to the car parking requirements under Local Planning Scheme No. 3 if:

- a) The circumstances of a development justify such variation and there will not be any resultant lowering of safety, convenience and amenity standards, it may permit a reduction in the number of car parking spaces required by Table 3 of Local Planning Scheme No.3.
- b) it is necessary to increase the required number of car parking spaces in order to maintain desirable standards of safety, convenience and amenity, such extra car parking spaces as the Shire considers necessary shall be provided. In imposing such extra car parking requirements, the Shire shall explain the reasons for the increase to the owner of the lot.
- c) Where there are two separate and different developments with different hours of peak operation, but being located on the same lot or adjoining lots, the Shire may permit a reduction of the required number of car parking bays on either or both lots, provided it is satisfied there would be no resultant lowering of safety, convenience and amenity standards.
- d) Where a proposed development is located adjacent to a constructed public car park, the Shire may, where it is satisfied there would be no lowering of safety, convenience and amenity standards, reduce the amount of required onsite car parking for that development by the amount which it considers the public car park serves the development.

Where a request for the reduction of the number of car parking bays is received, the following principles will also be applied:

- The Shire will not consider on-street and/or verge parking as part of the calculation of car parking bays for a development proposal.
- The proximity of public parking areas will only be considered within District Centre zoned land.
- Parking ratios under previous Planning Schemes are not relevant and are not a mitigating factor.
- A reduction in parking will only be determined by Council and not under delegation.
- A change in land use may invalidate the parking reduction.
- This Policy does not apply to developments considered under the Residential Design Codes.

CROSS REFERENCES (If any):

Admin Policy/Procedure:		Delegation:	
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LEGAL REFERENCES

Legislation:	Local Planning Scheme No. 3
Local Law:	
Notes:	Previous policy PS 1.10

Declaration of financial/conflict of interests to be recorded prior to dealing with each item.

9.21 Policies for the Planning and Development Directorate - Proposed Revocations

Previous Items:	N/A
Service Area:	Planning Development Services
File Reference:	OR-CMA-016
Applicant:	N/A
Owner:	N/A

PURPOSE

1. For Council to consider the revocation of various Planning Policies as contained in the Shire's Policy Register.

BACKGROUND

2. The Policy Register is currently being reviewed and, where considered necessary, amendments and revocations for Council consideration are being recommended.
3. Revocations are being considered for a number of reasons including potential ambiguity, requirements outlined in certain policies being the same as other documents (e.g. *2008 Residential Design Codes*) or interpretation issues, and therefore, are not adding value to the existing legislative position.

DETAILS

4. Council is requested to consider revoking the following policies:
 - DEV10 – Delegation of Authority – Determination of Development and Subdivision Applications (***Attachment 1***)
 - DEV38 – Variation of Building Setbacks – Residential Design Codes (***Attachment 2***)
 - DEV 39 – Walls on Boundaries – Local Planning Policy (***Attachment 3***)

STATUTORY AND LEGAL IMPLICATIONS

5. Local Planning Scheme No. 3 (LPS 3) allows the Shire to prepare policies in respect to any matter related to the planning and development of the Shire. Policies may apply to a particular class or matter and throughout the Scheme relate to one or more parts of the Scheme area. The Scheme allows Council to amend or rescind its planning policies.
6. A Local Planning Policy is not part of the Scheme and does not bind the Council in its decision making, however, Council is to have due regard to the Policy when making a decision.

POLICY IMPLICATIONS

7. If Council revokes the Policies, they will be removed from the Shire's Policy Register.

PUBLIC CONSULTATION/COMMUNICATION

8. There is no Scheme requirement for the policies to be advertised prior to being revoked. Should Council revoke the policies, a notice of revocation will be published once a week for 2 consecutive weeks in a newspaper circulating in the Shire area, in accordance with clause 2.5(b) of Local Planning Scheme No.3.

FINANCIAL IMPLICATIONS

9. There will be a cost involved in publishing a notice of revocation, this is, however, covered in the adopted budget.

STRATEGIC AND SUSTAINABILITY IMPLICATIONS

10. **Strategic Planning Implications**
 - The removal of the policies will assist with determining applications.
11. **Sustainability Implications**
 - Social implications**
 - Nil
 - Economic Implications**
 - Nil
 - Environmental Implications**
 - Nil

OFFICER COMMENT

12. Local Planning Policies DEV38 – Variation of Building Setbacks – Residential Design Codes and DEV 39 – Walls on Boundaries are redundant policies, due to the requirements being already stipulated in the *2008 Residential Design Codes*.
13. Local Planning Policy DEV10 – Delegation of Authority – Determination of Development and Subdivision Applications is regarding delegated authority already listed in the Delegated Authority Register (PDA1) adopted by Council in June 2009 (**Attachment 4**). This is, in effect, a duplication of the delegated authority.
14. Local Planning Policy DEV 10 is inconsistent with current legislation as it refers to District Planning Scheme No. 2 provisions.

MEETING COMMENT

15. A Councillor sought clarification as to the reason for the revocation of these policies. The Director of Planning and Development Services provided explanation.

COMMITTEE RECOMMENDATION TO COUNCIL PS-21/2010

1. That Council revokes the following planning policies in accordance with clause 2.5 of Local Planning Scheme No 3:
 - DEV10 – Delegation of Authority – Determination of Development and Subdivision Applications
 - DEV38 – Variation of Building Setbacks – Residential Design Codes
 - DEV 39 – Walls on Boundaries – Local Planning Policy
2. A notice of revocation be published once a week for 2 consecutive weeks in a newspaper circulating in the Shire area.

Moved: Cr Robinson

Seconded: Cr Townsend

CARRIED UNANIMOUSLY

POLICY REGISTER



Title:	Delegation of Authority – Determination of Development and Subdivision Applications		
Policy No.:	DEV10		
Date Adopted:	unknown	Date Last Reviewed:	unknown

Objective:	<p>To provide guidelines under which the Chief Executive Officer may exercise delegated authority to staff to:</p> <ul style="list-style-type: none"> a) approve or refuse development applications; and b) formulate a recommendation of approval or refusal for subdivision and development applications that require referral to the Western Australian Planning Commission for determination.
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1. Uses and Conditions

1.1 Uses

Staff may:

- 1.1.1 Approve all development applications where the proposed use is a 'P' use in the District Planning Scheme No 2.
- 1.1.2 Approve all development applications where the proposed use is an 'IP' use in the District Planning Scheme No 2.
- 1.1.3 Refuse all development applications where the proposed use is a 'X' use in the District Planning Scheme No 2.
- 1.1.4 Approve development applications where the proposed use is an 'AA' use in the District Planning Scheme No 2 where:
 - The proposal complies with the relevant scheme provisions and policies as appropriate.
 - No objections are received from contacted neighbours within the specified period of notification (should objections be received, the application shall be forwarded to Council for determination).
 - The proposed use is one of the following "AA" uses:
 - Additional Accommodation
 - Family Day Care Centre & Child Care Centre
 - Commercial Vehicle Parking
 - Consulting Rooms and Consulting Rooms – Group
 - Display Homes
 - Grouped Dwellings
 - Home Occupation
 - Office
 - Panel Beating (Light Industrial zone only)
 - Professional Office
 - Rural Pursuit
 - Keeping of Animals
 - Spray Painting (Light Industrial zone only)
- 1.1.5 Approve development applications for the following 'AA' uses without referral to neighbours:
 - Caretakers Dwelling
 - Convenience Store (in a Shopping zone only)
 - Residential Building (in a Private Clubs & Institutions zone only)
 - Aged or Dependant Persons Dwelling Units including a density bonus as provided for

under the R Codes.

1.2 Conditions

Staff may impose conditions on development approval which relate to the orderly and proper planning, preservation of the amenity of the locality and other such conditions as deemed appropriate.

1.3 Referral to Council

In considering an application, staff shall take into consideration the impact of the proposal on the general amenity of the area and if any significant doubt exists, the proposal shall be referred to Council for a decision, through the Planning Services Committee.

2. Minor Extensions

Any application for minor extensions to an existing development may be approved by staff, providing the proposal complies with the provisions of Council's District Planning Scheme No 2 and relevant policies.

3. Variation to Setbacks - General

Setback variations to property boundaries for residential dwellings (single and grouped dwellings) and outbuildings may be approved by staff subject to no objections being submitted by the owner(s) of the adjoining affected property/properties within the specified period of notification.

4. Advertising of "AA" Uses - District Planning Scheme No 2

Staff may initiate advertising for an application made pursuant to Clause 5.8 of the Scheme and refer the application and submissions to Council (except where no submissions are received and staff have the delegated power to deal with the application under this policy).

5. Development Applications requiring referral to the Western Australian Planning Commission for determination

When dealing with development applications requiring referral to the Western Australian Planning Commission for determination, staff can refer the application and recommendation to the Commission except where, in accordance with policy, it is required that the application be referred to Council.

6. Subdivision Applications & Clearances

6.1 Staff may refer recommendations for subdivision/amalgamation applications to the Western Australian Planning Commission in accordance with the following:

- a) Recommend approval of subdivision applications that are consistent with District Planning Scheme No 2, Council policy, the Residential Planning Codes, an approved Outline Development Plan or Structure Plan, guided development scheme or subdivision guide plan as applicable.
- b) Recommend refusal of subdivision applications that are not consistent with District Planning Scheme No 2, Council policy, the Residential Planning Codes, an approved Outline Development Plan or Structure Plan, guided development scheme or subdivision guide plan as applicable.
- c) Variation to the minimum lot sizes for residential subdivisions can be supported in accordance with the Western Australian Planning Commission Policy No. 2.2 (Residential Subdivision).

6.2 Recommend against the creation of lots smaller than 4 hectares in the Rural zones, unless specifically approved by Council.

6.3 Subdivision clearances

6.3.1 May be referred to the Western Australian Planning Commission once all relevant conditions of approval have been satisfied.

6.3.2 For the purpose of clearing a condition of subdivision, the existence of an outbuilding on an otherwise vacant new lot will not preclude the release of the subdivision, unless

- (i) the outbuilding is located across a new lot boundary, or too close to the new lot boundary in terms of the setback provisions of DPS No 2; or
- (ii) the subdivision condition clearly states that no outbuilding shall be allowed to remain on an otherwise vacant lot.
- (iii) At such time as a new lot, which contains an outbuilding, is to be further developed, the existence of the outbuilding will not necessarily be sufficient grounds for Council agreeing to setback dispensation for the further development.

(OCM 21/9/92)

6.4 Compassionate grounds alone not be accepted as valid reasons for recommending approval for subdivision as they are not related to the long term cadastral pattern which results.

7. Development Control Unit

7.1 All development applications that require input from more than one other service area shall be referred to the Development Control Unit for consideration and comment.

7.2 All subdivision applications shall be referred to the Development Control Unit for consideration and comment.

8. Notification of Delegated Decisions

8.1 A list of all development applications determined under delegated authority and subdivision applications considered under delegated authority shall be forwarded to Councillors and incorporated into the Planning Services Committee agenda and minutes.

8.2 Every applicant who receives notification of a conditional approval or refusal of a development application that was determined by staff and is aggrieved by that decision, may within 28 days of the date of that decision request that the matter be reconsidered by Council.

9. Appeals

9.1 Staff have delegated authority to respond to appeals to defend the decision of Council or a delegated decision. If the appeal involves mediation and as part of that mediation variation to any standard provision contained in any policy or the Scheme is sought, then the matter shall be forwarded to Council for consideration as to whether to support that variation.

9.2 In instances whereby an appeal was referred to Council, the outcome of that appeal will be reported in the General Business Bulletin

9.3 Councillors will be advised by the General Business Bulletin of any appeal whereby staff responded to that appeal and the appeal was lost.

CROSS REFERENCES (If any):

Management Practice No.		Delegation No.:	
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LEGAL REFERENCES

POLICY REGISTER



Title:	Variation of Building Setback – Residential Design Codes		
Policy No.:	DEV38		
Date Adopted:	17 May 2004	Date Last Reviewed:	unknown

Objective:	To outline the standard procedures for variation to the building setbacks required under the Scheme and the Residential Design Codes.		
1.	All applicants shall be required to provide an accurate site plan showing all existing improvements (including main building, outbuilding, septic tanks, leach drains), vehicular access, physical characteristics, vegetation, house layout (where relevant to the variation), contours (where relevant to the variation) - to support the application.		
2.	When dealing with an application for dispensation, staff may ask for the proposed siting of the house or outbuilding, the subject of the application to be clearly pegged out on the lot to facilitate inspection.		
3.	<p>Physical characteristics shall be taken to include the following :</p> <ul style="list-style-type: none"> Extreme slope Drainage and creekline Tree(s) Rock outcrop(s) Lot size and shape <p>Consideration may also be given where permanent structures exist, the location of which was affected by natural physical characteristics of the lot thus limiting the area available for building.</p>		
4.	Extensions or alterations to an existing residence which already contravenes the setback provisions of the Residential Design Codes may be approved provided that such extensions or alterations conform to the building line which has been set by that existing setback contravention.		
5.	Where a lot has boundaries to two or more streets, the setback from the less important street or streets may be reduced in accordance with Table 1 – GENERAL SITE REQUIREMENTS of the Residential Design Codes . This also applies to outbuildings which because of their construction material could affect an adjoining property; such applications to be referred to the neighbour for comment.		
6.	Pursuant to Part 3.2.1 of the Residential Design Codes staff may permit the front setback to be averaged. Where the subject lot adjoins a "battleaxe" lot access leg, right of way or a pedestrian accessway, the setback from that boundary may be reduced by up to half the width of the access leg, accessway or right of way to a maximum reduction of 2m, in accordance with Part 3.3.1. In such cases the resultant variation in setbacks shall be considered to be in the interests of visual amenity.		
8.	Where a lot exists in an R5 Density Code having an effective frontage of 21 metres or less and/or an area of 1500 sq.m. or less, Staff may apply the R10 side boundary setback standards because of the undersized nature of the lot as the setback provisions of the R5 Code in such circumstances are considered to be too excessive.		
10.	Where a carport attached to a dwelling is proposed in Residential or Urban Development zone, and where		
	a) metal columns are proposed on the boundary, and		

b) the carport is to be maximum 9.0 metres long, and

c) physical characteristics exist,

staff may approve the application without reference to neighbours.

12. In land zoned "Rural", "Rural Agriculture", "Rural Conservation" and "Rural Living" zones where a lot exists which is 4000 sqm. or less in area staff be permitted to agree to boundary setback variations where physical characteristics exist by applying the standards of the most appropriate Residential Design Code nearest to the size of the subject lot.
(OCM 20.7.92)

CROSS REFERENCES (If any):

Management Practice No.		Delegation No.:	
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LEGAL REFERENCES

Legislation:	
Local Law:	

Notes:	Previously Policy PS 1.3
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POLICY REGISTER

Title:	Walls On Boundaries – Local Planning Policy		
Policy No.:	DEV39		
Date Adopted:	18 August 2008	Date Last Reviewed:	

Objective:	<p>To define what constitutes "acceptable development" in regard to walls built on, or close to, lot boundaries.</p> <p>This policy aims to protect the amenity of adjoining residents, by ensuring that overshadowing is limited, and that neighbours are consulted on the external finish of the wall.</p>
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Scope and Limitations

Applies throughout the Shire of Kalamunda.

This policy does not apply to Dividing Fences between adjoining properties.

Background

The Residential Design Codes ('the Codes') are standards for the control of residential development throughout Western Australia. The Codes are produced by the Western Australian Planning Commission, under section 26 of the *Planning and Development Act 2005*.

For various types of residential development, such as walls on boundaries, the Codes set out **performance criteria**, and examples of **acceptable development** that comply with these criteria. The performance criteria represent the aim or objective, against which a proposed development is to be assessed.

Under clause 5.3.1 of the Codes, local governments are permitted to adopt local planning policies which vary or replace certain provisions of the Codes. In the case of boundary walls, a local planning policy may vary what is defined as acceptable development, to require less or greater standards than those contained in the Codes, or to require consultation with adjoining neighbours.

The standards for walls on boundaries are contained in clause ('design element') 6.3.2 of the Codes. They are subject to provisions concerning overlooking (design element 6.8) and overshadowing (6.9). A copy of the Codes is available for inspection at the Shire Administration Centre, 2 Railway Road, Kalamunda.

This policy shall replace the acceptable development provisions contained in design element 6.3.2 of the Codes. The performance criteria are unaffected.

Definitions

'Up to a boundary'

- The term 'up to a boundary' means either on the boundary, or between the boundary and the setback provided by Table 1, Tables 2a and 2b, Figures 2a – 2e and Figure 3 of the Codes.
- Where the subject site and an affected adjoining site are subject to different density codes (eg zoned R15 and R25), the length and height of the boundary wall on either site is determined by reference to the lower density code.

Performance Criteria for Buildings on Boundary

(as set out in the Residential Design Codes, design element 6.3.2)

Buildings built up to boundaries other than the street boundary where it is desirable to do so in order to:

- make effective use of space; or
- enhance privacy; or
- otherwise enhance the amenity of the development; and
- not have any significant adverse effect on the amenity of the adjoining property; and
- ensure that direct sun to major openings to habitable rooms and outdoor living areas of adjoining properties is not restricted.

Policy

1. Acceptable Development

Acceptable Development for walls built up to a boundary shall be as follows -

- Walls are to be constructed behind the front setback line, as specified in Table 1 of the Codes.
- Where the wall abuts an existing or simultaneously constructed wall, of similar or greater dimension, the wall shall be no higher than 3.0m, with an average height of 2.7m, and up to 9m in length up to one side and/or rear boundary.
- In areas with a density code of R10, R12.5, R15, R17.5 or R20, the wall shall be no higher than 3.0m, with an average height of 2.7m, and up to 9m in length up to one side and/or rear boundary.
- In areas with a density code of R25 or higher, the wall shall be no higher than 3.5m, with an average height of 3.0m for 2/3 the length of the boundary behind the front setback, up to one side and/or rear boundary.
- No wall constructed within 0.9m of a lot boundary may contain any opening, unless that boundary abuts a public street or communal open space, driveway or parking area created as part of the development.

2. Requirement for Planning Approval

A Metropolitan Region Scheme Form 1 'Application to Commence Development' is required to be submitted, together with the applicable planning application fee, in the following circumstances. Such applications are determined by Council, following neighbour consultation.

- Where a Detailed Area Plan (DAP) applies to the land;
- Where both the subject site and the affected adjoining site are created in a plan of subdivision submitted concurrently with the development application; or
- In areas with a density code of R2.5 or R5.

3. Overshadowing

(Design element 6.9.1 of the Codes)

The boundary wall shall be designed to ensure that its shadow, cast at midday on 21 June, onto any other adjoining property does not exceed the following limits -

- on adjoining properties coded R25 and lower - 25% of the site area;
- on adjoining properties coded R30 to R40 inclusive - 35% of the site area.

Note: In this context 'site area' refers to the surface of the adjoining lot, and is measured without regard to any building on it, but taking into account its natural ground levels.

4. Neighbour Consultation

Unless otherwise required in conjunction with an Application to Commence Development (as outlined in Point 2 above) -

- Comment shall only be sought from the adjoining property owner with respect to the surface finish of the wall facing that neighbour, and the finish shall be to the satisfaction of that neighbour.
- In the event of an objection from the neighbour with respect to the surface finish of the wall, and where a compromise can not be reached, application may be made to Council for a determination.
- Should the matter need to be referred to Council for determination, a completed Application for Codes Approval form, together with the applicable fee, is required to be submitted, ensuring both sides of the form are completed.

CROSS REFERENCES (If any):

Management Practice No.		Delegation No.:	
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LEGAL REFERENCES

Legislation:	Local Planning Scheme 3 (LPS3), clause 2.2 – "the local government may prepare a Local Planning Policy in respect of any matter related to the planning and development of the Scheme area ... and may amend or add to or rescind the Policy." Residential Design Codes, as amended 29 April 2008
Local Law:	
Notes:	LPS3 text - Local Planning Policies are guidelines used to assist the local government in making decisions under the Scheme.

DELEGATION REGISTER

Title:	Planning Matters		
Delegation No.:	PDA1		
Delegation from:	Council	Delegated to:	Chief Executive Officer
Date Adopted:	15 June 2009	Date Last Reviewed:	

Legislation:	Local Planning Scheme No 3; Planning & Development Act 2005		
Power or Duty of the Local Government which is being delegated:			

Under the relevant provisions of the Shire of Kalamunda's Planning Schemes, the *Planning and Development Act 2005* and the *Local Government Act 1995*, the Chief Executive Officer is delegated to exercise the powers or discharge the duties of the Council in regard to the following –

1. Advertising

To advertise and provide notice of applications for planning approval or consent, and to refer an application and submissions to Council, where required.

2. Determination of Applications

To determine applications for planning approval, planning consent or special approval, including –

- a) any conditions to be imposed; and
 - b) the period of validity of the approval or consent,
- in accordance with Council policy.

3. Conditions

To impose conditions on development approval which relate to orderly and proper planning, preservation of the amenity of the locality, and other such conditions as deemed appropriate.

4. Cash In Lieu

To accept and determine cash in lieu payment.

5. Setback Variations

To approve setback variations to property boundaries for all buildings and outbuildings, subject to no valid objections in the opinion of the Director Planning and Development Services being submitted by the owner(s) of the adjoining affected property/properties within the specified period of notification.

6. Keeping of Animals

To approve the keeping of hooved and/or large animals under clause 5.18 of the Local Planning Scheme No 3, where objections from adjoining owners/occupiers are either not received, or have been resolved, and where the keeping of such animals is permitted by the Scheme.

7. Commercial Vehicle Parking

As a land use class under Local Planning Scheme No 3, the approval of commercial vehicle parking applications is covered by clause 2 of this instrument of delegation.

To approve applications for commercial vehicle parking that entail variation to the standard vehicle movement times, where no objections have been received from affected residents.

To renew applications for commercial vehicle parking, where no legitimate complaints regarding non-compliance with conditions of approval have been received during the previous 12 months. Where a written complaint has been received, the renewal application is to be referred to affected landowners. If no objection is received, the Chief Executive Officer may approve the application. If an objection is received, the application is to be referred to Council for determination.

8. Subdivision Applications and Clearances

To refer recommendations for subdivision/amalgamation applications to the Western Australian Planning Commission, in accordance with the following –

- a) Recommend approval of subdivision applications that are consistent with Local Planning Scheme No 3, Council policy, the Residential Design Codes, an approved Outline Development Plan or Structure Plan, guided development scheme or subdivision guide plan as applicable.
- b) Recommend refusal of subdivision applications that are not consistent with Local Planning Scheme No 3, Council policy, the Residential Design Codes, an approved Outline Development Plan or Structure Plan, guided development scheme or subdivision guide plan as applicable.
- c) Variation to the minimum lot sizes for residential subdivisions can be supported in accordance with the Western Australian Planning Commission Policy DC 2.2 (Residential Subdivision).

9. Appeals (Review)

To respond to appeals to defend the decision of Council or a delegated decision. If the appeal involves mediation, and as part of that mediation variation to any standard provision contained in any policy or the Scheme is sought, then the matter shall be forwarded to Council for consideration as to whether to support that variation.

To determine appropriate conditions to be recommended to be applied to applications the subject of a successful appeal to the State Administrative Tribunal (SAT), and enter into Minute of Consent Orders accordingly.

These delegations may only be exercised subject to compliance with the relevant legislation, and in accordance with Council policy.

RELATED DOCUMENTS:

Council Policy:	DEV1 — Additional Accommodation DEV2 — Amusement Machines and Amusement Centres DEV5 — Caravan Park Proposals - Guidelines for Assessment DEV6 — Cash in Lieu of Car Parking DEV7 — Child Care Centres – Guidelines DEV10 — Delegation of Authority - Determination of Development and Subdivision Applications DEV12 — Design Aesthetics – Guidelines DEV16 — Fuel Storage Applications – Guidelines for Assessment DEV17 — Igloo/Tunnel House Applications – Guidelines for Assessment DEV19 — Notification to Affected Landowners – Community Consultation – Advertising
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	DEV20 — Outbuildings – Guidelines for Assessment DEV21 — Outbuildings in Subdivisions DEV22 — Parking of Commercial Vehicles on Private Property DEV23 — Pergolas – Guidelines for Assessment DEV25 — Public Open Space Contributions – Subdivision Applications DEV26 — Radio, Television and Communication Transmission Facilities/Masts DEV27 — Reduced Setbacks to Verandahs, Patios and Carports – Guidelines for Assessment DEV35 — Stormwater Drainage – Subdivision Applications DEV36 — Subdivision in Rural Zones DEV38 — Variation of Building Setback – Residential Design Codes DEV39 — Walls on Boundaries – Local Planning Policy DEV40 — Boundary Retaining Walls on Residential Land – Local Planning Policy DEV41 — Framework for Assessing Requests for Variation of the Number of Car Parking Bays – Local Planning Policy
Administration Policy/Procedure:	n/a

Notes:	<p>Local Planning Scheme No. 3.</p> <p>11.3 Delegation of Functions</p> <p>11.3.1 The local government may, in writing and either generally or as otherwise provided by the instrument of delegation, delegate to a committee or the Chief Executive Officer (CEO), within the meaning of those expressions under the <i>Local Government Act 1995</i>, the exercise of any of its powers or the discharge of any of its duties under the Scheme, other than this power of delegation.</p> <p>11.3.2 The CEO may delegate to any employee of the local government the exercise of any of the Chief Executive Officer's powers or the discharge of any of the Chief Executive's duties under clause 11.3.1.</p>
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Declaration of financial/conflict of interests to be recorded prior to dealing with each item.

9.22 Lot 5 (29) Courtney Place, Wattle Grove - Application for Parking of Commercial Vehicles

Previous Items:	146-09
Service Area:	Planning and Development Services
File Reference:	CR-16/029
Applicant:	Peter McHaffie
Owner:	Peter McHaffie

PURPOSE

1. For Council to reconsider an application for retrospective planning approval for the parking of two (2) commercial vehicles and trailers at Lot 5 (29) Courtney Place, Wattle Grove, at the invitation of the State Administrative Tribunal (SAT). Refer ***(Attachment 1)*** for Locality Plan.

BACKGROUND

2. The subject property has a lot area of 1.2 hectares and is zoned Special Rural under Local Planning Scheme No.3. Refer ***(Attachment 2)*** for Site Plan.
3. In August 2009, it was noted that two commercial vehicles and two trailers were being parked at the subject property, without planning approval having been obtained. A planning application was requested to be submitted for commercial vehicle parking and was received.
4. Two commercial vehicles and trailers (18m in length) are currently parked at the property, and operate between 7am to 7pm Weekdays and Saturdays, 9am to 6pm Sundays and Public Holidays.
5. Concerns were raised during the assessment phase of the planning application that the commercial vehicles were unable to enter and leave the property in one movement, due to the width of the adjoining road.
6. In November 2009 the application for retrospective planning approval for the parking of two commercial vehicles and trailers was refused by Council (Resolution 146-09) for the following reasons:

"a) The proposal fails to comply with the Council policy on 'Parking of Commercial Vehicles on Private Property' with respect of the length of the vehicles and movement times."
7. In accordance with Council's resolution, a notice of refusal was forwarded to the applicant. An application to review Council's decision was lodged with the SAT and an on-site Mediation Hearing was held on 9 March 2010. At that hearing, the applicant was advised by the SAT member that a revised application could be presented to Council for reconsideration, subject to the application responding to

Council's reasons for refusal.

8. To address matters relating to the length of the vehicle and movement times, the applicant has advised the following:
 - The commercial vehicles operated between 7am to 7pm Weekdays and Saturdays, 9am to 6pm Sundays and Public Holidays. So that the vehicle movements comply with Policy provisions, they are now to operate between 7am and 7pm Monday to Saturday and 9am to 5pm on Sundays and public holidays.
 - When initially assessed, the commercial vehicles and trailers were measured independently and confirmed as having a combined length of 19.7m. However, when attached both commercial vehicles and trailer will have a combined length of 18m.
9. In addition to the above, the applicant has also verbally advised that he intends to construct an outbuilding to house the vehicles and trailers on the property, details of which are not currently available. This does not form part of the subject application, and if an outbuilding application is received, it will be assessed on its own merits in accordance with the Local Planning Scheme No. 3 (LPS 3) and Policy provisions.
10. Subsequent to the site hearing the SAT ordered that:
 1. *"The applicant is to submit further and supporting information to the respondent by 31 March 2010.*
 2. *Pursuant to s 31 of the State Administrative Tribunal Act 2004 (WA), the Tribunal invites the respondent to reconsider the application, as supported by the further information lodged as order 1, on or before 19 April 2010.*
 3. *These proceedings are adjourned to mediation to resume at 10am, 27 April 2010 at State Administrative Tribunal, 12 St Georges Terrace, Perth.*
 4. *The applicant is at liberty and given leave to withdraw the application and apply to vacate these proceedings scheduled for 27 April 2010."*

INVITATION TO COUNCIL TO RECONSIDER ITS DECISION

11. The SAT has invited Council to reconsider its decision to refuse the application. The following options are available to Council:
 - a. Not accept the SAT's invitation to reconsider the matter;
 - b. Accept the SAT's invitation and affirm the decision to refuse the application;or

- c. Accept the SAT's invitation and set aside Council's previous refusal decision and substitute a new decision. The new decision could be the granting of planning approval subject to conditions relating to the modifications proposed by the applicant. Council could also impose other conditions of approval should it consider that it will bring the development into compliance with LPS 3 and/or Policy provisions.

STATUTORY AND LEGAL IMPLICATIONS

- 12. Under the provisions of LPS 3, the parking of a commercial vehicle on a private property is classified as a 'D' use and is not permitted, unless Council has granted planning approval.
- 13. Should Council decide not to accept the SAT's invitation or accept the invitation and affirm the decision to refuse the application, a further Mediation Hearing will be held at the SAT on 27 April 2010.
- 14. In considering an application for planning approval, clause 10.2 of LPS 3 requires Council to have due regard to the following matters:

"The compatibility of a use or development within its setting.

(n) The preservation of the amenity of the locality.

(o) The relationship of the proposal to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the proposal.

(p) Whether the proposed means of access to and egress from the site are adequate and whether adequate provision has been made for the loading, unloading, manoeuvring and parking of vehicles."

POLICY IMPLICATIONS

- 15. In assessing the application, Council is to give consideration to the 'Parking of Commercial Vehicles' policy. When previously considered by Council, the application was not consistent with the Council's policy with regard to the following provisions:

e. i) "The commercial vehicle to be parked on the lot shall not exceed (articulated type) 17.5m in length."

viii) Standard vehicle movement and start up times of between 7.00am and 7.00pm Monday to Saturday and 9.00am to 5.00pm on Sundays and public holidays shall apply, unless otherwise approved by Council."

FINANCIAL IMPLICATIONS

- 16. Nil

STRATEGIC AND SUSTAINABILITY IMPLICATIONS

17. Strategic Planning Implications

- The Draft Local Planning Strategy is considering options for locating multiple parking of commercial vehicles in appropriately located and zoned land.
- The Shire of Kalamunda is presently considering its planning options for the Special Rural area south west of Welshpool Road. The area is currently the subject of groundwater monitoring which is not due to be completed until early 2011. Once the monitoring has been finalised, the Shire will give further consideration to the future planning of the area.

18. Sustainability Implications

Social implications

- It is acknowledged that proposals such as this represent the primary income of their owners. As such, failure to secure the necessary planning approval can have a significant effect on their business.

Economic Implications

- Potential loss of income for the owner of the commercial vehicle.

Environmental Implications

- Nil

OFFICER COMMENT

19. With regard to the impact the commercial vehicles have on the amenity of surrounding Special Rural zoned properties, the following is noted:

- No loads are to be brought onto the subject property, which could otherwise have a negative impact on the visual amenity of the local area.
- The vehicle movements are proposed to be between 7.00am and 7.00pm Monday to Saturday and 9.00am to 5.00pm on public holidays in accordance with policy requirements. The Policy requires arrival times no later than 5.00pm on Sundays, however the applicant has requested that consideration be given to the occasional arrival time no later than 6.00pm, due to unforeseen circumstances such as weather and road conditions (due to the long haul nature of the activity). There is no objection to this from a planning perspective as it would not be considered to unduly affect the amenity of the locality.
- The subject property is situated towards the end of a cul-de-sac, therefore vehicle and pedestrian volumes are low and the vehicles concerned will not have a significant impact on the flow of vehicular and pedestrian movement.
- When parked on the subject property, the commercial vehicles and trailers will be partially screened from public view due to the existence of mature

landscaping which is approximately 2-6m tall and will be parked behind the front building line of the dwelling.

- When parked on the subject property, the commercial vehicles will be approximately 20m from the nearest dwelling on 33 Courtney Place.
 - The driveway and crossover are proposed to be sealed for aesthetic reasons and to ensure that the generation of dust is minimised.
 - Concerns have been raised regarding the ability of the drivers to manoeuvre the vehicles and trailers around the local area, due to the combined vehicles and trailers lengths and the width of the roads. It should be noted that no footpaths and kerbing exist within the locality, no damage to median strips and private property has been observed, and vehicle and pedestrian volumes are considered low in the area.
20. When initially assessed, the commercial vehicles and trailers were measured independently and confirmed as having a combined length of 19.7m. However, when attached, both commercial vehicles and trailer will have a combined length of 18m (500mm in excess of the maximum length permitted on Special Rural zoned properties).
21. The application does not comply with the Council's Policy 'Parking of Commercial Vehicles' in respect to the overall length of the vehicles, however, for the above reasons, they will not have an unacceptable impact on the amenity of the local area.

MEETING COMMENT

22. Nil.

COMMITTEE RECOMMENDATION TO COUNCIL

PS-22/2010

1. That Council, pursuant to Section 31 of the State Administrative Tribunal Act 2005, sets aside its decision of 16 November 2009 (Resolution 146-09) to refuse the application for planning approval.
2. That Council advises the State Administrative Tribunal that the commercial vehicles parking at Lot 5 (29) Courtney Place, Wattle Grove (as described in the application dated 7 September 2009) do not comply with the provisions of Local Planning Policy DEV22 – Parking of Commercial Vehicles on Private Property in relation to vehicle lengths, but the degree of discretion required to allow the approval is considered to be marginal.
3. That Council advises the State Administrative Tribunal that Council approves the application for the parking of two commercial vehicles (registrations MTA 550 and MTA 908) and two trailers (registrations 1 TIV 570 and 1 TIV 572) at Lot 5 (29) Courtney Place, Wattle Grove, subject to the following conditions:

a. The vehicles and trailers must, at all times, be parked in the

approved location as shown on plan annotated as diagram 65526.

- b. A sealed driveway and crossover is to be completed within 60 days from the date of this approval, and thereafter maintained to the satisfaction of the Shire's Manager Engineering.*
- c. The commercial vehicles are only to be operated between the hours of 7.00am and 7.00pm Monday to Saturday and 9.00am to 5.00pm public holidays and 9.00am to 6.00pm Sundays.*
- d. Approval of the parking activity does not include approval for the loading or unloading of the commercial vehicles and/or trailers, or the storage of goods in transit.*
- e. Only maintenance of a minor nature, such as servicing or wheel changing, is to be carried out on the subject property. No panel beating, spray painting or the removal of major body or engine parts is permitted.*
- f. Washing of the commercial vehicles and trailers on the subject lot is to be limited to the use of water and mild detergent, but not involve the use of any solvents, degreasing substances, steam cleaning and any other processes which may cause pollution or degradation of the environment.*
- g. The approval is personal to the applicant and shall not be transferred or assigned to any other person, property or commercial vehicle (including trailers).*

Moved: Cr Townsend

Seconded: Cr Lindsey

CARRIED UNANIMOUSLY

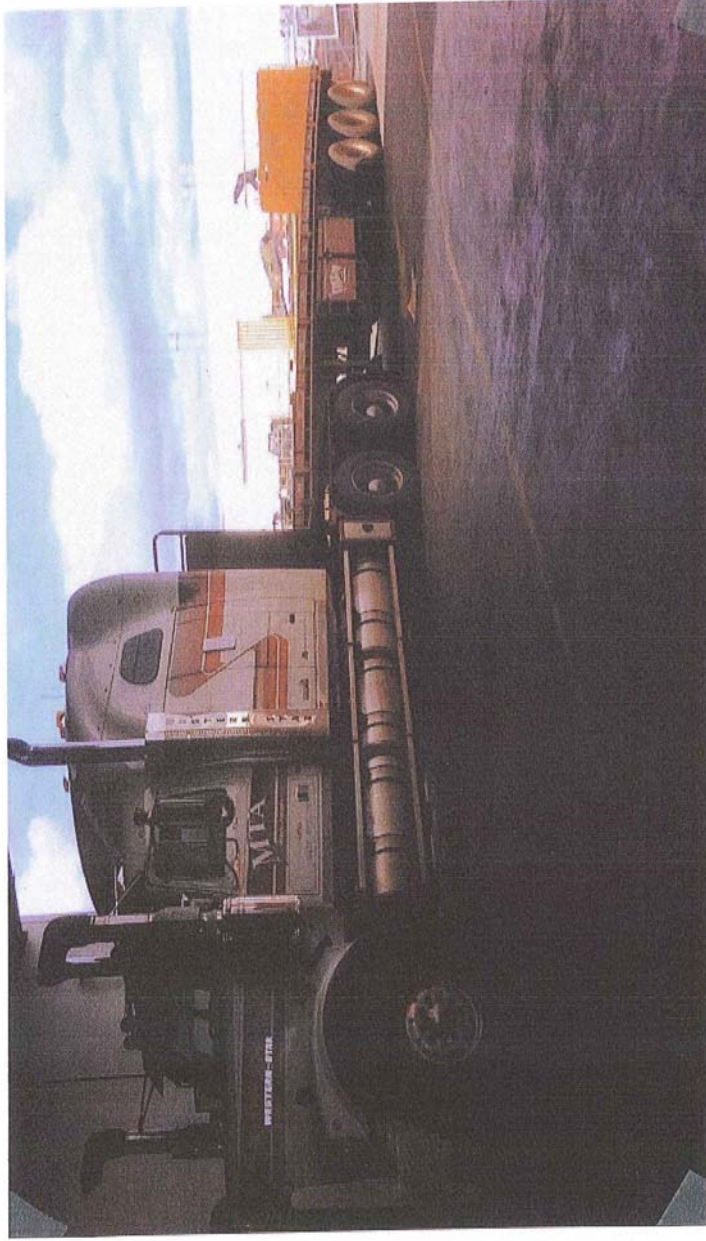


Planning Services Committee

Parking of Commercial Vehicles
 Lot 5 (29) Courtney Place, Wattle Grove
Locality Plan



Scale: N.T.S.
 Date: 12/04/10

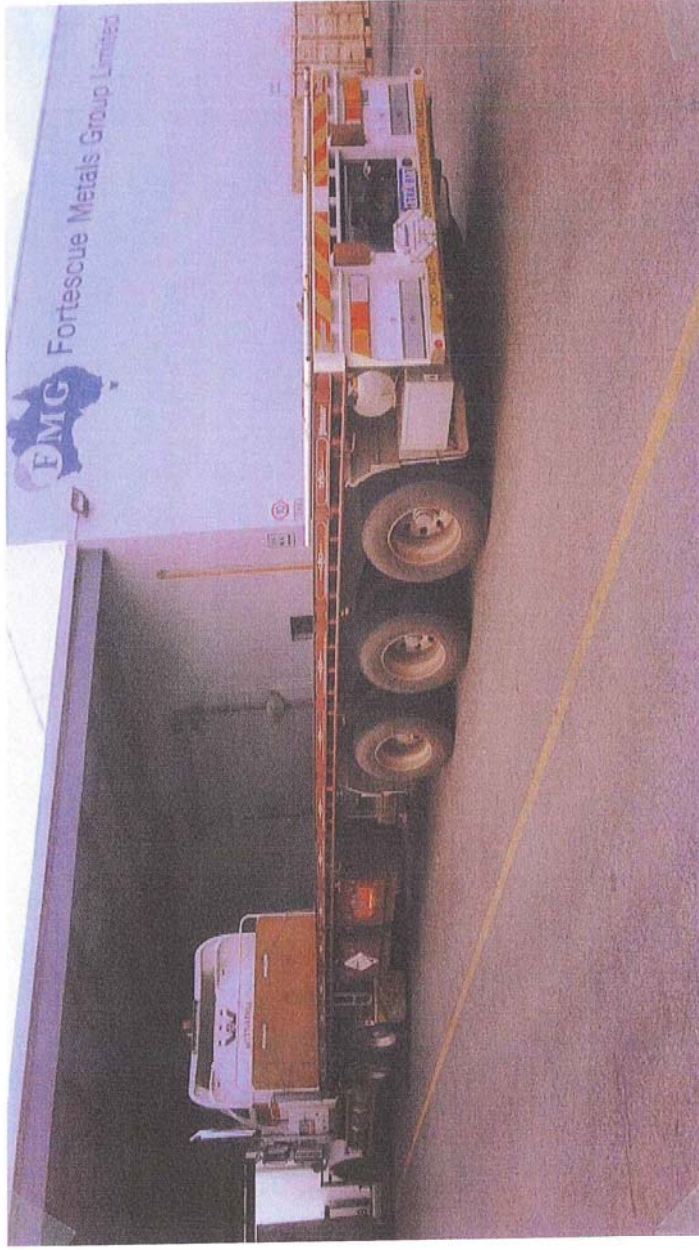


shire of
kalamunda
Planning Services Committee

Parking of Commercial Vehicles
Lot 5 (29) Courtney Place, Wattle Grove
Photo of Commercial Vehicle



Scale: N.T.S.
Date: 12/04/10



Planning Services Committee

Parking of Commercial Vehicles
 Lot 5 (29) Courtney Place, Wattle Grove
Photo of Commercial Vehicle



Scale: N.T.S.
 Date: 12/04/10

Declaration of financial/conflict of interests to be recorded prior to dealing with each item.

Cr Thomas declared an interest affecting impartiality in this item as family own one of the properties abutting the Right of Way. Cr Thomas relinquished the Chair and left the Chambers at 7:06pm and did not vote on this item. The Deputy Chairman, Cr Robinson, conducted the meeting. Cr Thomas returned to the Chambers at 7.24pm and resumed control of the meeting.

9.23 Proposed Closure of Right of Way - Stanhope Road, Kalamunda

Previous Items:	GS 12/2005 and GS 35/2005
Service Area:	Planning Development Services
File Reference:	ST-07/GEN
Applicant:	K Bradley
Owner:	Crown

PURPOSE

1. For Council to consider the proposed closure of the Right of Way (ROW) abutting Lot 153 (107) and 154 (109) Canning Road, Lot 51 (11) Lyndhurst Road and Lot 19 (3) Stanhope Road which currently provides secondary access to the lots.

BACKGROUND

2. In December 2004 Council resolved to withdraw a request to close the ROW off Stanhope Road - refer to **(Attachment 1.)** for Locality Plan -, and that the proposal be referred back to Shire Officers for reassessment and then reconsidered at a future meeting (Resolution GS 12/2005).
3. In April 2005, Council resolved to not support a request to close the ROW off Stanhope Road on the grounds of it having the potential to provide secondary access to the abutting lots, and that a gate crossing the ROW be removed within three months of the decision (Resolution GS 35/2005).
4. In August 2008, a request was received by the Shire to close the ROW off Stanhope Road so that the rear portion could be amalgamated with Lot 153 Canning Road, and access still be maintained off the ROW to Lot 154 Canning Road and Lot 19 Stanhope Road.

Statutory and Legal Implications

ROW Closure requests are dealt with in accordance with the Land Administration Act 1997, supplemented by the Land Administration Regulations 1998.

PUBLIC CONSULTATION/COMMUNICATION

5. The proposed closure was advertised to the adjoining landowners and referred to the service authorities, during which time one objection and two non objections were received. Refer **(Attachments 2 and 3)** for the Submission Table and Consultation Plan.

STRATEGIC AND SUSTAINABILITY IMPLICATIONS

6. Strategic Planning Implications

- Closing the entire ROW would prevent access to Lot 51 (11) Lyndhurst Road and Lot 19 (3) Stanhope Road via the ROW.
- The ROW is Crown land, and all abutting lots have legal access rights to it.

7. Sustainability Implications

Social implications

- Closing portion of the ROW would not remove the potential for anti-social behaviour to reoccur in the ROW.

Economic Implications

- Nil

Environmental Implications

- Nil

OFFICER COMMENT

8. The closure of the ROW has been requested by the owner of Lot 153 Canning Road. The owner has requested the closure for security reasons, as the ROW provides a gap between the boundary fence between Lot 153 and 154 Canning Road and the side of Lot 19 Stanhope Road. The owner has offered to purchase either the whole or a portion of the ROW if the closure proceeds.
9. If the ROW remains open, it will maintain the ability for it to be constructed in future to service current or future land uses. However, this will not address the current security issues.
10. If the ROW is not fenced on the common boundary of Lots 153 and 154 Canning Road, it will remain unmade which would detract from the rear yards of the existing and future residences.
11. It is noted that the Department of Planning does not generally support partial ROW closures, however if the section of the ROW directly abutting Lot 153 Canning Road is closed, secondary access would still be possible to Lot 19 Stanhope Road, should the south-east corner of Lot 153 be truncated. Refer (**Attachment 4**) plan of partial ROW closure.
12. Council can either not support the closure so that access to the abutting lots is maintained, or support the proposal and forward its recommendation to the Department of Planning which will ultimately determine the request in accordance with the Land Administration Act 1997.

MEETING COMMENT

13. The applicant spoke in favour of the closure of the Right of Way and provided Councillors with a proposal for the division of the area. Councillors sought clarification on aspects of the proposal.
14. A resident spoke in opposition to the proposal to close the Right of Way as it would affect access to his property. Councillors sought clarification as to the issue of access to the property.

COMMITTEE RECOMMENDATION TO COUNCIL PS-23/2010

1. That the owners of Lot 153 (107) Canning Road have a detailed plan prepared prior to the Shire forwarding its recommendation to the Department of Planning, which demonstrates that secondary access to Lot 154 (109) Canning Road and Lot 19 (3) Stanhope Road will still be maintained when the portion of Right of Way abutting their lot is closed.
2. Subject to the plan being to the satisfaction of the Shire's Director of Engineering Services, the request for closing the section of the Right of Way abutting Lot 153 (107) Canning Road be supported and the Shire's recommendation be forwarded to the Department of Planning in accordance with the Land Administration Act 1997.

Moved: Cr McKechnie

Seconded: Cr Lindsey

For

Cr Lindsey
Cr Morton
Cr Heggie
Cr O'Connor
Cr Bilich
Cr McKechnie
Cr Robinson

Against

Cr Everett
Cr Stallard
Cr Cresswell
Cr Townsend

CARRIED



Shire of
Kalamunda
Planning Services Committee

Proposed Closure of Right of Way (ROW)
Stanhope Road, Kalamunda
Locality Plan

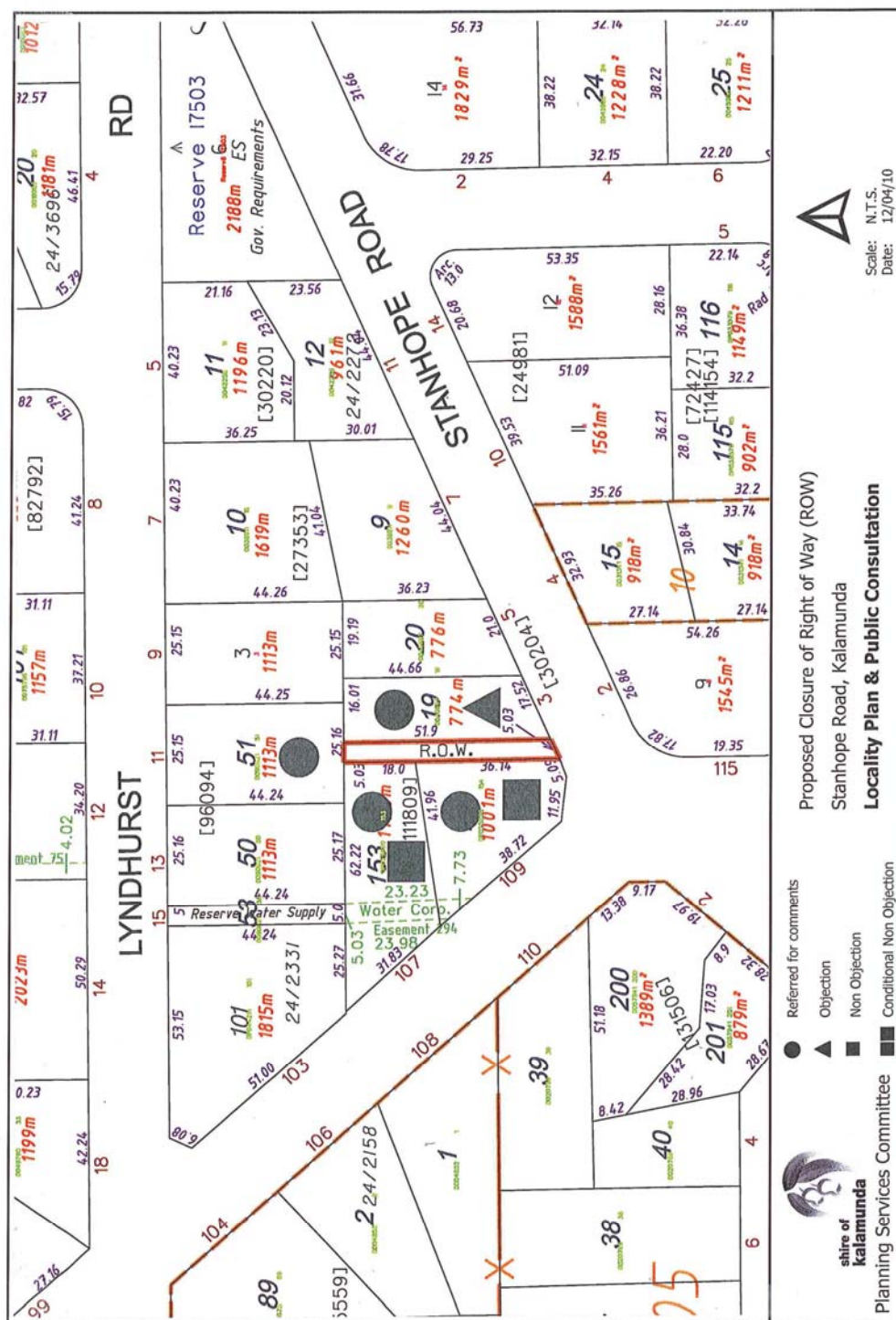


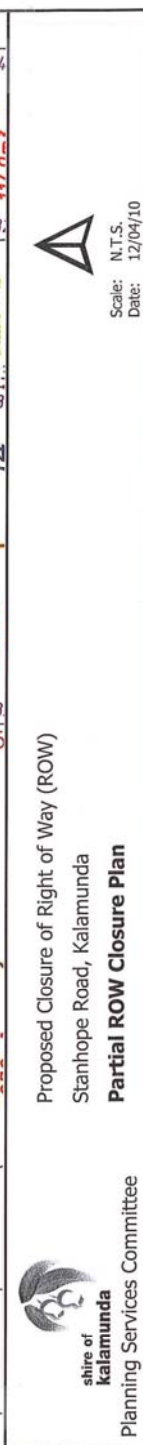
Scale: N.T.S.
Date: 12/04/10

Proposed Closure of Right of Way - Stanhope Road, Kalamunda

	Submission	Details	Sta
1.	M Longo 3 Stanhope Road KALAMUNDA WA 6076	Objection 1. Closure of the Right of Way would prevent access to the rear of our property. The Right of Way was created to allow for access to all the abutting lots.	Note
2.	N Panich 109 Canning Road KALAMUNDA WA 6076	No objection	Note
3.	K Bradley 107 Canning Road KALAMUNDA WA 6076	No objection	Note
4.	Telstra Locked Bag 2522 PERTH WA 6001	No objection	Note
5.	Western Power Locked Bag 2520 PERTH WA 6001	No objection	Note

Copies of submissions may be made available to Councillors.





Proposed Closure of Right of Way (ROW)

Stanhope Road, Kalamunda

Partial ROW Closure Plan



shire of
kalamunda
Planning Services Committee

Scale: N.T.S.
Date: 12/04/10

Declaration of financial/conflict of interests to be recorded prior to dealing with each item.

9.24 Traffic Study Outcome- Kalamunda Road between Roe Highway and Abernethy Road, High Wycombe

Previous Items: GS 86/2009
Service Area: Engineering Services
File Reference:
Applicant: N/A
Owner: N/A

PURPOSE

1. To consider the Kalamunda Road Traffic Study, between Roe Highway and Abernethy Road, High Wycombe.

BACKGROUND

2. Kalamunda Road is designated as an Important Regional Road (commonly known as a 'Blue Road') under the Metropolitan Regional Scheme.
3. In 2001 the Department of Planning and Infrastructure completed a review of the Kalamunda Road reservation. After an extensive consultation process, Council favoured a high standard, two lane road, between Roe Highway and Wittenoom Road, over a four lane dual carriageway.
4. Accordingly, a road reservation, ranging between 25.5m and 30m, was placed for the section between Roe Highway and Wittenoom Road and 32m for the section between Wittenoom Road and Abernethy Road.
5. In 2004 a roundabout was constructed at the intersection of Newburn Road with part funding under the State Black Spot Programme. In late 2007 public art work, was installed in the roundabout as part of the Village Improvement Programme.
6. In November/December 2008 the developers of the High Wycombe Centre carried out road improvements in front of the Shopping Centre.
7. In response to the traffic concerns in Kalamunda Road, in front of the Shopping Centre, a road safety audit was commissioned.
8. At the August 2009 round of meetings, Council considered the outcome of the Road Safety Audit and resolved as follows:
 1. *That Road Safety Audit report be noted and referred to the Shopping Centre Owner to carry out necessary actions on their property.*
 2. *That no further road works be undertaken by the Shire, in the section of Kalamunda Road, in front of the Shopping Centre in*

High Wycombe.

3. *That Council request the CEO investigate and cost options for traffic flow and access on Kalamunda Road with particular reference to Kalamunda Road between Newburn Road and Wittenoom Road as Stage 1.*
9. Accordingly, Transport and Traffic consultants, Cardno Eppell Olsen (Cardno) were engaged to conduct a traffic study in Kalamunda Road between Roe Highway and Abernethy Road, High Wycombe.
10. The consultants' brief required particular focus on the section of Kalamunda Road fronting the High Wycombe Shopping Centre.

DETAILS

11. Cardno has completed the traffic study, which involved collection and analysis of traffic data, historical crash data, the existing road geometry, traffic flows to and from the High Wycombe Shopping Centre, stakeholder consultations and traffic modelling. Cardno's report appears at **(Attachment 1.)**
12. In respect to the improvements of traffic flow in front of the shopping centre, Cardno developed and investigated the following 7 options:
 - Option 1: Reconfigure Central Driveway
 - Option 2: Reconfigure Central Driveway and Remove Right-Turn In
 - Option 3: Relocate Central Driveway and Upgrade Roundabout
 - Option 4: Signalise Central Driveway
 - Option 5: Install Central Median with Roundabout at Foxton Boulevard
 - Option 6: Upgrade Kalamunda Road to Four Lanes
 - Option 7: Signalise Kalamunda Road/Newburn Road Intersection
13. Traffic simulations were generated with the use of sophisticated computer software, PARAMICS, to depict traffic flows for all seven options. Options 3, 6 and 7 showed improved traffic flows.
14. Option 3 is the Consultant's preferred option as it is relatively low in cost, maintains the amenity of the locality and improves traffic flow in front of the shopping centre.

STATUTORY AND LEGAL IMPLICATIONS

15. Compulsory land acquisitions, if required, and associated compensation will be subject to the provisions under the Land Administration Act.

POLICY IMPLICATIONS

16. Nil.

PUBLIC CONSULTATION/COMMUNICATION

17. As part of the process, a manned stand was created at the Shopping Centre to allow residents to provide input, comments and feedback about the existing situation in the area. Written comments and feedback were also solicited from the public at the same time and members of the public were invited to complete a feedback form and return it to Council.

FINANCIAL IMPLICATIONS

18. The cost to upgrade Kalamunda Road will depend upon the preferred option and scope of works, to be determined at a future date.

STRATEGIC AND SUSTAINABILITY IMPLICATIONS

19. Outcome 2.2 – Development of urban design to meet community aspirations of history, heritage and lifestyle values.

Outcome 2.3 – Long term viability of infrastructure and facilities.

OFFICER COMMENT

20. It would be prudent to carry out preliminary estimates for all the three options before making a decision on the preferred option. The cost of carrying out these estimates will be in the order of \$29,400 ex GST, which could be accommodated within the current year's allocation.
21. Urban Design Consultants have been engaged to prepare plans for the section of Kalamunda Road between Abernethy Road and Roe Highway. The future road design of Kalamunda Road should take into account the outcome of the 'Kalamunda Road High Wycombe Streetscape Improvement Plan' and included in any future cost estimates.
22. It is anticipated that any of the three options will largely fit within the existing road reservation, between Kenneth Road and Wittenoom Road. Additional widening will be required in front of the old High Wycombe Shopping Centre (which house a hardware store, pizza shop and a Muzz Buzz outlet) beyond the existing reservation width of 25.5m to obtain a minimum 28m wide road reserve.
23. The existing road reservation is approximately 24.2m wide. The Shire will need to acquire a strip of land on the northern side of the Kalamunda Road varying between 1.3m and 10m, to achieve the required road reservation for widening the road, as indicated in the Metropolitan Regional Scheme.

MEETING COMMENT

24. A Councillor sought clarification as to some of the assumptions which were made in these projections. The Director of Engineering Services advised these projections were based on the future traffic projections of Main Roads.

OFFICER RECOMMENDATION

PS-24/2010

That Council:

1. Notes the attached report and recommendations.
2. Request CEO:
 - i. Seek further information in relation to the urban design considerations for options 3, 6, and 7 with particular regard to the potential treatment of space for pedestrians, cyclists , landscaping and signage.
 - ii. Obtain cost estimates for each of the three road treatment options plus the associated urban design treatments.
3. The cost estimates in 2. ii. above be pre-design desk top estimates and reported to Council.

Moved: Cr Robinson

Seconded: Cr Cresswell

CARRIED UNANIMOUSLY

Declaration of financial/conflict of interests to be recorded prior to dealing with each item.

Cr Heggie declared a financial interest in this item as he has two leases at this complex Lot 9001 Kalamunda Road High Wycombe. Cr Heggie left the Chambers at 7.27pm and returned at 7.30pm he did not vote on this item.

9.25 Lots 23, 50 and 9001 Kalamunda Roads, High Wycombe - Cash-in-lieu for Public Open Space and Progress of Subdivision and Developments Associated with the High Wycombe Town Centre

Previous Items:	OCM September 2004, September 2006, February 2008, March 2008 and December 2009
Service Area:	Planning Development Services
File Reference:	KL-02/530
Applicant:	N/A
Owner:	P Cinnani

PURPOSE

1. To note the payment of cash-in-lieu of Public Open Space (POS) progress of subdivision works and to consider an extension to the substantial commencement period for the lifestyle retirement village.

BACKGROUND

2. The above sites form part of a "Town Centre Concept" endorsed by Council. The concept included a shopping centre, a tavern, two fast food outlets, village centre incorporating uses such as a medical centre, health and fitness centre and community toilets and car parking associated with the above. Refer **(Attachment 1a and 1b)** Town Centre Concept. To date, the shopping centre, tavern and the majority of the car parking has been developed.
3. The Town Centre Concept was subject to a Deed of Agreement between the Shire and the developer which included amongst other matters dates by which development was to have been finalised, expenditure of cash-in-lieu funds for POS and the ability for Council to draw on a bank guarantee for non compliance with aspects of the Deed.

DETAILS

4. The Shire's Solicitors have provided the following advice on matters currently outstanding:

1. ISSUES

There are two sets of issues:

- 1.1.1. ISSUES FOR NOTING BY COUNCIL:

Mr Cinanni's payment of cash-in-lieu of providing land for public open

space; and

Progress to date with respect to the subdivision approved on 20 February 2008.

1.1.2. ISSUES WHICH REQUIRE A DECISION BY COUNCIL:

Mr Cinanni's request for the extension of the dates specified in the 2005 agreement between himself and the Shire (**Shire Agreement**) for completion of the village centre, lifestyle retirement village and public open space works;

the Shire's entitlement to draw on the bank guarantee provided by Mr Cinanni under the Shire Agreement, as a consequence of his failure to complete the village centre, lifestyle retirement village and public open space works before the stipulated dates; and

Mr Cinanni's application under Local Planning Scheme No. 3 for an extension of the substantial commencement period for the lifestyle retirement village.

2. ISSUES FOR NOTING BY COUNCIL

2.1. PAYMENT OF CASH-IN-LIEU OF PROVIDING PUBLIC OPEN SPACE

Two subdivision approvals have been granted in relation to Mr Cinanni's property, the first on 14 January 2004 and the second on 20 February 2008. Both were granted with a condition requiring 5,305 m² of public open space to be vested in the Crown for the purpose of a recreation reserve free of cost and without payment of compensation.

At the time of the 2004 subdivision approval, section 20C of the *Town Planning and Development Act 1928* (since replaced by the *Planning and Development Act 2005*) allowed a cash-in-lieu payment to be made to the Shire for public open space as an alternative to providing land. This payment could only be made with the prior approval of the Shire and the Western Australian Planning Commission.

The possibility of a cash-in-lieu payment was acknowledged in the Shire Agreement and in a separate written agreement entered into by Mr Cinanni and others with the West Australian Planning Commission in 2005 (**WAPC Agreement**). Under the WAPC Agreement the payment of cash-in-lieu was dependent on a revised outline development plan for the site being adopted by the Shire and endorsed by the WAPC and each then approving the payment. A revised outline development plan was subsequently approved by the Shire and endorsed by the WAPC. The revised outline development plan contains a condition requiring the cash-in-lieu payment to be made in accordance with the WAPC Agreement. By approving the revised outline development plan with this condition, the Shire effectively approved the cash-in-lieu payment.

Similarly, the WAPC's endorsement of the revised outline development plan provided its approval for the cash-in-lieu payment. The WAPC has subsequently confirmed that the cash-in-lieu payment is required to be made by Mr Cinanni.

As required by the applicable legislation, a valuation has been undertaken to determine the amount of the cash-in-lieu payment which must be made by Mr Cinanni. The amount is \$278,988. Mr Cinanni has paid this to the Shire.

Under the Shire Agreement, once the cash-in-lieu payment is received, the Shire is required to support an application to the Minister for Planning for approval to use the payment for the improvement or development of public open space and a water feature on the nearby Reserve 47766. Under the Shire Agreement, Mr Cinanni is required to plant and landscape the Reserve and develop the water feature. The estimated cost of these works is approximately \$1.1M. Consequently, while Mr Cinanni's cash-in-lieu payment will be used for some of these works (if approved by the Minister), Mr Cinanni will still have to expend a further \$830,000 (or thereabouts) to satisfy his obligation under the Shire Agreement with respect to public open space works and the water feature.

The application to the Minister for the use of Mr Cinanni's cash-in-lieu payment in the manner described above has yet to be made to the Minister, but will be made shortly.

3. ISSUES WHICH REQUIRE A DECISION BY COUNCIL

3.1. EXTENSION OF COMPLETION DATES UNDER THE SHIRE AGREEMENT

Under the Shire Agreement, Mr Cinanni was required to undertake and complete various developments within specified timeframes. The particular developments are as follows:

3.1.1.1. Lifestyle Retirement Village

A lifestyle retirement village was required to be completed by 24 October 2009. Development of this village has not been commenced. A planning approval was issued on 7 February 2008 for a 64 aged persons' dwelling. However, this expired on 6 February 2010. Mr Cinanni has sought an extension of the substantial commencement period of this approval to 6 February 2011, a matter separately addressed below.

With respect to the lifestyle retirement village (which will comprise 64 aged persons dwellings), Mr Cinanni has sought an extension of the completion date to:

24 October 2011, for half of the dwellings (a 24 month extension

*from the stipulated completion date of 24 October 2009); and
24 October 2012, for the other half of the dwellings (a 36 month
extension of the stipulated completion date of 24 October 2009).*

3.1.1.2. The town centre concept

The 'town centre concept' comprises:

3.1.1.2.a.1. a shopping centre;

3.1.1.2.a.2 a tavern;

3.1.1.2.a.3 two fast food outlets;

*3.1.1.2.a.4 a village centre incorporating uses such as a medical
centre, health and fitness centre and community toilets; and*

3.1.1.2.a.5 car parking and road works associated with the above.

These developments were required to be completed by 24 October 2008.

The shopping centre, tavern and fast food outlets were completed in December 2008. A planning approval for part of the village centre (including a medical centre) was granted in August 2008. However, that approval was never implemented. Consequently, no aspect of the village centre has been commenced. Mr Cinanni has recently provided a qualified commitment to providing the village centre.

Although the Shire Agreement describes the village centre as incorporating uses such as a medical centre, health and fitness centre and community toilets, the revised outline development plan refers to the village centre as comprising uses such as a medical centre, health and fitness centre, restaurants, cafés, community facility and amenities and car parking.

Mr Cinanni has proposed that the completion date for the village centre be extended to 24 April 2012. In effect, this is an extension of 42 months from the stipulated completion date of 24 October 2008. Mr Cinanni's proposed extension is expressed to be subject to at least 50% of the tenancies within the proposed village centre being let prior to the commencement of construction. If this is not achieved, Mr Cinanni proposes that he will then seek a further extension of the completion date or the Shire's approval to proceed with an alternative form or mix of uses within the village centre.

3.1.1.3. Public open space and water feature

The upgrading/creation of a water feature and public open space on Lot 49 and Reserve 47766 was required to be completed by 24 October 2008. The Shire has recently approved a landscaping plan and reticulation design for the public open space works. Mr Cinanni has advised that the landscaping works can be commenced and completed by 30 June 2010, subject to any delays caused by inclement weather. After the landscaping is complete, the public will be excluded from the public open space for an 8-10 week period, while the landscaping becomes established.

3.1.1.4. Grounds for extending completion dates under the Shire Agreement

Under clause 8 of the Shire Agreement the stipulated completion dates:

'may be extended only if, following receipt of a written request by Cinanni, the Shire agrees in writing that a stipulated date cannot be met through no fault of Cinanni.'

Mr Cinanni has identified the following reasons for not being able to meet the completion dates stipulated by the Shire Agreement:

3.1.1.4.a.1 Mr Cinanni adopted a staged approach to the development of the separate components of the town centre concept;

3.1.1.4.a.2 the earlier stages comprising the shopping centre, tavern, liquor store and one fast food restaurant were delayed by disputes with the Shire about conditions of planning approvals and a building licence. While these were ultimately resolved by agreement following the commencement of a number of proceedings in the State Administrative Tribunal, there were consequential delays in development proceeding;

3.1.1.4.a.3 the amalgamation and subdivision of Lot 9001 has also been delayed by a dispute between Mr Cinanni and the Western Australian Planning Commission over conditions. This dispute has also been resolved following the initiation of proceedings in the State Administrative Tribunal. Again, this has led to delays in development proceeding;

3.1.1.4.a.4 the delays associated with these disputes, had the flow-on effect of delaying later stages of the town centre concept (e.g. the village centre);

3.1.1.4.a.5 the financing of the development has been impacted

by the global financial crisis (no details provided);

3.1.1.4.a.6 at the time the medical centre was approved in August 2008, Mr Cinanni had firm expressions of interest from a number of potential tenants. A change to Federal health policy (unspecified) and the effect of the global financial crisis lead to these expressions of interest being withdrawn. Despite subsequent advertising, it has not been possible to secure a tenant for the medical centre;

3.1.1.4.a.7 with respect to the public open space and water feature, a landscaping plan and reticulation design has only recently been approved by the Shire. In addition, issues concerning the payment of cash-in-lieu, which is to be used to fund some of these works (if approved by the Minister) have only recently been resolved.

For the purpose of clause 8 of the Shire Agreement, if Council is satisfied that the delay in completion of the village centre, lifestyle village and works for the public open space and water feature has occurred through no fault of Mr Cinanni's, then the completion dates for these works and development can be extended.

3.2. SHIRE'S RIGHT TO DRAW ON THE BANK GUARANTEE PROVIDED BY MR CINANNI

Under clause 6.1 of the Shire Agreement, Mr Cinanni provided the Shire with an irrevocable bank guarantee in the sum of \$150,000. The Shire Agreement provided that where Mr Cinanni failed to complete certain works or development by the stipulated completion dates, the Shire was entitled to draw on the bank guarantee at the rate of \$1,000 for each subsequent week during which the works or development remained incomplete. The periods of delay between the stipulated completion dates and Council's meeting on 19 April 2010 will be as follows –

- town centre concept – 78 weeks; and
- lifestyle retirement village – 26 weeks.

The total delay is, therefore, 104 weeks for which the Shire would be entitled to draw \$104,000 from the bank guarantee. Under clause 6.4 of the Shire Agreement, the money may be applied to the Shire's general municipal fund and used for any purpose the Shire sees fit.

A question arises under the Shire Agreement whether the Shire is entitled to draw on the bank guarantee where it first extends the stipulated dates for completion of works and development. Although the issue is not beyond argument, the better view is that where Council extends the completion dates it cannot draw on the bank guarantee for the delays in completing works and development by reference to the initial completion dates. It would only be where there was a failure to complete development by the extended completion dates that the bank

guarantee could then be drawn on. Consequently, should Council determine to extend the completion dates for the lifestyle retirement village, village centre and public open space and water feature, it will not be able to draw upon the bank guarantee unless in the future there is a failure to complete the works and development by the extended dates.

3.3. EXTENSION OF THE SUBSTANTIAL COMMENCEMENT PERIOD FOR THE LIFESTYLE RETIREMENT VILLAGE

On 27 January 2010 Mr Cinanni's planning consultants requested an extension of the substantial commencement period for the development approval issued for the lifestyle retirement village on 7 February 2008. Their requested extension is to 6 February 2011.

The Shire's approval required substantial commencement of the lifestyle retirement village within 2 years, failing which the approval would lapse. As substantial commencement did not occur by 6 February 2010, the approval has now lapsed.

Clause 10.5.2 of the Shire's *Local Planning Scheme No. 3* permits a request to be made for an extension of the term of an approval, where this request is made prior to the expiry of the approval. In this instance, the request was made by letter dated 27 January 2010. Consequently, the request has been validly made and must be determined by the Shire.

The Scheme does not identify any particular considerations which Council must take into account when considering such an application. However, factors relevant to a consideration of a requested extension would include:

- whether the planning framework had changed in any material way;
- whether the locality has changed so that the lifestyle retirement village is no longer an appropriate development;
- whether the proposed lifestyle retirement village would be approved today; and
- the reasons why the approval has not been implemented to date.
- the upgrading and creation of a water feature and public open space on Lot 49 and Reserve 47766 to be completed by 30 June 2010

STATUTORY AND LEGAL IMPLICATIONS

5. As Above.

POLICY IMPLICATIONS

6. Nil.

PUBLIC CONSULTATION/COMMUNICATION

7. Nil.

FINANCIAL IMPLICATIONS

8. It is recommended that at this stage Council not draw down on the funds available in the bank guarantee. Payment of the cash-in-lieu for POS may be expended in the High Wycombe locality subject to approval by the Minister for Planning.

STRATEGIC AND SUSTAINABILITY IMPLICATIONS

9. **Strategic Planning Implications**

- Finalisation of these matters will move towards the completion of the High Wycombe Town Centre.

10. **Sustainability Implications**

Social implications

- Provision of cash-in-lieu funds will be expended on POS in the High Wycombe locality (subject to approval by the Minister for Planning) thus enhancing the amenity of the area.

Economic Implications

- Continued development of the High Wycombe Town Centre will provide employment opportunities.

Environmental Implications

- Nil.

OFFICER COMMENT

11. Proceeding with the matter as described above will allow the development to continue and achieve the outcomes proposed in the "Town Centre Concept".

MEETING COMMENT

12. Nil.

COMMITTEE RECOMMENDATION TO COUNCIL PS-25/2010

1. That Council:

1. Notes the reported position with respect to the cash-in-lieu payment and the implementation of the 2008 subdivision approval;
2. Extends the time stipulated in clause 2.3.4 (a) of the Shire agreement for completion of the following works and development forming part of the town centre concept:
 - The following components of the village centre, namely the medical centre, one restaurant and public toilets are to be completed by 24 April 2012; and
 - The upgrading and creation of a water feature and public open space

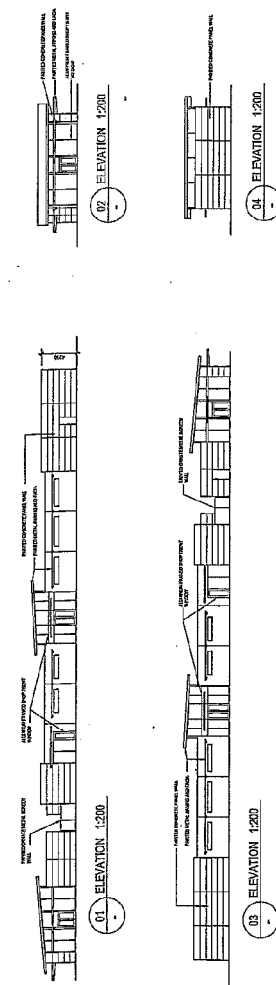
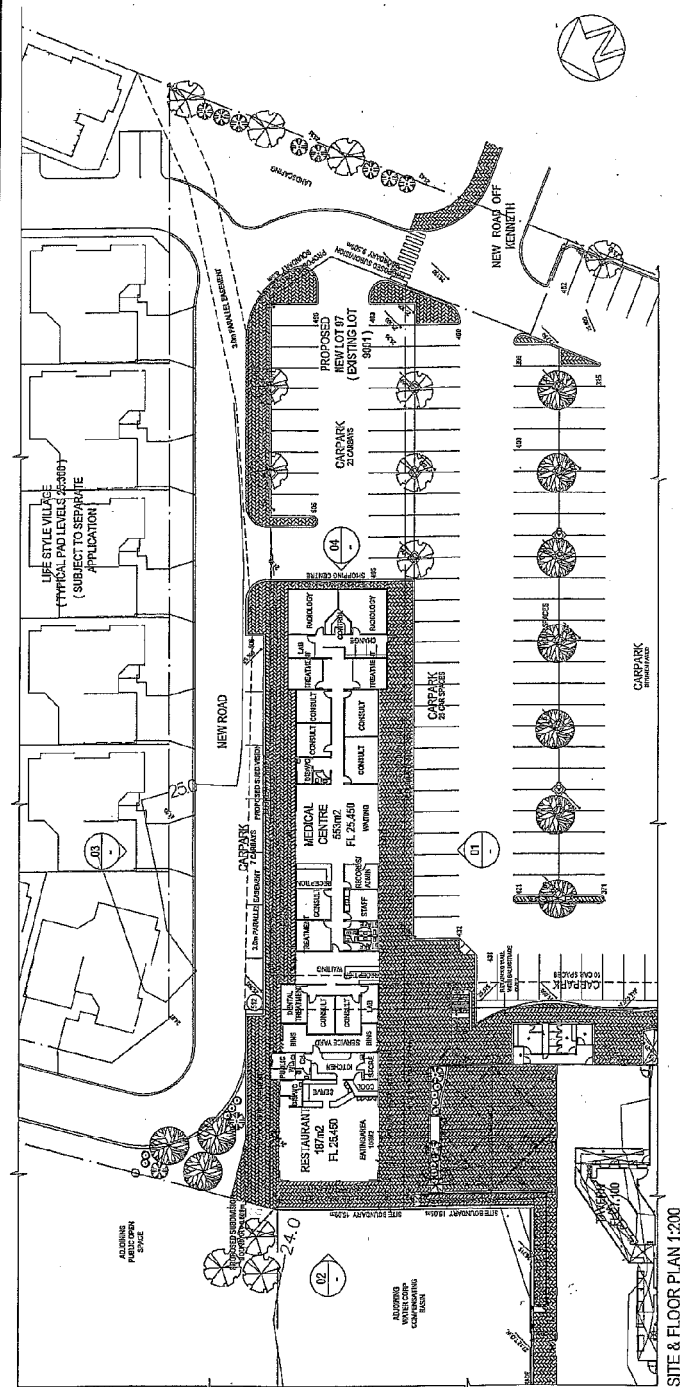
on lot 49 and reserve 47766 is to be completed by 30 June 2010;

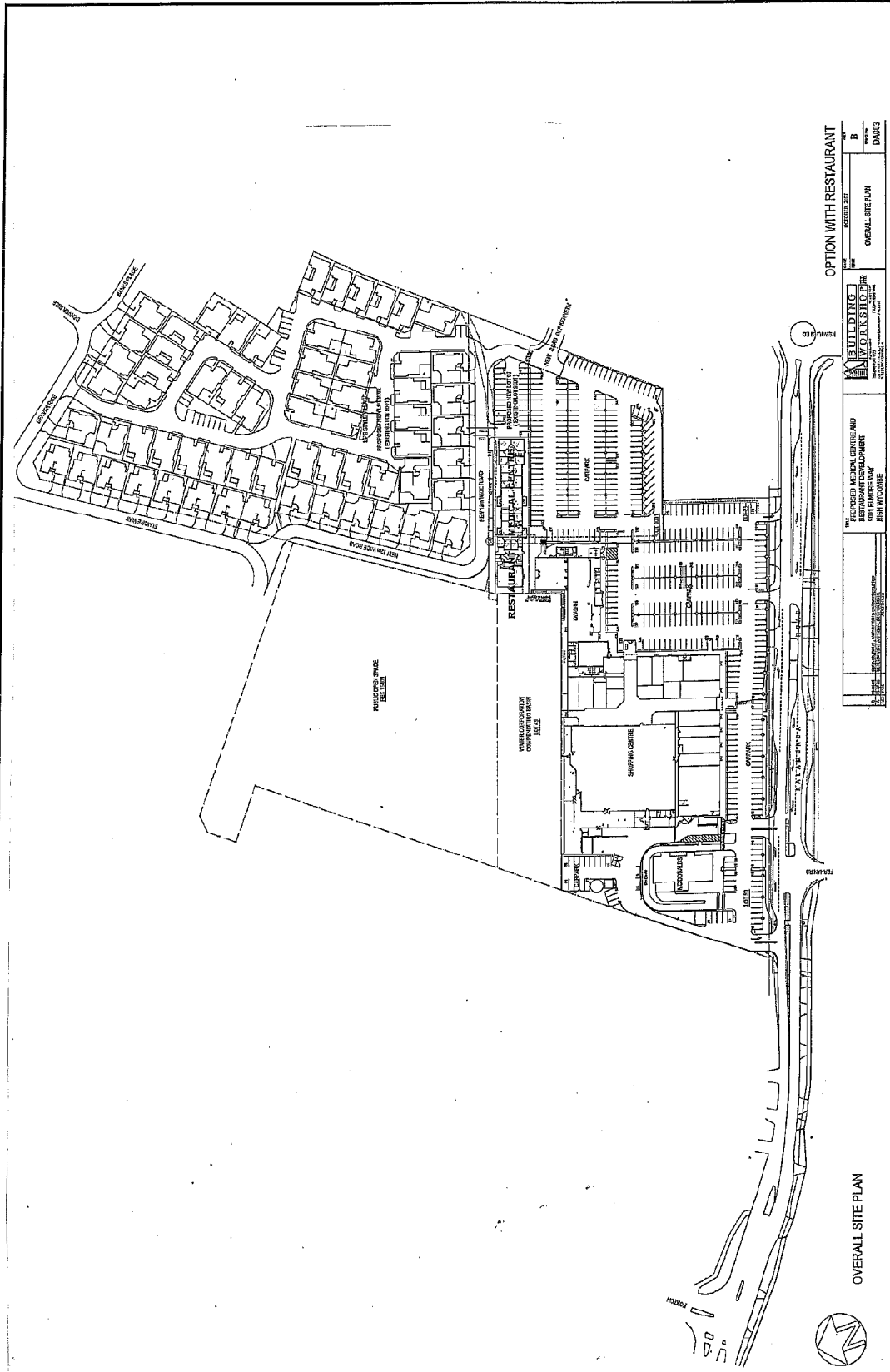
3. Extending the time in clause 2.3.4(b) of the Shire agreement for completion of the following works and development involved in the lifestyle retirement village:
 - 32 aged persons' dwellings for which planning approval was granted on 7 February 2008, are to be completed by 24 October 2011; and
 - A further 32 aged person's dwellings, for which planning approval was granted on 7 February 2008, are to be completed by 24 October 2012;
4. Under clause 10.5.2 of the Local Planning Scheme No. 3, Council extends the last day of the period stipulated in the planning approval granted on 7 February 2008 within which the lifestyle retirement village is to be substantially commenced by 6 February 2011;
5. Reserves all of its rights to draw on the bank guarantee provided under the Shire agreement, both in respect of the failure to complete works and development by the dates stipulated in the shire agreement and the extended dates provided above.

Moved: Cr O'Connor

Seconded: Cr Cresswell

CARRIED UNANIMOUSLY





Cash-in-lieu for Public Open Space and progress of subdivision and developments associated with the High Wycombe Town Centre

Lots 23, 50 and 9001 Kalamunda Road, High Wycombe

Overall Site Plan



Scale: NTS
Date: 12/04/10



shire of
kalamunda
Planning Services Committee

10. QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN

10.1 Nil.

11. QUESTIONS BY MEMBERS WITHOUT NOTICE

11.1 Nil.

12. URGENT BUSINESS APPROVED BY THE PERSON PRESIDING OR BY DECISION

12.1 **Motion**

That the meeting go behind closed doors to consider a urgent confidential item.

Moved: Cr McKechnie

Seconded: Cr Cresswell

CARRIED UNANIMOUSLY

12.2 The meeting closed to the public at 7.32pm.

13. MATTERS CLOSED TO THE PUBLIC

13.1 13

14. CLOSURE