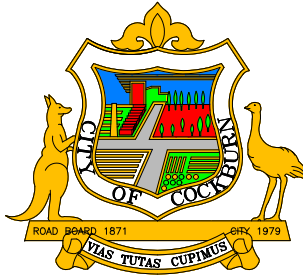


CITY OF COCKBURN



ORDINARY COUNCIL

AGENDA ATTACHMENTS

FOR

THURSDAY, 12 MARCH 2009

CITY OF COCKBURN

SUMMARY OF AGENDA TO BE PRESENTED TO THE ORDINARY COUNCIL MEETING TO BE HELD ON THURSDAY, 12 MARCH 2009 AT 7:00 PM

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CITY OF COCKBURN

AGENDA TO BE PRESENTED TO THE ORDINARY COUNCIL MEETING TO BE HELD ON THURSDAY, 12 MARCH 2009 AT 7:00 PM

1. **DECLARATION OF MEETING**
2. **APPOINTMENT OF PRESIDING MEMBER (If required)**
3. **DISCLAIMER (To be read aloud by Presiding Member)**

Members of the public, who attend Council Meetings, should not act immediately on anything they hear at the Meetings, without first seeking clarification of Council's position. Persons are advised to wait for written advice from the Council prior to taking action on any matter that they may have before Council.

4. **ACKNOWLEDGEMENT OF RECEIPT OF WRITTEN DECLARATIONS OF FINANCIAL INTERESTS AND CONFLICT OF INTEREST (by Presiding Member)**
5. **APOLOGIES AND LEAVE OF ABSENCE**
6. **ACTION TAKEN ON PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**
Nil
7. **PUBLIC QUESTION TIME**
8. **CONFIRMATION OF MINUTES**
 - 8.1 **(OCM 12/3/2009) - ORDINARY COUNCIL MEETING - 12/02/2009**

RECOMMENDATION

That the Minutes of the Ordinary Council Meeting held on 12 February 2009 be adopted as a true and accurate record.

COUNCIL DECISION

9. WRITTEN REQUESTS FOR LEAVE OF ABSENCE

10. DEPUTATIONS AND PETITIONS

11. BUSINESS LEFT OVER FROM THE PREVIOUS MEETING (If adjourned)

Nil

12. DECLARATION OF COUNCILLORS WHO HAVE NOT GIVEN DUE CONSIDERATION TO MATTERS IN THE BUSINESS PAPER

13. COUNCIL MATTERS

13.1 (OCM 12/3/2009) - DECISION OF ANNUAL ELECTORS MEETING - 3 FEBRUARY 2009 - PUBLIC QUESTION TIME AT COUNCIL MEETINGS (1713) (D GREEN) (ATTACH)

RECOMMENDATION

That the Mayor, as Presiding Member at Council Meetings, review the protocols currently applicable to Public Question Time at formal meetings of Council and seek the consensus of other Councillors to any amendments proposed.

COUNCIL DECISION

Background

At the Annual Electors Meeting conducted on 3 February 2009, the following motion was carried:

To extend Public Question Time from 15 minutes to a maximum of 1 hour.

It is required that any decisions passed at an Electors Meeting be considered by Council.

Submission

N/A

Report

The length of time to be allocated for Public Question Time (PQT) at Council meetings is to be a minimum of 15 minutes, pursuant to Regulation 6(1) of the Local Government (Administration) Regulations, as attached.

Subsequently, Council has adopted the mechanism by which PQT is governed in its Standing Orders Local Law, Clause 4.4, a copy of which is attached. This is supplemented by the PQT protocol established by the previous Mayor, and generally accepted by Councillors as the process by which PQT at Council Meetings is conducted.

One of the principle focuses of the PQT protocols is to enable substantive responses to be prepared and provided to questions presented by the public. Any relaxation of this requirement could result in less qualitative responses being provided at meetings and an increase in the number of questions taken on notice.

While the motion passed at the Electors Meeting is specific to the length of time allocated to PQT, the issue of managing the process of PQT is a separate, but closely related, matter which requires simultaneous consideration.

Accordingly, it is suggested that the newly elected Mayor be required to review the protocols associated with PQT at Council Meetings, in order to address the issue in a holistic manner, including the length of time he or she wishes allocated in order to facilitate PQT.

Strategic Plan/Policy Implications

Governance Excellence

- To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices.

Budget/Financial Implications

N/A

Legal Implications

Sec. 5.33 of the Local Government Act, 1995, and Clause 4.4 of Council's Local Law (Standing Orders) refer.

Community Consultation

Minutes of the Electors Meeting were made available to the public on Council's website.

Attachment(s)

1. Public Question Time at Council Meetings Protocol.
2. Extract from Local Government (Administration) Regulations in relation to Public Question Time at Council Meetings.
3. Extract from Council Standing Orders Local Law – Clause 4.4.

Advice to Proponent(s)/Submissioners

The Mover of the motion carried has been informed that it will be presented to the Council Meeting to be held on 12 March 2009.

Implications of Section 3.18(3) Local Government Act, 1995

Nil.

13.2 (OCM 12/3/2009) - DECISION OF ANNUAL ELECTORS MEETING - 3 FEBRUARY 2009 - AGENDA BRIEFING SESSIONS (1713) (D GREEN)

RECOMMENDATION

That Council conducts a workshop to consider whether it wishes to open its Council Meeting Agenda Briefing Sessions to the public, based on the information provided in the Report.

COUNCIL DECISION

Background

At the Annual Meeting of Electors conducted on 3 February 2009, the following motion was carried:

That Council opens to the public the Briefing Sessions held the week before Council Meetings.

It is required that any decision passed at an Electors Meeting be considered by Council.

Submission

N/A

Report

In considering this item, research was undertaken to establish the practises of other comparable local governments in the metropolitan area relative to the subject matter.

This involved contacting 17 other local governments and sourcing relevant information, resulting in the following findings:

- 7 Councils operate using a traditional Committee system
- 3 Councils have multiple monthly Council Meeting cycles
- 1 Council provides reports directly to Council each month
- 7 Councils operate with a pre-Council Meeting Agenda Briefing Session one week prior to Council. Of these 2 (Cockburn included) are closed and 5 are open to the public.

Upon further investigation it was revealed that the Councils which open these meetings to the public also have some degree of public participation process by way of questions, statements, submissions or deputations, subject to strict compliance with procedures adopted by each Council. This is facilitated by a variety of mechanisms, including involvement either prior to or following the Agenda briefing and some restricted only to those members of the public who are directly affected by a proposal listed on the forthcoming Council Agenda.

One similarity in all the Councils surveyed which operate with open Agenda Briefing Sessions is that the Agenda is provided to all Elected Members in advance to enable them to familiarise themselves with the issues to be discussed in advance of the Briefing Session. Similarly, the Agenda is made available for public access at the same time it is provided to Elected Members. This practice obviously requires that the Council Agenda and associated business papers are finalised in advance of them being made available to Council members and the public.

This process then allows the Briefing Sessions to be chaired by a Presiding Member (normally the Mayor or another Councillor). In addition, strict procedural protocols in respect of both public and Elected Member participation are in place and controlled by the Presiding Member.

In many ways, the processes replicate that of a Council meeting, excepting that Elected Members are able to ask questions of staff in order to clarify issues contained in the officer reports.

In all cases, no general discussion nor expression of opinion in relation to recommendations is allowed from Elected Members, as it is required that any debate on the recommendation take place in the formal confines of the Council meeting.

Similarly, public participation is controlled by a variety of protocols which govern procedures by which questions and submissions are received from the public.

Should Council determine that it wishes its Briefing Sessions to be open to the public, it will need to be aware that neither themselves nor members of the public will have access to information relative to items on the Agenda. Under this scenario, it would not be advisable to have any public question/submission time prior to the briefing. An opportunity for public input could be provided at the end of the officer presentations. However, it should also be noted that the briefing will essentially be controlled by the CEO, as the Agenda is being presented to the forum for the first time. An alternative arrangement could be facilitated by adjusting the closing date for preparation of the draft Agenda and making the settled Agenda and business papers available to Elected Members and the public in advance of the briefing session. This would require the closing deadline for the submission of Agenda items to be brought forward by a number of working days in order to have the Draft Agenda items checked and accepted, prior to finalising the Agenda paper for preliminary access by Elected Members and the public.

However, given that the majority of matters on each Agenda relate to planning and development items, this will have a negative efficiency impact on some applicants.

Currently, the elapsed time from the closing date for the submission of officer reports to the finalisation of items and preparing the accepted items in Agenda form is a maximum of 8 working days. It is not possible to streamline the internal administrative processes to enable this timeframe to be shortened, therefore, the closing date for the receipt of draft reports would need to be extended if the Agenda is to be available for Elected Member and public access prior to the appointed date of the Briefing.

Therefore, Council has a choice between enabling earlier access to the Council Agenda for the benefit of the Elected Members and the public or retaining the current timeframes associated with the preparation of the Agenda and have the briefing sessions remain as an officer's presentation evening, either open or closed to the public.

Should the preference be to open the Briefings to the public, protocols would need to be established on the manner by which public participation, if any, would be enabled and managed.

Strategic Plan/Policy Implications

Governance Excellence

- To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices.

Budget/Financial Implications

N/A

Legal Implications

Sec. 5.33 of the Local Government Act, 1995, refers.

Community Consultation

Minutes of the Electors Meeting 2009 are available for public view on Council's web site.

Attachment(s)

N/A

Advice to Proponent(s)/Submissioners

The Mover of the motion carried has been informed that it will be presented to the Council Meeting to be held on 12 March 2009.

Implications of Section 3.18(3) Local Government Act, 1995

Nil.

13.3 (OCM 12/3/2009) - DECISION OF ANNUAL ELECTORS MEETING - 3 FEBRUARY 2009 - SECURITY GUARDS AT COUNCIL MEETINGS (1713) (D GREEN) (ATTACH)

RECOMMENDATION

That Council notes the decision of the Annual Electors Meeting held on 3 February 2009, in respect of this matter, for the reasons provided in the report.

COUNCIL DECISION

Background

At the Annual Electors Meeting conducted on 3 February 2009, the following motion was carried:

That Council remove security guards from Council Meetings.

It is required that any decisions passed at an Electors Meeting be considered by Council.

Submission

N/A

Report

The issue of employing security personnel is one that is essentially the responsibility of the Chief Executive Officer (CEO).

The practice was first introduced some years ago due to increased concerns by Elected Members over what they perceived as intimidatory behaviour by some members of the public at Council Meetings.

Accordingly, the CEO at that time agreed to employ security personnel to be present at Council Meetings as a demonstration to those who wished to engage in disruptive behaviour at Council Meetings that excessive disobedience or threatening behaviour would not be tolerated.

While the responsibility for the conduct of Council Meetings rests with the Presiding Member, who has powers to control any disruptive behaviour pursuant to Council's Standing Orders Local Law, any action in seeking removal of a person or persons from the Council Chamber or Administration building is required to be undertaken by CEO, who has statutory control for the management of Council buildings, as shown on the attachment.

As such, while it would be competent for Council to pass a resolution directing the CEO to employ security personnel as a means of offering Elected Members a greater level of personal protection, it is doubtful that it could pass a resolution to the effect of disempowering the CEO to do so.

In practice, the CEO discusses such issues with the Elected Members, in particular the Mayor, and implements whatever measures are considered necessary to minimise any potential risks. More recently, the assistance of the Police has been requested as the ultimate deterrent against disruptive behaviour at Council Meetings by members of the public and this has resulted in some people being ejected from Council Meetings in order to enable the meeting to continue and for Council to effectively conduct its business.

In addition, the Administration building is currently subject to a risk assessment as a result of ongoing concerns by some Elected Members over security issues, including threatening behaviour from the public gallery at Council Meetings.

The results of this exercise will no doubt include suggested strategies to mitigate risks associated with a variety of situations which could impact on Elected Members, private citizens and the protection of Council property.

For these reasons, it is not considered appropriate for Council to pass any motions that it is not directly responsible for implementing. It is considered more appropriate for the CEO to continue to assess situations as they arise and deploy whatever resources are considered necessary to ensure the safety of people who attend Council Meetings.

Strategic Plan/Policy Implications

Governance Excellence

- To provide effective monitoring and regulatory services that administer relevant legislation and local laws in a fair and impartial way.

Budget/Financial Implications

N/A

Legal Implications

Sec. 5.33 and 5.41 of the Local Government Act, 1995 refer.
Sec. 49 and 50 of the Police Act 1892, refer.
Sec. 70A of the Criminal Code, refer.

Community Consultation

Minutes of the 2009 Annual Electors Meeting are available for public view on the Council's web site.

Attachment(s)

Extract Department of Local Government Guidelines *Disruptive Behaviour by the Public at Council Meetings*.

Advice to Proponent(s)/Submissioners

The Mover of the motion carried has been informed that it will be presented to the Council Meeting to be held on 12 March 2009.

Implications of Section 3.18(3) Local Government Act, 1995

Nil.

13.4 (OCM 12/3/2009) - LOCAL GOVERNMENT STATUTORY COMPLIANCE AUDIT RETURN 2008 (1332) (P WESTON) (ATTACH)

RECOMMENDATION

That Council adopt the Local Government Compliance Audit Return for the period 1 January 2008 to 31 December 2008, as attached to the Agenda.

COUNCIL DECISION

Background

Since 2000, completion of the Local Government Compliance Audit Return has been mandatory for all local governments in WA in accordance with Regulations 14 and 15 of the Local Government (Audit) Regulations 1996.

Submission

To adopt the Return in its submitted form.

Report

The annual Compliance Audit Return is to be presented to, and adopted by, a meeting of Council.

Following adoption by Council, a certified copy of the Return, signed by the Mayor and Chief Executive Officer, along with a copy of the relevant section of the Council Minutes, is submitted to the Director General, Department of Local Government and Regional Development in accordance with Regulations 14 and 15 of the Local Government (Audit) Regulations 1996.

The Return indicates a conformity rating of 98.3% for the year.

Several issues were raised in relation to Tenders for providing goods and services to which comprehensive comments from Council's Purchasing Co-ordinator is attached and which contains suggestions to improve compliance in this area.

Two issues were raised in relation to Local Government Employees and these are addressed in greater detail in the attached memorandum prepared by the Human Resources Manager.

Strategic Plan/Policy Implications

Governance Excellence

- To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices.

Budget/Financial Implications

N/A

Legal Implications

Regulations 14 and 15 Local Government (Audit) Regulations 1996 refer.

Community Consultation

N/A

Attachment(s)

Compliance Audit Return 2008.

Advice to Proponent(s)/Submissioners

N/A

Implications of Section 3.18(3) Local Government Act, 1995

Nil.

14. PLANNING AND DEVELOPMENT DIVISION ISSUES

14.1 (OCM 12/3/2009) - RETROSPECTIVE APPLICATION FOR PARKING OF A COMMERCIAL VEHICLE - LOCATION: LOT 150 (3) STEINBECK PLACE, SPEARWOOD - OWNER / APPLICANT: C & P BLOGNA (3309891) (R COLALILLO) (ATTACH)

RECOMMENDATION

That Council:

- (1) refuse the retrospective application for parking of a commercial vehicle at Lot 150 (3) Steinbeck Place, Spearwood for the following reasons:-
 1. the proposal is contrary to the protection of the residential amenity of the location by virtue of:
 - (a) the hours of operation of the commercial vehicle;
 - (b) the noise and disturbance associated with the use of the vehicle;
 - (c) the adverse affect on the visual amenity of Steinbeck Place, due to the vehicle being parked in a highly visible location, within the front building setback area which detracts from the residential appearance of the street.
 2. the relevant concerns raised by surrounding property owners.
- (2) issue a Schedule 9 Notice of Determination on Application for Planning Approval / Refusal and an MRS Form 2 Notice of Refusal;
- (3) advise the applicant that parking of the commercial vehicle on the subject property or adjacent verge is prohibited in accordance with the MRS Form 2 Notice of Refusal; and
- (4) advise the applicant and submissioners of Council's decision accordingly.

COUNCIL DECISION

Background

Zoning:	MRS:	Urban
	TPS3	Residential 'R20'
Lot size:	714m ²	
Land use:	Residence (Commercial Vehicle Parking)	
Use class:	'D'	

In December 2008, the City received a complaint from a nearby landowner with regards to the parking of a truck on the subject site. The matter was investigated and it was revealed that the landowner has been parking the truck on the verge and following advice from the City's Ranger Services the truck was now being parked within the subject site. The landowner was subsequently advised by the City's Development Compliance Officer of the requirement to obtain planning approval for the parking of the truck in accordance with the provisions of the City's Town Planning Scheme No. 3 ('Scheme').

Submission

This application seeks planning approval from the City for the parking of a commercial vehicle on the subject site. The City's Scheme defines a commercial vehicle as being:

"any vehicle used or intended to be used in a business or trade which has a tare weight in excess of 3.5 tonnes, and excludes vehicles directly associated with the conduct of a rural pursuit, business or trade on the lot for which the vehicle or vehicles are used".

In accordance with the above, the landowner/applicant has submitted an application for retrospective approval for the parking of a truck which meets the criteria of a commercial vehicle as defined above. The application seeks to formalise approval for parking of the truck on the subject site's concrete driveway located on the north side of the property as shown on Attachment 2 (Site Plan) to this report.

Report

The subject land is zoned Residential 'R20' under the City of Cockburn Town Planning Scheme No. 3. Council has the discretion to either approve (with or without conditions) or to refuse the application.

The Scheme provides the following with regards to the parking of commercial vehicles within the Residential Zone.

"5.8.4 Parking of Commercial Vehicles

- (a) *Despite any other provision of this Scheme, no commercial vehicle is permitted to remain on privately owned land within the Residential Zone for a period longer than is necessary for*

loading or unloading unless the local government has issued a planning approval permitting the parking of such a vehicle.

- (b) *A commercial vehicle may be permitted to be parked within a Residential Zone, provided that:*
- (i) *the vehicle is parked on a lot containing only a single house;*
 - (ii) *the vehicle forms an essential part of the occupation of an occupant of the dwelling;*
 - (iii) *vehicles exceeding 8 metres in length are parked parallel to the side boundary of the lot and behind the building line;*
 - (iv) *no repairs are to be undertaken on the lot;*
 - (v) *in the opinion of the local government, it is not likely to adversely affect the amenity of the surrounding land;*
 - (vi) *the local government may apply any conditions to the approval it sees fit; and*
 - (vii) *the local government has the ability to withdraw its approval at any time for any reason..”*

It is considered that the commercial vehicle parking complies with many of the relevant requirements listed above. However the size and scale of the vehicle and its proposed parking location has the potential to adversely affect the amenity of the surrounding land and therefore be non-compliant with item (b)(v) above.

Neighbour Consultation

Given the potential impacts associated with the truck parking, the application was referred to adjoining landowners for comment. Two submissions were received in relation to the application, both of which raised objections. The submissions objecting to the proposal raised the following concerns:

- the truck starts between 4:30 a.m. and 5:00 a.m. most mornings
- the noise created by the truck is obtrusive and impacts on quality of life
- the truck is a prime mover more suited to an industrial or commercial area not a residential area
- the truck is parked out the front of the house and is an eye-sore for the rest of the street

The above objections are considered valid particularly given the location in which the commercial vehicle is parked and the size and scale of the vehicle as highlighted in Attachment 3 (Photos). The hours of operation are also a concern as the noise normally generated by such vehicles is significant and adjoining residences are located between 6 – 30 metres from the vehicle parking area.

Although the applicants indicated in their application that the vehicle is occasionally required to be started before 6:00 a.m., one of the submissions provided a diary of start times which were before 6:00am more than 'occasionally'. City Officers raised the issue of commencement times with the applicant and they reiterated that the vehicle needs to be started before 6:00 a.m. when demand requires it and is unavoidable due to the nature of the industry in which they work.

Given the unpredictable nature of start times, it would be difficult for the City to monitor and enforce a condition of approval relating to commencement time no earlier than 6:00 a.m. as the applicant is unable to commit to the specified time. Furthermore, monitoring would rely heavily on anecdotal evidence of adjoining landowners which would do little to enhance sentiments within the street and locality.

It is considered that the imposition of approval conditions could only marginally address the proposal's elements of non-compliance and any conditions relating to screening and noise attenuation would be difficult to achieve given the site's constraints.

Conclusion

Based on the above discussion, it is recommended that the proposed commercial vehicle parking be refused based on the following:

- the proposal is contrary to the protection of the residential amenity of the location by virtue of:
 - the hours of operation of the commercial vehicle;
 - the noise and disturbance associated with the use of the vehicle;
 - the adverse affect on the visual amenity of Steinbeck Place, due to the vehicle being parked in a highly visible location, within the front building setback and verge area, which detracts from the residential appearance of the street.

- the nature of concerns raised by surrounding property owners.

Strategic Plan/Policy Implications

APD47 - Retrospective Development Approvals

Demographic Planning

- To ensure the planning of the City is based on an approach that has the potential to achieve high levels of convenience and prosperity for its citizens.

- To ensure development will enhance the levels of amenity currently enjoyed by the community.

Budget/Financial Implications

N/A

Legal Implications

N/A

Community Consultation

Four (4) surrounding owners were consulted regarding the proposal. Two (2) submissions were received, both objecting to the proposal

Attachment(s)

- 1 Location Plan
- 2 Site Plan
- 3 Photos

Advice to Proponent(s)/Submissioners

The Proponent(s) and those who lodged a submission on the proposal have been advised that this matter is to be considered at the 12 March 2009 Council Meeting.

Implications of Section 3.18(3) Local Government Act, 1995

Nil

14.2 (OCM 12/3/2009) - PROPOSED CHANGE OF USE FROM 'SHOWROOM/WAREHOUSE' TO 'HEALTH STUDIO' - LOCATION: UNIT 1/22 HAMMOND ROAD, COCKBURN CENTRAL - OWNER: DALEGLLEN INVESTMENTS PTY LTD - APPLICANT: MICHAEL PRATT (6006364) (M SCARFONE) (ATTACH)

RECOMMENDATION

That Council:

- (1) refuse the application for a change of use from 'Showroom/Warehouse' to 'Health Studio' at Unit 5/26 Hammond Road, Cockburn Central for the following reason:-

The proposal does not provide sufficient on site car parking.

- (2) issue a Schedule 9 Notice of Determination on Application for Planning Approval – Refusal and an MRS Form 2 - Notice of Refusal; and

(3) advise the applicant of the decision of Council.

COUNCIL DECISION

Background

Zoning:	MRS:	Industrial
	TPS3	Mixed Business
Land Use:	Health studio	
Lot Size:	975 m ²	
Use Class:	"P"	

The subject site is located on Hammond Road, Cockburn Central approximately 500 metres south of North Lake Road, within the Lake Yangebup Business Park Estate. A two unit 'Showroom/Warehouse/Office' development was approved for the subject site in August 2007 and is currently under construction. The 'Health Studio' is proposed to occupy the southern unit in this development.

Submission

The applicant has proposed the following development for the subject site:-

- Hours of operation are from 6.00am to 9.00pm Monday to Thursday, 6.00am to 8.00pm Friday, 8.00 am to 3.00pm Saturday and 9.00am to 1.00pm on Sunday.
- Facility will be based on group exercise sessions catering for a maximum of 40 students per class.
- Three staff are to be employed on site during peak periods (4-9).

Report

The following section provides a discussion of the various issues affecting the proposal.

Statutory Context

Proposed Use

A 'Health Studio' is defined by the City of Cockburn Town Planning Scheme No. 3 (TPS No. 3) as follows:

Health Studio: means land and buildings designed and equipped for physical exercise, recreation and sporting activities including outdoor recreation.

'Health Studio' is considered to be the most appropriate definition applicable to the proposed use. A 'Health Studio' is a 'P' or use in the Zoning Table – Table 1 meaning the use is '*permitted by the Scheme providing the use complies with the relevant development standards and requirements of the Scheme*'.

While the proposed use is permitted within the 'Mixed Business' zone, the proposal does not meet the development standards and requirements of TPS No. 3, given that there is insufficient on site parking and is recommended for refusal.

Car Parking

Table 3 of TPS No. 3 provides vehicle parking provisions for commercial use classes. Where vehicle parking provisions are not prescribed for a particular use the requirement will be determined by the City.

The proposed use is not included within Table 3 and as such the parking requirements are at the discretion of the City. In order to determine the appropriate car parking standard to be applied to a 'Health Studio' the requirements of seven other local government authorities were analysed. The average car parking requirement was one bay per 16.3 m² of GLA. The median car parking requirement for a 'Health Studio' use is one bay per 15 m². In determining the car parking requirements for the proposed 'Health Studio' the median requirement, one bay per 15 m², is considered appropriate and has been applied.

The applicant has indicated that the 'Warehouse' portion of the approved development would be primarily used for the 'Health Studio'. The 'Warehouse' is approximately 460 m². Given the car parking requirements outlined above the proposed use would require 31 car bays. This does not take into account the requirement for the office or showroom portions of the approved development as the warehouse is likely to be used most intensely. Unit 1 has been approved with 8 car parking bays for its exclusive use, while there are 16 bays approved in total. Based on the calculations above there is a shortfall of 23 car bays on site.

Given the shortfall of parking on site it is considered the proposed development is inappropriate for this location and should not be supported. It is noted that the City may continue to receive applications for a wide range of uses in vacant showroom/warehouse units in Industrial/Mixed Business locations, as there are an increasing number of vacant units available. However it is the City's responsibility to ensure that existing businesses in the locality are not adversely affected by parking and traffic congestion and that decisions are based on orderly and proper planning for the locality.

Strategic Plan/Policy Implications

Demographic Planning

- To ensure the planning of the City is based on an approach that has the potential to achieve high levels of convenience and prosperity for its citizens.
- To ensure development will enhance the levels of amenity currently enjoyed by the community.

Infrastructure Development

- To provide an appropriate range of recreation areas that meets the needs of all age groups within the community.

Budget/Financial Implications

N/A

Legal Implications

Town Planning Scheme No. 3
Planning and Development Act 2005
State Administrative Tribunal Regulations

Community Consultation

The proposal has not been advertised to adjoining property owners.

Attachment(s)

1. Site Plan
2. Floor Plan

Advice to Proponent(s)/Submissioners

The Proponent(s) and those who lodged a submission on the proposal have been advised that this matter is to be considered at the 12 March 2009 Council Meeting.

Implications of Section 3.18(3) Local Government Act, 1995

Nil

14.3 (OCM 12/3/2009) - PROPOSED CHANGE OF USE FROM 'SHOWROOM / WAREHOUSE' TO 'DANCE STUDIO' - LOCATION: UNIT 5/26 HAMMOND ROAD, COCKBURN CENTRAL - OWNER: MR GUISEPPE AND MRS FRANCESCA BUCCINI - APPLICANT: DE FREITAS AND RYAN (6009739) (M SCARFONE) (ATTACH)

RECOMMENDATION

That Council:

- (1) refuse the application for a change of use from 'Showroom/Warehouse' to 'Dance Studio' at Unit 5/26 Hammond Road, Cockburn Central for the following reasons:-
 1. the proposal does not provide sufficient on site car parking; and
 2. the proposal is considered likely to inhibit the future use of the other tenancies within the complex.
- (2) issue a Schedule 9 Notice of Determination on Application for Planning Approval – Refusal and an MRS Form 2 - Notice of Refusal; and
- (3) advise the applicant and submissioners of the decision of Council.

COUNCIL DECISION

Background

Zoning:	MRS:	Industrial
	TPS3	Mixed Business
Land Use:	Use Not Listed - 'Dance Studio'	
Lot Size:	185 m ²	
Use Class:	"A"	

The subject site is located on Hammond Road, Cockburn Central approximately 500 metres south of North Lake Road, within the Lake

Yangebup Business Park Estate. The 'Dance Studio' is proposed to be located within a set of approved 'Showroom/Warehouse' units with associated car parking provisions. At present 4 of the tenancies on the subject lot have been leased and a total of two changes of use have already been approved within the developments. A third tenancy appears to be operating as a 'Shop' a use that is not permitted within the 'Mixed Business' zone. This is the subject of separate investigation.

Submission

The applicant has proposed a 'Dance Studio' at Unit 5/26 Hammond Road, Cockburn Central. The main characteristics of the proposed development are as follows:-

- Hours of operation are from 10.00am to 9.00pm Monday to Saturday. Some additional rehearsals may occur on Sundays.
- Facility will cater for a maximum of 10 students per class with an average of 5-8 students.
- Parents are to be discouraged from remaining on site during classes.
- Classes to run for an hour with students arriving fifteen minutes before the start of class to warm up.
- One teacher is to be employed on site.

It is considered important to note that while the original submission from the lessee indicated that one teacher would be employed on site, a further submission by the lessee's parents indicates that up to five teachers would be employed on site, therefore resulting in increased car parking demand.

Report

The following section provides a discussion of the various issues effecting the proposal.

Statutory Context

Proposed Use

A 'Dance Studio' is not defined by the City of Cockburn Town Planning Scheme No. 3 (TPS No. 3) and is therefore not included in the Zoning Table – Table 1. The proposed 'Dance Studio' is considered a 'Use Not Listed'.

Clause 4.4.2 of TPS No. 3 provides guidance to Officers to assist in the determination of a proposed 'Use Not Listed'. Under the provisions of Clause 4.4.2 the City may:

- i) determine the use is consistent with the objectives of the particular zone and is therefore permitted;

- ii) determine that the use may be consistent with the objectives of the zone and thereafter follow the advertising procedures of Clause 9.4 in considering an application for planning approval; or
- iii) determine that the use is not consistent with the objectives of the particular zone and is therefore not permitted.

The subject site is zoned 'Mixed Business' under the provisions of the City of Cockburn Town Planning Scheme No. 3 (TPS No. 3). The objective of the 'Mixed Business' zone is as follows:

To provide for a wide range of light and service industrial, wholesaling, showrooms, trade and professional services, which, by reason of their scale, character, operation or land requirements, are not generally appropriate, or cannot conveniently or economically be accommodated within the Centre or industry zones.

The City has recently conditionally approved a change of use from 'Showroom/Warehouse' to 'Health Studio' within the subject site. While the proposed 'Dance Studio' use is a similar use to the approved 'Health Studio' it is determined that the proposed use is not consistent with the objectives of the zone due to the proposed scale of operations, which results in a car parking shortfall. This aspect is discussed in further detail below.

Car Parking

Table 3 of TPS No. 3 provides vehicle parking provisions for commercial use classes. Where vehicle parking provisions are not prescribed for a particular use the requirement will be determined by the City.

The proposed use is not included within Table 3 and as such the parking requirements are at the discretion of the City. The applicant for the proposed 'Dance Studio' use has indicated that one staff member will be on site during lessons which will cater for up to ten students. Each class will run for one hour with a fifteen minute overlap occurring when students first arrive to warm up for the next class. During this overlap period there is a potential for 20 students to be located on the site. While the applicant has indicated that parents will not be encouraged to stay and watch the children it is considered likely that a number of parents will wait in their cars or within the proposed 'Dance Studio' for the duration of the lessons.

Given the above it is considered appropriate that car parking for the proposed use be calculated at one bay per student resulting in a requirement for 10 car parking bays to be provided on site. The 'Showroom/Warehouse' units were approved on 11 January 2007 with a car parking provision of 1 bay per 50 m² gla. Given the subject tenancy has a total area of 187 m² less than 4 car parking bays have

been allocated to it resulting in a car parking shortfall of approximately 6 bays.

As stated above the City has approved two other changes of use within the set of 'Showroom/Warehouse' units on the subject lot. Unit 2 has been approved for 'Amusement Parlour' (Network Gaming Centre) which operates outside general office hours and has approval to accommodate up to 28 persons (The target customers for this development are between 10-16 years old and are unlikely to drive). Unit 4 has been approved as a 'Health Studio' with numbers restricted to one on one training i.e. maximum of two staff and two patrons on site. This use also has approval to operate outside of standard office hours and may require up to four car parking bays at any one time. A third tenancy appears to be a shop type business operating from the showroom/warehouse complex as well (this is currently being investigated as part of a separate action) and is also likely to generate more traffic than a 'Warehouse/Showroom' development.

The peak hours of operation for the 'Amusement Parlour' (Network Gaming Centre), 'Health Studio' and 'Dance Studio' will coincide as each use attracts patrons outside of standard office hours. Should each of the proposed uses be operating at full capacity it is likely car parking issues and traffic conflicts will arise. No footpath is provided on site to link each of the rear tenancies to the front of the development and as such there may be further conflict between pedestrians being dropped off at the front of the complex and those driving in/out to the rear tenancy/ies.

Given the potential for conflict vehicle/pedestrian conflict and the proposed parking shortfall it is considered the proposed development is inappropriate for this location and should not be supported.

Strategic Plan/Policy Implications

Demographic Planning

- To ensure the planning of the City is based on an approach that has the potential to achieve high levels of convenience and prosperity for its citizens.
- To ensure development will enhance the levels of amenity currently enjoyed by the community.

Infrastructure Development

- To provide an appropriate range of recreation areas that meets the needs of all age groups within the community.

Budget/Financial Implications

N/A

Legal Implications

- Town Planning Scheme No. 3
- Planning and Development Act 2005
- State Administrative Tribunal Regulations

Community Consultation

In accordance with Council's policy APD53, the proposal was advertised to surrounding tenants and adjoining land owners for comment. Two neighbours responded consisting of one non-objection and one objection to the proposal. The reason specified in the non-objection (support) was as follows:

I am looking forward to this as it may create more exposure for my own business.

The reason specified in the objection was as follows:

Although this operation will not affect our business operations and I support the business in principle, I can anticipate some vehicle movement issues. The driveway/carpark is very small and only allows movement of one vehicle at a time. The dropping off and collection of students could lead to bottlenecks. [emphasis added by submissioner].

The non-objection does not provide valid planning support for the proposal while the objection echoes the concerns of the City's officers.

Attachment(s)

- 1 Site Plan/Elevations
- 2 Submissions

Advice to Proponent(s)/Submissioners

The Proponent(s) and those who lodged a submission on the proposal have been advised that this matter is to be considered at the 12 March 2009 Council Meeting.

Implications of Section 3.18(3) Local Government Act, 1995

Nil

14.4 (OCM 12/3/2009) - SINGLE DWELLING - ADDITIONS & RENOVATION TO EXISTING DWELLING - LOCATION: 3 SHERIDAN COURT MUNSTER - OWNER / APPLICANT: WAYNE PETER GREEN - (3315250) (B HOGARTH-ANGUS) (ATTACH)

RECOMMENDATION

That Council grant its approval to the proposed additions & renovation to an existing dwelling on Lot 663 (No. 3) Sheridan Court, Munster in accordance with the approved plan subject to the following conditions:-

STANDARD CONDITIONS

1. Development can only be undertaken in accordance with the terms of the application as approved herein and any approved plans.
2. Nothing in the approval or these conditions shall excuse compliance with all relevant written laws in the commencement and carrying out of the development.
3. No wall, fence or landscaping greater than 0.75 metres in height measured from the natural ground level at the boundary, shall be constructed within 1.5 metres of a vehicular access-way unless such wall or fence is constructed with a 2 metre truncation.
4. All stormwater being contained and disposed of on-site to the satisfaction of the Council.
5. No activities relating to this approval causing noise and/or inconvenience to neighbours being carried out after 7.00pm or before 7.00am, Monday to Saturday, and not at all on Sunday or Public Holidays.
6. The surface finish of the boundary wall(s) abutting the adjoining lot(s) is to be either face brick or rendered to match the external walls of the dwelling being constructed unless otherwise agreed with the adjoining property owner(s). In all instances, the work is to be of a high standard.

SPECIAL CONDITION

7. The length of the garage wall being reduced to 8.4m as marked in red on the amended plans.

FOOTNOTE

- 1 The development is to comply with the requirements of the Building Code of Australia.

2 issue a Schedule 9 Notice of Determination on Application for Planning Approval – Approval (inclusive of MRS Form 2 Notice of Approval).

COUNCIL DECISION

Background

Zoning:	MRS:	Urban
	TPS3	R20
Land use:	Residential	
Lot size:	768 m ²	
Use class:	"P"	

Submission

The applicant has proposed a series of additions to an existing dwelling. The proposed alfresco, outdoor kitchen, paved terraces, and decking all comply with the requirements of the Residential Design Codes (R-Codes). The proposed garage length of 8.4 m also complies with the R-Code requirements; however the wall is higher (3.172 m) than the Acceptable Development Criteria of the R-Codes, with a reduced primary street setback of 3 m.

The applicant has provided the following justification in support of the proposal which has been summarised accordingly:-

- The additional space is required to provide security and protection for two (2) x vehicles, a boat, Tradesman Trailer, BMX bike trailer and standard trailer which cannot all be accommodated within the existing double carport and shed and are therefore all currently visible from the street.
- The height of 3.172 m is required to continue the existing roof line so the garage can be incorporated under the existing dwelling, to allow enough clearance for a boat and to contain water runoff.

A copy of the applicant’s full submission should be read in conjunction with this report and is contained in the agenda attachments.

Report

The subject land is zoned R20 under the City of Cockburn Town Planning Scheme No. 3. Council has the discretion to either approve (with or without conditions) or to refuse the application.

The proposed development complies with the standards and provisions of the City's Town Planning Scheme No. 3/Residential Design Codes & Council Policy APD 49 with the exception of the following:-

- Council Policy APD 49 Clause 6.2 – *'Boundary walls up to a height of 3 m'*.
- Clause 6.2.3 A3.5 – *'Garages setback 4.5 m from the primary street'*.

The applicant seeks to vary the maximum height requirement of 3 m for boundary walls by proposing a wall height of 3.172 m. The extra height brings the extensions under the main roof line to ensure the additions are an integral part of the dwelling. This additional height also allows adequate clearance for a boat and canopy.

The performance criteria of the Codes in relation to boundary walls state that buildings can be *"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;*
- *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."*

It is considered that the proposed garage boundary wall complies with the above performance criteria because the proposal will improve the appearance of the dwelling by providing additional vehicle storage space, negating the need for them to be parked in full view of the street. It is believed the location of the boundary wall will not adversely affect the amenity of the adjoining neighbour or result in significant overshadowing.

Finally, the proposed garage represents a variation to the 4.5 m primary street setback as this has been reduced to 3 m. Allowing the garage to be setback this distance lessens the impact on the adjoining neighbour's outdoor living area, which could be adversely impacted if the 4.5 m setback was applied.

The performance criteria of the Codes in relation to the setback of garages states that the setback is *"not to detract from the streetscape*

or appearance of the dwelling, or obstruct views of dwellings from the street and vice versa"

It is considered that this application complies with the above performance criteria as the reduced setback still allows an open streetscape and is only 1 metre in front of the existing dwelling.

One (1) landowner was advised of the development application and one (1) letter of objection was received. The objector's main concerns were regarding the wall overshadowing on their property and the aesthetics of the wall.

The above concerns are addressed below:-

Whilst there will be some overshadowing to the adjoining property, it should be noted that all of the overshadowing will only affect a paved walkway and caravan storage area.

The overall length of the wall has been reduced from 11.3m to 8.4m in negotiation with the applicant to minimise the impact on the neighbouring property. Given these circumstances, The City opines that the proposal will not significantly impact on the neighbour and/or their habitable outdoor living area.

Recommendation

It is recommended that Council support the application on the basis the proposed garage will not adversely affect the amenity of neighbouring properties. Additionally, it is believed the construction of the garage will vastly improve the amenity for all concerned.

Strategic Plan/Policy Implications

The Planning Policy which applies to this item is:-

APD49 'Residential Design Codes- Alternative Acceptable Development Provisions'.

Demographic Planning

- To ensure development will enhance the levels of amenity currently enjoyed by the community.

Budget/Financial Implications

N/A

Legal Implications

Town Planning Scheme No. 3
Residential Design Codes 2002
Planning and Development Act 2005
State Administrative Tribunal Regulations

Community Consultation

N/A

Attachment(s)

1. Location Plan
2. Site Plan and Elevations
3. Applicant's justification

Advice to Proponent(s)/Submissioners

The Proponent(s) and those who lodged a submission on the proposal have been advised that this matter is to be considered at the 12 March 2009 Council Meeting.

Implications of Section 3.18(3) Local Government Act, 1995

Nil

14.5 (OCM 12/3/2009) - PROPOSED LOCAL STRUCTURE PLAN FOR LOTS 10 AND 11 LYON ROAD, AUBIN GROVE - OWNER: A MAKJANICH - APPLICANT: BURGESS DESIGN GROUP (9645I) (M CARBONE) (ATTACH)

RECOMMENDATION

That Council:

- (1) adopt the Structure Plan as shown in Attachment 2 for Lots 10 and 11 Lyon Road (corner Gaebler Road), Aubin Grove subject to the following;
 1. The Local Water Management Strategy being approved by the Department of Water; and
 2. The structure plan and associated report being amended to demonstrate compliance with the 10% public open space requirement of Liveable Neighbourhoods Edition No. 4, as well as requiring a Detailed Area Plan for the R40 grouped housing site.

3. The structure plan being amended to identify the telecommunication site as “Restricted Use – Telecommunication Facility” and the word ‘Residential’ being added to R25 and R40.
- (2) subject to compliance with point 1 above, forward the structure plan documents and schedule of submissions to the Western Australian Planning Commission for its endorsement;
- (3) adopt the schedule of submissions contained in the Agenda attachment; and
- (4) advise the proponent and those persons who made a submission of Council’s decision, and request the Department of Water to provide written advice to the City once it has approved the Local Water Management Strategy.

COUNCIL DECISION

Background

The subject land is currently zoned ‘Development’ – Development Area No. 11 (DA 11) under the City of Cockburn’s Town Planning Scheme No. 3, which requires a structure plan to be prepared to guide future subdivision and development. The subject land also falls within Development Contribution Area No. 7 (DCA 7), which requires the landowner to make a proportional contribution to regional drainage.

The land is located within the Southern Suburbs District Structure Plan Stage 2 (Banjup).

Submission

Burgess Design Group (the applicant) at the request of the landowner has submitted a structure plan for the subject land.

Report

Proposed Structure Plan

The structure plan proposes a coding of R25 and provides for single residential lots between 320 m² to 500 m². A 2996 m² residential R40 grouped dwelling site is proposed in the north east corner of the structure plan, adjacent to the proposed local centre on the corner of Lyon and Gaebler Roads. The structure plan will yield 111 green title

lots, including one R40 grouped dwelling site which could accommodate 13 grouped dwellings.

The proposed structure plan is generally in accordance with the district structure plan except with regard to the following:

- Residential R25 proposed around the public open space area rather than medium density (usually R30 or above). This is considered acceptable as the proposed R25 coding allows for smaller lots of 320 m², and still provides for adequate surveillance of the POS area.
- Not including a Mixed Business/Commercial zone on the corner of Lyon/Gaebler Roads. This is considered acceptable as there is already sufficient commercial zoned land provided on the other corner of Lyon/Gaebler Roads, which accommodates the needs of the Aubin Grove area.
- Limiting the extent of the medium density R40 area to 2996 m², which is marginally less than that indicated under the district structure plan. This is considered acceptable given the higher than normal R25 coding provided for the remainder of the site.

Detailed Area Plans (DAPs) are proposed for the laneway lots adjacent to the POS area. It is also recommended that a DAP be required for the R40 grouped housing site to address built form and access issues.

Public Open Space and Drainage

The structure plan requires a total of 8060m² of POS. The structure plan proposes a total of 9037m² of POS in combination with drainage. Liveable Neighbourhoods allows drainage to be credited as POS provided the drainage between 1:1 and 1:5 does not represent more than 20% of the required POS area. Drainage which accommodates the 1:1 cannot be credited as POS.

The original structure plan included a rectangular shaped drainage swale which had a 1:1 area of 1007 m², which resulted in a POS shortfall of 30 m². However, the City's Parks and Environmental Departments requested the swale be redesigned to protect native trees. In order to retain these trees, the swale became an irregular shape and increased in size to 1225m² for the 1:1 area.

Under the revised structure plan, the area that can be credited as POS is 7782 m² (9.65%), which is a shortfall of 278 m² (0.35%). The applicant is seeking a concession to the POS on the basis that they are retaining native vegetation as requested by the City. However, even though the shortfall is partly contributed by the need to retain existing vegetation, it is not considered acceptable to support the shortfall as the 1:1 drainage area must be provided in addition to the 10% POS. It

is also apparent that the drainage design could be amended to achieve the POS requirement. This could include a combination of measures including increasing the size of the POS by reducing the road reserve width on the southern and eastern sides of the POS, modifying the drainage basin within the POS, or providing soak wells or other engineering devices to increase at source infiltration.

It should also be noted that if the City supported a shortfall in the POS requirement, it would attract a cash-in-lieu payment by the developer.

Accordingly, it is recommended that the structure plan and POS schedule be amended to reflect the 10% public open space requirement.

Chile Way

The existing Chile Way abuts the south eastern boundary of the structure plan and terminates without connecting to Lyon Road or providing a suitable turn around area. The structure plan proposes to extend Chile Way to Lyon Road with a left-in left-out arrangement. Two submissions have been received from residents within Chile Way objecting to the proposal on the grounds that it will increase traffic. However, the road is only proposed to service a total of 8 lots and the restricted nature of the intersection and the numerous other road linkages to Lyon Road means that traffic along Chile Way will be limited.

Consultation

The structure plan was advertised for public comment for 28 days. At the close of advertising, 19 submissions were received, including 8 no objections, 8 providing advice and 3 objections. Refer to the schedule of submissions contained within the agenda attachments.

Of particular note, the Department of Water (DoW) has requested that the submitted stormwater strategy be upgraded to a Local Water Management Strategy (LWMS). The applicant has upgraded the report to a LWMS and has recently submitted it to the DoW. It is therefore recommended that the structure plan be approved subject to the approval of the LWMS from the DoW.

The Department for Planning and Infrastructure has also requested a few changes to the structure plan which are supported and discussed in further detail in the schedule of submissions.

Conclusion

The proposed structure plan is generally in accordance with Liveable Neighbourhoods principles and the district structure plan. It is therefore recommended that Council adopts the structure plan subject

to the approval of a Local Water Management Strategy and the relevant changes to the report and plan to achieve appropriate POS compliance.

Strategic Plan/Policy Implications

Demographic Planning

- To ensure the planning of the City is based on an approach that has the potential to achieve high levels of convenience and prosperity for its citizens.
- To ensure development will enhance the levels of amenity currently enjoyed by the community.

Infrastructure Development

- To construct and maintain parks and bushland reserves that are convenient and safe for public use, and do not compromise environmental management.
- To provide an appropriate range of recreation areas that meets the needs of all age groups within the community.

The Planning Policy which applies to this item is:
SPD4 - 'Liveable Neighbourhoods'

Budget/Financial Implications

N/A

Legal Implications

Clause 6.2.9.1 of TPS No. 2 requires Council to make a decision on the application within 60 days from the end of the advertising period or such longer period as may be agreed by the applicants. The applicants have now requested the application be determined in accordance with the provisions of the Scheme.

Failure to determine the application will lead to a deemed refusal in accordance with Clause 6.2.9.4 and there is an appeal right to the State Administrative Tribunal.

Community Consultation

The structure plan was advertised in accordance with the requirements of Town Planning Scheme No. 3. There were 19 submissions received including 8 no objections, 8 providing advice and 3 raising concerns.

Attachment(s)

1. Location plan
2. Proposed structure plan
3. Southern Suburbs District Structure Plan Stage 2 (Banjup)
4. Schedule of Submissions

Advice to Proponent(s)/Submissioners

The Proponent(s) and those who lodged a submission on the proposal have been advised that this matter is to be considered at the 12 March 2009 Council Meeting.

Implications of Section 3.18(3) Local Government Act, 1995

Nil

14.6 (OCM 12/3/2009) - ONE GROUPED DWELLING (EXISTING) AND NINE AGED PERSONS' DWELLINGS - LOCATION: 240 - 246 (LOTS 89, 2042, 80 & 79) HEALY ROAD HAMILTON HILL - OWNER: V & M GIRARDI - APPLICANT: ALVARO DESIGN CONSULTANTS (ROCCO ALVARO) (3318070) (A LEFORT) (ATTACH)

RECOMMENDATION

That Council approve the application for one grouped dwelling (existing) and nine aged persons' dwellings at 240-246 (Lots 89, 2042, 80 & 79) Healy Road Hamilton Hill subject to the following conditions:

CONDITIONS

1. Development may be carried out only in accordance with the details of the application as approved herein and any approved plan.
2. Nothing in the approval or these conditions shall excuse compliance with all other relevant written laws in the commencement and carrying out of the development.
3. No activities causing noise and/or inconvenience to neighbours being carried out after 7.00p.m. or before 7.00a.m., Monday to Saturday, and not at all on Sunday or Public Holidays.
4. Retaining wall(s) being constructed in accordance with a suitably qualified Structural Engineer's design and a building licence being obtained prior to construction. Retaining walls are required for any cut and/or fill greater than 150 mm in height. In this regard, any fill above or below natural ground level at the lot boundaries is to be

- suitably retained or have a compliant stabilised embankment.
5. The premises shall be kept in a neat and tidy condition at all times by the owner/occupier to the satisfaction of the City.
 6. Crossovers are to be located and constructed to the City's specifications. Copies of specifications are available from the City's Engineering Services.
 7. Existing crossovers that are not required as part of the development, shall be removed and the verge reinstated within a period of 60 days, to the satisfaction of the City.
 8. Notwithstanding the detailed specifications required to be submitted for a Building Licence approval, a separate schedule of the colour and texture of the building materials shall be submitted to and approved by the City prior to applying for a Building Licence, and before the commencement or carrying out of any work or use authorised by this approval.
 9. A detailed landscape plan must be submitted to the City and approved, prior to applying for building licence and shall include the following:-
 - (1) the location, number and type of existing and proposed trees and shrubs.
 - (2) any lawns to be established;
 - (3) any natural landscape areas to be retained;
 - (4) those areas to be reticulated or irrigated; and
 - (5) verge treatments
 10. The landscaping installed in accordance with the approved detailed landscape plan, must be reticulated or irrigated and maintained to the satisfaction of the City.
 11. No development or building work covered by this approval shall be commenced until the landscape plan has been submitted and approved, by the City.
 12. Existing mature trees located on the southern portion of Lot 80 and Lot 2042 shall be retained to the satisfaction of the City and incorporated into the development. In this regard a detailed survey showing all existing vegetation on the lots shall be undertaken and submitted to the City prior to the commencement of any site works.
 13. Walls, fences and landscape areas are to be truncated

within 1.5 metres of where they adjoin vehicle access points where a driveway and/or parking bay meets a public street or limited in height to 0.75 metres.

14. All stormwater being contained and disposed of on-site to the satisfaction of the City.
15. The parking area, driveways and points of ingress and egress to be designed, constructed, drained and marked in accordance with the plan certified by a suitably qualified practicing Engineer and thereafter maintained to the satisfaction of the City. These works are to be done as part of the building construction.
16. Three visitor parking bays are to be permanently marked and maintained at all times for use exclusively by visitors to the property, be clearly visible from the street or communal driveway and be located, together with the reversing area, in front of any security gates or barrier for the development.
17. The street verge adjacent to the Lot(s) being grassed or otherwise completed in accordance with the approved plans and be established prior to the occupation of the building; and thereafter maintained to the City's satisfaction.
18. All effluent disposal systems and stormwater soak wells currently located on the site must be appropriately decommissioned. (See footnote for further information).

SPECIAL CONDITIONS

1. Lots must be amalgamated prior to issuance of a Building Licence.
2. All floor plans for the proposed aged persons' dwellings being modified in following manner in accordance with the requirements of the Residential Design Codes:
 - i) All external and internal doors to provide a minimum 820 mm clear opening.
 - ii) Internal corridors to be a minimum 1000 mm wide, width to be increased to a minimum of 1200 mm in corridors with openings on side walls.
 - iii) All dwellings to include a visitable toilet (AS4299:1995, Clause 1.4.12), preferably located within a bathroom.
 - iv) Toilet and toilet approach doors shall have a minimum 250 mm nib wall on the door handle side

- of the door and provision for the installation of grab rails in accordance with AS4299:1995, Clause 4.4.4(h).
- v) All storerooms being amended to at least 4 sqm in area with a minimum dimension of 1.5 sqm.
 - vi) All floor levels being shown on the floor plans.
3. The floor plan for the dwelling on proposed Lot 9 shall be modified so that the entrance to the kitchen is widened to a minimum width of 1m.
 4. An amended site plan being submitted which shows:
 - i) The visitor bay proposed next to Lot 1 being relocated in a location within common property to the satisfaction of the City.
 - ii) One of the visitor's bays to be amended to be wheelchair accessible with a minimum width of 3.8m in accordance with AS4299:1995, clause 3.7.1.
 - iii) The dwelling on proposed Lot 6 being redesigned so that the open space is consolidated for use in conjunction with the outdoor living area to the satisfaction of the City.
 5. At least one occupant of each aged persons dwelling is aged over 55, or is the surviving spouse of such a person.
 6. The landowner entering into a legal agreement to be prepared by the City's Solicitor at the landowner's cost which binds the landowner, their heirs and successors in title requiring that the at least one occupant of each aged persons dwelling is aged over 55, or is the surviving spouse of such a person.
 7. A notification under Section 70A of the Transfer of Land Act is to be prepared in a form acceptable to the City and lodged with the Registrar of Titles for endorsement on the Certificate of Title for the subject lot, prior to the commencement of development works. This notification is to be sufficient to alert prospective purchasers of the use and restrictions of the aged person's dwellings as stipulated under Condition 24 of this approval. The notification should (at the full cost of the landowner) be prepared by the City's Solicitor and be executed by both the landowner and the City.
 8. The submission of a waste management strategy which demonstrates how waste is to be collected from the site,

taking into account that the approved development has been designed for occupation by aged persons.

FOOTNOTES

1. The development is to comply with the requirements of the Building Code of Australia.
2. The applicant/landowner is advised that an application to subdivide the property will not be supported by the City until the dwellings have been constructed to plate height.
3. To meet the City's condition regarding decommissioning of the onsite effluent disposal system, the applicant is to supply one of the following:-
 - i) A statutory declaration signed by either the applicant or their agent confirming that all onsite effluent disposal systems on the property have been decommissioned in accordance with Regulation 21 of the Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulations 1974, and provide a receipt from a licensed liquid waste contract confirming that the onsite effluent disposal system has been pumped out. Stormwater soak wells are to be decommissioned in the same manner as prescribed for effluent disposal soak wells in the Regulations.
 - ii) The applicant is to arrange for an onsite assessment of the property by an Environmental Health Officer prior to and after removal of the onsite effluent disposal system to ascertain whether any part of the onsite effluent disposal system is still present. Please note that the City's Health Service will charge a minimum service fee, with an additional hourly rate where 2 or more hours are required.)
4. In relation to Condition 23, the applicant is advised that the requirement for at least one occupant of each aged persons dwelling to be aged over 55, or is the surviving spouse of such a person shall be included in the strata management plan which will be required when the property is strata titled.

COUNCIL DECISION

Background

Zoning:	MRS:	Urban
	TPS3	Residential R20
Land use:	Grouped Dwelling and Aged Persons' Dwellings	
Lot size:	3,690 sqm	
Use class:	Grouped Dwellings "P" Aged Persons' Dwellings "D"	

The subject land is comprised of four separate (adjoining) land parcels on Healy Road in Hamilton Hill. Lots 70, 80 and 89 contain existing dwellings and Lot 2042 contains an outbuilding associated with Lot 89. The subject land falls significantly from north to south and contains some significant mature trees located close to the street on Lot 2042.

The proposal does not comply with all the location requirements of Council's Aged Persons Accommodation Policy APD12. Council officers do not have delegation to approve applications for aged person's dwellings where they are inconsistent with this policy which is why the application is being referred to Council for determination.

Submission

The applicant proposes to retain the existing two storey dwelling on Lot 89 and construct nine aged persons' dwellings on the remaining land which includes the rear of Lot 89 and on the entire area of Lots 70, 2042 and 80. All other existing dwellings and outbuildings etc are proposed to be demolished. The proposed dwellings are to be constructed of pre-cast concrete panels.

The proposed aged persons' dwellings are all two storey and generally consist of three or four bedrooms, two bathrooms, two living areas, double carport and store room. The overall development of the site comprises two separate driveways, proposed as common property, and three visitor car parking bays with all vehicle access to the lots obtained from one of the two common property driveways.

Report

The following section provides a discussion of the various issues affecting the proposal.

Zoning

The subject land is zoned Residential R20 under the City's Town Planning Scheme No. 3 (TPS 3) which would normally allow for a maximum of seven dwellings to be constructed on a land parcel of this size (instead of the proposed 10). The applicant however is seeking approval applying to construct one grouped dwelling and nine aged persons' dwellings under Clause 6.1.3 A3 of the Residential Design Codes (R-Codes) which provides a density bonus for aged persons' dwellings by allowing the minimum site area to be reduced by up to one third, in accordance with part 7.1.2 and 7.1.3 of the R-Codes. The proposal is therefore consistent with the zoning.

Aged Person's Accommodation Policy APD12

Council's Policy APD12 'Aged Persons Accommodation – Design Guidelines' was developed to ensure that sites for aged or dependent persons' accommodation are suitable and have reasonable access to transport, shops and community facilities.

The following table summarises the location criteria outlined in the policy and includes the actual distances associated with this proposal:

Policy Criteria	Policy Distance	Actual Distance	Comment
(a) Local Facilities (Local Store, postal/banking)	400 m	980 m	Does not comply
(b) Distance to bus stop	200 m	50 m	Complies
(c) Footpath Gradients between local facilities and bus stop	<1:12	<1:12	Complies
(d) District Facilities (seniors centre, library, medical etc)	400 m or easily accessible by road and public transport	Bus Stop on verge	Complies

As demonstrated in the above table, the proposed development is not within 400 m or a 5 minute walk of the nearest local centre and therefore approving the proposal constitutes a variation to the policy.

Whilst the nearest local centre (Hamilton Hill Shopping Centre) is approximately 980 m from the site, the centre contains a good range of local shopping needs including supermarket, chemist, post office, bank ATM's and other specialty stores. It is estimated that the time taken to walk from the subject site to the centre would be 10-12 minutes which is considered reasonable in relation to the number of services available at the centre. In addition, there are two bus stops that are located within 50m of the proposed development which connect to Fremantle and Murdoch Train Stations and the subject land is also across the road from the Jean Willis Centre which is a City of Cockburn-run day centre providing activities and outings for seniors.

Overall, whilst the site does not comply with Council's Policy, it is still considered to be relatively well-located in terms of access to key services and facilities required by aged persons'. The variation to the policy is therefore supported.

Residential Design Codes

The variation to the minimum site area requirements of the R-Codes (Clause 6.1.3 A3 i) which the applicant is applying for allows the minimum site area to be reduced by up to one third where the development is in accordance with the Aged or Dependent Persons' Dwelling criteria (Clause 7.1.2). The proposal does not comply with the following elements of the acceptable development criteria:

- A maximum plot ratio of 100 sqm for grouped dwellings.
- All ground floor units.
- External and internal doors to provide a minimum 820 mm clear opening.
- Internal corridors to be a minimum 1000 mm wide, width to be increased to a minimum of 1200 mm in corridors with openings on side walls.
- The first visitors car space shall provide a wheelchair accessible parking space and be a minimum width of 3.8 m in accordance with AS4299:1995, Clause 3.7.1.

The applicant has provided no justification against the performance criteria for this element (Clause 7.1.2 P2). Therefore the proposal lacks key design features which are required to be included to achieve the density bonus under the R-Codes which indicates that the proposal in its current form is unsuitable for aged persons. In addition, the proposal provides store rooms which are less than 4 sqm in area and have a minimum dimension of less than 1.5 m which does not comply with Clause 6.10.3 A3.1 of the R-codes. It is considered that all of the above elements (except for the requirement for ground floor units) can be adequately addressed through condition(s) requiring the applicant to modify the floor plan for each dwelling to incorporate these key design features.

The variations to the plot ratio area for each dwelling are considered relatively minor and are therefore acceptable. With regards to the requirement for all units to be on the ground floor, the proposed design is considered acceptable given that all essential living areas and one bedroom are located on the ground floor. This means that residents can live entirely on the ground floor and "age in place" should their mobility decrease and the use of the stairs become a problem.

Site Layout

There are some concerns with the layout of the site specifically the location of the visitor's car parking bay next to Lot 1, the shape of proposed Lot 6 and how waste will be collected from the site.

The proposed visitor parking bay located next to Lot 1 would require vehicles to parallel park which would then require them to turn the vehicle around at the end of the common property driveway. This is impractical and would almost certainly result in visitor's vehicles entering proposed private lots. Should Council approve the proposal, a condition should be imposed requiring the relocation of the parallel visitor parking bay which is currently located next to Unit 1 in a location to the satisfaction of the City.

Lot 6 contains an area of 293 sqm and features a relatively large portion of open space in the north-east corner of the lot. This area is not associated with the outdoor living area and is not accessible from the dwelling. There is a concern that the area would be wasted and unusable. Should Council approve the proposal, a condition should be imposed requiring the redesign of the dwelling on proposed Lot 6 so that the open space is consolidated to form one large outdoor living area.

With regards to waste collection, there is no centrally located bin storage area so individual bins would need to be carted from each dwelling to the street. For the rear dwellings, this equates to a distance of approximately 35 metres which is considered unreasonable for aged persons, particularly given the gradient of the subject land. This issue can only be addressed by Council's waste collection service vehicles being able to enter the common property driveways and for the landowner/future strata body to indemnify Council against any damage that the vehicles may cause. Alternatively, the development could utilise a private waste collection service. In any case, should Council approve the proposal, a condition should be imposed requiring the applicant to submit a waste management strategy to demonstrate how waste collection will occur.

Dwelling Design

All of the proposed aged dwellings are two storey with a bedroom, bathroom, kitchen and living area on the ground floor and additional bedrooms and living areas on the second level. Each dwelling has also been provided with a double carport/garage and in most cases a northern-facing outdoor living area. As mentioned in the Residential Design Codes section of the report, the proposed design ensures that residents can remain in the dwelling should mobility and the use of stairs become difficult? In addition, as previously discussed, design features required to accommodate aged persons who are currently lacking in the proposal can be conditioned.

Should Council approve the proposal, a condition should be imposed requiring the owner of the land and subsequent strata owners to enter into a legal agreement requiring dwelling inhabitants to persons over 55 years of age. A notification on the titles of the existing and proposed lots will also be required to alert any potential purchasers of this restriction.

Existing Mature Trees

Lot 2042 contains a number of existing mature trees towards the front of the site (the approximate location has been marked on the site plan). The existing trees significantly add to the amenity of the area and have the impact to enhance future development. Should Council approve the proposal, a condition should be imposed requiring those large mature trees to be incorporated into the new development and this seems achievable given the setback of the dwelling on proposed Lot 5.

Conclusion

As discussed in the report, a number of modifications are considered necessary to make the proposal more appropriate for aged persons and these changes can be conditioned. It is therefore recommended that Council vary their Aged Persons Accommodation policy and approve the proposal subject to conditions. Support for the proposal is based on the following reasons:

- The provision of aged person's accommodation contributes to the provision of a variety of housing types in the area.
- The proposal is not considered to detract from the amenity of the area.
- The proposal is located within 1km of a substantial local centre which equates to a 10-12 minute walk and footpath gradients are relatively low between the subject land, bus stops and local centre.
- A bus stop with services to Murdoch and Fremantle Train Stations is located within 50 metres of the site which provides convenient access to a variety of services.

Strategic Plan/Policy Implications

Demographic Planning

- To ensure the planning of the City is based on an approach that has the potential to achieve high levels of convenience and prosperity for its citizens.
- To ensure development will enhance the levels of amenity currently enjoyed by the community.

Budget/Financial Implications

N/A

Legal Implications

Town Planning Scheme No. 3
Planning and Development Act 2005
State Administrative Tribunal Regulations

Community Consultation

N/A

Attachment(s)

1. Location Plan
2. Site Plans
3. Floor plans & Elevations

Advice to Proponent(s)/Submissioners

The Proponent(s) and those who lodged a submission on the proposal have been advised that this matter is to be considered at the 12 March 2009 Council Meeting.

Implications of Section 3.18(3) Local Government Act, 1995

Nil.

14.7 (OCM 12/3/2009) - PROPOSED RETAINING WALLS (R CODE VARIATIONS) - LOCATION: LOT 399 (6) CADIZ PLACE. COOGEE - OWNER: A G PEARSON & L N MCCANN-PEARSON - APPLICANT: A G PEARSON (3315995) (R COLALILO) (ATTACH)

RECOMMENDATION

That Council:-

- (1) grant its approval for the development of retaining walls on Lot 399 (6) Cadiz Place, Coogee subject to the following conditions and advice notes:-
 1. Development can only be undertaken in accordance with the terms of the application as approved herein and any approved plans.
 2. All stormwater being contained and disposed of on-site to the satisfaction of the Council.

3. The premises shall be kept in a neat and tidy condition at all times by the owner/occupier to the satisfaction of the City.
4. No activities causing noise and/or inconvenience to neighbours being carried out after 7.00pm or before 7.00am, Monday to Saturday, and not at all on Sunday or Public Holidays.
5. Retaining walls being constructed in accordance with a suitably qualified Structural Engineer's design and a building licence being obtained prior to construction.
6. Earthworks over the site and batters must be stabilised to prevent sand or dust blowing, and appropriate measures shall be implemented within the time and in the manner directed by the Council in the event that sand or dust is blown from the site.

SPECIAL CONDITIONS

7. Plans submitted with the building licence application are to demonstrate the following design changes being made to the satisfaction of the City, as indicated in red on the approved development plan:
 - i. the rear retaining wall being modified to achieve a maximum height of no more than 2 metres measured from natural ground level at the base of the wall
 - ii. the side retaining walls being modified to achieve a height of no more than 9.0 metres AHD.
 - iii. The provision of access stairs to the rear sewer easement area.
8. Screen walls or fencing being constructed on top of the retaining walls to the City's satisfaction.
9. The rear (unretained) portion of land within the sewer easement as shown on the approved plan shall remain clear of any fill and/or debris at all times and be maintained by the landowner to the satisfaction of the City.
10. All fill, retaining walls and associated footings and piles shall be fully contained within the subject lot.

FOOTNOTES

1. The development is to comply with the requirements of the Building Code of Australia.
 2. Condition 6 is intended to ensure there is no dust or sand nuisance generated for other property owners. It is the landowner's responsibility to maintain the site in such a condition that no sand or dust will be blown from the site.
 3. In relation to Condition 7, the required changes are considered necessary in order to reduce the impact of the proposed retaining walls on adjoining properties.
 4. The applicant is advised that Condition 8 has been imposed in order to eliminate privacy and overlooking concerns associated with the development.
 5. The applicant is advised that dividing fences are controlled through the Dividing Fences Act. Accordingly owners should liaise with the adjoining landowner if there is an intention to remove or replace any portion of fencing.
- (2) issue a Schedule 9 Notice of Determination on Application for Planning Approval (inclusive of MRS Form 2 Notice of Approval); and
- (3) advise the applicant and submissioners of Council's decision accordingly.

COUNCIL DECISION

Background

This item was previously presented to the ordinary Council meeting of 12 February 2009 where it was resolved as follows:

That Council defer its determination for the development of retaining walls on Lot 399 (No. 6) Cadiz Place Coogee, to allow the applicant and objectors to have the opportunity to enter into negotiations with a view to coming to a positive outcome on this matter, and should an agreement not be reached by the end of February, the matter be presented to the March Ordinary Council Meeting.

In accordance with Council's resolution of 12 February 2009, a meeting was held at Council's offices on 27 February with the following attendees:

Councillor Attril, Councillor Romano, Councillor Limbert, Mr Adam Pearson (applicant), Mr Fred Tarbotton, Mrs Morena Tarbotton (both of 6 Strickland) and Mrs Jean Dickson (8 Cadiz Place) and Vicki Lummer (Manager Statutory Planning).

Discussion at the meeting resulted in the following points becoming clear :

- Mrs Jean Dickson raised concerns in regard to the length of proposed retaining wall that abuts her property. Her concerns were that the wall was not long enough to retain the entire fill and should be extended further.

Council officers have investigated this and it is recommended that the applicant be required to retain all fill on site, utilising retaining walls built completely on the subject property. In this instance there may be longer walls required. Condition 10 of the recommendation adequately covers this issue.

- Fred and Morena Tarbotton raised the following concerns in regard to the proposed retaining wall:
 1. The wall, if constructed 1.6 m from their common boundary to a height of 2 m will dominate their yard and entertaining area, it would block their sunlight and affect their privacy. They are very opposed to this (these comments were raised in their previous submission and have not changed).
 2. They would not be opposed to the construction of 2 walls, one of 1.250 m on the common boundary with a 1.8 m height fence on top and then another retaining wall of 1.250 m setback 1.6 m with an additional fence on top. This, they believe will better protect their privacy and provide better visual amenity. (These comments are unchanged from the February consideration of this application).
- Mr Adam Pearson raised the following concerns in regard to the matter:
 1. He does not favour the officer's recommendation from the 12 February report (compromise of a 2m high wall setback 1.6 m) as this will leave his finished lot level lower than both of his neighbours in Cadiz Place.
 2. He is not willing to split the wall into 2 steps as favoured by the Tarbottons as there will be additional costs in ensuring

the lower wall is correctly constructed, taking into account the proximity of the pool in the Tarbotton's garden and the need for the wall to have piled footings.

All parties have been made aware of the right of appeal (application for review of Council's decision) that will exist after Council makes a determination of the application.

- Officer comments on the above discussion are as follows:
 1. The option of splitting the wall is possible. There would have to be engineering certification to ensure that both walls are adequate. There is also the added requirement that the second retaining wall may have to extend down to the level of the first wall as if Water Corp need to excavate the sewer, the second wall would be undermined if it did not extend to the sewer level.
 2. Whether the wall is split or not, the overall height from the Tarbotton's garden will be the same.

The summation of the discussion at the meeting and afterwards, is that neither party is willing to compromise their position from that which was evident at the 12 February meeting. Given this, the recommendation to Council on this matter remains unchanged.

Zoning:	MRS:	Urban
	TPS3	Residential 'R20'
Land use:	Single (R-Code) House	
Lot size:	781m ²	
Use class:	'P'	

The subject site is located at 6 Cadiz Place in Coogee. It is a vacant site and has a fall of approximately 3.5 metres from the frontage to the rear of the property. The site is bounded by 5 properties, all containing single storey residences. A Water Corporation sewer easement measuring 1.6 metres in width spans the full length of the rear of the subject site. A 1.5 metre high retaining wall and associated fence was located at the rear of the site however this has since been removed by the landowner.

Submission

The applicant proposes to construct retaining walls on the southern, eastern and northern boundaries of the subject site. The southern and northern walls are proposed to be located adjacent to the common boundary while the eastern (main) retaining wall is proposed to be located 1.6 metres from the rear boundary. The construction of the retaining walls has been proposed in order to create a relatively 'flat' site which is approximately a metre below street level. In order to

achieve this, the eastern retaining wall has been proposed at a revised height of 2.52 metres above ground level. The applicant originally proposed a rear wall height of 3.45 metres however amended plans have been received reducing the scale of the development as detailed below.

The proposal still does not comply with the retaining limits specified by the Acceptable Development Criteria of the Residential Design Codes of Western Australia (R Codes). As such, the proposal was advertised to surrounding neighbours and objections were received which is the basis for the proposal being referred to Council for determination.

Report

The applicant initially proposed the construction of large retaining walls in order to achieve a flat lot which was level with the street. In order to achieve this, the application proposed a rear boundary retaining wall height of 3.45 metres.

Neighbour Consultation

City Officers had major concerns with the application as proposed and in accordance with the R Codes and the City's Planning and Development Policy No. 50 – Residential Design codes – Neighbour Consultation Guidelines (APD50) proceeded to refer the application to neighbouring properties for comment. Three submissions were received objecting to the proposal. All three submissions objected to the proposal on the following grounds:

- Height and scale of the proposed wall visually obtrusive
- Will restrict access to direct sunlight and cause overshadowing
- Lack of privacy and create overlooking concerns

Given the validity of the concerns raised by the submissions received and the non-compliant nature of the proposal, City Officers met with the applicant to discuss potential alternatives. Various options were recommended including incorporating an undercroft garage with a future dwelling design and reducing the height of the retaining required to below street level. As a result, the applicant submitted amended plans with the rear retaining wall being setback 1.6 metres from the rear boundary however the height of the retaining wall remained the same (3.45 metres) despite the advice given to the applicant by City Officers to reduce the height and scale of the retaining.

The amended plans were referred to adjoining landowners for comment as the proposal still included variations to the acceptable development provisions of the R Codes. Three submissions objecting to the revised proposal were received from the same adjoining landowners who commented on the original development plans. The nature of the objections remained the same despite the applicant

providing a 1.6 metre setback from the rear boundary to the main retaining wall.

In recognition of the concerns raised by adjoining landowners and City Officers, the applicant once again submitted revised plans. The second set of revised plans maintained the proposed 1.6 metre setback of the rear retaining wall to the rear boundary however the wall height had been reduced by a metre to achieve a maximum height of 2.52 metres. Although the reduction in retaining height was based on advice from City Officers, the application was required to be referred to adjoining landowners for a third and final time.

As a result of the latest advertising period, a total of four (4) submissions were received with all raising objections to the proposal. A schedule of submissions has been provided as an attachment to this report.

The main issues raised in the submissions received are as follows:

- Proposal will reduce access to sunlight
- Proposed wall is too high and not in keeping with surrounding development.
- Proposal will affect property values.
- Development does not comply with Council guidelines.
- Issues of overlooking and privacy will occur.
- Maintenance concerns with area between boundary and rear wall particularly as no access/stairs proposed.
- Location and depth of retaining wall pylons/suspended footings will lead to further damage of our property and swimming pool.

It should be noted that the majority of the above comments are considered valid reasons for objecting however some are not related to planning matters (i.e. property values) and issues that could be controlled through conditions of approval (i.e. maintenance and access to rear area, overlooking/privacy concerns, potential of subterranean damage etc.).

Compliance with R Codes

As previously stated, the revised proposal does not comply with various design requirements of the R Codes. With regards to the retaining and site works proposed, the R Codes specifies the following Acceptable Development Criteria:

“6.6.1 - Excavation or fill

A1.4 Filling behind a street setback line and within 1 m of a common boundary not more than 0.5 m above the natural level at the boundary except where otherwise stated in a local planning policy or equivalent.”

Given that proposed walls reach a maximum height of 2.52 metres above the natural level at the boundary, the development does not meet the above acceptable development criteria.

As the proposal does not meet the acceptable development criteria, it is required to be assessed in accordance with the relevant Performance Criteria as follows:

“6.6.1 - Excavation or fill

P1 Development that retains the visual impression of the natural level of a site, as seen from the street or other public place, or from an adjoining property“

Given that the subject lot has a fall of approximately 3.5 metres from the frontage to the rear, it is acknowledged that retaining is required in order to provide suitably level site in order to accommodate the construction of a dwelling. However, the height and scale of the proposed retaining is not considered to satisfy the above criteria particularly as viewed from adjoining properties. A suitable reduction in the retained levels would be required in order to achieve compliance with the above fill criteria.

The development is also required to satisfy Element 6.9 (Design of Climate Requirements) of the R Codes. The relevant Performance Criteria for assessment of the proposal is as follows:

“6.9.1 - Solar access for adjoining sites

P1 Development designed to protect solar access for neighbouring properties taking account the potential to overshadow:

- outdoor living areas;*
- major openings to habitable rooms;*
- solar collectors; or*
- balconies or verandahs.”*

It is considered that the height of the rear retaining wall would impact negatively on the ability for the adjoining lots to the rear of the subject site to access natural sunlight given the potential 4.32 metre height of the rear retaining wall and associated fencing (2.52 metre retaining wall plus 1.8 metre high fence). As such it is considered that the development as proposed does not fulfil the above requirement.

Site Works and Boundary Alignment

Prior to applying to the City for approval to construct the proposed retaining walls, the applicant obtained a survey of the subject site. The survey revealed that the existing 1.5 metre high retaining wall (installed in 1992) which spanned the rear boundary had been incorrectly

positioned by the previous owner. The wall was located approximately 300 millimetres within the subject site. The applicant proceeded to excavate and remove the rear retaining wall in order to place the proposed new retaining wall along the correct the alignment of the boundary.

The rear adjoining landowner/s lodged a complaint with City Officers with regards to the removal of the retaining wall and provided background information to the boundary alignment issue. The owners of the rear adjoining property (6 Strickland Court) advised that although the retaining wall had been installed incorrectly, the previous landowner of 6 Cadiz Place (subject site) was aware of the anomaly and allowed them to use the additional land parcel.

The owners of 6 Strickland Court have since lodged a written application to the Registrar of Titles for adverse possession of the relevant portion of land pursuant to the *Transfer of Land Act 1893*. The owners have subsequently requested that Council defer consideration of the subject application until a determination has been made by the relevant authority.

It is considered that the application need not be deferred by Council as the proposed walls are fully contained within both the current and potentially modified boundaries of the subject lot. Furthermore, the proposed eastern retaining wall is located along the western boundary of the sewer easement and will therefore not be affected by any potential change to the common boundary which is located on the east of the sewer easement. Deferral could only have been considered had the proposal not have been revised to relocate the boundary retaining wall to 1.6 metres away from the common boundary.

Alternatives to Proposed Development

Although the latest revised plans are an improvement on the original plans submitted as part of the application, it is considered that given the validity of the submissions received from adjoining landowners, a further reduction of the height of the proposed retaining walls is required. Given that the previous 1.5 metre high retaining wall was considered the rear 'natural' ground level of the subject site, the development of an additional 0.5 metres retaining above the historical retaining could be considered to be acceptable in terms of the R Codes.

With the existing rear retaining wall having already been removed, the revised site levels are identified as ranging from 7.0 metres (AHD) at the rear to 10.5 metres (AHD) at the frontage. Therefore the development of a 2.0 mere high retaining wall at the rear of the site will achieve an average site level of 9.0 metres (AHD) which is consistent with surrounding development.

Conclusion

Based on the above discussion, Council is presented with three options as follows:

Option 1

That the proposed development be refused based on the following reasons:

- The proposal is contrary to the objective of the R Codes Element 6.6 – Site Works, “to preserve the sense of the natural topography of the site and locality with a view to the protection of streetscape and the amenity of adjoining properties”.
- The proposal is contrary to the R Codes Performance Criteria 6.6.1 – Excavation or Fill by virtue of “not retaining the visual impression of the natural level of the site as seen from the street or adjoining properties”.
- The proposal is contrary to the R Codes Performance Criteria 6.9.1 – Excavation or Fill provisions of 6.9.1 - Solar Access for Adjoining Sites by virtue of “not being designed to protect solar access for neighbouring properties taking into account the potential to overshadow outdoor living areas and major openings to habitable rooms”.
- The proposed height of the retaining will set an undesirable precedent for residential development in the area.

OR

Option 2

That the proposed development be approved in its current form based on the following reasons:

- The walls are required in order to facilitate the construction of a dwelling on the property at street level;
- With suitable fencing the proposal would not cause any privacy or overlooking issues to adjoining properties.

OR

Option 3

That the proposed development be conditionally approved with a reduced maximum rear retaining wall height of 2 metres (above ground level) based on the following reasons:

- Reducing the approved height of the rear wall to 2 metres above ground level will reduce the impact of retaining on adjoining landowners and retain the natural impression of the site from the street.
- Retaining above the 0.5 metre maximum prescribed by Acceptable Development Criteria 6.6.1 (A1.4) of the R Codes is required in order to facilitate the construction of a dwelling and functional private open space on the property;
- With suitable fencing and screening measures, the proposed lower wall height should not cause any privacy or overlooking issues to adjoining properties.

It is recommended that Council approve the application subject to revised plans with a reduced wall height based on the reasons mentioned in Option 3 above.

Strategic Plan/Policy Implications

The Planning Policy which applies to this item is:-

APD50 - Residential Design Codes – Neighbour Consultation Guidelines

Strategic Plan/Policy Implications

Demographic Planning

- To ensure the planning of the City is based on an approach that has the potential to achieve high levels of convenience and prosperity for its citizens.
- To ensure development will enhance the levels of amenity currently enjoyed by the community.

Budget/Financial Implications

N/A

Legal Implications

Town Planning Scheme No. 3
Planning and Development Act 2005
State Administrative Tribunal Regulations

Community Consultation

In accordance with Council's Policy APD50, the proposal was advertised to five (5) surrounding neighbours for comment. four (4) neighbours responded with submissions objecting to the proposal.

Attachment(s)

1. Location Plan (indicating submissioners)
2. Site Plan
3. Elevation
4. Schedule of Submissions

Advice to Proponent(s)/Submissioners

The Proponent(s) and those who lodged a submission on the proposal have been advised that this matter is to be considered at the 12 March 2009 Council Meeting.

Implications of Section 3.18(3) Local Government Act, 1995

Nil.

15. FINANCE AND CORPORATE SERVICES DIVISION ISSUES

15.1 (OCM 12/3/2009) - LIST OF CREDITORS PAID - JANUARY 2009 (5605) (K LAPHAM) (ATTACH)

RECOMMENDATION

That Council receive the List of Creditors Paid for January 2009, as attached to the Agenda.

COUNCIL DECISION

Background

It is a requirement of the Local Government (Financial Management) Regulations 1996, that a List of Creditors be compiled each month and provided to Council.

Submission

N/A

Report

The list of accounts for January 2009 is attached to the Agenda for consideration. The list contains details of payments made by the City in relation to goods and services received by the City.

Strategic Plan/Policy Implications

Governance Excellence

- To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices.

Budget/Financial Implications

N/A

Legal Implications

N/A

Community Consultation

N/A

Attachment(s)

List of Creditors Paid – January 2009.

Advice to Proponent(s)/Submissioners

N/A

Implications of Section 3.18(3) Local Government Act, 1995

Nil.

15.2 (OCM 12/3/20099) - STATEMENT OF FINANCIAL ACTIVITY - JANUARY 2009 (5505) (N MAURICIO) (ATTACH)

RECOMMENDATION

That Council receive the Statements of Financial Activity and associated reports for January 2009, as attached to the Agenda.

COUNCIL DECISION**Background**

Regulation 34(1) of the Local Government (Financial Management) Regulations 1996 prescribes that a local government is to prepare each month a Statement of Financial Activity.

Regulation 34(2) requires the Statement of Financial Activity to be accompanied by documents containing:–

- (a) details of the composition of the closing net current assets (less restricted and committed assets),
- (b) explanations for each material variance identified between YTD budgets and actuals; and
- (c) any other supporting information considered relevant by the local government.

Regulation 34(4)(a) prescribes that the Statement of Financial Activity and accompanying documents are to be presented to the Council.

Submission

N/A

Report

Attached to the Agenda is the Statement of Financial Activity for January 2009 and associated reports. These include explanations for material variances within operating revenue and expenditure, as well as for capital works & project expenditure.

Note 1 shows the program split for grants and contributions received towards asset purchase and development.

Note 2 provides a reconciliation of Council's net current assets (adjusted for restricted assets and cash backed reserves). This provides a financial measure of Council's working capital and an indication of its liquid financial health.

The Reserve Fund and Restricted Funds Analysis Statements substantiate the calculation of Council's net current assets position.

The Reserve Fund Statement reports the budget and actual balances for Council's cash backed reserves, whilst the Restricted Funds Analysis summarises bonds, deposits and infrastructure contributions held by Council. The funds reported in these statements are deemed restricted in accordance with Australian Accounting Standards.

Material Variance Threshold

For the purpose of identifying material variances in Statements of Financial Activity, Financial Management Regulation 34(5) requires Council to adopt each financial year, a percentage or value calculated in accordance with Australian Accounting Standard AAS5 - Materiality. This standard defines materiality in financial reporting and states that materiality is a matter for professional judgement. Information is material where its exclusion may impair the usefulness of the information provided. AAS5 does offer some guidance in this regard by stating that an amount that is equal to or greater than 10% of the appropriate base amount may be presumed to be material.

The materiality threshold adopted by Council for the 2008/09 financial year is \$50,000 or 10% (whichever is the greater). In applying the threshold, officers give due regard to the nature of the data and how it is best consolidated (e.g. at an individual project level, specific works program, distinct activity, nature and type level etc).

Rating of Jandakot Airport

In accordance with the lease agreement between Jandakot Airport Holdings Pty Ltd (JAH) and the Commonwealth of Australia, the City has reached agreement with JAH for the *rating* of the land known as Jandakot Airport including Jandakot City.

Both JAH and the City of Cockburn are satisfied that the outcome meets the requirements of both parties in the negotiation and reflects in the main what other commercial / industrial property owners remit to the City in terms of rating.

Strategic Plan/Policy Implications

Governance Excellence

- To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices.

Budget/Financial Implications

Where variances reported are of a permanent nature (i.e. not due to timing issues), they will impact Council's end of year surplus/deficit position. Variances identified as at the end of December, were addressed in the mid-year Budget Review.

Legal Implications

Section 6.4 of the Local Government Act, 1995 and Regulation 34 of the Local Government (Financial management) Regulations 1996, refer.

Community Consultation

N/A

Attachment(s)

Statement of Financial Activity and associated reports - January 2009.

Advice to Proponent(s)/Submissioners

N/A

Implications of Section 3.18(3) Local Government Act, 1995

Nil.

16. ENGINEERING AND WORKS DIVISION ISSUES

16.1 (OCM 12/3/2009) - PROCLAMATION OF COCKBURN ROAD REALIGNMENT AT PORT COOGEE (129005)(450002) (J RADAICH) (ATTACH)

RECOMMENDATION

That Council agree to the proposal by the Commissioner of Main Roads in accordance with Section 13 of the Main Roads Act, to proclaim Cockburn Road realignment as a 'highway' and deproclaim the former alignment of Cockburn Road at Port Coogee as shown in Main Roads WA Drawing Nos. 9422-036-04 and 0821-361.

COUNCIL DECISION

Background

Cockburn Road has been re-aligned to the east to accommodate the Port Coogee residential and marina development in North Coogee. The former alignment of Cockburn Road has been removed and the land incorporated into the residential development. This section of Cockburn

Road is under the care and control of Main Roads WA as a 'highway' under the Main Roads Act, and there is a need for the Commissioner of Main Roads WA to formalise responsibilities following its realignment.

Submission

Main Roads WA is seeking Council's endorsement for Main Roads to be proclaimed as the responsible management authority for the realigned Cockburn Road, and to deproclaim their responsibility for the former Cockburn Road alignment past the Port Coogee development.

Report

The proclamation will formalise the management arrangement for the realigned Cockburn Road and should be supported. Under the proclamation arrangement, the delineation of responsibilities will be as follows: -

- Main Roads will be fully responsible for the realigned road except as indicated below.
- The City will be responsible for all footpaths.
- The median islands and western verge area landscaping between the railway line and Powell Road will be maintained by the City at a higher standard with a contribution by Main Roads, to be formalised by a maintenance agreement.

Strategic Plan/Policy Implications

Transport Optimisation

- To construct and maintain roads which are convenient and safe for vehicles, cyclists and pedestrians.

Budget/Financial Implications

N/A

Legal Implications

N/A

Community Consultation

N/A

Attachment(s)

1. 2 letters from Main Roads regarding the Proclamation of Cockburn Road Realignment at Port Coogee.
2. Main Roads WA Drawing Nos. 9422-036-04 and 0821-361 showing the freeway/highway to be formally proclaimed.

Advice to Proponent(s)/Submissioners

N/A

Implications of Section 3.18(3) Local Government Act, 1995

Nil

16.2 (OCM 12/3/2009) - MARKET GARDEN SWAMPS DRAFT ENVIRONMENTAL MANAGEMENT PLAN (6128) (V HARTILL) (ATTACH)

RECOMMENDATION

That Council:

- (1) advertise the draft Market Garden Swamps Environmental Management Plan for public consultation for a period closing sixty (60) days from the date of advertisement; and
- (2) refer the draft Market Garden Swamps Environmental Management Plan to the relevant stakeholder agencies and groups for their review and comment prior to the amendment and adoption of the Market Garden Swamps Environmental Management Plan.

COUNCIL DECISION

Background

The Environmental Services section of Council has a current strategy to develop a suite of environmental reserves management plans to preserve, protect and where appropriate enhance the natural and recreational value of significant regional environmental reserve areas within the City. These plans are a consolidation of much research and review and will provide a more robust framework for reserve management going forward. The Environmental section is also undertaking a broad review of the current Greening Plan and has a clear goal of reconfiguring that report to be more NRM focused. This revised strategy, supported by the site specific EMP's, will underpin the delivery of the strategic vision identified by Council (in its current strategic plan). To date, management plans have been prepared for 8 of 13 major reserves. Those completed are:

1. Bibra Lake Reserve
2. Coogee Beach
3. Denis De Young
4. Freshwater Reserve
5. Lake Coogee
6. Market Garden Swamp
7. The Sanctuary
8. Yangebup/Little Rush Lakes

Requests for quotations for the Market Garden Swamp EMP were called seeking a suitably qualified and experienced multi-disciplinary consultancy to prepare an updated environmental management plan for Market Garden Swamps and immediate environs. The project was awarded to consultants *GHD*.

A first draft was issued to the working group members representing major stakeholders and community members, for review and comment, in June 2008. Officers of the City provided a substantial list of amendments and queries and the draft document was revised and reissued in January 2009.

Submission

Council to consider the Draft Market Garden Swamps Environmental Management Plan (EMP) and endorse it for advertising and for public comment for a period of sixty days.

Report

The focus of the Market Garden Swamp Management Plan is on the conservation and management of the natural wetland values and the surrounds; however, the plan also includes landscaping and recreational components. The plan incorporates Market Garden Swamps 1, 2 and 3 but at this stage Market Garden Swamp 3 is not managed by the City and as such recommendations may need to be reviewed at a later date.

The Management Plan discusses the following items:

- Management Zones
- Natural Environmental Values
- Management Objectives
- Working with the Community
- Recommendations
- Appendix A – Figures
- Appendix B – Flora
- Appendix C - Fauna

The community group “Friends of Market Gardens Swamps” and Environmental Services consulted and provided information for the

report. Environmental Staff are supportive of the report as it gives clear direction for future management.

Strategic Plan/Policy Implications

Infrastructure Development

- To construct and maintain parks and bushland reserves that are convenient and safe for public use, and do not compromise environmental management.

Lifestyle and Aspiration Achievement

- To deliver our services and to manage resources in a way that is cost effective without compromising quality.

Natural Environmental Management

- To conserve, preserve and where required remediate the quality, extent and uniqueness of the natural environment that exists within the district.

Budget/Financial Implications

The Market Garden Swamp Reserve Draft EMP cost \$31,152 + GST to prepare of which \$15,000 was covered by a grant from Lotterywest.

The costs for future works have not been identified in the report and will need to be addressed in the finalisation of the document. It is anticipated however that a majority of the works will be funded through the normal operating budget.

In the current operational works program the following projects have funds allocated to this project area:

- OP 8086Market Garden Swamp 1.....\$77,770
- OP 8093Market Garden Swamp 2\$44,910

In the current capital works program the following projects have funds allocated to this project area:

- CW 5561Information Signage (portion of)\$11,500
- CW 5569Market Garden Swamp 2-Dual use path.....\$36,500
- CW5574Market Garden Swamp 1-Boardwalk\$20,000

Legal Implications

N/A

Community Consultation

Copies of the draft *Market Garden Swamps Environmental Management Plan* are available in the City's Libraries and on the website. A public comment period of 60 days will be advertised in local papers and in the City's other usual media. Council are therefore likely to consider the recommended final EMP at the 11 June 2009 OCM.

A request for comment and approval will be issued with copies of the draft document to:

- Department for Environment and Conservation – Regional Parks Branch
- Department for Environment and Conservation – Beeliar Regional Park Community Advisory Committee
- Heritage Council of Western Australia
- The City of Cockburn Aboriginal Reference Group
- Friends of Market Garden Swamp – Paula Maclay

An invitation to comment with directions to the City's website will be issued to:

- Spearwood Community Residents Association.

Officers will make themselves available for briefing presentations to representative groups and Authorities during the comment period. Comments will be collated by the consultant, and presented to Council at consideration of adopting the finalised management plan.

Attachment(s)

Report for Market Garden Swamps Environmental Management Plan 2009 to 2010.

Copies of the draft *Market Garden Swamps Environmental Management Plan* are available in the City's Libraries and on the website.

Advice to Proponent(s)/Submissioners

N/A

Implications of Section 3.18(3) Local Government Act, 1995

Nil.

17. COMMUNITY SERVICES DIVISION ISSUES

17.1 (OCM 12/3/2009) - LEASE - BIBRA LAKE SCOUTS SHED - HOPE ROAD (1114662) (R AVARD) (ATTACH)

RECOMMENDATION

That Council enter a lease agreement with the Scout Association of Australia, West Australian Branch, for use of the shed located on a portion of Reserve 46787, as shown on the attached plan for a period of twenty-one (21) years with the following terms and conditions:

- (1) for a lease fee of a peppercorn conditional on the lessee being responsible for all maintenance and outgoings associated with the property and
- (2) all other terms and conditions being to the satisfaction of the Chief Executive Officer.

COUNCIL DECISION

Background

The Bibra Lake Scouts Group has utilised an old shed located on the Bibra Lake Reserve in Hope Road, Bibra Lake for many years. The shed is in very poor condition and sections have been heavily infected by white ants and are now unsafe. The Bibra Lake Scouts Group has gained a grant from Lotterywest for \$25,000 towards the cost of a new shed. Council has previously committed \$32,000 from its grants and donations budget towards the shed and a general clean-up of the immediate area.

Submission

The Bibra Lake Scouts Group has approached the City seeking a lease for a portion of the Reserve on which the shed will be located to meet the requirements of the Lotterywest Grant for surety of tenure for the building.

Report

The Bibra Lake Scout Group has an active membership in excess of 100 and is one of the largest and longest serving scout troupes in the State. The Group has utilised the large shed currently on the site to

store their equipment and have a long standing arrangement for the joint use of the Cockburn Wetlands Education Centre building.

Replacement of the current shed will greatly enhance the appearance of the immediate area and provide a safe and secure storage facility for the Scouts.

Bibra Lake Reserve 46787 is designated for Recreation and Educational Use under the City of Cockburn Management Order with the City having the power to lease for a period of up to twenty-one (21) years.

The Scouts are proposing to demolish the existing building and associated out buildings and replace them with a new shed. There are a number of large introduced trees, several old tank stands and a sea container proposed to be removed from the site.

The proposed development will need to adhere to the standard statutory approvals process of similar building works that occur within the City.

Given the benevolent nature of the scout's activities it is proposed that a lease fee of a peppercorn be established with the Scouts being responsible for all other costs associated with the ongoing operation and maintenance of the building.

Strategic Plan/Policy Implications

Infrastructure Development

- To construct and maintain community facilities that meet community needs.
- To provide an appropriate range of recreation areas that meets the needs of all age groups within the community.

Governance Excellence

- To conduct Council business in open public forums and to manage Council affairs by employing publicly accountable practices.

Budget/Financial Implications

The Scouts will be responsible for all building works. Council has previously budgeted the sum of \$32,000 towards this project and a grant has been received from Lotterywest by the Scouts for \$25,000 giving a total project value of \$57,000. It is proposed that the lease document require the Scouts to have responsibility for all maintenance and operation costs associated with the construction and ongoing operation of the building.

Legal Implications

The Local Government is exempted from the requirements of Section 3.58 of the Local Government Act by way of the Clause under the Local Government (Functions and General regulations) 1996 Section 30 (b) (i) that the Scout Group is deemed to be an organisation that has the *objects of which are of a charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature.*

Whilst the Bibra Lake Scout Group will utilize the building the legal entity the City will have the agreement with is the Scout Association of Australia, West Australian Branch.

Community Consultation

The Scouts have utilised the building for a considerable period and the proposal is simply to replace an existing building.

Attachment(s)

1. Site plan showing proposed lease area.
2. Location Plan

Advice to Proponent(s)/Submissioners

The Proponent(s) and those who lodged a submission on the proposal have been advised that this matter is to be considered at the 12 March 2009 Council Meeting.

Implications of Section 3.18(3) Local Government Act, 1995

Nil.

18. EXECUTIVE DIVISION ISSUES

Nil

19. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

20. NOTICES OF MOTION GIVEN AT THE MEETING FOR CONSIDERATION AT NEXT MEETING

21. NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY COUNCILLORS OR OFFICERS

22. MATTERS TO BE NOTED FOR INVESTIGATION, WITHOUT DEBATE

23. CONFIDENTIAL BUSINESS

24 (OCM 12/3/2009) - RESOLUTION OF COMPLIANCE (SECTION 3.18(3), LOCAL GOVERNMENT ACT 1995)

RECOMMENDATION

That Council is satisfied that resolutions carried at this Meeting and applicable to items concerning Council provided services and facilities, are:-

- (1) integrated and co-ordinated, so far as practicable, with any provided by the Commonwealth, the State or any public body;
- (2) not duplicated, to an extent Council considers inappropriate, services or facilities as provided by the Commonwealth, the State or any other body or person, whether public or private; and
- (3) managed efficiently and effectively

COUNCIL DECISION

25. CLOSURE OF MEETING