

## 15.2 PROPOSED MODIFICATION TO SUBDIVISION GUIDE PLAN NO.8A - CONVERSION OF LOT 31 CAMPERSIC ROAD, BRIGADOON FROM 'PRIVATE RECREATION (TENNIS COURTS)' TO "RESIDENTIAL"

(Swan Valley) (Development Services)

### KEY ISSUES

#### New Information

- This application was first considered by the Council at its Ordinary Meeting held on 18 October 2006. As a result of deputations made by residents and the Brigadoon Progress Association and following debate Council resolved to:
  - "1. *Defer consideration of this matter until such time as it can be determined from the Department for Planning and Infrastructure (or other relevant agency) the justification for requiring that the documentation for Amendment No 45 to Town Planning Scheme No. 9 be modified to remove the tennis court lot from 'Area C' which had previously shown it to be transferred to the Crown free of cost.*
  - 2) *Record that the reason for changing the Recommendation is that the deferral will provide Council and the community with the opportunity to determine the reason for the removal of the site from the area to be vested to the Crown and thus hopefully confirm the intentions of both the State and the developer as to the purpose of this land."*
- The applicant has now formally requested that the matter be placed on this Agenda for consideration as he believes the objectors and the City have had sufficient time for which to research all relevant information to either support or reject the application. As this matter has exceeded the 60 days deemed refused period the applicant reserves the right to seek a review to the State Administrative Tribunal (SAT) should the Council refuse the application at this meeting (8 November 2006).
- To date no additional or new information has been received from representatives of the Brigadoon Progress Association. Therefore the matter is presented to Council for determination without change to the previous recommendation.

#### Previous report

- The purchasers of Lot 31 Campersic Road have lodged a Development Application to construct a single dwelling and associated shed on the subject lot.
- The land is zoned "Landscape" under the City's Town Planning Scheme No.9. The lot is designated for "Private Recreation (Tennis Courts) under the applicable Subdivision Guide Plan 8A for Brigadoon and the proposal constitutes a modification to this.
- The proposed modification was advertised for a period of 28 days in accordance

with Scheme requirements, with a sign on site inviting interested parties to make comment and written notification to all Brigadoon residents.

- A total of 96 submissions were received, comprising 82 objections and 14 non objections. The grounds of objections can be summarised as follows:
  - Residents bought into the estate on the basis that the lot was designated for public use and were provided sales brochures to this effect.
  - The lot has been a community asset for 20 years and has consistently been advertised as such.
  - There are limited facilities of this type in Brigadoon.
  - The lot is below the minimum lot size in Brigadoon and will affect the amenity of the estate, establishing a precedent for smaller residential lots.
  - Residential development on this lot will have environmental impacts including visibility from Campersic Road.
  - Questioned the sale process of the subject lot.
- The above points relating to resident/purchaser expectations are noted by staff. However the lot is in freehold title and was never indicated or required to be vested as a public reserve throughout both the Guide Plan and subdivision process. Further, development of a single dwelling is a "P" use under the subject lots "Landscape" zoning and under the provisions contained within Appendix 7 of the Scheme applicable to the Subdivision Guide Plan area. Clause 2.2.6.1 of the Scheme details, in the matter of "P" uses, that Council shall not refuse an application for such by reason of the unsuitability of that use. It is considered highly unlikely that Council could defend on appeal a refusal of the application on the basis a residential use is unsuitable.
- There are no prescribed minimum lot sizes under the Scheme for the Landscape zone, notwithstanding this is not an application for subdivision to create a new lot. Subdivision lot sizes were predetermined in the adopted Subdivision Guide Plan.
- In relation to environmental issues, the applicant has submitted a geotechnical report confirming the lot capable of accommodating a dwelling and effluent disposal system. The proposed setbacks are considered acceptable noting the size of the lot and existing site conditions. Whilst the matter of the visibility of the house from the road was noted as a point of objection it is also noted that the applicant's intention is to selectively revegetate along the boundaries. This should afford a level of screening.

It is recommended that Council endorse the modification to Subdivision Guide Plan 8A to delete the designation of Lot 31, Campersic Road, Brigadoon as "Private Recreation (Tennis Courts)" and approve the proposed development of a single house subject to standard conditions and a special condition requiring the applicant to designate a building envelope, being not more than 750m<sup>2</sup>, on feature survey plan of the lot. The modified Subdivision Guide Plan be forwarded to the WAPC for its endorsement in accordance with Clause 17 of the applicable provisions of Appendix 7 of the Scheme prior to the issue of a building licence.

## **AUTHORITY/DISCRETION**

Council has discretion under point 17 of the provisions contained in Appendix 7 of the Scheme relating to the Brigadoon Estate to modify the Subdivision Guide Plan. Clause 17 states:

*"With the approval of the State Planning Commission, the Subdivisional Guide Plan may be modified where circumstances direct, but the number of lots created through subdivision of the entire property shall not exceed 493, exclusive of lots for water supply, private recreation, radio transmission, public purposes or other non-saleable purpose".*

## **BACKGROUND**

Applicant:	V. Scaramozzino
Owner:	Brian Dale
Zoning:	TPS - MRS - Landscape Rural
Strategy/Policy:	Gidgegannup/Brigadoon Place Plan
Development Scheme:	City of Swan Town Planning Scheme No.9
Existing Land Use:	Formerly Tennis Courts - contains a dam
Lot Size:	7557m <sup>2</sup>
Area:	-
Use Class:	Dwelling; Single House "P"

## **DETAILS OF THE PROPOSAL**

The applicant, who has contracted to purchase the subject lot from the owner, is seeking Council's approval to develop a single residence and shed. This will entail the removal of the tennis courts and picnic facilities on the site which have been utilised by Brigadoon residents since their inception some 20 years ago.

## **DESCRIPTION OF SITE**

Lot 31 is an irregularly configured lot of 7558m<sup>2</sup> in area situated on the western side of the intersection of Connemara Drive and Campersic Road in Brigadoon. The lot is predominantly cleared, slopes gently from east to west and contains a tennis court, gravel parking and picnic area and a dam in the south-west corner which was in-situ prior to the area being subdivided. A drainage easement exists on the property.

## **SITE HISTORY/PREVIOUS APPROVALS**

The Brigadoon Estate was approved and developed during the 1980's by Bond Corporation, in accordance with Council's *Town Planning Scheme No 9* and provisions specified in *Appendix 7 – Special Rural Zone No 8 "Swan Valley Special Rural and Recreation"*.

The aforementioned provisions relate to the staged development of Brigadoon ie Stages 1 to 4 inclusive, with Lot 31 being located in Stage 2.

On 22 September 1989 *Amendment 45* (of TPS 9) was gazetted modifying the original provisions and development criteria for continuing stages of the estate.

The main issues in Amendment 45 were -

- superceding of Special Rural Zone No 8 Subdivisional Guide Plan with Subdivision Guide Plan 8A;
- amending the Scheme Text Appendix 7 relating to ownership of "*Public Open Space*" and "*Regional Open Space*";
- such land being transferred free of cost to those respective bodies.
- other text changes related to fencing, septic tanks proximity to a creek or stream, reticulated water to all lots, and the number of lots being increased.
- amending the Scheme maps to reflect zoning changes.

The subdivision layout of Brigadoon and specifically Stage 2 included the natural drainage system in open space and recreation avenues and consistent with significant vegetation and topographic features.

The road system was designed to enhance the watershed thereby reducing erosion potential and disruption to the natural drainage system.

The land in Brigadoon remaining in Bond Corporation ownership/control was transferred to Maymerge Australia Holdings on 27 June 1997; this included that of Stages 2, 3 and 4.

18 October 2006 As a result of deputations made by residents and the Brigadoon Progress Association and following debate Council resolved to:

*"1. Defer consideration of this matter until such time as it can be determined from the Department for Planning and Infrastructure (or other relevant agency) the justification for requiring that the documentation for Amendment No 45 to Town Planning Scheme No. 9 be modified to remove the tennis court lot from 'Area C' which had previously shown it to be transferred to the Crown free of cost.*

*2) Record that the reason for changing the Recommendation is that the deferral will provide Council and the community with the opportunity to determine the reason for the removal of the site from the area to be vested to the Crown and thus hopefully confirm the intentions of both the State and the developer as to the purpose of this land."*

## **OTHER RELEVANT PREVIOUS DECISIONS OF COUNCIL**

Not applicable.

## **APPLICANT'S SUBMISSION**

The applicant has provided the following comment with respect to the objections raised through public advertising;

### **PUBLIC USE:**

*We do not know whether residents bought their land on the basis that Lot 31 was designated for public use, but given the current use of "Private Recreation" and that a key had to be obtained before a resident could use the tennis court, it was hardly a public asset that anyone could access at anytime.*

### **COMMUNITY ASSET FOR 20 YEARS:**

*We think that a little clarification is needed with this statement, because unless we are mistaken the lot was owned by one developer who sold it to another developer who then sold it to the current owner about 2 years ago. However the tennis court on the corner of Caspian Way and Boulonais Drive is a community asset and still remains a community asset.*

### **SMALLER RESIDENTIAL LOTS:**

*Lot 31 Campersic Road already has its own title and we are not applying for further subdivision of a large lot to create this one, therefore a precedent for smaller residential lots within the estate will not be set, as this lot already exists.*

### **ENVIRONMENTAL & VISUAL IMPACTS:**

*Modern day effluent systems available on the market these days ensure environmental issues don't occur. As to the point made about visibility from Campersic Road, what does this statement mean exactly? Does it mean that every residence up and down Campersic or any other road in Brigadoon should never have been approved, due to the visual impact on the Brigadoon estate.*

### **SALES PROCESS:**

*The sales process has absolutely nothing to do with our development application as the lot is a privately owned asset and not a public one.*

## **PUBLIC CONSULTATION**

The proposal was advertised for public comment for a period of 28 days, with written notification to all residents of Brigadoon and a sign erected onsite inviting comment. A total of 98 submissions were received, comprising 84 objections and 14 non-objections. The grounds for objections raised in submissions will be addressed further in this report.

## **CONSULTATION WITH OTHER AGENCIES AND/OR CONSULTANTS**

None undertaken.

## **REPORT**

### **Permissibility of Use**

The Brigadoon Estate is subject to an anomaly whereby the upland area, including the subject lot, is zoned "Landscape" under the Scheme and subject to these provisions and yet is also contained within Subdivision Guide Plan 8A which has its own separate provisions. As to which of these provisions takes precedence, or whether both apply, has previously been subject to differing legal opinion. Notwithstanding, the Scheme provisions applicable to Subdivision Guide Plan 8A do provide the potential for its modification. Further, the provisions applicable to the "Landscape" zone and the Subdivision Guide Plan both list a single dwelling as a "P" use. Clause 2.2.6.1 of the Scheme details, in the matter of "P" uses, that Council shall not refuse an application for such by reason of the unsuitability of that use within the zone.

Almost all the public submissions objecting to the modification stated the point that the designation of the lot as a community asset/public space was a selling point from the inception of the Brigadoon Estate. Many have stated this formed part of their reason for purchasing. A review of Council's documentation on the Subdivision Guide Plan and the staged subdivision process itself note significant modification between the original guide plan and the modification 8A which was the subject of Scheme Amendment No.45 in 1989. This amendment ceded significant tracts of land comprised within the original Guide Plan and in the ownership of the developer (then Bond Corporation) to the then State Planning Commission, Council and the Crown. This included land to be vested as Reserves for Recreation. Critically it appears that the final documentation, based on modifications to the amendment documents directed by the SPC, deleted the inclusion of the subject lot as a public reserve.

It is occasionally noted in general that sales brochures provided to purchasers do not always accurately reflect statutory documentation. In this instance, whilst sales brochures for the estate do indicate the land as public open space, this is unfortunately an incorrect representation. Whilst Council may be sympathetic to the position of residents in this matter, it has no responsibility or control over such representation.

To this end the assessment of the proposed change of use contends on one hand the right to use the lot for a single residence, which is undeniable under the Scheme, with its designation as Private Recreation under the Guide Plan, where the modification of such is discretionary. On balance it is considered that it would be difficult to sustain on appeal a refusal of the application for a single dwelling on the grounds that such use is inappropriate within the zone.

### **Minimum Lot Size**

Many submissions made the point that permitting the subject lot to be used for residential purposes would be inconsistent with the minimum lot size within the Brigadoon Estate, would establish an undesirable precedent and degrade the existing amenity. It should be noted that there is no minimum lot size specified for the "Landscape" zone applicable to the lot. Whilst the Gidgegannup/Brigadoon Place Plan

recommended an amendment to Scheme provisions to introduce a minimum 4 hectare lot size for the existing estate, these have not been adopted within a formal policy under the Scheme and have no statutory weight. Notwithstanding this, the proposal does not entail subdivision and the creation of a new lot. It is therefore considered that approval for the use of the lot for a single residence does not compromise Scheme zoning objectives.

### **Environmental Impacts and Setbacks**

It has been contended that the subject lot is unsuitable for development. Certainly the original Guide Plan documentation did not detail a geotechnical report for the lot, however the applicant has provided one. This details that ground stability is sufficient to accommodate housing foundations. Onsite effluent disposal can be facilitated with amended soils treatment.

The applicant intends to site the house on the existing tennis courts. This will provide for a minimum setback of approximately 17 metres to the boundary with Connemara Drive. The proposed location of the shed (54m<sup>2</sup>) is intended to be in the existing gravel car park area, 14 metres from the northern rear boundary. Given the size of the lot, the fact the existing cleared areas are being utilised and the existing dam onsite, the proposed setbacks are considered acceptable. Consistent with other lots within the estate, however, the applicant will need to designate a building envelope for the subject lot. This should be nominally limited to approximately 10% of the lot area - i.e. 750m<sup>2</sup> and should be drafted on a site feature survey. This is a recommended requirement of any approval.

Visibility of a residence in this location is not considered to negatively affect the amenity of the estate and it is noted that the applicant intends to provide planting that should afford a level of screening from the road.

### **New Information**

Council deferred making a determination at its meeting held on 18 October 2006 following deputation and information provided by the residents and the Brigadoon Progress Association.

The applicant has now formally requests that the matter be placed on this Agenda for consideration as he believes the objectors and the City have had sufficient time for which to research all relevant information to either support or reject the application. As this matter has exceeded the 60 days deemed refused period the applicant reserves the right to seek a review to the State Administrative Tribunal (SAT) should the Council refused the application at this meeting (8<sup>th</sup> November 2006).

### **OPTIONS AND IMPLICATIONS**

Option1: Council may resolve to refuse the proposed modification to Subdivision Guide Plan 8A to change the use of the lot from Private Recreation to a single dwelling on the grounds it is inconsistent with the intent of the Guide Plan, will negatively impact on the amenity of the locality as currently enjoyed by residents and is therefore contrary to orderly and proper planning.

This is not the recommended option.

Implications: The applicant will have a right of appeal to the State Administrative Tribunal. It is considered unlikely that Council could successfully sustain a refusal of the application.

Option 2: Council may resolve to approve the proposed modification to Subdivision Guide Plan 8A to change the use of the lot from Private Recreation to allow a single dwelling and associated shed to be developed subject to standard conditions and a requirement for the applicant to submit a site plan, based on a feature survey, designating on the lot a building envelope no greater than 750m<sup>2</sup> in area. The modification should then be forwarded to the WAPC for its endorsement.

This is the recommended option.

Implications: The applicant will be able to build upon the lot they have purchased, however the residents of Brigadoon Estate will forfeit the use of the tennis courts and picnic area they have enjoyed for 20 years.

## **CONCLUSION**

The applicant is seeking Council approval to construct a single residence and associated shed on Lot 31 Campersic Road, Brigadoon. The lot is designated "Private Recreation" under Subdivision Guide Plan 8A, which reflects its historic development and use as community tennis courts. The proposal to replace these with a private residence constitutes a modification to the guide plan and the proposal was duly advertised for public comment for a period of 28 days with a sign on site and written notification to all Brigadoon residents. A total of 98 submissions were received, with 84 objections on the grounds that the lot has historically been represented to residents/purchasers as public open space, has functioned as a community asset for 20 years, there are limited facilities of this type in Brigadoon and its removal will affect the amenity of the locality and the use of the lot for residential purposes does not accord with the minimum lot size for Brigadoon and will thereby set a precedent. Concern was also expressed that the lot is environmentally incapable of supporting residential development.

It is factually incorrect that the lot is "Public Open Space" in the statutory sense. It is comprised in freehold title and is not a reserve. It is zoned "Landscape" under the Scheme and under this zoning and the other applicable provisions relating to Subdivision Guide Plan 8A a single dwelling is a "P" use. The Scheme states that Council shall not refuse a "P" use by virtue that the use is unsuitable within the zone. There are no minimum lot sizes applicable to the "Landscape" zone under the Scheme and a geotechnical report submitted by the applicant confirms the lot capable of residential development. It is recommended that Council endorse the proposed modification and approve the proposed single residence and associated shed subject to standard conditions and the formal designation of a building envelope of 750m<sup>2</sup> on the lot. The modification is then to be forwarded to the WAPC for its endorsement prior to the issue of a building licence.

To date no additional or new information has been received from representatives of the Brigadoon Progress Association. Therefore the matter is presented to Council for determination without change to the previous recommendation.

## **ATTACHMENTS**

- Location Plan / Guide Plan 8A
- Site Plan
- Floor Plan

## **STRATEGIC IMPLICATIONS**

Nil

## **STATUTORY ENVIRONMENT**

City of Swan Town Planning Scheme No.9.

## **FINANCIAL IMPLICATIONS**

Nil

## **RECOMMENDATION**

That the Council resolve to:

- 1) Approve the proposed modification to Subdivision Guide Plan 8A to change the use of the lot from "Private Recreation (Tennis Courts)" to allow a single dwelling and associated outbuilding subject to the following conditions:
  - (a) The applicant provides a feature survey plan of the subject lot with a designated building envelope of not more than 750m<sup>2</sup> in area, within which the proposed residence, shed and effluent disposal system shall be located, to the satisfaction of the Principal Planner.
  - (b) All earthworks and/or associated drainage details shall be in accordance with plans and specifications approved by the Chief Executive Officer.
  - (c) All stormwater produced on the site shall be disposed of on the site to the satisfaction of the Chief Executive Officer.
  - (d) An approved effluent disposal system must be installed prior to the occupation of any building the subject of this approval.
  - (e) The shed shall only be used for domestic and/or rural purposes associated with the property, and not for human habitation.
  - (f) All crossovers must be built and maintained in accordance with City specifications.

- (g) Any additional development, which is not in accordance with the application (the subject of this approval) or any condition of approval, will require further approval of the City.

Advice to Applicant

- (i) Take notice that it is the responsibility of the applicant to advise the landowner(s) and/or builder(s) of the need to satisfy the requirements of the conditions of the planning approval for the subject lot, prior to or on lodgement of Building Applications. The City will not issue a Building Licence until all the conditions of planning approval and any other requirements pertaining to this planning approval have been met (including payment of fees and charges).
- (ii) In accordance with the Local Government (Miscellaneous Provisions) Act 1960 and Building Regulations 1989 a Building Licence application must be submitted to, and approved by the City's Principal Building Surveyor prior to any construction or earthworks commencing on site.
- (iii) To enable your Building Licence Application to be assessed promptly, please ensure a complete application is submitted to the City.

To assist in preparing a complete Building Licence Application refer to the City of Swan website ([cityofswan.com](http://cityofswan.com)) and follow the links to Building Services Applicant Checklists.

If you require assistance, please contact Customer Services on 9267 9267.

- 2) The proposed modification to Subdivision Guide Plan 8A to change the use of the lot from "Private Recreation (Tennis Courts)" to allow a single dwelling and associated outbuilding to be forwarded to the Western Australian Planning Commission for endorsement pursuant to Clause 17 of the applicable provisions of Appendix 7 of TPS9.
- 3) The applicant is advised that a building licence will not be issued until the proposed modification of the Subdivision Guide Plan 8A is endorsed by the WAPC as per recommendation (2) above.

**MOTION** that the Council resolve to:

- 1) Defer consideration of this matter to the next Council meeting to allow further consultation with relevant parties prior to the Council making a decision.
- 2) Record that the reason for changing the Recommendation is to enable consideration to be given to the information tabled by Mr Burgess during his deputation.

(Cr Zannino - Cr Congerton)

**RESOLVED (9/2) TO:**

- 1) Defer consideration of this matter to the next Council meeting to allow further consultation with relevant parties prior to the Council making a decision.
- 2) Record that the reason for changing the Recommendation is to enable consideration to be given to the information submitted by Mr Burgess and to allow further consultation.

Cr McNamara requested that the votes of members be recorded:

For: Mayor Cr Gregorini, Councillors Congerton, Lucas, Haynes, Wainwright, Croy, Zannino, Alban and Holmes

Against: Councillors McNamara and Marino