

### **3.2 REQUEST FOR DELETION OF CONDITION OF PLANNING APPROVAL - LOT 155 TALBOT ROAD, HAZELMERE**

(Midland) (Development Services)

#### **KEY ISSUES**

- The applicant is seeking to modify Condition 3 of the City's Approval to Commence Development dated 16 June 2006 which requires the retention of a three metre wide strip of existing vegetation to provide a screening buffer to Lot 189 Adelaide Street to the south.
- This requirement has been imposed at the request of the adjoining owner of Lot 189 to afford a level of screening of the transport depot as viewed from his property.
- The applicant contends that such a requirement, coupled with the necessary 3 metre wide firebreak and the proposed location of a 40m x 40m compensating basin unreasonably reduces the development area of the site. The applicant has suggested an alternative arrangement of providing 2 metre high (brush wood) fencing.
- Given the finished floor levels of the office and workshop buildings subject of the approval and the difference in elevation with the residence on Lot 189 it is considered that the normal 2 metre high (brush wood) fencing would provide less effective screening than a strip of existing (taller) trees.
- The subject lot's General Rural zoning specifies development setbacks of 30 metres from front and rear boundaries and 20 metres from side boundaries. Within this context and noting the variations already granted by Council with respect to setbacks and carparking for this development, and the applicable provision of the zone relating to preservation of remnant vegetation, it is not considered the subject condition unreasonably limits development of the lot.

It is recommended that Council retain this condition.

#### **AUTHORITY/DISCRETION**

Council has discretion under clause 2.3.17 of the Scheme to amend or revoke a Development Approval.

#### **BACKGROUND**

Applicant:	Peter D. Webb and Associates
Owner:	P.M. Bartlett
Zoning:	TPS - General Rural

	Additional Use - Sales and Assembly of Relocatable Buildings and Equipment; Storage; Repairs and the Warehousing of Fitout Equipment.
MRS -	Rural
Strategy/Policy:	NA
Development Scheme:	City of Swan Town Planning Scheme No.9
Existing Land Use:	Vacant
Lot Size:	5.1857 ha
Area:	8385m <sup>2</sup>
Use Class:	Transport Depot "AA"

## DETAILS OF THE PROPOSAL

The applicant is requesting the modification of Condition 3 of the Approval to Commence Development dated 16 June 2006 which states:

*"A 3 metre wide strip of the existing vegetation on the southern boundary adjoining Lot 189 Adelaide Street is to be retained as a buffer".*

It is proposed by the applicant to provide some form of opaque fencing to effect visual screening. Suggested fencing type is a 2.0m high brushwood fencing.

## DESCRIPTION OF SITE

Lot 155 Stirling Crescent is located on the south-eastern corner of the intersection of Talbot Road and Stirling Crescent, Hazelmere, with ready access to the Great Eastern Highway Bypass and Roe Highway. The lot has a frontage of approximately 70 metres to Talbot Road and 360 metres to Stirling Crescent, is relatively flat and vacant, with vegetation in the back half.

The surrounding area is zoned General Rural to the east of Stirling Crescent, is unzoned on the north-western side of Talbot Road and reserved for Public Purposes (airport land) to the west of the subject lot. The area is characterised by industrial and commercial uses, including the Pioneer Road Services bitumen plant on the adjoining land to the west, the Fertals animal by-products plant on the northern side of Talbot Road and other manufacturing and transport businesses.

## SITE HISTORY/PREVIOUS APPROVALS

18 January 1999	Approval for "Transport Depot";
23 February 2000	Final approval by Council to Amendment 363 to Town Planning Scheme No.9 to rezone Pt Lot 155 Stirling Crescent, Hazelmere to facilitate an "Additional Use" - Sales and Assembly of Relocatable Buildings; Storage; Repairs and the Warehousing of Fitout Equipment. The amendment was gazetted on 7 November 2000.

The above Scheme Amendment was effected to facilitate a specific tenant that was interested in locating their business (predominantly related to relocatable accommodation) on the subject lot.

28 February 2001 Approval for "Office, Warehouse, Workshop and Maintenance Building"

The 2 year approval period expired on 28 February 2003. A 12 month extension was granted, expiring 28 February 2004.

13 October 2003 Approval for "Assembly and Sales of Relocatable Buildings and Equipment, Storage, Repairs and Warehousing".

28 September 2005 Approval for Transport Depot and Office.

16 June 2006 Modification to Approval for Transport Depot and Offices

## **APPLICANT'S SUBMISSION**

The applicant contends that the requirements to maintain a 3 metre wide firebreak along the southern boundary of the subject lot coupled with a 3 metre wide vegetation strip and the requirement to install an onsite compensating basin will unreasonably minimise available land for development.

## **PUBLIC CONSULTATION**

None undertaken for this proposal.

## **REPORT**

### **Scheme Provisions for General Rural Zone**

Clause 8.2.4.2 details criteria which Council shall have regard to when exercising its discretion on applications for development, one of which is:

*"Retention of remnant vegetation wherever possible".*

Earlier development approvals for the subject property did not require the retention of the remnant vegetation in the back half of the lot. However in the most recent consideration of proposed modifications to the Development Approval dated 28 September 2005, the exercise of discretion on this matter has been influenced by the request of the owner and resident of Lot 189 Adelaide Street, to the south to retain some of the existing trees along the common boundary of the two properties to provide screening. This matter is discussed in detail below.

It should be noted that the setbacks for the General Rural zone are 30 metres from the front and rear boundaries and 20 metres from the side boundary. The reasons stated by the applicant for opposing the condition requiring a 3 metre wide vegetation strip is that, when coupled with firebreak requirements and the need to accommodate

a sizeable drainage basin, it will render a significant strip of land unavailable for development. It should be reiterated that, whilst Council has discretion to vary setbacks and has done so in favour of the landowners in respect of this development, it is not a reasonable expectation to develop right to the boundary as may be permitted in an industrial zoned property.

### **Amenity**

The subject condition has been imposed to afford a level of screening to the resident of Lot 189 Adelaide Street to the south. This arose after the written request of this owner was received by the City after the issue of its approval dated 28 September 2005. In the subsequent consideration of the modifications approved on 14 June 2006 it was considered reasonable to impose a screening buffer as a condition to address this resident's concern, given the scale of the approved development and the fact that this could be easily facilitated by the owner. The applicant's alternative of providing a 2m high brushwood fencing is not considered to be as effective as a vegetation buffer, given the difference in elevations between the residence on Lot 189 and the area of development on the subject lot would allow for the overlooking of a screen fence of the 2m height. As a further point a vegetation buffer may possibly provide more effective noise dampening than a fence and is considered more desirable on this basis.

### **OPTIONS AND IMPLICATIONS**

Option 1: Council may resolve to delete this condition and impose a new condition allowing for some form of opaque screen fencing (2m high brushwood suggested by applicant) along the common boundary as proposed by the applicant.

This is not the recommended option.

Implications: The amenity of the resident of Lot 189 Adelaide Street may not be preserved as well as if this condition was retained.

Option 2: Council may resolve to retain this condition as imposed in its Approval to Commence Development dated 14 June 2006.

This is the recommended option.

Implications: The applicant will have a right of appeal to the State Administrative Tribunal.

### **CONCLUSION**

The applicant is seeking to modify Condition 3 of the City's Approval to Commence Development dated 14 June 2006 which requires the retention of a three metre wide strip of existing vegetation to provide a screening buffer to Lot 189 Adelaide Street to the south. The applicant's contention is that the condition unreasonably sterilises the land against development and asserts that a form of opaque screen (2m high brushwood) fencing is a better alternative.

The Scheme setbacks prescribed under the subject lots General Rural zoning do not allow as of right development up to the boundary and the contention that the condition represents an unreasonable sterilization of land is not accepted. Given the differences in elevations between the finished development and the adjoining Lot 189 it is considered that screen fencing would be overlooked and would be less effective than a strip of retained taller trees.

It is recommended that the condition be retained.

## **ATTACHMENTS**

Approved Plan.

## **STRATEGIC IMPLICATIONS**

Nil.

## **STATUTORY ENVIRONMENT**

City of Swan Town Planning Scheme No. 9

## **FINANCIAL IMPLICATIONS**

Nil

## **RECOMMENDATION**

That the Council resolve to:

- 1) Retain Condition 3 of the City's Approval to Commence Development dated 14 June 2006.

**CARRIED**