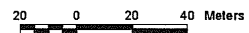


Digital Topography : DLI October 2002
Prepared by City of Joondalup - 12/06/2006 - djt



**PROPOSED AMENDMENT NO 38
SCHEDULE OF SUBMISSIONS FOLLOWING ADVERTISING
(CLOSED 19 SEPTEMBER 2007)**

NO	NAME OF SUBMITTER	DESCRIPTION OF AFFECTED PROPERTY	SUBMISSION SUMMARY	OFFICER OR COUNCIL'S RECOMMENDATION
1	J & C Lewis	16 Marjorie Street Mullaloo 6027	See Attachment 3 Page 1	Noted.
2	M A & A W Pritchard	6 Oceanside Promenade Mullaloo 6027	See Attachment 3 Page 2	The submission does not relate to the issue under consideration. The submitter will be advised to contact the tavern owners to pursue the issue raised.
3	Western Power	N/A	See Attachment 3 Page 3	Noted.
4	Department of Health	N/A	See Attachment 3 Page 4	Noted.
6	F Luck	80 Oceanside Promenade Mullaloo 6027	Same as submission No 5 See Attachment 3 Page 6	See submission No 5
7	Water Corporation	N/A	No objection See Attachment 3 Page 7	Noted.
8	R & L Prestage	6 Northshore Drive Mullaloo 6027	See Attachment 3 Page 8	See submission No 5
9	R Went	7 Leach Street Marmion 6020	See Attachment 3 Page 9	See submission No 5
10	M Went	7 Leach Street Marmion 6020	See Attachment 3 Page 10	See submission No 5
11	M Berney	1B Hood Terrace Sorrento 6020	See Attachment 3 Page 11-12	See submission No 5 Amendment No 38 is not about height limits within the City of Joondalup
12	L Smith	14 Hood Terrace Sorrento 6020	See Attachment 3 Page 13	See submission No 5
13	J R Bell	267 West Coast Drive North Beach 6020	See Attachment 3 Page 14	See submission No 5

**PROPOSED AMENDMENT NO 38
SCHEDULE OF SUBMISSIONS FOLLOWING ADVERTISING
(CLOSED 19 SEPTEMBER 2007)**

14	J Matthews	7B Hood Terrace Sorrento 6020	See Attachment 3 Page 15	See submission No 5
15	L Nunn	11 Hood Terrace Sorrento 6020	See Attachment 3 Page 16	See submission No 5
16	T Smith	14 Hood Terrace Sorrento 6020	See Attachment 3 Page 17	See submission No 5
17	G Baines	3 Hood Terrace Sorrento 6020	See Attachment 3 Page 18	See submission No 5
18	M Cox	16A Hood Terrace Sorrento 6020	See Attachment 3 Page 19	See submission No 5
19	S Baines	3 Hood Terrace Sorrento 6020	See Attachment 3 Page 20	See submission No 5
20	S Hastie	12 Hood Terrace Sorrento 6020	See Attachment 3 Page 21	See submission No 5
21	M Moon	6 Carew Place Greenwood 6024	See Attachment 3 Page 22-26	The proposed amendment does not alter the density of the development, nor does it seek to bypass the existing density of the development. There would be no physical change to the development as a result of Amendment 38. The amendment does seek to rectify an existing situation that has occurred as a result of the 2005 SAT decision, which, in opinion of SAT, means that multiple dwellings are not permitted in density codes below R35.
22	J Tasker	7A Hood Terrace Sorrento 6020	See Attachment 3 Page 27	See submission No 5
23	P Kraus	6 Bluewater Rise Mullaloo 6027	See Attachment 3 Page 28	See submission No 5
24	H Kraus	6 Bluewater Rise Mullaloo 6027	See Attachment 3 Page 29	See submission No 5
25	J Kraus	29 Karalundie Way Mullaloo 6027	See Attachment 3 Page 30	See submission No 5

**PROPOSED AMENDMENT NO 38
SCHEDULE OF SUBMISSIONS FOLLOWING ADVERTISING
(CLOSED 19 SEPTEMBER 2007)**

26	J Kraus	19 Karalundie Way Mullaloo 6027	See Attachment 3 Page 31	See submission No 5
27	G O'Reilly	18 Page Drive Mullaloo 6027	See Attachment 3 Page 32	See submission No 5
28	I O'Reilly	19 Atoll Court Mullaloo 6027	See Attachment 3 Page 33	See submission No 5
29	M Caiacob	7 Rowan Place Mullaloo 6027	See Attachment 3 Page 34-36	See submission No 21 above
30	M Sideris	12 Page Drive Mullaloo 6027	See Attachment 3 Page 37-40	The submission does not address Amendment No 38, and focuses on previous decisions of the Supreme Court and makes allegations of illegal actions by the City and Council. No response to this submission is required.
32	M Macdonald	5 Mair Place Mullaloo 6027	Objection See Attachment 3 Page 42-43	The submission states that the 2005 SAT decision did not affect the development. This is not considered to be the case, as prior to the SAT decision, it was considered that multiple dwellings were a discretionary use under DPS2. The submitters comments that an amendment is not needed to allow multiple dwellings on the site are noted, however, due to the 2005 SAT decision, it is considered appropriate that certainty be provided to this issue.
33	M Zakrevsky	49 Korella Street Mullaloo 6027	See Attachment 3 Page 44	The proposed amendment 38 has arisen in response to a specific circumstance, and would therefore not set a precedent. The amendment does seek to rectify an existing situation that has occurred as a result of the 2005 SAT decision, which, in opinion of SAT, means that multiple dwellings are not permitted in density codes below R35.

ATTACHMENT 3

To: Chief Executive Officer
City of Joondalup, PO Box 21, Joondalup WA 6919
email: info@joondalup.wa.gov.au
File ref: 54602

City of Joondalup DOCUMENT REGISTRATION
Reference # : 54602
Letter # : 729012
Action Officer : PL01 CC: APES06
Date Received : 10/08/2007
Action Required: NOTE

SUBMISSION ON SCHEME AMENDMENT NO 38

NAME: Joanne & Chris Lewis.

ADDRESS: 9 Narrabeen Place, Kallaroo.

also owners of 16 Marjorie St Muttaloo.

Subject of Submission

(State how your interests are affected, whether as a private citizen, on behalf of a company or other organisation, or as an owner or occupier of property).

Address of Property Affected by Scheme (if applicable)
(Include lot number and nearest street intersection)

Submission (Give in full your comments and any arguments supporting your comments - continue on additional sheets if necessary)

As the multiple dwellings already exist, this is just a process to bring everything in line. our objections or otherwise are completely irrelevant.

Date: 9/8/07 Signature: [Signature]

To: Chief Executive Officer
City of Joondalup, PO Box 21, Joondalup WA 6919
email: info@joondalup.wa.gov.au
File ref: 54602

02

SUBMISSION ON SCHEME AMENDMENT NO 38

NAME: Mr Pritchard & Adj Pritchard

ADDRESS: 6 Ocean side from Wattle low
WA 6027

Subject of Submission

(State how your interests are affected, whether as a private citizen, on behalf of a company or other organisation, or as an owner or occupier of property).

Address of Property Affected by Scheme (if applicable)
(Include lot number and nearest street intersection)

Submission (Give in full your comments and any arguments supporting your comments – continue on additional sheets if necessary)

Mr Catchpole I would like to be advised regarding construction of this property as I am still feeling the after effects from the Tavernier development - including cracked foundations in my home.

Date: 12-8-11

Signature: Mr Pritchard

Retained on RMS
Retained on RMS

Re: Proposed Amendment No 38 to City of Joondalup District Planning Scheme No 2

Dear Graeme,

Western Power, wish to advise that there are no objections to the amendment you propose to carry out for the above-mentioned project.

Perth One Call Service (Phone 1100 or 9424 8117) must be contacted and location details (of Western Power's underground cable) obtained prior to any excavation commencing. Work Safe requirements must be observed when excavation work is undertaken in the vicinity of Western Power's assets.

Western Power is obliged to point out that the cost of any changes to the existing (power) system, if required, will be the responsibility of the individual developer.

Yours faithfully,

Karen Hughes-More
Network Services Officer
Customer Contact Centre
Western Power - Locked Bag 2511, PERTH, WA, 6001, Australia

T: 13 10 87 | F: (08) 9225 2660 | E: customer.contact.centre@westernpower.com.au

safe reliable efficient

=====
Electricity Networks Corporation, trading as Western Power
ABN: 18 540 492 861

TO THE ADDRESSEE - this email is for the intended addressee only and may contain information that is confidential.
If you have received this email in error, please notify us immediately by return email or by telephone.
Please also destroy this message and any electronic or hard copies of this message.

Any claim to confidentiality is not waived or lost by reason of mistaken transmission of this email.

Unencrypted email is not secure and may not be authentic. Western Power cannot guarantee the accuracy, reliability, completeness or confidentiality of this email and any attachments.

VIRUSES - Western Power scans all outgoing emails and attachments for viruses, however it is the recipient's responsibility to ensure this email is free of viruses.

=====



Department of Health
Government of Western Australia

04

Your Ref: 54602
Our Ref: 04-06087
Enquiries: Jade Plottke (9388 4937)

City of Joondalup DOCUMENT REGISTRATION
Reference # : 54602
Letter # : 730406
Action Officer : PL01 CC: APES06
Date Received : 17/08/2007
Action Required: NOTE

Chief Executive Officer
City of Joondalup
PO Box 21
JOONDALUP WA 6919

Dear Sir/Madam

**PROPOSED AMENDMENT NO.38 TO CITY OF JOONDALUP DISTRICT
PLANNING SCHEME NO.2**

Thank you for your letter of the 9th of Aug 2007 requesting the Department of Health's comments on the above.

The Department of Health has no objection to this proposed town planning scheme amendment, subject to any developments on the subject land connecting to sewer as required under the Government Sewerage Policy - Perth Metropolitan Region.

Yours faithfully


Neil McGuinness
MANAGER WASTEWATER MANAGEMENT

**ENVIRONMENTAL HEALTH DIRECTORATE
HEALTH PROTECTION GROUP
HEALTH SYSTEMS SUPPORT DIVISION**

14 August 2007

S:\EHD\Waste\Typing\DOCUM\2007\708014pj10.doc

Environmental Health
All Correspondence: PO Box 8172 Perth Business Centre Western Australia 6849
Grace Vaughan House 227 Stubbs Terrace Shenton Park WA 6008
Telephone (08) 9388 4999 Fax (08) 9388 4955
ABN 28 684 750 332

Submission into the Proposed Amendment No 38 to the District Planning Scheme.

I **object** to the proposed Amendment No 38 "Adding additional uses 1-20 to Lot 100 (10) Oceanside Promenade, Mullaloo." (Mullaloo Tavern) for the following Reasons;

Town planning law does not permit multiple dwellings on this site due to its R20 coding not permissibility in the zoning table. Council by law is unable to use discretion and is attempting to rewrite statutory law in conflict with its own town planning laws.

1. Council does not have the power of discretion over multiple dwellings on this site.
2. Council in not prosecuting the developer, is not carrying out its legal requirement under town planning law.
3. Council is attempting to circumvent town planning law for an individual developer and ignoring proper and orderly planning, creating a dangerous precedent.
4. Council has not determined a density for these dwellings as required by the Town Planning Scheme and the Residential Design codes.
5. Council must not use schedule two to bypass the RCode on the land, it must amend the Rcode through the Residential Design Codes and amend the Rcode map.
6. Council is initiating and facilitating approval of an illegal development, development which contravenes its planning approval and town planning law.
7. This Council proposal funded by the City to benefit a developer to bypass the statutory density of the site will set a precedent for any developer who does not want to meet density requirements set by planning law.

Signed;



Name;

Keith Luck

Address;

80 Oceanside Prom Mullaloo

Date;

4-9-07

Submission into the Proposed Amendment No 38 to the District Planning Scheme.

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Signed;

F. H. H. H. H.

Name;

FRAYE LUCK

Address;

80 OCEANSIDE PROM MULLALOO

Date;

4/9/07

City of Joondalup DOCUMENT REGISTRATION
Reference # : 54602
Letter # : 733927
Action Officer : PL01 CC: APES06
Date Received : 07/09/2007
Action Required: NOTE
Note : ORIGINAL ON FILE TO ACTION OFFICER

07



Your Ref: 54602
Our Ref: JT1 2005 05383 V01
Enquiries: Ross Crockett
Phone: 08 9420 2013 Facsimile 08 9420 3193

Urban Design & Policy
City of Joondalup
P.O. Box No. 21
Joondalup WA 6919

5th September 2007

Attn: **Graeme Catchpole**

629 Newcastle Street
Leederville 6007
Western Australia
PO Box 100
Leederville 6902
Perth Western Australia
Tel (+61 8) 9420 2420
www.watercorporation.com.au
ABN 28 003 434 917

Re: Amendment 38 to City of Joondalup District Planning Scheme No. 2
Lot 100 (No. 10) Oceanside Promenade, Mullaloo.

I refer to your letter dated the 7th August 2007, requesting comments on the above District Planning Scheme Amendment from this Corporation.

With respect to the proposed District Planning Scheme Amendment above, the Water Corporation has no objections in principal to this Amendment.

If you have any further queries on these comments please phone Ross Crockett on (08) 9420 2013

A handwritten signature in black ink, appearing to read "Frank Kroll", written over a horizontal line.

Frank Kroll
Senior Officer, Land Planning
Development Services Branch
Customer Services Division



R. & L. Prestage
51 Dover Crescent
Wembley Downs WA 6019
11 September 2007

08

Garry Hunt
Chief Executive Officer
City of Joondalup
info@joondalup.wa.gov.au

Dear Sir,

Submission for the Proposed Amendment No 38 to the District Planning Scheme.

We register our **objection** to the proposed Amendment No 38 relating to "Adding additional uses 1-20 to Lot 100 (10) Oceanside Promenade, Mullaloo. The Mullaloo Tavern.

Our objection is soundly based on the following;

1. Neither the City of Joondalup nor any other authority has the power to approve a Multiple Dwelling in an R20 area.
The town planning does NOT permit multiple dwellings on an R20 site.
2. The town planning for the City of Joondalup cannot be arbitrary applied.
This is a situation of utter chaos and indicates a weakness within the City of Joondalup for all developers to exploit.
3. It is incumbent on the City of Joondalup to ensure that the building codes are strictly adhered to for the protection of all its ratepayers.
4. The building Codes cannot be arbitrarily applied. We have seen the past skulduggery that has existed in the City of Joondalup.
This cannot continue as otherwise the management and councillors of the City must again be terminated.
5. It is the responsibility of the City of Joondalup to ensure strict compliance with its building codes. We are seeing too often developers and others flouting regulations with the construction of buildings that are not in conformity with regulations. The developer then having constructed the building applying for it to be approved.
Regulations are for a purpose and have been adopted to protect the majority of ratepayers.
6. Rather than attempt to approve a non conforming building it should either remain in a conforming use or be demolished to indicate that the City of Joondalup has the ability to maintain control over its town planning laws.
7. The proposal by the City of Joondalup to ignore the statutory density for the site provides for any developer or builder to disregard all planning regulations and density requirements of the Council to provide substantial additional financial benefits at the expense of the ratepayers.
It would be a fool who complied.
8. A density of the dwellings has not been determined as required by the Town Planning Scheme and Residential Design Codes.
9. It is not permissible for the Council to use schedule 2 to bypass the R Code on the land.

Ralph and Lois Prestage
6 Northshore Drive Mullaloo 9341 3063

Reference # : 54602 02089
Letter # : 735087
Action Officer : PL01 CC: APES06
Date Received : 14/09/2007
Action Required: NOTE
Note : ORIGINAL TO ACTION OFFICER

09

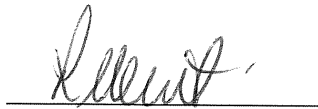
Submission into the Proposed Amendment No 38 to the District Planning Scheme.

I **object** to the proposed Amendment No 38 "*Adding additional uses 1-20 to Lot 100 (10) Oceanside Promenade, Mullaloo.*" (*Mullaloo Tavern*) for the following Reasons;

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7. This Council proposal funded by the City to benefit a developer to bypass the statutory density of the site will set a precedent for any developer who does not want to meet density requirements set by planning law.

Signed;



Name;

REG TREVOR WEST

Address;

7 LEACH STREET MARMION WA 6020

Date;

12-9-2007

Reference # : 54602 02089
 Letter # : 735088
 Action Officer : PL01 CC: APES06
 Date Received : 14/09/2007
 Action Required: NOTE
 Note : ORIGINAL TO ACTION OFFICER

10

Submission into the Proposed Amendment No 38 to the District Planning Scheme.

I **object** to the proposed Amendment No 38 "*Adding additional uses 1-20 to Lot 100 (10) Oceanside Promenade, Mullaloo.*" (*Mullaloo Tavern*) for the following Reasons;

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Signed;

Margaret West Name; MARGARET WENT

Address;

7 Leach Street Marmion 6020

Date;

12-09-07

City of Joondalup DOCUMENT REGISTRATION
 Reference # : 54602
 Letter # : 735442
 Action Officer : PL01 CC: APES06
 Date Received : 18/09/2007
 Action Required: NOTE

13, Hood Terr
 Sorrento
 6020



13 Sept 07.

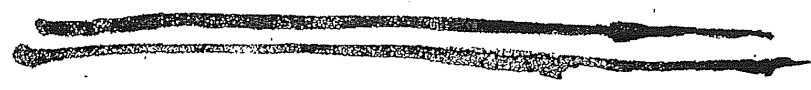
Dear Gary,

It greatly concerns me that our coast line will be turned into mass dwellings ~ multi storey apartments. I have just returned from the gold coast which was so American / Asian looking. There is no beauty in rectangles of concrete & glass with balconys all trying to out do each other with flashy joggers. So I do worry about the changing of town planning to high density ~ high rise.

Please dont let it happen here. Sign off on the 3 storey limit as you have been asked to do by the people of Joondalup.

Thank you

M. Boney



Chief Sec 575
10/9/07

Submission into the Proposed Amendment No 38 to the District Planning Scheme.

I object to the proposed Amendment No 38 "Adding additional uses 1-20 to Lot 100 (10) Oceanside Promenade, Mullaloo." (Mullaloo Tavern) for the following Reasons;

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Signed; M H. Berney Name; MARGARET BERNEY
 Address; 13 HOOD TERR SORRENTU 6020
 Date; 13 Sept 07

Submission into the Proposed Amendment No 38 to the District Planning Scheme.

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Signed;

L Smith

Name;

Lesley Smith

Address;

14

Hood Tee, Sorrento 6020.

Date;

16/09/07

Retained on RMS

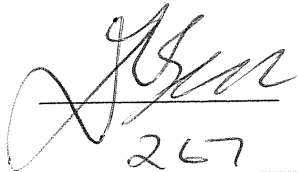
Submission into the Proposed Amendment No 38 to the District Planning Scheme.

I **object** to the proposed Amendment No 38 "Adding additional uses 1-20 to Lot 100 (10) Oceanside Promenade, Mullaloo." (Mullaloo Tavern) for the following Reasons;

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Signed;



Name;

DEAN R BELL

Address;

267 WEST COAST DRIVE

Date;

16-9-07

NORTH BEACH WA.
6020

Retained on RMS

Submission into the Proposed Amendment No 38 to the District Planning Scheme.

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Signed;

Neil Webb

Name;

Jim Matthews

Address;

7B Hood Terrace Sorrento 6020

Date;

16/09/07

Retained on RMS

Submission into the Proposed Amendment No 38 to the District Planning Scheme.

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Signed; Leonie Dunn Name; LEONIE DUNN
 Address; 11 HOOD TCE SORRENTO.
 Date; 15/9/07.

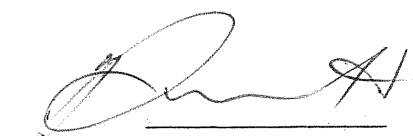
Retained on RMS

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5. Council must not use schedule two to bypass the RCode on the land, it must amend the Rcode through the Residential Design Codes and amend the Rcode map.
6. Council is initiating and facilitating approval of an illegal development, development which contravenes its planning approval and town planning law.
7. This Council proposal funded by the City to benefit a developer to bypass the statutory density of the site will set a precedent for any developer who does not want to meet density requirements set by planning law.

Signed;  Name; T. SMITH
 Address; 14 Hood Tce Serrento
 Date; 15/9/07

Retained on RMS

Submission into the Proposed Amendment No 38 to the District Planning Scheme.

I object to the proposed Amendment No 38 "Adding additional uses 1-20 to Lot 100 (10) Oceanside Promenade, Mullaloo." (Mullaloo Tavern) for the following Reasons;

Town planning law does not permit multiple dwellings on this site due to its R20 coding not permissibility in the zoning table. Council by law is unable to use discretion and is attempting to rewrite statutory law in conflict with its own town planning laws.

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2. Council in not prosecuting the developer, is not carrying out its legal requirement under town planning law.
3. Council is attempting to circumvent town planning law for an individual developer and ignoring proper and orderly planning, creating a dangerous precedent.
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Signed;

[Signature]

Name;

Gary Boina

Address;

13 Wood Tee Sorrento 6020

Date;

15/9/07

Retained on RMS

Submission into the Proposed Amendment No 38 to the District Planning Scheme.

I **object** to the proposed Amendment No 38 "Adding additional uses 1-20 to Lot 100 (10) Oceanside Promenade, Mullaloo." (Mullaloo Tavern) for the following Reasons;

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Signed;

Margaret Lock

Name;

Address;

16A Hood Jet Serrento

Date;

15-9-07

Retained on RMS

Submission into the Proposed Amendment No 38 to the District Planning Scheme.

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Signed;

S. Baines

Name;

S. BAINES

Address;

3 HOOD

TUE

SORRENTO

Date;

15.9.07


Retained on RMS

Submission into the Proposed Amendment No 38 to the District Planning Scheme.

I object to the proposed Amendment No 38 "Adding additional uses 1-20 to Lot 100 (10) Oceanside Promenade, Mullaloo." (Mullaloo Tavern) for the following Reasons;

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7. This Council proposal funded by the City to benefit a developer to bypass the statutory density of the site will set a precedent for any developer who does not want to meet density requirements set by planning law.

Signed;  Name; SUSANNE HASTIE
 Address; 12 HOOD TCE SORRENTO
 Date; 16/9/07

Retained on RMS

Proposed Amendment No 38 to City Of Joondalup District Planning Scheme No 2

Please accept this submission on proposed amendment 38.

I DO NOT support this amendment to the DPS2 for the following reasons;

1.

The full resolution of Council was not in the information available on the City of Joondalup website.

That Council:

1 Pursuant to Part 5 of the Planning and Development Act 2005, CONSENTS to initiate Amendment No 38 to the City of Joondalup District Planning Scheme No. 2, for a period of 42 days, by adding additional use 1-20 to Lot 100 (10 Oceanside Promenade, Mullaloo, in "Schedule 2 – Section 1 (Clause 3.15) – Additional Uses" as follows:

NO	STREET/LOCALITY	PARTICULARS OF LAND	ADDITIONAL USE
1-20	10 Oceanside Promenade, Mullaloo	Lot 100	While the building comprised in Strata Plan 47048 remains on this site, Strata Lots 4 and 10 of Strata 47048 may be used as multiple dwellings (permanent residential accommodation), notwithstanding that the R20 density code applies to the land.

2 Prior to the advertising period commencing, FORWARDS the proposed amendment to the Environmental Protection Authority in order to decide if an environmental review of the site is required;

3 NOTES that the scheme amendment is proposed as a result of the decision of the State Administrative Tribunal in the Owners of Strata Plan 18449 v the City of Joondalup (2005) WASAT 304, deciding that at density codes of R30 or less multiple dwellings are not permissible;

4 NOTES for the sake of clarity on this issue that strata lots 3, 8 and 11 are designated as grouped dwellings, and that strata lots 1, 2, 5, 6, 7, 9 and 12 are designated residential building (short stay).

It is clear from the full resolution 3 are grouped dwellings, not mentioned anywhere in the report and 2 multiple dwellings are not permissible in the correct carriage of the DPS2

The City is required to prosecute under Section 211 of the PDA 2005 and to uphold the code of conduct.

2.

It is standing legal principal that land use permissibility is decided by the Planning Scheme Zoning Table and that the Planning Scheme Zoning Table is subject to the 'provisions' of the Planning Scheme (C.O.J. DPS2 3.2.1).

The land use multiple dwelling is discretionary in the Planning Scheme Zoning Table but not permitted in R30 and below by (C.O.J DPS2 3.2.1) way of the 'provision' of the Residential Design Codes in the Planning Scheme (supported by 2005 Sorrento SAT decision).

The subject land is coded R20. The land use multiple dwelling is not within the discretionary powers of the Council by way of the Planning Scheme Zoning Table and the DPS2 3.2.1. Multiple dwelling under R35 is and always was illegal under the DPS2.

It is the subject provision Residential Design Codes (made clear by DPS2 CI 3.2.1 – zoning table) within the DPS2 which needs variation or an amendment which are both dealt with under Part 4 of the scheme not the zoning table or added use schedule. Council is in breach of its DPS2 and acting against its code of conduct if it wrongly deals with the permissibility of multiple dwellings in R20 by way of the added use table. Added use is to allow use classes not normally permitted in that zone. In this instance it is not the zoning Table ("D") that does not permit multiple dwellings it is the coding.

The coding must be varied or amended as statutorily set out in the residential design codes. SAT has already stated it does not have the power to over ride the objectives and intent of the scheme and this Council and the WAPC does not either when the issue must be addressed by way of part 4 of the DPS2.

3.

Council did not carry out its obligations under the DPS2 by wrongly issuing a planning approval (breach of DPS2) for Multiple Dwellings for **5 dwellings** constructed and intended to be used as Grouped Dwellings (DA 2002). Council is obligated under section 211 of the Planning and Development Act 2005 to enforce the provisions of its scheme. The accompanying report to this proposed amendment wrongly states grouped dwellings were determined to be akin to multiple dwellings and it does not mention this would breach CI 1.9 of the DPS2 or mention enforcing the provisions of its scheme (DPS2 1.9).

Council has not carried out its obligations under the DPS2 by issuing a planning approval (Plans TPAT 2003) for multiple dwellings for 3 dwellings constructed and intended to be used as grouped dwellings (3 dwellings not constructed partly or wholly one above another).

Council has not carried out its obligations under the DPS2 by not issuing a planning approval for grouped dwellings for the 3 grouped dwellings constructed as grouped dwellings and intended to be used as grouped dwellings.

Council has not carried out its obligations under the DPS2 by issuing a planning approval (Plans TPAT 2003) for 2 dwellings constructed and intended to be used as multiple dwellings in an R20 zone in breach of Part 4 of the DPS2. Council is obligated

under section 211 of the Planning and Development Act 2005 to enforce the provisions of its scheme.

This amendments intent is clearly to allow the developer of this building which contravenes good and properly orderly planning and is on many counts in breach of the DPS2 a bias.

4.

Council is not enforcing the provisions of its scheme and is breaching the code of conduct by attempting to negate the provision Residential Design Codes within the DPS2. It is the coding on this site that needs to be dealt with it is statutory it can not just be withstood (ignored) effectively uncoding the land in this instance so the Rcode stands but does not apply to benefit a developer without following the statutory processes in place in part 4 of the DPS2. Part 4 also clearly states a code must be determined which will apply to the land or the dwellings (e.g. expanded coding).

5.

If Council really believes it can just not withstand the R20 code on the site as suggested by the proposed amendment then they would have discretionary power to approve multiple dwellings in R20, they do not. The SAT could not just withstand the code and determine that multiple dwellings were appropriate in a building (Sorrento Resort) and therefore the statutory law on the land did not come into it, but like this Council and the WAPC it had to apply statutory law. Council is not enforcing its DPS2 or its code of conduct if it does not apply Part 4 of the DPS2.

Density of the site can not be negated or withstood and requires a scheme amendment in its own right to change the RCode or apply a variation such as Expanded coding. Notwithstanding the type of dwelling is not permitted on this R20 lot the type of dwelling can be included by way of a change to the scheme map and text under Part 4 of the DPS2.

6. The report does not address or provide all the relevant information.

Extract from Report

*Various parties, including potential apartment owners, the proponents and interest groups have recently sought clarification about the impact of the changes to the development and the regulatory framework in which it now sits and **is required to comply with.***

*The question for Council is how would it address any complaint or inquiry about the **use of the residential units** in the building. Council has an obligation, under section 211 of the Planning and Development Act 2005 to enforce the provisions of its Scheme, (which includes the terms of any of its approvals).'*

6.1 The regulatory framework has not changed,

Multiple dwellings are not permitted on land coded R20, was never permitted on land coded R20 and this is statutory law to which the Council **is required to comply with.** This Council is in breach of its DPS2 and Code of Conduct if it attempts to circumvent Town Planning Law, abandon proper and orderly planning and ignore the intent and

objectives of the scheme and Residential Design Codes. The report does not mention the provisions of DPS2 Part 4 (RCodes) or DPS2 CI 1.9 (Definitions).

The Zoning Table was always subject to the provisions of the scheme the SAT (Sorrento Resort) was not a new planning decision. To allow a dwelling type not included under the designated Rcode, extended Coding or an Rcode change is required under part 4 and is the statutory requirement in this instance to which the Council **is required to comply with.**

THIS AMENDMENT DOES NOT BRING CLARIFICATION AND BREACHES THE DPS2.

The 3 dwellings not constructed wholly or partly one above the other and intended to be used for permanent accommodation has always been use class grouped dwelling. The regulatory framework dictates that a DA is required for use class grouped dwelling for these three dwellings. A DA for grouped dwellings for these three dwellings is a statutory requirement which the Council **is required to comply with.** Any complaint or enquiry about people residing in these three grouped dwellings classified as multiple dwellings would result in the Council enforcing the DPS2 provisions under 211 of the Town Planning and Development Act 2005.

THIS AMENDMENT DOES NOT BRING CLARIFICATION AND BREACHES THE DPS2.

The use class residential building does not allow related people to stay in these units. If 2 or more related people stay in these units a breach of the DPS2 occurs. This amendment does not clarify that 2 or more related people are prohibited from renting or staying in these units. Short stay for unrelated people would clarify this point on the DA. Potential owners of these residential buildings have said they are not aware 2 or more related people staying in these units would be a breach of the DPS2 and lead to the Council enforcing the provisions of the DPS2.

THIS AMENDMENT DOES NOT BRING CLARIFICATION AND BREACHES THE DPS2

6.2. The changes to the development are not being addressed as this amendment is not accompanied by a plan as constructed. A plan of the building as constructed is required for the Councilors information before it can even contemplate any amendment to the scheme to allow a dwelling type not permitted by the designated Rcode.

Extract from Report

6.3

• The location of the 7 short stay apartments within the site does not give rise to any planning issues; The planning issue not mentioned is one it is a residential building for unrelated people and the City will need to spend time and money ensuring this statutory law is upheld and enforce planning law.

• The proposal to have 5 dwellings used as permanent accommodation does not give rise to planning issues; The 5 dwellings do give rise to planning issues as two are wrongly constructed in breach of the DPS2 and 3 grouped dwellings have been classified as multiple dwellings (seemingly to get around the land requirement for strata titling) in breach of the DPS2. The issue is the lawful carriage of the Scheme.

• The issue is that if some permanent units were located above other permanent unit (ie multiple dwellings), then there is an argument that such a land use is not permissible, in accordance with the SAT decision'.

The SAT decision ruled out multiple dwellings all together not just if dwellings were located one above another – the use class multiple dwelling is not permitted. All five units are in breach of the DPS2 in accordance with the SAT decision.

7. A precedent will be set where if a developer is not happy with the code on the land and wants to build dwellings not permitted in that code or has built outside planning law instead of Council enforcing its Scheme it will simply have the infringement put into the DPS2 proposed and funded by the City. This amendment is contrary to the statutory law, objectives and intent of the Residential Design Codes and weakens the Scheme.

8. I strongly object to this amendment being proposed and funded by the Council which has spent upward of 5 years (Ratepayers time and money) on this simple DA and then has not incorporated the Supreme Court finding that the units constructed side by side are grouped dwellings (NO DA for grouped dwellings) and the SAT finding that Use Class Multiple dwelling is not permitted on a site coded R30 or below (DA for 5 Multiple dwellings).

NOTE A 211 is being lodged with the Minister of Planning regarding the DA.

3 Grouped dwellings classified as multiple dwellings, no DA for grouped dwellings.
2 Multiple dwellings constructed and intended to be used as multiple dwellings in R20.
City's support for strata title application which allegedly is in breach of the DPS2 supported by the proposed amendment initiated at the rate payer's expense.

Mnique Moon
6 Carew Place
Greenwood
6024

94482109
mnique61@yahoo.com.au

City of Joondalup DOCUMENT REGISTRATION
Reference # : 54602
Letter # : 735443
Action Officer : PL01 CC: APES06
Date Received : 18/09/2007
Action Required: NOTE

27

Submission into the Proposed Amendment No 38 to the District Planning Scheme.

I object to the proposed Amendment No 38 "*Adding additional uses 1-20 to Lot 100 (10) Oceanside Promenade, Mullaloo.*" (*Mullaloo Tavern*) for the following Reasons;

Town planning law does not permit multiple dwellings on this site due to its R20 coding not permissibility in the zoning table. Council by law is unable to use discretion and is attempting to rewrite statutory law in conflict with its own town planning laws.

1. Council does not have the power of discretion over multiple dwellings on this site.
2. Council in not prosecuting the developer, is not carrying out its legal requirement under town planning law.
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4. Council has not determined a density for these dwellings as required by the Town Planning Scheme and the Residential Design codes.
5. Council must not use schedule two to bypass the RCode on the land, it must amend the Rcode through the Residential Design Codes and amend the Rcode map.
6. Council is initiating and facilitating approval of an illegal development, development which contravenes its planning approval and town planning law.
7. This Council proposal funded by the City to benefit a developer to bypass the statutory density of the site will set a precedent for any developer who does not want to meet density requirements set by planning law.

Signed; J Tasker Name; Jean Tasker
Address; 7A Hood Terrace Sorrento 6020
Date; 15-9-07

Retained on RMS

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Signed;

P Kraus

Name;

PETER KRAUS

Address;

6 Bluewater Rise, Mullaloo

Date;

9/9/07

Retained on FMS

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Signed;

H/Kraus

Name;

HELEN KRAUS

Address;

6 Bluewater Bce, Mullaloo

Date;

9/9/07

Retained on HMS

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Signed;

Name;

Address;

Date;

JOKraws
 29 KARAIONDIE WAY, MULLALOO,
 13/9/2007

Submission into the Proposed Amendment No 38 to the District Planning Scheme.

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Signed; J. Kraus Name; J. Kraus
 Address; 19 Kara Lundy Way Mullaloo
 Date; 13-9-07

32

City of Joondalup DOCUMENT REGISTRATION
 Reference # : 54602
 Letter # : 735661
 Action Officer : PL01 CC: APES06
 Date Received : 18/09/2007
 Action Required: NOTE

Submission into the Proposed Amendment No 38 to the District Planning Scheme.

Subject to the proposed Amendment No 38 "Adding additional uses 1-20 to Lot 100 (10) Oceanside Promenade, Mullaloo." (Mullaloo Tavern) for the following Reasons;

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Signed;

Greg O'Reilly
 18 Paque

Name;

Greg O'Reilly

Address;

18 Paque

Dve Mullaloo

Date;

18/9/07

Submission into the Proposed Amendment No 38 to the District Planning Scheme.

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Signed; I. O'Reilly Name; IRIS O'Reilly
 Address; 19 ATOLL CT MULLALOO 6027
 Date; 16.9.07

Date; 18th September 2007

To: City of Joondalup
Boas Ave , Joondalup
WA 6027

From: Michael Caiacob
7 Rowan Place Mullaloo ,
WA 6027

RE; Proposed Amendment No 38 – Public Submission.

Thank you for the opportunity to comment on the advertised Proposed Amendment No38 to the DPS-2. Additional Uses 1-20 , lot 100 Oceanside Promenade , Mullaloo.

In the strongest terms, I object to the proposed Amendment No 38 for the following reasons;

1. Town planning law does not permit multiple dwellings on this site due to its R20 coding permissibility in the zoning table. Council is unable to use discretion and is attempting to rewrite statutory law in conflict with its own town planning laws.

*The State Administrative Tribunal at **The Owners of Strata Plan 18449 and City of Joondalup** [2005] WASAT 304.*

The issues before the Tribunal were:

Whether on the proper construction of s 8A of the TPD Act, the Tribunal has jurisdiction to categorise the use proposed in a planning application which has been refused or conditionally approved by the responsible authority in circumstances where the responsible authority has categorised the proposed use. Whether development of land coded "R30" or less for the purposes of "multiple dwellings" "conform[s] to" the Residential Design Codes of Western Australia 2002 (Codes).

9 The Tribunal determined that the issues were to be answered "yes" and "no", respectively.

and

63 The result is that if the Tribunal were, like the City, to categorise the proposed use as 'multiple dwellings', approval of the application is not within the discretion of the decision-maker under DPS 2 and the Tribunal would be obliged to decline.

2. Council is attempting to circumvent town planning law for an individual developer and ignoring proper and orderly planning, creating a dangerous precedent for all R20 to R30 areas with in the City of Joondalup. The City has argued previously over Multiple Dwellings on R-20 sites. The city claimed in Sorrento Resort SAT;

"(a) It would result in the development being classified as Multiple Dwellings under District Planning Scheme No. 2 with a resultant proposed density of R100 which does not comply with the density of R20 designated under District Planning Scheme No. 2.

(b) Approval of the development to a R100 density would be contrary to orderly and proper [planning] for the locality considering the R20 density of the site."

The same argument equally applies to Amendment 38 and Mullaloo considering the R-20 density of the site as well as the locality.

3. Council must not use the Town Planning Scheme schedule two to bypass the R-Code of the land, it must amend the R-code through the Residential Design Codes and amend the R-code map accordingly.

4. This Council proposal funded by the City to benefit a developer to bypass the statutory density of the site will set a precedent for any developer who does not want to meet density requirements set by planning law.
5. Council has not determined a density for these Multiple Dwellings as required by the Town Planning Scheme and the Residential Design codes.
6. Council has not determined a density for the unapproved Grouped Dwellings on this site as required by the Town Planning Scheme and the Residential Design codes. The development application does not approve Grouped Dwellings. Group Dwellings need approval and a DENSITY prior to the City considering Multiple Dwellings and their DENSITY.
7. Council is initiating and facilitating approval of an illegal development, development which contravenes the town planning laws.
8. The funding of this scheme amendment, by the City at significant ratepayers expense, highlights the fact that the City and its officer's advice to Council have created this situation. Ratepayers should not be funding this proposal but those who advised Council incorrectly and failed to amend their advice in a timely manner.
9. Council in not prosecuting the developer for departure from the DPS-2, is not carrying out its legal requirement under town planning law.
10. Council has not recognized the initial problem – officers incorrect advise to Council. Council in not prosecuting those who have breached the Town Planning Scheme , is not carrying out its legal requirement under town planning law.”
11. There is a legal requirement under the DPS-2 and Town Planning Act for observance of the Local Town Planning Scheme. The officers and the Council are neglecting this.
12. The City Officers failure to deal with the issue of Multiple Dwellings on this site between 2003 and Amendment 38 in 2007 is nothing short of dereliction of duty and has now imposed further additional financial burden on the Ratepayers of the City.
13. The City officer(s) knowingly permitted the construction of Multiple Dwellings in an R-20 area causing significant costs to the ratepayers. Full disclosure of ALL relevant facts needs to be addressed in public prior to any decision on Amendment 38., to date the report into Amendment 38 is incorrect in fact and incomplete and does not outline the full situation and position of the City.
14. The failure of this Council to deal with its officers in the same manner as it deals with ratepayers and ratepayer groups, highlights the fact that the Code of Conduct is being applied unfairly , unequally and with discrimination.
15. Not understanding what the Mayor and the CEO signed exactly in regards the Common Seal , it is suspected that this approval has already been entertained. Please explain in finite detail the process followed for this amendment.
16. It is apparent that the threat of legal action from various parties is the reason Council has initiated and will approve Amendment No38 , regardless of comments obtained from Advertising or any credible comprehensive investigation into the flawed process that has led Council to this point.

17. Due to the treat of legal action(s) the City and Council have a financial conflict of interest in administering the DPS-2 , with regards to Amendment No38.
18. Officers need to explain why it was necessary to approach the Hon Minister for Planning and Infrastructure and for what reasons they believe a S211 complaint would be lodged with the Minister.
19. Points 3 & 4 of the Council resolution CJ118-06/07 are not included in the Amendment documents and should be for absolute clarity. (ie; no approval for grouped dwellings).
20. Council does not have the power of discretion over multiple dwellings on this site. The swearing in of Elected Members declares observance with the Code of Conduct. The Code of Conduct states;
Duty to the public will always be given absolute priority over the private interests of Elected Members, Committee Members and Employees.
Justice
This standard requires that we treat people fairly, without discrimination, and with rules that apply equally to all. We ensure that opportunities and social benefits are shared equally among individuals, with equitable outcomes for disadvantaged people. We uphold the laws of the Council of the City of Joondalup and comply with relevant State and Federal legislation.

The DPS-2 has been publicly advertised and accepted. Departure from the publicly accepted DPS-2 for Amendment 38 is unacceptable, for the reasons stated above.

Signed ;

Michael Caiacob

Chief Executive Officer
PO BOX 21
JOONDALUP WA 6919

Proposed Amendment No 38 to City Of Joondalup District Planning Scheme No 2

Lot 100 - 10 Oceanside Promenade, Mullaloo

This proposed amendment by the Planning Officers of the City of Joondalup is the final stage of an illegal agreement between key City officers and the redeveloper of this site to the financial detriment of all City of Joondalup ratepayers.

In the Supreme Court full bench hearing, RE WASCA 293 (28 November 2003) ALL parties to that matter, being the City of Joondalup, the developer Rennet PI and the Mullaloo Progress Association (MPA) agreed that the proposed development consisted of only two residential components, Grouped Dwelling and Residential Building, and that there was in fact NO Multiple dwelling component to be allowed on this site.

Pullen J in his delivered decision clearly states

"In my opinion, the density requirements have been met, because only five grouped dwellings are located on the subject land, and that does not exceed the density requirements in the R Codes.

97 *As to the five short stay apartments which, in my opinion, satisfy the definition of "residential building", there is no density requirement and the council was free to approve them. "*

Parker J, Miller J, and Pullen J also recognised and accepted argument that there was a potential to circumvent the R Code density for the land

"The Association argued that the density requirements could be circumvented by designating some apartments "short stay" and later selling them as permanent homes. I disagree. The planning approval includes approval for five "short stay" apartments. If those apartments are later used without approval as permanent residences, that use will be a use contrary to the approval, and the council could take action under s 10 of the Town Planning and Development Act 1928 or s 43A of the Metropolitan Region Town Planning Scheme Act 1959 to prevent such use."

It should be noted that during the hearing of this case the City of Joondalup repeatedly made statements of a misleading nature, and presented to Pullen J that they would take the position of controlling this change of use as raised as part of this case. The officers involved have not and never had any intention of so doing, as made evident by the City of Joondalup's subsequent rampant failure to ensure that the development constructed complied with the Building Code of Australia, Australian Standards and the Disability Discrimination Act, the unlawful further gifting of public car parking at zero cost contrary to

Council policy, and the City of Joondalup's demonstrated repeated failure to properly charge for all necessary permissions and approvals. This position is further proven by the illegal actions of the Council to refuse to release any of the documents sought under FOI Laws which would prove the extent of this contrived public asset stripping. In fact when the development was completed, these apartments were later 'used' without approval by the developer as permanent residences, which was a use known by the City to be contrary to the approval and the written findings of the Supreme Court.

The truth is that this application by the City officers is no more than the final step of a programme of improper support by the planning officers of the City of Joondalup for an developer that deliberately built contrary to the Codes and the improper use that has already occurred will never be prosecuted by the City of Joondalup as it implied in the Supreme Court because the City is now the applicant for the redefinition of the change of use on this land.

The Supreme Court as the Superior Court of WA dealt with this site in good faith on the evidence put forward by the City of Joondalup and the decisions that it reached based on that evidence should not be circumvented after the event by the City because the same officers involved in that same case subsequently decided to completely ignore the legal position of this development after they won the case. Such actions make the City of Joondalup morally bankrupt and unfit for any of the purposes of Local Government.

In fact this predicted application by the City of Joondalup by the now bankrupted MPA, a Community Association, is so contrary to the findings of the Supreme Court that it provides further clear evidence of the existence of an illegal agreement between the developer and the City, and makes clear that the position previously taken in the Supreme Court was not of a genuine nature, and that all the planning advantages subsequently bestowed on this developer by the same City officers involved were of a deliberate and highly improper nature.

Reference Extract - WASCA 293 (28 November 2003)

"Ground 4(a) reads:

"Density of the residential development

4. Further or alternatively the approval was ultra vires the City of Joondalup because: (a) as the land has a density code of R20, and given the provisions of clauses 4.2.4, 4.2.5 and 4.2.6 of the DPS, the only permissible residential development on the land without an Agreed Structure Plan is single house or grouped dwelling. The approval has allowed a multiple dwelling and a residential building."

84 The Association's written outline of argument reads:

"The effect of clause 4.3.1 is that the Council cannot alter the minimum area of lot per dwelling for R20 (450 m²). The concept dwelling in this clause of the Scheme means the type of dwelling specified under the relevant density code. Council cannot approve a residential development on the land that is not contemplated by the R20 density code. VIZ it can only approve single house or a grouped dwelling. Otherwise the clear intent of clause 4.3.1 (ie to control density) could be circumvented."

85 Insofar as the ground asserts that the approval has allowed a "multiple dwelling", I do not agree.

86 "Multiple dwelling" is defined in the Scheme as having the same meaning as that set out in the R Codes. In the R Codes, "multiple dwelling" is defined to mean:

"A dwelling in a group of more than one where any part of a dwelling is vertically above part of any other."

87 It is true that the application to council included an application for multiple dwellings, because the five "short stay 1 storey 1 bedroom" apartments had located above them, five "permanent residential 2 storey 3 bedroom" apartments. However, condition (s) to the approval granted by council required the deletion of the five "short stay 1 storey 1 bedroom" apartments, as a result of which the development, as approved, was for 10 apartments side by side in a row, five of them being designated as "short stay 2 storey 3 bedroom" apartments and the five middle ones being designated as "permanent residential 2 storey 3 bedroom" apartments.

88 In relation to the "short stay" apartments, these were referred to by the planning officer's report, and in my opinion correctly so, as "residential building". The planning officer's report stated that "apartments will be managed in-house by the tavern operators or may involve a specific apartment operator". "Residential building" is defined in the Scheme to have the same meaning as in the R Codes. "Residential building" in the R Codes was defined to mean:

"... a building or portion of a building, together with rooms and outbuildings separate from such building but ancillary thereto; such building being used or intended, adapted or designed to be used for the purpose of human habitation –

- temporarily by two or more persons, or
- permanently by seven or more persons,
- who do not comprise a single family; but does not include a hospital or sanatorium, a prison, an hotel, a motel, or a residential school."

89 The "short stay" apartments are for "temporary" human habitation.

90 The Association's written submissions state, in effect, that because Table 1 Column 2 of the R Codes only refers to "single house" and "grouped dwelling", that council could not approve anything other than those two types of residential development. I disagree with that submission. The R Codes do not state what uses the council may or may not approve. The R Codes set standards in relation to certain residential development. The Scheme in cl 4.2.3 states that development of land "for any of the residential purposes dealt with by the (R Codes) shall conform to the provisions of those Codes". It is the Scheme which states what uses may be approved by council. The uses permitted in the Scheme are listed in the zoning table, which is Table 1 to the Scheme. "Residential building" is a "D" use. A "D" use is a use class which is "not permitted but to which Council may grant its approval" after having regard to the matters set out in cl 6.8 of the Scheme, which required inter alia that the council take into account the comments or wishes of objectors (which it did). The council therefore had jurisdiction to approve a "residential building" if it wished to do so. The fact that "residential building" is not listed in the R Codes density table does not mean that council had no jurisdiction to grant planning approval. The fact that it is not listed means that the R Codes have nothing to say about them. This ground must be dismissed.

91 I then turn to grounds 4(b) and (c), which read:

"(b) alternatively the residential development on the land exceeds the maximum area of lot per dwelling prescribed by the DPS contrary to clause 4.3.1 of the DPS because:

- (i) the 5 two storey three bedroom apartments classified by Council as a residential building is not in fact a residential building but rather grouped dwellings; and
- (ii) the 5 two storey three bedroom apartments classified by Council as a multiple dwelling is in fact a grouped dwelling;

(a)[sic] alternatively the decision of Council to classify 5 two storey three bedroom apartments as a residential building was so unreasonable that no reasonable Council could have made that decision."

92 The facts in relation to this ground are complicated by the fact that the proposal put up to council, and commented on by the planning officer, was a proposal which combined "multiple

dwelling" in relation to the five middle apartments (because of the stacking of one apartment above the other) and "residential building" for the five other short stay apartments. The effect of condition (s), however, changed the circumstances so that what was approved was development which involved five "short stay 2 storey 3 bedroom" apartments and five "permanent residential 2 storey 3 bedroom apartments".

93 The City submitted to this Court that the five "permanent" apartments in this new configuration were "multiple dwellings". That cannot be correct, because a "multiple dwelling" is defined in the Scheme and R Codes as I have set out above, and no apartment is located one above the other.

94 In my opinion, the five permanent residential apartments are "grouped dwellings", because they satisfy the definitions of "dwelling" and "grouped dwelling", which definitions are defined in the Scheme to have the meanings in the R Codes which read:

"Dwelling means a building or portion of a building being used or intended, adapted or designed to be used for the purpose of human habitation on a permanent basis by –

- a single person,
- a single family, or
- no more than six (6) persons who do not comprise a single family."

and

"Grouped dwelling means a dwelling which is one of a group of two or more dwellings on the same lot such that no dwelling is placed wholly or partly vertically above another, except where special conditions of landscape or topography dictate otherwise."

95 There was a submission made that the five permanent apartments were not "grouped dwellings" because they were not located on the ground. It was submitted that the R Codes manual states that "grouped dwellings" must be located on the ground. That is not what the manual says. The manual indicates that a "grouped dwelling" will "normally" have its own private garden area attached. There is nothing to say that a "grouped dwelling" must be located on the ground.

96 The R Codes require 450 square metres of site for each "grouped dwelling". That means that on the 2,377 square metre site, five "grouped dwellings" could be constructed. That is what council approved. It was argued that the reference to 450 square metres of site must refer to 450 square metres of clear site with no other buildings – in effect, 450 square metres of open space. That is not, however, what the density table requires. The requirement in column 3 is about the size of the site. In my opinion, that is a reference to the land the subject of the application. The R Codes provide separately in column 6 for the "open space" requirements. In my opinion, the density requirements have been met, because only five grouped dwellings are located on the subject land, and that does not exceed the density requirements in the R Codes.

97 As to the five short stay apartments which, in my opinion, satisfy the definition of "residential building", there is no density requirement and the council was free to approve them. The Association argued that the density requirements could be circumvented by designating some apartments "short stay" and later selling them as permanent homes. I disagree. The planning approval includes approval for five "short stay" apartments. If those apartments are later used without approval as permanent residences, that use will be a use contrary to the approval, and the council could take action under s 10 of the Town Planning and Development Act 1928 or s 43A of the Metropolitan Region Town Planning Scheme Act 1959 to prevent such use."

Submission by

M Sideris 18th September 2007 Ratepayer 12 Page Drive Mullaloo

In making this submission I hereby given notice that I claim copyright and that I refuse your right to selectively publish any of my submissions in an edited or altered form.

If you wish to publish any of my submission in part or in a form that does not fully reflect the content then you must contact me for approval.

Mitchell Sideris

PROPOSED AMENDMENT No. 38 to CoJ DPS2

I do **not** support proposed amendment No 38 to DPS2 for the following reasons
Lot 100 is coded R20. Council does not have discretionary powers to permit Multiple Dwellings in an R20 zoning. This amendment will thus contravene the intent of DPS2.

_____ This proposal sets a precedent. If passed, there will be applications for multiple dwellings in R20 zones. Multiple dwellings should be permitted in R40 or higher density zones only.

- 1 The numerous usages proposed to operate side by side and in a staggered manner is a recipe for conflict and continuous litigation between each of the users and the Council.
- 2 The configuration of group dwelling, multiple dwelling, short stay apartments, permanent dwellings, hotel, tavern, and drive through bottle shop is a dog's breakfast that cannot possibly be administered without continuous conflict between each of the users.
- 3 How would the legislated requirements of each component be monitored for compliance?
- 4 The clash of interests in areas such as the Swan Brewery Development and Crawley development are proof of the expensive litigation and unsatisfactory outcomes.
- 5 Council's original intent when this R20 site had approval to be a "village centre" was that only one small type of commercial operation be permitted on Lot 100 (10 Oceanside Promenade, Mullaloo). i.e. completely self contained family tavern and parking or convenience store/delicatessen.

V.K. (Ken) Zakrevsky
49 Korella St.,
Mullaloo

19th September, 2007

SUBMISSION ON AMENDMENT 38 TO THE DPS2.

From: Marie Macdonald
5 Mair Place
Mullaloo WA

I object to the Amendment on the following grounds:

Decision of SAT 2005 did not affect the Development

The report states that because of a decision of Sat 2005 that the Council provide a clear statement that multiple dwellings are permissible within the existing Mullaloo Tavern development.

That Tribunal decision included the statement

"(a) It would result in the development being classified as Multiple Dwellings under District Planning Scheme No. 2 with a resultant proposed density of R100 which does not comply with the density of R20 designated under District Planning Scheme No. 2.

Nothing has changed with respect to multiple dwellings in the DPS2 since its inception. If multiple dwellings approved in this development do not comply with the DPS2 currently then they did not comply when they were approved by Council in August 2002 and did not comply when they were approved for building in Dec 2003. The introduction of new Residential Design Codes in 2002 had no changes with respect to the definition of multiple dwellings or Table 1. These new R codes did not affect the compliance of the multiple dwellings with respect to the R20 density.

Planning Appeal 2002 did not deal with Multiple Dwellings in R20.

This tribunal did not deal with the issue of permanent dwellings; it dealt initially with the reinstatement of the original application in height and addition of 5 short stay apartments. The tribunal did not make a decision. It agreed to the mediated outcome between the parties which related to the short stay apartments. Permanent accommodation was not an issue for this tribunal even though the plans had permanent dwellings on them. There was no issue of multiple dwellings in R20 to decide. The SAT in 2007 agreed that the car parking configuration as built was acceptable. However it made no statement on multiple dwellings being allowable in R20 because it was not an issue before the Tribunal even though it had plans of the "as built" development which contained multiple dwellings and there was the previous decision of SAT which stated multiple dwellings were not acceptable in R20.

The Supreme Court Decision 28 November 2003 Grouped Dwellings were approved by Council this amendment is contrary to that decision.

The Supreme decision did not address the issue of multiple dwellings in R20 because the judge concluded when the floor was removed the dwellings became grouped dwellings and as such the density of the site could be maintained. The judge convened a hearing to deal with this issue and all parties agreed that grouped dwellings had been approved. In his decision he stated that the 5 grouped dwelling could meet the requirement of the R Codes for a 450sqm minimum site area per dwelling as the site

was 2377 sq metres. Had multiple dwellings been deemed a possibility by the judge it would not have been necessary for the hearing to occur, as the ground would have failed. However the City did not bring a planning approval before Council to reflect that decision of the Supreme Court. Consequently the City approved a development for building contrary to the decision of the Supreme Court in December 2003. The City had to know how which units were dwellings before building approval was given as the process required this, therefore they should have known that multiple dwellings were being built contrary to the Supreme Court Decision.

This Amendment is contrary to the Supreme Court decision.

Zoning in Commercial Zone allows multiple dwellings with Council Discretion.

The amendment seeks to allow multiple dwellings on the Mullaloo Tavern Development site Zoned commercial R20 multiple dwellings is listed as a discretionary use in the zoning table, that is a use which Council can be approve with discretion. There is no need of an amendment to the DPS2 to allow the use. Section 3.15 of the DPS2 allows additional uses to be included in schedule 2 where the land does not meet the requirements of the Zoning Table. Council can meet the requirement of the zone with respect to multiple dwellings in a Commercial zone. It does not need to list this as an additional use. Part 3 of the DPS2 does not relate to the Residential Coding on the Site.

Residential Density Requirements of Part 4 DPS2 do not allow Multiple Dwellings in R20.

The Multiple Dwellings do not meet the requirements of the DPS2 with respect to Part 4 of the DPS2.

Part 4.2.3 states.

Unless otherwise provided for in the scheme the development of land for any of the of the residential purpose dealt with by the Residential Design Codes shall conform to the provisions of those Codes.

The Amendment is contrary to Part 4 of the DPS2 and cannot be changed by an additional use class under 3.15.

Council can amend the R Coding on the Land. If Council were to amend the R coding on the land to a code which meets the building as built then the problem of occupancy of the proposed residents would be resolved. They would have certainty. The City has not stated what at what density all the units could be accommodated. It is in excess of R60. It is possible the Residential Building units on site cannot be occupied because of the single family requirement cannot be met. An amendment to the R coding on site could allow all units to be permanently occupied.

Grouped dwellings on site do not meet the Requirements of Part 4.

The City has not addressed the fact that the grouped dwellings on site do not also meet the requirements of the R coding on site. The resolution of Council clearly identifies three group dwellings on site. These are contrary to the only development approval given in August 2002 which stated multiple dwellings were approved. Also as grouped dwellings they have to meet the minimum site requirement of 450sq metres which these units cannot meet. The Amendment does nothing to solve this problem

This Amendment should not be approved will not achieve the outcome desired.

Marie Macdonald

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SUBMISSION AGAINST PROPOSED AMENDMENT No. 38
which is intended to permit multiple dwellings (permanent residential accommodation)
on Lot 100 which is coded R20 density.

I am against this proposed amendment to permit multiple dwellings on Lot 100 (10
Oceanside Promenade being the Mullaloo Beach Tavern) for the following reasons:-

- 1 DPS2 does not permit multiple dwellings on this R20 site and the developer
 Rennet Pty Ltd has chosen to do otherwise.
- 2 This proposed amendment is an attempt to circumvent town planning law and
 if successful will set a precedent to other developers who choose to ignore or
 depart from DPS2. If passed, it makes a mockery of DPS2 and portrays the
 image of collusion between the City's officers and a developer.
- 3 This amendment could be regarded as a blatant attempt to authorize improper
 actions.

Marilyn Zakrevsky – ratepayer & resident,
49 Korella Street, Mullaloo, W.A. 6027

19th September 2007

