

# Minutes **Policy Committee**

MEETING HELD ON WEDNESDAY 4 MARCH 2009

---

## CITY OF JOONDALUP

### MINUTES OF THE POLICY COMMITTEE MEETING HELD IN CONFERENCE ROOM 2, JOONDALUP CIVIC CENTRE, BOAS AVENUE, JOONDALUP ON WEDNESDAY 4 MARCH 2009

#### ATTENDANCE

##### Committee Members:

Cr Kerry Hollywood	<i>Presiding Person</i>	North Ward	
Mayor Troy Pickard			<i>Absent from 1908 hrs to 1910 hrs</i>
Cr Marie Macdonald		Central Ward	
Cr Mike Norman		South-West Ward	
Cr Trona Young		North Central Ward	<i>from 1909 hrs</i>

##### Officers:

Mr Garry Hunt	Chief Executive Officer	<i>Absent from 1944 hrs to 1946 hrs</i>
Mr Mike Tidy	Director Corporate Services	<i>to 2018 hrs</i>
Mr Clayton Higham	Director Planning and Community Development	
Ms Glenda Blake	Acting Manager, Strategic and Organisational Development	
Mrs Janet Foster	Administrative Services Coordinator	
Mrs Rose Garlick	Administrative secretary	

##### In Attendance:

Cr Russ Fishwick	South Ward
Cr Brian Corr	South-East Ward

#### DECLARATION OF OPENING

The Presiding Person declared the meeting open at 1906 hrs.

#### APOLOGIES/LEAVE OF ABSENCE

Apologies: Cr Fiona Diaz  
Cr Sue Hart

#### CONFIRMATION OF MINUTES

##### MINUTES OF THE POLICY COMMITTEE HELD 15 DECEMBER 2008

**MOVED** Cr Norman **SECONDED** Mayor Pickard that the minutes of the meeting of the Policy Committee held on 15 December 2008 be confirmed as a true and correct record.

**The Motion was Put and**

**CARRIED (4/0)**

**In favour of the Motion:** Crs Hollywood, Macdonald, Norman, and Mayor Pickard

**ANNOUNCEMENTS BY THE PRESIDING PERSON WITHOUT DISCUSSION**

Nil

**DECLARATIONS OF INTEREST**

Nil

**IDENTIFICATION OF MATTERS FOR WHICH THE MEETING MAY SIT BEHIND CLOSED DOORS**

Nil

**PETITIONS AND DEPUTATIONS**

Nil

**REPORTS****ITEM 1            BURNING BAN ON PRIVATE PROPERTIES –  
[29061]**

**WARD:**            All

**RESPONSIBLE**    Mr Garry Hunt  
**DIRECTOR:**      Office of CEO

---

**PURPOSE/EXECUTIVE SUMMARY**

To provide the Policy Committee with additional information in relation to the issue of burning on private properties.

It is recommended that the Policy Committee considers the new options provided and recommends to Council that option 3 be adopted, namely; publish a notice in the *Government Gazette* and in a local newspaper stating that “burning on private property and the use of incinerators are prohibited within the City of Joondalup at all times, excluding enclosed devices used for the purposes of cooking or heating” and amend the City’s current Policy 6-5 to state that the City will not issue permits.

**BACKGROUND**

At the Policy Committee Meeting of 16 September 2008 a request for a report was made in relation to “backyard fires”.

A report was subsequently drafted which outlined the level of influence the City has in regulating such fires and if possible, the City’s capacity to ban them via a local law.

The Policy Committee considered the report at its meeting of 15 December 2008 and recommended the following:

*“...that Council ADOPTS Option 2, namely agreeing to publish a notice in the Government Gazette and in a local newspaper stating that “backyard burning and the use of incinerators are prohibited within the City of Joondalup at all times” and amend the City’s current Policy 6-5 to state that the City will not issue permits.”*

A report on the issue was then prepared for Elected Members to consider at the Briefing Session of 10 February 2009. Several questions were raised at the meeting and as such, the matter has been referred back to the Policy Committee for further deliberation.

This report outlines the additional information requested by Elected Members at the Briefing Session above and provides updated options for the Policy Committee to consider in light of the new information.

## **DETAILS**

The following requests for additional information were raised:

1. What effects do incinerators have on the environment?
2. Will the ban have any impact on incinerators used in hospitals within the City of Joondalup?
3. Why is residential garden refuse and rubbish able to be burned on private property during the prohibited burning times?
4. What implications will the ban have on the use of potbelly stoves and BBQs?

The following responses are provided for the Policy Committee’s consideration.

1. Effects of incinerators on the environment:

If not effectively designed, incinerators can contribute significantly to air pollution, depending on the material or product being burnt. The Health Department discourages the use of household incinerators, particularly for the disposal of rubbish (especially plastics). This is due to the toxic fumes that can be emitted into the atmosphere if not properly captured. Also, residue ash from burning can contain heavy metals that have detrimental effects on the environment and are difficult to dispose of effectively.

Section 24F of the *Bush Fires Act 1954* (“the Act”) allows for persons to burn garden refuse in an incinerator during restricted and prohibited burning times, if burned in accordance with the following requirements:

- *The incinerator must be designed and constructed so as to prevent the escape of sparks or burning material*
  - *The incinerator must be situated 2 metres or more away from any building or fence; or*
  - *If the incinerator is within 2 metres of a building or fence, the local government must have given written permission for the incinerator to be used.*

- *There must be no inflammable material within 2 metres of the incinerator when it is in use*
- *At least one person must be present at the site of the fire at all times until it is completely extinguished*
- *When the fire is no longer required, the person must ensure that the fire is completely extinguished by the application of water or earth.*

“Burning garden refuse” is defined under the Act as “*lighting or using a fire in the open air for the purposes of destroying garden refuse or rubbish or for any like purpose.*” Therefore, householders are currently able to burn green waste and rubbish in an incinerator any time of the year, if their incinerator meets the requirements outlined above. A permit is not required unless the incinerator is located within 2 metres of a building or fence.

To restrict this ability, a local government under Section 24G(2) of the Act may, by notice published in the *Government Gazette* and a newspaper circulating within its district, prohibit or impose restrictions on the burning of garden refuse that is otherwise permitted under Section 24F. (Publishing an advertisement in the *Government Gazette* provides a legally enforceable prohibition that is supported by the powers and penalties contained within the *Bush Fires Act 1954*). This could include either a complete ban on the use of incinerators or the requirement of a permit.

2. Impacts a burning ban may have on hospital incinerators:

There are two hospitals within the City of Joondalup; Glengarry Hospital and Joondalup Health Campus. Neither hospital has an incinerator on its premises, therefore they would be unaffected by a blanket ban on incinerators.

3. Burning garden refuse and rubbish during prohibited burning times

Under Section 24F of the Act, persons may burn garden refuse and rubbish during restricted and prohibited burning times, if burned in accordance with the following requirements:

- *Garden refuse and rubbish must be burned **on the ground** in the following manner:*
- *There is no inflammable material (other than that being burned) within 5 metres of the fire at any time while the fire is burning*
- *The fire is lit between 6pm and 11pm and is completely extinguished before midnight on the same day*
- *At least one person is present at the site of the fire at all times until it is completely extinguished*
- *When the fire is no longer required, the person ensures that the fire is completely extinguished by the application of water or earth.*

The City's *Policy 6-5 Burning on Private Property* adds to these conditions by requiring the following:

- *Garden refuse and rubbish intended for burning must be placed on the ground in a heap no more than one metre across and one metre high.*
- *Only one heap may be burnt at any one time.*
- *During restricted and prohibited burning times (31 October – 31 May), garden refuse and rubbish cannot be burned if the fire danger rating is extreme or very high.*

Permits are only required for burning garden refuse and rubbish if it takes place outside of these requirements.

#### 4. Implications of a ban on potbelly stoves and BBQs

Under Section 25 of the Act, subsection (1aa) excludes gas appliances (such as BBQs) from being subject to burning restrictions on private land. They would therefore be unaffected by any blanket ban.

Potbelly stoves are normally used inside a home for the purposes of heating, however, should they be utilised outside or on a patio, they may be captured by the Act as an "incinerator". (Incinerators are defined in the Act, as "[*apparatus that are*] designed and constructed so as to prevent the escape of sparks or burning material"). However, incinerators are only referred to in Section 24F of the Act, which deals with "destroying garden refuse (or rubbish)", therefore, burning firewood for the purposes of heating may distinguish potbelly stoves from incinerators so they are not captured under the Act.

It is doubtful that potbelly stoves would be impacted by a blanket ban and it is also doubtful that there are any instances within the City of Joondalup where potbelly stoves are utilised outside of a home.

#### Consideration of other burning apparatus and processes






Following consideration of the impacts on potbelly stoves, the City also considered a variety of burning apparatus and processes that may be captured by a blanket ban on "backyard burning".

The table below looks at each process/apparatus in relation to two purposes, is a blanket ban aiming to:

1. Reduce incidences of smoke emissions?
2. Reduce fire hazards on private property?

A blanket ban will have different implications on the use of burning processes/apparatus, depending on the purpose of the ban. For instance, should the purpose be to reduce incidences of smoke, almost all devices listed produce smoke and are captured by the Act in some way, therefore, a blanket ban would be effective. However, should the purpose be to reduce fire hazards on private property, many devices listed *do not* pose a fire hazard and may therefore be unintentionally captured by a blanket ban. (These include: household incinerators, webbers and chimineas).

The table lists various burning processes/apparatus, a picture of the process/apparatus, the section within the Act where it may be captured and a yes/no indication as to whether the process/apparatus poses a smoke or fire hazard.

<b>BURNING PROCESS OR APPARATUS</b>	<b>PICTURE OF PROCESS OR APPARATUS</b>	<b>APPLICABLE CATEGORY WITHIN THE ACT</b>	<b>PURPOSE: SMOKE</b>	<b>PURPOSE: HAZARD</b>
<b>44 Gallon Drum</b> (open)		Potentially s. 25(1)(a) – “open fire for the purposes of camping”	Yes	Yes
<b>Household Incinerators</b> (enclosed)		s. 24F(1) – “burning garden refuse in an incinerator”	Yes	No
<b>Hangi</b> (traditional enclosed Maori fire pit used for cooking)		Potentially s. 25(1)(a) – “open fire for the purposes of cooking”	No	No
<b>Wood-Fired Pizza Oven</b> (enclosed)		Not likely to be captured under the Act.	Yes	No
<b>Brazier</b> (free-standing open heater)		Potentially s. 25(1)(a) – “open fire for the purposes of camping”	Yes	Yes

<p><b>Potbelly Stove</b> (outdoors)</p>		<p>Not likely to be captured under the Act.</p>	<p>Yes</p>	<p>No</p>
<p><b>Gas BBQ</b></p>		<p>Excluded as a restricted appliance under s. 25(1aa)</p>	<p>N/A</p>	<p>N/A</p>
<p><b>Fire Pit</b> (open or covered)</p>		<p>Potentially s. 25(1)(a) – “open fire for the purposes of camping”</p>	<p>Yes</p>	<p>Yes</p>
<p><b>Wood-Fired BBQ</b> (open)</p>		<p>s. 25(1)(a) – “open fire for the purposes of cooking”</p>	<p>Yes</p>	<p>Yes</p>
<p><b>Webber</b> (open or enclosed)</p>		<p>s. 25(1)(a) – “open fire for the purposes of cooking”</p>	<p>Yes</p>	<p>No</p>
<p><b>Chiminea</b> (semi-enclosed)</p>		<p>Potentially s. 25(1)(a) – “open fire for the purposes of camping”</p>	<p>Yes</p>	<p>No</p>



**Issues and options considered:**

1. Following a resolution of Council, publish a notice in the *Government Gazette* and in a local newspaper stating that “burning on private property and the use of incinerators are prohibited within the City of Joondalup **at all times without a permit**” and amend the City’s Policy 6-5 to reflect this.

*Effect:* This option would effectively restrict people from burning any materials in:

- an incinerator
- a 44 gallon drum
- a Chiminea
- a Webber
- a Wood-fired BBQ
- on the ground
- a brazier
- a hangi
- a fire pit

at any time during the year without obtaining a permit from the City.

The City could then develop criteria for determining the circumstances in which a permit would be issued (most likely for instances where removing a fire hazard is best achieved through controlled burning) and amend the City’s Policy 6-5 to reflect this.

In all other circumstances an application for a permit would be refused.

2. Following a resolution of Council, publish a notice in the *Government Gazette* and in a local newspaper stating that “burning on private property and the use of incinerators are prohibited within the City of Joondalup **at all times**” and amend the City’s current Policy 6-5 to state that the City will not issue permits.

*Effect:* This option would effectively restrict people from burning any materials in:

- an incinerator
- a 44 gallon drum
- a Chiminea
- a Webber
- a Wood-fired BBQ
- on the ground
- a brazier
- a hangi
- a fire pit

at any time during the year.

The City’s policy would then make it clear to residents that burning on private property and the use of incinerators are banned, as permits will not be available.

3. Following a resolution of Council, publish a notice in the *Government Gazette* and in a local newspaper stating that “burning on private property and the use of incinerators are prohibited within the City of Joondalup **at all times**, excluding enclosed devices used for the purposes of cooking or heating” and amend the City’s current Policy 6-5 to state that the City will not issue permits.

*Effect:* This option would effectively restrict people from burning any materials in:

- an incinerator
- a 44 gallon drum
- a Wood-fired BBQ
- a fire pit
- on the ground
- a brazier
- a hangi

at any time during the year.

Excluding “enclosed devices used for the purposes of cooking or heating” will ensure that wood-fired pizza ovens, potbelly stoves, webbers, hangis and chimineas are not captured by a blanket ban.

It is the City’s view that from a public health perspective, the greatest concern comes from smoke emissions created by burning green waste and rubbish. Excluding enclosed cooking and heating devices reflects this view and ensures that processes and apparatus, that do not pose a fire hazard risk, are also excluded.

4. Introduce a local law under the general powers provisions of the *Local Government Act 1995*, to ban specific materials from being burnt and to ban specific processes for burning on private property, as determined by Elected Members.

*Effect:* This option would enable Council to specify the materials and burning processes to be banned, however, legal advice would need to be obtained to ensure that no inconsistencies exist between provisions in the local law and other legislation.

In addition, it should be noted that the process for introducing a local law is often long and expensive and is best avoided if other effective options are also available.

5. Amend the City’s *Health Local Laws 1999* to prohibit the burning of rubbish on the ground or in an incinerator.

*Effect:* This option has been pursued by the City of Rockingham; however, it is not very effective as the prohibition only captures a limited number of materials and does not extend to green waste.

Additionally, the new *Health Bill* has omitted the nuisance provisions and as such, the City’s Health Local Laws will require a major review in the next 12 to 18 months and may not be able to capture offences relating to smoke emissions.

6. Do nothing.

*Effect:* This option would enable City Officers to issue permits for residents to burn garden refuse, rubbish or bush on the ground or in an incinerator during prohibited or restricted burning periods in accordance with the City’s Policy and the Act.

Outside of limited burning periods, permits would not be required to burn materials in on private property.

**Link to Strategic Plan:**

Not applicable.

**Legislation – Statutory Provisions:**

Relevant legislation includes:

- *Local Government Act 1995*
- *Bush Fires Act 1954*
- *Health Act 1911*
- *Bush Fire Prevention and Control Local Law 1998*
- *Health Local Laws 1999*

**Risk Management considerations:**

There is a risk that instituting a complete fire ban may seem unreasonable to residents who are undertaking all necessary precautions to ensure that fires on private property are contained. Limiting reasonable acts within a controlled environment on private land may appear to some residents as an unwarranted over-regulation on behalf of the City.

**Financial/Budget Implications:**

Should option 4 be adopted and a local law is pursued, the cost of instituting a blanket ban significantly increases. Consultation processes required under section 3.12 of the *Local Government Act 1995* cost a minimum of \$2,000 to undertake. The cost of obtaining legal advice would also need to be factored into this option.

**Policy implications:**

Should options 1, 2, 3 or 4 be adopted, the City's Policy 6-5 will require amending to reflect the elements of the option pursued.

**Regional Significance:**

Not applicable.

**Sustainability implications:**

Not applicable.

**Consultation:**

Not applicable.

**COMMENT**

The City still maintains its position that instituting a blanket ban for burning on private property may be of some merit to residents from both a safety and public health perspective. However, the ban should be for the purposes of restricting potential fire hazards and smoke created from burning green waste and rubbish only.

**ATTACHMENTS**

Nil.

**VOTING REQUIREMENTS**

Simple Majority.

**MOVED Cr Hollywood, SECONDED Mayor Pickard that the Policy Committee RECOMMENDS that Council ADOPTS Option 3, namely agreeing to publish a notice in the *Government Gazette* and in the local newspaper stating that “burning on private property and the use of incinerators are prohibited within the City of Joondalup at all times, excluding enclosed devices used for the purposes of cooking or heating” and amend the City’s current Policy 6-5 to state that the City will not issue permits.**

**Lapse of quorum**

*Mayor Pickard left the Room at 1908 hrs. At this point, a quorum was not present.*

The following members were present in the Room:

Cr Hollywood  
Cr Macdonald  
Cr Norman

*Cr Young entered the Room at 1909 hrs. With the presence of a quorum, the meeting resumed.*

*Mayor Pickard entered the Room at 1910 hrs.*

Discussion ensued

**MOVED Cr Young, SECONDED Cr Norman that the Policy Committee AGREES to withdraw the above motion.**

**The Motion was Put and**

**CARRIED (5/0)**

**In favour of the Motion:** Crs Hollywood, Macdonald, Norman, Young and Mayor Pickard

**MOVED Mayor Pickard, SECONDED Cr Hollywood that the Policy Committee RECOMMENDS to the Council that a paper on the “Burning Ban on Private Properties” be advertised for public comment and a report be submitted back to the Policy Committee for consideration.**

**The Motion was Put and**

**CARRIED (3/2)**

**In favour of the Motion:** Crs Hollywood, Macdonald, and Mayor Pickard **Against the Motion:** Crs Norman and Young

## **ITEM 2                    TRADESMAN'S                    TEMPORARY                    PARKING    PERMITS – [57618]**

**WARD:**                    All

**RESPONSIBLE**      Mr Mike Tidy  
**DIRECTOR:**            Corporate Services

---

### **PURPOSE**

To describe the arrangements in place to assist the construction industry with site access and parking in the Joondalup City Centre during building construction and to consider temporary tradesman's parking permits.

### **EXECUTIVE SUMMARY**

The existing protocols and procedures for Construction Site Parking and Hoarding Licences have been reviewed and updated to reflect the introduction of paid parking. The revisions have been approved by the Chief Executive Officer.

The protocols and procedures allow for the storage of construction materials and the loading and unloading of people, plant and equipment. It is felt that these arrangements provide adequate support for temporary parking by trades' people.

*This report recommends that the Policy Committee NOTES that:*

- 1.     the City has protocols in place for Hoarding License and Construction Site Parking Permits to manage the parking, verge, footpath and site access issues associated with construction and work sites.*
- 2.     the Hoarding License and Construction Site Parking Permit protocols do not provide for parking permits, reserved or exclusive access to parking for the general parking requirements of individual workers and trades people working on work sites.*

### **BACKGROUND**

A report to the Policy Committee was requested by Council at its September 2008 meeting (refer CJ199-09/08) on "the provision of temporary parking permits to tradespersons" to use while working on developments within the Joondalup City Centre.

The introduction of paid parking in the City Centre could potentially provide impediments to organisations or individuals involved in constructing or maintaining buildings. The management of these arrangements is through the Hoarding Licence and Construction Site Parking Permit protocols. These have been revised and those revisions approved by the Chief Executive.

## DETAILS

### Issues and options considered:

#### Issues

There are two issues associated with construction sites and sites undergoing extensive renovation and maintenance.

The first is the normal construction requirements of machinery and equipment, materials delivery and storage, loading and unloading etc. These issues have impacts on the use and access to parking bays, verges and footpaths either temporarily or for the duration of the works. There are also significant safety issues for pedestrians and motorists.

It is accepted that these issues are a normal part of construction activity and in a developing City Centre there need to be arrangements in place that assist the works to progress but at the same time minimise disruption and ensure that the safe movement of pedestrians and motorists is not compromised.

The second relates to the parking needs of construction workers and tradespersons working on site. Again it is accepted that the temporary needs related to trade activities such as staff and equipment drop off and pick up etc is a normal part of the activity associated with a construction or work site. The issue of general vehicle parking while working on site, however, is a separate matter.

In essence the parking requirements generated by workers and tradespersons for general vehicle parking while engaged on work sites are no different to those of any other worker in the City Centre other than that the requirement is most likely short term. It is considered that it would not be equitable to offer concessional parking arrangements such as reserved or exclusive parking for use by workers and trades persons to meet general parking needs. They should avail themselves of the same parking opportunities as other workers in the City Centre.

It is acknowledged that for some trades ready access to equipment, tools and materials stored in a vehicle may be necessary, however, in these instances it is considered that the onus is on the developer/builder to provide that access on site.

The revised Construction Site Parking Permit and Hoarding License application process has addressed these issues and provides an effective means for workers and trades' people working on sites with valid building approvals to:

- secure the use of portions of the road reserve to access work sites,
- where it is considered appropriate in some circumstances to set aside parking bays on the street, or portions of pavement to assist in the construction, development or remediation of buildings to ensure the work location is kept as safe as possible for pedestrians, motorists and site workers,
- permit loading and unloading of equipment and materials,
- permit the storage of equipment and materials during the life of the construction work,
- permit access for use by heavy lifting equipment or specialised equipment such as concrete pourers,
- permit use by individual trades people to load and unload their own equipment before parking their vehicles in ordinary parking bays around the construction site.

The processes do not provide for individual trades people to have access to reserved, or exclusive permanent parking under a permit system for the duration of the works. It is the responsibility of the developer/builder to provide sufficient parking for workers and trades' people on the site if this is considered necessary.

### Other Local Governments

Most Local Governments have hoarding and construction licence provisions and they are generally very similar to the City of Joondalup. These Local Governments make no special provision for trades people.

Some Local Governments have considered the option of temporary permits. There are a number of approaches such as those outlined below.

- The City of Melville allows permits to be purchased on a daily or ½ daily basis, for the same calculated fee as the paid parking bay would normally require but usable in time limited areas; i.e. a permit can be purchased for all day parking in a 1 hour zone. The current all day fee is \$6. Bays may not be set aside and there are no guarantees that a bay will be available when the vehicle comes to park
- The City of Subiaco has no current provisions in place but are reviewing a proposal for a “commercial” permit which has a \$10 daily fee but parking meter charges will apply on top of the permit fee and bays will not be set aside
- The City of Fremantle offers street parking permits at \$14 per bay per day. There is no guarantee a bay will be available and bays are not set aside.
- The City of Perth provides bay hire for any purpose outside the CBD. The fee is \$54 per bay per day. Bays may not be set aside in the CBD as it disadvantages regular users.

These are all variations on a similar theme but essentially they provide no financial concessions nor any exclusive or reserved use of parking. The saving to the permit holder is that in some cases, it is not necessary to have the money or credit card to feed a parking meter. There are overheads to managing these arrangements and it is felt that requiring workers and trades' people to use the normal parking arrangements available to City Centre workers generally is not a significant impost.

### **Link to Strategic Plan:**

Objective 1.3: To lead and manage the City effectively.

### **Legislation – Statutory Provisions:**

The processes are developed under the provisions of the Local Government Act 1995 and the Local Government (Miscellaneous Provisions) Act 1960

### **Risk Management considerations:**

Unregulated access to construction sites for equipment and materials has the potential to cause injury to workers or passers by. These processes ensure the work location is kept as safe as possible for pedestrians, motorists and site workers.

**Financial/Budget Implications:**

The hoarding licence fee in the current fees and charges manual has been set at \$1 per square metre per month or part month. Construction site parking which provides exclusive use of parking bays between agreed times is charged at the following rates.

**Monday to Saturday Parking Bay – Exclusive Use Fee**

<b>Basis of Cost</b>	<b>Fee</b>	<b>GST</b>	<b>Total Fee</b>
Works and private maintenance (Short Term – 1-7 days)			
Full day per bay/length of road	\$20.00	\$2.00	\$22.00
Half day per bay/length of road	\$12.27	\$1.23	\$13.50
Works and private maintenance (Long Term – more than 7 days)			
Full day per bay/length of road	\$15.45	\$1.55	\$17.00
Half day per bay/length of road	\$8.18	\$0.82	\$9.00

The current fees and charges are believed to reflect a reasonable continuing financial return for the City whilst recognising the need for developers and maintenance organisations to access their work sites in an efficient way.

**Policy implications:**

There are no policy implications and there are already processes for the issuing of Hoarding Licences and Construction Site Parking permits which have been in operation for some time. These processes have been updated to reflect the impact of paid parking in the City Centre.

**Regional Significance:**

Not applicable

**Sustainability implications:**

Not applicable

**Consultation:**

Not applicable

**COMMENT**

Construction and major maintenance works in the City Centre have the potential to disrupt traffic, affect pedestrian access and block portions of foot paths and carriageways for extended periods. It is important to have arrangements in place which recognise the necessity of these disruptions but which minimise their impact.

The protocols provide for arrangements that take account of the need for specialised equipment movements, loading and unloading of equipment and the delivery of building materials. It is the responsibility of the developer/builder to provide sufficient parking for workers and trades' people on site if considered necessary, otherwise



workers and trades' people are to make their own arrangements using the available general parking bays in the area.

## ATTACHMENTS

Nil

## VOTING REQUIREMENTS

Simple majority

**MOVED Cr Young, SECONDED Cr Norman that the Policy Committee NOTES that:**

- 1 the City has protocols in place for Hoarding License and Construction Site Parking Permits to manage the parking, verge, footpath and site access issues associated with construction and work sites;**
- 2 the Hoarding License and Construction Site Parking Permit protocols do not provide for parking permits, reserved or exclusive access to parking for the general parking requirements of individual workers and trades people working on work sites.**

*During discussion, the Chief Executive Officer left the Room at 1944 hrs and returned at 1946 hrs.*

**The Motion was Put and**

**CARRIED (3/2)**

**In favour of the Motion:** Crs Hollywood, Macdonald and Young **Against the Motion:** Mayor Pickard and Cr Norman,

## **ITEM 3 CONSIDERATION OF PUBLIC CONSULTATION FOR COMPLIANT COMMERCIAL DEVELOPMENT - [12950, 06094]**

**WARD:** All

**RESPONSIBLE** Mr Clayton Higham

**DIRECTOR:** Planning and Community Development

---

## **PURPOSE/ EXECUTIVE SUMMARY**

To provide Policy Committee with options for the development of a policy to guide the advertising or notification of proposed commercial development that adjoins residential zones, where the development is compliant and would not otherwise require public consultation.

## **BACKGROUND**

Council, at the Meeting held on 25 November 2008 made the request for "...a report from the Chief Executive Officer on developing a policy that will enable the owner/s of property adjacent to a proposed commercial development to be informed of that

*development even when the proposed development is a “P” use pursuant to District Planning Scheme 2.”*

Within the City there are many areas where the Residential Zone abuts a Mixed Use, Business, Commercial or Service Industrial Zone. In these locations, residents may be adjacent to commercial development that complies with the Scheme provisions but is considerably different to the surrounding residential development. However, residents in these locations must expect that non-residential development will occur there as they abut a ‘non-residential’ zone.

Development applications on commercial sites which are a “P” use, that is a permitted use under DPS2, can be approved under delegated authority where there are no variations to the standards or there is no issue with the nature of the land uses proposed, and potential impacts or variance from what might reasonably be contemplated.

Where the above situation occurs, there is no obligation under DPS2 to consult with adjacent land owners.

Direction has therefore been given to develop a policy so that the owners of land adjacent to commercial sites that are being developed are informed about developments even if that development is a “P” use pursuant to DPS2. This report explores the options and principles that will guide the development of this Policy.

## **DETAILS**

### Current process for the advertising of development applications

The Scheme outlines the necessary process for the advertising of development applications (clause 6.7) based on the land use permissibility being “A” (uses that are not permitted unless the Council gives approval and has been advertised for public comment) or “D” (uses that are discretionary, and not permitted without the Council’s approval.). In addition, where a development application does not comply with any standard or requirement of the Scheme and the variation is likely to affect an adjoining property owner or the general locality, the application is also required to be advertised in accordance with clause 6.7.1.

Further to this, clause 6.4 of the Scheme states that *“The Council may if it so desires, before determining any application consult with any other statutory, public or planning commission and with any other party it deems fit”*. Although the clause could be read as relating to authorities such as service agencies and public agencies, it is open to the Council to consider that public consultation might fall into this category, in the case of permitted development such as non-residential development adjoining the Residential Zone.

The main reasons to consult with neighbours or the wider community are:

- to provide an opportunity for members of the community to voice opinions, exercise their rights and be involved in the planning and development of their community;
- to strengthen the community’s confidence in the ‘Planning’ processes carried out within the City;
- to assist the Council in making informed and responsive ‘Planning’ decisions; and

- to demonstrate the transparency and accountability of the Council's 'Planning' processes.

**Issues and options considered:**

At present the Scheme does not require compliant permitted development to be advertised to adjoining property owners. Part 8 of the DPS2 allows the Council to make planning policies, about “... *any matter related to the planning and development of the Scheme area...*” and as such Council may wish to consider the development of a policy to extend the need for public advertising to encompass adjoining residential zoned land to instil greater public confidence and transparency in the planning process.

**Option 1: Notify adjoining property owners of approved development**

In the case of applications being advertised, there is a certain level of expectation that an interested party may influence the design or determination of a proposal. In fact, if the proposal conforms to the standards, the Council is (by law) obliged to approve it, in the form that it was submitted. As such, option 1 would entail the development of a policy that ensures notification of approved developments on land that is not zoned Residential but adjoins land zoned Residential. This process would be different to Clause 6.7 (public notice) of the Scheme, whereby this would be undertaken after a determination had been made.

For information purposes, Council will notify affected neighbours after planning approval has been granted on the basis the development is deemed to comply. Notification of the determination would avoid confusion whereby interested parties may have a false understanding that they may influence the decision for compliant development.

**Option 2: Expand the extent to which advertising of development is required**

The Council may wish to develop a policy to ensure owners of residential land are provided with the opportunity to comment on any commercial development application received on an adjoining property, where the proposed development is compliant and would not otherwise require advertising.

As previously mentioned this advertising process may instil a certain level of expectation that neighbours can influence the decision making process. The content of the advertising letters may lessen this expectation by making it known that the Council is not obliged to agree with, or uphold, every opinion expressed by neighbours, nor to incorporate all suggestions into its decision on a proposal. Council must also ensure that any irrelevant consideration raised through the advertising process does not influence their decision.

Full consideration would need to be given to any written comments received during the applicable advertising period. However, where an application complies with the provisions of the Scheme the Council is (by law) obliged to approve it and it would therefore be unreasonable to require modifications in response to any comments received.

It is also important to note that additional advertising requirements, whilst it may keep the community informed, would also delay the processing of the development application and would not add value to the planning process. In addition, there little

scope for adjoining owners to make a valid comment in regard to fully compliant development.

It is therefore recommended that this option is not pursued.

**Link to Strategic Plan:**

The following objectives and strategies in the City's Strategic Plan 2008-2011 are applicable to this report.

1.1 Objective: To ensure that the processes of local governance are carried out in a manner that is ethical, transparent and accountable.

1.2 Objective: To engage proactively with the community.

3.1 Objective: To encourage the development of the Joondalup CBD.

**Legislation – Statutory Provisions:**

Clause 8.11 of the City of Joondalup's District Planning Scheme No 2 enables Council to prepare, amend and add to local planning policies that relate to any planning and development matter within the Scheme area.

**Risk Management considerations:**

The public consultation of compliant commercial development may result in the desire for all compliant development, whether residential, commercial, industrial or otherwise, to follow a similar process. This is not possible in all instances as a compliant single house development does not require a development application under DPS2 and as such would not be advertised.

The impact of a greater need for public consultation may result in delays when processing applications and that the public may be notified of proposals they can do nothing about.

**Financial/Budget Implications:**

Not Applicable.

**Policy implications:**

The Policy Committee may recommend the development of a policy as the result of this report.

**Regional Significance:**

Not Applicable.

**Sustainability implications:**

Not Applicable.

**Consultation:**

Not Applicable.

**COMMENT**

As a result of the options explored in this report, it is recommended to the Policy Committee that a policy be developed to incorporate the principles of Option 1 whereby owners of land zoned Residential will be notified of any approved development on adjoining land zoned Mixed Use, Business, Commercial or Service Industrial Zone should public consultation not be otherwise required.

**ATTACHMENTS**

Nil.

**VOTING REQUIREMENTS**

Simple Majority

*Director Corporate Services left the Meeting at 2018 hrs.*

**MOVED Mayor Pickard, SECONDED Cr Young that the Policy Committee RECOMMENDS that Council REQUESTS the preparation of a Policy in accordance with Option 1 of this Report, and presented to the Policy Committee for consideration.**

Discussion ensued

**The Motion was Put and**

**CARRIED (5/0)**

**In favour of the Motion:** Crs Hollywood, Macdonald, Norman, Young and Mayor Pickard

**ITEM 4 COASTAL HEIGHT POLICY - STATUS REPORT – [24581]**

**WARD:** North, North-Central, Central, South-West and South

**RESPONSIBLE** Mr Clayton Higham

**DIRECTOR:** Planning and Community Development

**Note:**

Following the Council meeting on 17 February 2009, contact was made with the office of the Minister for Planning and Infrastructure on the status of Scheme Amendment No 32. The Minister was asked whether he would be prepared to indicate his support for the amendment in its present form or, if not, to provide clarification on what he would be prepared to accept and what would be required of the Council to progress this.

**PURPOSE**

To provide background information on the request for a review of the Coastal Building Height Policy

## EXECUTIVE SUMMARY

This report was initially considered by Council in December 2008, where it was deferred to the February 2009 meeting. At its meeting held on 17 February 2009, Council resolved to:

- defer a motion moved by Cr Corr and seconded by Cr Norman to the Council meeting to be held on 17 March 2009 for further consideration;
- refer the report to the Policy Committee for consideration.

Council adopted Policy 3-4 Height of Buildings within the Coastal Area (Non-Residential Zone) in February 2006. The Policy provides a guideline for the consideration of the appropriate height of buildings along the coast.

Concurrently, Council sought to introduce an amendment to District Planning Scheme No. 2 (DPS2) to reflect the coastal height policy limit. The amendment has not been finalised and is awaiting the approval of the Minister.

Council recently approved a new auditorium for the Sacred Heart College. The auditorium projects above the 10 metre height limit established by the policy. The issue generated significant debate on the application of the policy.

Council has requested a review of the policy.

This report notes that

1. Council policy is established to assist with decision making;
2. Policies do not provide a mandatory control on issues;
3. Policies can be varied depending on merit and circumstance of related decisions; and
4. The making of a decision in variance of a policy does not invalidate the policy.

A high number of submissions were received endorsing the merit and content of Policy 3-4 prior to its adoption. Since that time there has been no indication that community sentiment in favour of the policy has wavered. On this basis, it is concluded that the policy is appropriate in its current form with one minor change. That is that there be consultation on any proposal which exceeds the policy.

## BACKGROUND

At the Council meeting held on 2 September 2008, the following motion was carried:

*“That a report be presented to Council this year addressing the status of Policy 3-4 –Height of Buildings within Coastal Area (non-residential zones) and associated Scheme Amendments.”*

At the Council meeting held on 17 February 2009, the following motions were carried:

*“That the following Motion BE DEFERRED to the next Council meeting to be held on 17 March 2009:*

*“MOVED Cr Corr, SECONDED cr Norman that Council:*

- 1 fully SUPPORTS Policy 3-4 - Height of Buildings within the Coastal Area (Non-Residential Zone) and the Planning Scheme Amendment approved by Council in April 2006;*
- 2 WRITES to the Planning Minister(s) requesting that the Amendment to District Planning Scheme No 2 be finalised and that this matter be treated as urgent.”*

*“That the following officer’s recommendation be REFERRED to the Policy Committee meeting to be held on 4 March 2009 for further consideration:*

*“That Council:*

- 1 NOTES the current status of Policy 3-4 Height of Buildings within the Coastal Area (Non-Residential Zone);*
- 2 In accordance with Clause 8.11 of the City of Joondalup’s District Planning Scheme No 2, ADVERTISES for public comment for a period of twenty one (21) days, modifications to Policy 3-4 Height of Buildings within the Coastal Area (Non-Residential Zone) to add the following Statement 3:*
  - “3 Where a proposal exceeds the 10 metre height limit outlined in Point 2, that proposal shall be advertised for public comment in accordance with the provisions of Clause 6.7 of District Planning Scheme No 2.”*
- 3 NOTES that the public comments in relation to the proposed modified policy will be presented to the Policy Committee in the first instance, prior to submitting to Council;*
- 4 NOTES that in relation to the Minister’s request, specific site analysis will be undertaken in the initial stage of the review of DPS2 and this will be included in the Scheme review process.”*

The Coastal Height Policy includes a provision to limit the height of development of non-residential land within 300m of the coastline. The policy height limit is for buildings not to exceed 10m above natural ground level, which is approximately equivalent to a 2 storey commercial building with a pitched roof, or a 3 level commercial building with a flat roof. The sites affected by the policy are shown in Attachment 1.

The policy was adopted following a proposal by some local land owners to develop a 4 and 5 level development on land very near the coast, to accommodate a range of commercial and residential uses. The land was not zoned for the purposes proposed, and the height and density of development were significantly different to anything previously contemplated on the subject land. As a result of the Council’s increased interest in the issue of building bulk along the coast, Council resolved to prepare a policy and DPS2 amendment to introduce guidelines for maximum height along the coast.

The public responded with approximately 270 submissions in support of the proposed policy. Council subsequently adopted the policy and initiated a DPS2 amendment. While the policy was finalised, the amendment requires the final approval of the Minister for Planning. Correspondence has been exchanged with the Minister's office to answer queries and seek finalisation of the amendment, but to date approval has not been forthcoming.

Council recently gave planning approval for a proposed auditorium for Sacred Heart College. The auditorium raised a number of issues, a key matter being the height and bulk of the development. A portion of the proposed building is 14.6 metres in height when evaluated as required by the policy. This aspect was considered in great detail, and Council resolved to vary the policy and give its consent for the development.

#### Proposed Scheme amendment

Council has submitted the draft Scheme amendment to the Western Australian Planning Commission (WAPC) requesting that the amendment be finalised. Correspondence has been exchanged with the WAPC and Minister's office in an effort to have the matter finalised.

The most recent correspondence received from the Minister's office (in October 2008) suggests that there is concern about a scheme amendment that potentially limits the height of development below the 5 storey limit espoused in the State's planning policy for development near the coast. The correspondence requests that Council reviews its position on the limits for the few non-residential sites along the coast, having regard to site conditions, view corridors etc. Alternately, more suitable justification is requested for the amendment, although the form for that is not prescribed.

#### **DETAILS**

The role of Council policy is to provide parameters to guide decision making. In planning matters, policies assist the evaluation process in circumstances where:

- standards are not prescribed in the DPS2,
- the DPS2 includes provision for the exercise of discretion, or
- the Council adopts criteria for assessment to complement DPS2 controls.

Policy limits are not statutory limits, and can be varied having regard to circumstance and the merit of a proposal. In fact, Council is obliged by DPS2 to consider such factors when making planning decisions.

In regard to the amendment proposal, work will be conducted including site analyses of each non residential affected land holding, to validate and refine the proposed height limits for each of those sites. It should however be borne in mind that the likely optimum development outcome in the near future is not a significantly bulky or high cluster of buildings in any of those sites.

#### **COMMENT**

Although Council has varied the Policy in making its decision by approving the Sacred Heart auditorium, that decision does not invalidate the policy, nor does it weaken the general intent of the policy. The Sacred Heart decision was made in



recognition of the individual circumstances of that site. It is therefore considered that the intention of the policy remains valid.

However, Council may consider it appropriate to modify the policy so that all proposals that exceed the height are advertised for public comment in accordance with the provisions of the planning scheme. All other principles and wording within the current policy will remain unchanged.

Some work needs to be done in response to the Minister's request, particularly in relation to the sites known as Sorrento Village and Harbour Rise. This will be done as part of the Scheme review process, with this anticipated to take twelve (12) months.

Subsequent to the report submitted to Council in December 2008, in an effort to clarify the proposal and its intent, the recommendations have been modified slightly to make them clearer, but the intent has not been changed.

### **ATTACHMENTS**

Attachment 1	Coastal Strip (featuring non-residential sites)
Attachment 2	Policy 3-4 Height of Buildings within the Coastal Area (Non-Residential Zone)

### **VOTING REQUIREMENTS**

Simple Majority

The Director Planning and Community Development tabled the following correspondence:

- Department of Planning and Infrastructure – Coastal Height – Scheme Amendment No 32 – 20 October 2008 – Appendix 1 refers.
- Western Australian Planning Commission – District Planning Scheme No 2 Amendment No 32 – 31 May 2007 – Appendix 2 refers.

**MOVED Mayor Pickard, SECONDED Cr Young that the Policy Committee RECOMMENDS that Council:**

- 1 NOTES the current status of Policy 3-4 Height of Buildings within the Coastal Area (Non-Residential Zone);**
- 2 In accordance with Clause 8.11 of the City of Joondalup's District Planning Scheme No 2, ADVERTISES for public comment for a period of twenty one (21) days, modifications to Policy 3-4 Height of Buildings within the Coastal Area (Non-Residential Zone) to add the following Statement 3:**
  - “3 Where a proposal exceeds the 10 metre height limit outlined in Point 2, that proposal shall be advertised for public comment in accordance with the provisions of Clause 6.7 of District Planning Scheme No 2.”**

- 3 **NOTES that the public comments in relation to the proposed modified policy will be presented to the Policy Committee in the first instance, prior to submitting to Council;**
- 4 **NOTES that in relation to the Minister's request, specific site analysis will be undertaken in the initial stage of the review of DPS2 and this will be included in the Scheme review process.**

Discussion ensued

**The Motion was Put and**

**CARRIED (3/2)**

**In favour of the Motion:** Crs Hollywood, Young and Mayor Pickard **Against the Motion:** Crs Macdonald and Norman,

*Appendices 1 and 2 refers*

#### **REQUESTS FOR REPORTS FOR FUTURE CONSIDERATION**

Cr Young requested a report in relation to the operation of kite surfing on City of Joondalup beaches be presented to the Policy Committee.

#### **CLOSURE**

There being no further business, the Presiding Person declared the Meeting closed at 2125 hrs, the following Elected Members being present at that time:

Cr Kerry Hollywood  
Mayor Troy Pickard  
Cr Marie Macdonald  
Cr Mike Norman  
Cr Trona Young