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Shire of Kalamunda

# Planning Services Committee

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Minutes for 5 December 2011



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## MINUTES

### 1.0 OFFICIAL OPENING

1.1 The Chairman opened the meeting at 6:30pm and welcomed Councillors, Staff and Members of the Public Gallery.

### 2.0 ATTENDANCE, APOLOGIES AND LEAVE OF ABSENCE PREVIOUSLY APPROVED

#### 2.1 Attendance

##### Councillors

Donald McKechnie	(Shire President) North Ward
Sue Bilich	North Ward
Margaret Thomas	(Chairman, Planning) North Ward
Bob Emery	North West Ward
Dylan O'Connor	North West Ward
John Giardina	South East Ward
Frank Lindsey	South East Ward
Noreen Townsend	South West Ward
Allan Morton	South West Ward
Justin Whitten	South West Ward

##### Members of Staff

Clayton Higham	Director of Development and Infrastructure
Rhonda Hardy	Director Corporate and Community Services
Darrell Forrest	Manager Governance
Michelle Clark	Executive Assistant
Sara Slavin	Minute Secretary
David Tomlinson	Manager Statutory Planning & Building
Andrew Fowler-Tutt	Manager Strategic Planning & Sustainability
Gerard Thomas	Manager Technology and Corporate Support

**Members of the Public** 7

**Members of the Press** 0

#### 2.2 Apologies

##### Councillors

Martyn Cresswell	North West Ward
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##### Staff

James Trail	Chief Executive Officer
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#### 2.3 Leave of Absence Previously Approved

Geoff Stallard	South East Ward
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**3.0 PUBLIC QUESTION TIME**

A period of not less than 15 minutes is provided to allow questions from the gallery on matters relating to the functions of this Committee. For the purposes of Minuting, these questions and answers are summarised.

3.1 Nil.

**4.0 PETITIONS/DEPUTATIONS**

4.1 Nil.

**5.0 APPLICATIONS FOR LEAVE OF ABSENCE**

5.1 Nil.

**6.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETING**

6.1 That the Minutes of the Planning Services Committee Meeting held on 7 November 2011 are confirmed as a true and correct record of the proceedings.

Moved: **Cr Donald McKechnie**

Seconded: **Cr Bob Emery**

Vote: **CARRIED UNANIMOUSLY (10/0)**

**7.0 ANNOUNCEMENTS BY THE PERSON PRESIDING WITHOUT DISCUSSION**

7.1 Nil.

**8.0 MATTERS FOR WHICH MEETING MAY BE CLOSED**

8.1 Nil.

**9.0 DISCLOSURE OF INTERESTS****9.1 Disclosure of Financial and Proximity Interests**

- a. Members must disclose the nature of their interest in matters to be discussed at the meeting. (Sections 5.60B and 5.65 of the *Local Government Act 1995*.)
- b. Employees must disclose the nature of their interest in reports or advice when giving the report or advice to the meeting. (Sections 5.70 and 5.71 of the *Local Government Act 1995*.)

9.1.1 Nil.

9.2 **Disclosure of Interest Affecting Impartiality**

- a. Members and staff must disclose their interest in matters to be discussed at the meeting in respect of which the member or employee had given or will give advice.

9.2.1 Nil.

**10.0 REPORT TO COUNCIL**

Please Note: declaration of financial/conflict of interests to be recorded prior to dealing with each item.





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**Declaration of financial / conflict of interests to be recorded prior to dealing with each item.**

**45. Amendment of Shire of Kalamunda Health Local Law 2011**

Previous Items	10.29 August 2011 PSC
Responsible Officer	Director Planning & Development Services
Service Area	Health
File Reference	LE-LOL-026
Applicant	N/A
Owner	N/A
Confidential Attachment 1	Fax from the Joint Standing Committee on Delegated Legislation – Under Separate Cover <i>Reason for Confidentiality: All correspondence from the Delegated Legislation Committee is required to be kept confidential by the Committee itself.</i>
Attachment 2	Tracked changes version of amended Shire of Kalamunda Health Local Law 2011 – three related pages
Attachment 3	Untracked version of amended Shire of Kalamunda Health Local Law 2011 – three related pages

**PURPOSE**

1. For Council to consider amendments to the Shire of Kalamunda Health Local Law 2011.

**BACKGROUND**

2. Council considered this matter in the August 2011 round of meetings and it was resolved:  
  
"That Council:
  1. Resolves to make the Shire of Kalamunda Health Local Law 2011 and the Shire of Kalamunda Keeping and Control of Animals and Nuisance Local Law 2011."
3. The Shire of Kalamunda Health Local Law 2011 was Gazetted on 7 October 2011.
4. A copy of the Local Law was sent to the Joint Standing Committee on Delegated Legislation in October 2011.

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**DETAILS**

5. The Joint Standing Committee on Delegated Legislation has reviewed the Shire of Kalamunda Health Local Law 2011 and advised of their intention to recommend disallowance of the Local Law unless they receive by 5pm, Wednesday 14 December 2011 the following undertakings from the Shire of Kalamunda Council:

- Clause 4.4(b) be amended to specify the requirements of the Manager Health Service with regard to refuse disposal in the local law.
- Clause 5.7(b) (i) be amended to delete the words “or/and” from the clause and specify which word applies.
- Clause 6.16(3)(c) be amended by removing the word “than”.

In addition the Committee is seeking the following standard undertakings:

- All consequential undertakings arising from the undertakings above will be made.
- Clauses 4.4(b), 5.7(b) (i) and 6.16(3) (c) will not be enforced in a manner contrary to the undertakings that Council gives.
- The undertakings will be completed within six months of the date of the Shire's letter giving the undertakings.
- The Shire of Kalamunda will provide a copy of the minutes of the meeting at which the Kalamunda Council resolves to provide the undertakings above.
- Where the Local Law is made publicly available, whether in hard copy or electronic form, it be accompanied by a copy of these undertakings.

6. The office of the Committee has been advised that the next Ordinary Council Meeting is on Monday 19 December 2011. They expect to receive a written undertaking by Friday 23 December 2011.

**STATUTORY AND LEGAL IMPLICATIONS**

7. If the Shire of Kalamunda Health Local Law 2011 is disallowed it will cease to have effect and cannot be enforced.
8. Should Council resolve to amend the Local Law the amendments, following the amendment process as detailed in clause 18, will be published in the Government Gazette and come in to effect on the date of gazettal.

**POLICY IMPLICATIONS**

9. Strategy 1.6.8 – provide quality environmental and public health services which comply with and exceed relevant legislation.

## **PUBLIC CONSULTATION/COMMUNICATION**

10. The intention of Council to amend the local law will need to be advised seeking public comment.

## **FINANCIAL IMPLICATIONS**

11. Nil.

## **STRATEGIC AND SUSTAINABILITY IMPLICATIONS**

### **Strategic Planning Implications**

12. Nil.

### **Sustainability Implications**

#### Social Implications

13. Nil.

#### Economic Implications

14. Nil.

#### Environmental Implications

15. Nil.

## **OFFICER COMMENT**

16. The changes required by the Joint Standing Committee on Delegated Legislation have been incorporated into the Shire of Kalamunda Health Local Law 2011. (Attachment 2) tracks all the proposed changes in the Local Law. (Attachment 3) is an untracked version of the proposed Local Law.
17. In summary the proposed changes are explained as follows:
- Clause 4.4(b) has been amended by deleting the second sentence and replacing the same with the following sentence; "All such refuse is to be disposed of at a Department of Environment & Conservation licenced facility".
  - Clause 5.7 (b) (i) has been amended by deleting, "or/" as recommended by the Committee.
  - Clause 6.16(3) (c) has been amended by removing the word "than" as recommended by the Committee.

18. It is proposed that the local law amendment be adopted through the following process:
- a. State-wide and local public notice is given of Councils intention to amend the local law seeking public comment.
  - b. A copy of the state-wide notice and proposed amendments to the local law is sent to the Minister for Local Government and to the Minister for Health.
  - c. Approval for the amended Health Local Law must be obtained from the Executive Director Public Health.
  - d. Following a period of at least six weeks from the date of the newspaper notice, all submissions must be considered and a report provided to Council.
  - e. Council considers and resolves to make the proposed Health Local Law amendments.
  - f. The amendments to the Health Local Laws are published in the Government Gazette.
  - g. Local public notice given of the amended local law.
  - h. Copy of gazetted local law amendment provided to the Joint Standing Committee on Delegated Legislation.
19. Recommend that Council resolves to amend the Shire of Kalamunda Health Local Law 2011 as shown in (Attachments 2 and 3).

### **COMMITTEE RECOMMENDATION TO COUNCIL (PS45/2011)**

That Council:

1. Resolves to give state-wide public notice of its intention to amend the Shire of Kalamunda Health Local Law 2011, and invites comment pursuant to Section 3.12 of the *Local Government Act 1995*.
2. Gives an undertaking to the Joint Standing Committee on Delegated Legislation that:
  - All consequential undertakings arising from the amendments to the Shire of Kalamunda Health Local Law 2011 will be made.
  - Until such time as the amendments take effect clauses 4.4(b), 5.7(b)(i) and 6.16(3)(c) of the Shire of Kalamunda Health Local Law 2011 will not be enforced in a manner contrary to the intent of the amendments.
  - The amendments will be completed within six months of the date of this resolution.
  - Where the Local Law is made publicly available, whether in hard copy or electronic form, it will be accompanied by a copy of the proposed amendments and these undertakings.

Moved: **Cr Donald McKechnie**

Seconded: **Cr Frank Lindsey**

Vote: **CARRIED UNANIMOUSLY (10/0)**



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**Declaration of financial / conflict of interests to be recorded prior to dealing with each item.**
**46. The Parking of Four Commercial Vehicles – Lot 20 (17) Maud Road, Maida Vale**

Previous Items	N/A
Responsible Officer	Director Planning and Development Services
Service Area	Planning and Development Services
File Reference	MD-04/017
Applicant	N Pavlinovich
Owner	N Pavlinovich
Attachment 1	Locality Plan
Attachment 2	Site Plan
Attachment 3	Photograph of the Commercial Vehicles
Attachment 4	Photograph of the Commercial Vehicles
Attachment 5	View of Proposed Commercial Vehicle Parking Area from Maud Road
Attachment 6	Photograph of Storage on-site
Attachment 7	Photograph of Storage on-site

**PURPOSE**

1. To consider a retrospective planning application to continue to park four commercial vehicles (two prime movers and two trailers) at Lot 20 (17) Maud Road, Maida Vale. Refer to the Locality Plan (Attachment 1), the Site Plan (Attachment 2), photographs of the commercial vehicles in the proposed parking location (Attachments 3 and 4) and view of the proposed commercial vehicle parking area from Maud Road (Attachment 5).

**BACKGROUND**

2. The subject property is 1ha in area, zoned Special Rural, contains a single dwelling, two outbuildings (sheds) and has direct access onto Maud Road. Access is via a single crossover. Mature vegetation exists throughout the property.
3. In May 1986 planning approval was issued by the Shire to park two commercial vehicles (two trucks) at the property as part of the occupant's home occupation. The property was sold in 2002 and therefore this approval has become invalid.
4. Between July 2002 and April 2008, complaints were received regarding commercial vehicles being parked on the property without planning approval having been obtained.
5. Under District Planning Scheme No. 2 up until March 2007, the use Commercial Vehicle Parking was not permitted on Special Rural zoned properties. Despite requests from the Shire to cease parking commercial vehicles on the property this continued to occur.

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6. Since March 2007 when Local Planning Scheme No. 3 (“the Scheme”) was gazetted, the use Commercial Vehicle Parking has been able to be considered on Special Rural zoned properties subject to obtaining planning approval.
  7. In May 2008, a retrospective planning application was received by the Shire to continue to park two commercial vehicles on the property, however due to inadequate documents being received the application was cancelled.
  8. The applicant advised the Shire that the commercial vehicles were to be relocated to another property and therefore was not going to apply for planning approval to park the commercial vehicles on the subject property. However, the commercial vehicles were not subsequently removed.
  9. In October 2009, a Direction under Section 214 of the *Planning and Development Act 2005* was served by the Shire on the applicant, requiring the parking of commercial vehicles on the property to stop immediately and not recommence.
  10. During an inspection of the property in January 2010, it was noted that five commercial vehicles were parked on site, a large quantity of oil drums and tyres were being stored on site mostly within an existing outbuilding, and considerable damage had occurred to the surface of the road and verge. Subsequent inspections of the property revealed that the property had continued to be used for the parking of commercial vehicles and storage of such items.
  11. Council initiated legal action against the applicant, and in November 2010 the applicant was convicted in the Midland Magistrates Court for the unauthorised parking of the commercial vehicles on the property. It should be noted that the magistrate stated that:  
  
*“Pavlinovich Bulk Transport Pty Ltd, operates a commercial vehicle transport business on the land at 17 Maud Road, Maida Vale. The land is identified as the principle place of business in the accused’s company records.*  
  
*The accused’s company operates a significant commercial transport business which has four employees and a number of large commercials at the address.”*
  12. In March 2011, the property was inspected by the Shire and a large quantity of tyres, oil drums and vehicles parts (including the front body sections of commercial vehicles) were being stored on site, and five commercial vehicles were parked on site. Refer to the photographs of the storage on site (Attachments 6 and 7).
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13. In August 2011, the applicant appealed the magistrate's decision to the Perth Supreme Court on three grounds of appeal. All three grounds were dismissed by the court and the magistrate's decision was upheld.
14. In September 2011, a planning application for retrospective approval was received by the Shire to continue to park four commercial vehicles (two prime movers and two trailers) on the subject property.
15. Local Planning Policy DEV22 – Parking of Commercial Vehicles on Private Property ("the Policy") stipulates that where objections and/or complaints have been received the application will be referred to Council for determination; therefore the subject application cannot be determined under delegation.

## **DETAILS**

16. Details of the application are as follows:
  - The applicant who resides at the property is to drive the commercial vehicles as part of their employment.
  - The application is for the parking of two prime movers and two attached trailers.
  - The commercial vehicles are proposed to operate between Monday and Friday 6.30am to 5.00pm, and Saturdays 6.30am to 1.00pm.
  - The vehicles are proposed to be parked behind the existing dwelling, beside an existing outbuilding and screened from the street and adjoining landowners.
  - The commercial vehicles will idle for up to five minutes, prior to leaving the site and upon arrival.
  - Confirmation on whether any loads are brought to the property and off loaded on site; whether major maintenance to the vehicles occurs on site; and the distance of the proposed parking location to the nearest boundary were requested by the Shire but not provided by the applicant.
  - Based on data from the Shire's aerial mapping system the proposed commercial parking location will be approximately 48m from the front boundary and 6m from the side (west) boundary.

17. Details of the commercial vehicles proposed to be parked on the property are as follows:

**Table 1**

	<b>TRUCK</b>	<b>TRAILER</b>	<b>POLICY REQUIREMENTS (RIGID TYPE)</b>
MAKE	Western Star	H Porter	
TYPE	Prime Mover	Tipper	
YEAR	1988	2009	
LENGTH	3.9m	9.1m	
HEIGHT	3.3m	2.1m	4.3m Maximum
WIDTH	2.5m	2.5m	2.5m Maximum
TARE WEIGHT	8.5 tonnes	7.5 tonnes	
AGGREGATE WEIGHT	90 tonnes	47 tonnes	
LICENCE NO.	STAR 444	1TKG 893	
COMBINED LENGTH (WHEN ATTACHED)	17m		17.5m maximum

**Table 2**

	<b>TRUCK</b>	<b>TRAILER</b>	<b>POLICY REQUIREMENTS (ARTICULATED TYPE)</b>
MAKE	Kenworth	H Porter	
TYPE	Prime Mover	Tipper	
YEAR	2000	2006	
LENGTH	3.8m	9.1m	
HEIGHT	2.9m	2.1m	4.3m Maximum
WIDTH	2.5m	2.4m	2.5m Maximum
TARE WEIGHT	8.8 tonnes	7.5 tonnes	
AGGREGATE WEIGHT	42.5 tonnes	47 tonnes	
LICENCE NO.	1CPF 262	1THL 421	
COMBINED LENGTH (WHEN ATTACHED)	15m		17.5m maximum

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**STATUTORY AND LEGAL IMPLICATIONS**

18. Under Table One (Zoning Table) of the Scheme the use "Commercial Vehicle Parking" is classed as a 'D' use in a Special Rural zoning meaning that it is not permitted, unless Council has granted planning approval.
19. Under Table Two (Site Requirements) of the Scheme, development on Special Rural zoned properties is to be setback 10m from side boundaries and 15m from front boundaries unless otherwise approved by the Shire.
20. Under Schedule 1 of the Scheme (Land Use Definitions) commercial vehicles are defined as being:  
  
*"a vehicle whether licensed or not, and include propelled caravans, trailers, semi-trailers, earth moving machines whether self-propelled or not, motor wagons, buses and tractors and their attachments but shall not include any motor car or any vehicle whatsoever the weight of which is less than 3.5 tonnes."*
21. Clause 4.2.2 of the Scheme (Objectives of the Zone – Special Rural) an objective of the Special Rural zoning is to retain amenity and the rural landscape in a manner consistent with orderly and proper planning.
22. Clause 5.20 of the Scheme (Commercial Vehicle Parking) stipulates that the determination of commercial vehicle parking applications shall be "*generally*" in accordance with the Policy. The Shire reserves the right to amend the conditions of an approval or revoke an approval to park a commercial vehicle as a result of a justified complaint being received.
23. In considering an application for planning approval, clause 10.2 of the Scheme (Matters to be Considered by Local Government) requires Council to have due regard to the compatibility of the development within its settings, the preservation of the amenity of the locality, the likely effect of the scale and appearance of the proposal, whether the proposed means of access and egress from the property are adequate, and any relevant submissions received on the application.
24. If Council refuses the development, or imposes conditions that are not acceptable to the applicant, there is a Right of Review (appeal) to the State Administrative Tribunal.

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## **POLICY IMPLICATIONS**

### **Local Planning Policy DEV22 – Parking of Commercial Vehicles on Private Property.**

25. In assessing the application, Council is to give consideration to the Policy which stipulates the following provisions applicable to parking commercial vehicles on Special Rural zoned properties:
- Applications for a maximum of two commercial vehicles will be considered where the existence of a lawfully established business generates the need for more than one commercial vehicle; in these cases applications will be dealt with on their merits.
  - The commercial vehicle shall not exceed (articulated type) 17.5m in length and 4.3m in height.
  - Approval to park a commercial vehicle on a lot shall apply to the applicant only on the lot the subject of the application and shall not be transferred to any other person.
  - The commercial vehicle shall be parked entirely on the lot behind the alignment of the front of the house.
  - The commercial vehicle must be parked on the lot so that it does not interfere with the normal access and egress of other vehicles, and does not cause damage to the road, kerb or footpath.
  - Spray painting, panel beating and major servicing on the commercial vehicles is not permitted. Maintenance limited to oil and grease changes, and changes of wheels (but not repairs to tyres) and other minor maintenance as approved by Council.
  - Standard vehicle movement and start up times of between 7.00am and 7.00pm Monday to Saturday and 9.00am to 5.00pm on Sundays and public holidays.
  - The idling times for start up and cool down being restricted to five minutes.

## **PUBLIC CONSULTATION/COMMUNICATION**

26. The proposal was advertised for 14 days to nearby property owners for comment in accordance with clause 9.4.3 of the Scheme. Eight non-objections and nine objections were received.
27. Four of the non-objections and two objections were from the same properties. The non-objectors did not provide any additional comment on the proposal.

28. Of the objections received, the following comments were received:
- Servicing of the vehicles and associated activities on the property being conducted day and night.
  - Noise emitted by activities on the property being excessive.
  - There allegedly being up to twelve (12) prime movers and trailers parked on the property, as well as other machinery (such as bobcats, forklifts and compressors).
  - Damage being potentially caused to the road and kerbing by the commercial vehicles.
  - Neighbours being affected by traffic congestion along Maud Road caused by the commercial vehicles entering and leaving the property.
  - The keeping of fuel and tyres on the property being a fire hazard.

#### **FINANCIAL IMPLICATIONS**

29. Nil.

#### **STRATEGIC AND SUSTAINABILITY IMPLICATIONS**

##### **Strategic Planning Implications**

30. The property falls within an area identified in the Shire's Draft Local Planning Strategy as being considered to be rezoned to Residential Bushland.

##### **Sustainability Implications**

###### Social implications

31. Potential impacts in terms of visual amenity, noise and movement of commercial vehicles on the local road network.

###### Economic Implications

32. Nil.

###### Environmental Implications

33. The lack of an adequate on site drainage system means that there is the potential for oil, grease and chemicals used to maintain the vehicles, to enter nearby waterways.

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**OFFICER COMMENT**

34. The proposal to continue to park four commercial vehicles on the property does not comply with the following requirements of the Policy:
- a. Applications for a maximum of two commercial vehicles will be considered where the existence of a lawfully established business generates the need for more than one commercial vehicle; in these cases applications will be dealt with on their merits. There are currently more than two commercial vehicles parked on the site.
  - b. The commercial vehicle must be parked on the lot so that it does not interfere with the normal access and egress of other vehicles, and does not cause damage to the road, kerb or footpath.
  - c. Spray painting, panel beating and major servicing on the commercial vehicles is not permitted. Maintenance limited to oil and grease changes, and changes of wheels (but not repairs to tyres) and other minor maintenance as approved by Council.
  - d. Standard vehicle movement and start up times of between 7.00am and 7.00pm Monday to Saturday and 9.00am to 5.00pm on Sundays and public holidays.

35. Whist the prime movers and their respective trailers are likely to be attached the majority of the time, giving the visual impression of two vehicles, this technically constitutes four vehicles and, as such, exceeds the maximum of two commercial vehicles allowed for in the Policy.

36. Under the Scheme a "transport depot", is defined as:

*"means any land or buildings used of the garaging or parking of road motor vehicles or commercial vehicles used, or intended to be used, for carrying goods or persons for hire or reward or for any consideration, or for the transfer of goods or persons from one such motor vehicle to another of such motor vehicles, and including the maintenance and repair of such vehicles, but not other vehicles;*

This is due to more than two commercial vehicles being proposed to be parked on the property (four commercial vehicles proposed), a use not permitted on a Special Rural zoned property.

Taking into account the above and other activities on the site, such as major maintenance, it is considered that the activity exceeds the scope of "commercial vehicle parking" in the Scheme and Policy and would be more appropriately defined as "transport depot", which is not permitted in the Special Rural zone.

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37. The commercial vehicles are used in conjunction with a business which has received no Shire approval to operate from the property.
  38. The width of the adjoining road carriageway (6m) and the existence of street trees on verges mean that the commercial vehicles cannot enter and leave the property in a single movement, creating a risk to the safety of other road users and pedestrians as a consequence.
  39. It should be noted that a relatively high volume of traffic uses Maud Road en-route to and from Kalamunda Road and Hawtin Road. During inspections of the property it was noted that damage has been caused to the surface of the road and kerbing, presumably by the commercial vehicles.
  40. The large quantity of tyres, oil drums and vehicle parts being stored on site indicates that the scale of the maintenance being carried out on the vehicles is not minor in nature.
  41. There is the potential for oil, grease and chemicals used to maintain the vehicles, to enter nearby waterways because of the lack of an adequate on site drainage system. The amount of oil being stored on the property and lack of methods to detain oil, grease and chemicals on site also means that there is the potential for the soil to become contaminated.
  42. The proposed use is not consistent with the Special Rural zoning objectives stipulated under the Scheme as its scale does not retain the rural amenity of the area.
  43. During the advertising period, objections were received regarding the impact the commercial vehicles were having on the amenity of the local area, the major servicing of the vehicles on site, the number of vehicles parked on site being greater than proposed and the vehicles causing traffic congestion when entering and leaving the property.
  44. It is recommended that Council refuses the proposal to continue to park four commercial vehicles on the property.

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**COMMITTEE RECOMMENDATION TO COUNCIL (PS46/2011)**

That Council:

1. Refuses the proposal for Nenad Pavlinovich to continue to park four commercial vehicles, a Kenworth prime mover (registration number 1CPF 262), A Western Star prime mover (registration number STAR 444), an H Porter tipper trailer (registration number 1THL 421) and an H Porter tipper trailer (registration number 1TKG 893) on Lot 20 (17) Maud Road, Maida Vale, for the following reasons:
  - a. The application failing to comply with Local Planning Policy DEV22 – Parking of Commercial Vehicles on Private Property, which stipulates that a maximum of two commercial vehicles can be parked on a Special Rural zoned property; major maintenance cannot occur to the vehicles on site; vehicle movement and start up times being restricted to between 7.00am and 7.00pm Monday to Saturday and 9.00am to 5.00pm on Sundays and public holidays; and the commercial vehicles cannot cause damage to the road or kerbing.
  - b. The proposed use being considered to be a transport depot due to more than two commercial vehicles being proposed to be parked on the property. A transport depot is an 'X' use (use not permitted) on a Special Rural zoned property under the Zoning Table of Local Planning Scheme No. 3.
  - c. The commercial vehicles having an unacceptable impact on the safety of other vehicles and pedestrians by virtue of the width of the adjoining road reserve.
  - d. The scale of the proposed use being considered incompatible with the purpose and intent of the Special Rural zone in that it would not retain the amenity of the locality.
  - e. The commercial vehicles being used in conjunction with an unauthorised business which operates from the subject property.

Moved: **Cr Noreen Townsend**Seconded: **Cr Dylan O'Connor**Vote: **FOR**  
**Cr Frank Lindsey**  
**Cr Allan Morton**  
**Cr Noreen Townsend**  
**Cr Bob Emery**  
**Cr Dylan O'Connor**  
**Cr Margaret Thomas**



**AGAINST**

**Cr John Giardina**

**Cr Justin Whitten**

**Cr Sue Bilich**

**Cr Donald McKechnie**

**CARRIED (6/4)**



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**Declaration of financial / conflict of interests to be recorded prior to dealing with each item.**
**47. Lot 8 (10), 9 (12) and 10 (14) Central Mall, Kalamunda – Proposed Office and Shop Unit Development**

Previous Items	N/A
Responsible Officer	Director Planning and Development Services
Service Area	Planning and Development Services
File Reference	BR-02/012
Applicant	Marocchi Engineering Group
Owner	Cagen Holdings Pty Ltd
Attachment 1	Locality Plan
Attachment 2	Site Plan
Attachment 3	Elevations
Attachment 4	Internal Ground Floor Plan
Attachment 5	Internal Upper Floor Plan
Attachment 6	Photograph of the Existing Retail Building on Subject Property
Attachment 7	Photograph of the Proposed Development's Location (Looking South Along Barber Street)
Attachment 8	Photograph of the Proposed Development's Location (Looking North Along Barber Street)
Attachment 9	Kalamunda Townsite Improvement Plan

**PURPOSE**

1. To consider an application to build a two storey office and shop unit development at Lot 8 (10), 9 (12) and 10 (14) Central Mall, Kalamunda. Refer to the Locality Plan (Attachment 1), Site Plan (Attachment 2), Elevations (Attachment 3), Internal Ground Floor Plan (Attachment 4) and Internal Upper Floor Plan (Attachment 5).

**BACKGROUND**

2. The subject site area is 3,552sqm in aggregate, zoned District Centre, has direct vehicular access from Barber Street via two separate crossovers, pedestrian access from Central Mall via an internal access way, and contains a retail building which is to be retained fronting onto Central Mall to the east and associated car parking to the west. Surrounding properties contain shops and associated car parking. Refer to the photograph of the existing retail building on the subject property (Attachment 6), the photographs of the proposed development's location looking south along Barber Street (Attachment 7) and looking north along Barber Street (Attachment 8).
3. The property is identified on the Kalamunda Townsite Improvement Plan (KTIP) as being an "Area of poor amenity" meaning that future development on the property is to address key issues outlined on the KTIP. Refer to the KTIP (Attachment 9).

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**DETAILS**

4. Details of the application are as follows:
- The premises will contain seven ground floor shop units and eight offices on the second level.
  - The tenants, and therefore hours of operation for which, are yet to be confirmed.
  - Vehicular access to the property is proposed to be gained via a single crossover from Barber Street which will abut the south (side) boundary and allow for two way vehicle movement. The existing crossover which abuts the north (side) boundary is proposed to be removed.
  - Pedestrian access to the premises is proposed via an internal access way from Barber Street, and to the upper storey via three separate stairways.
  - The building will be constructed of concrete tilt-up panels.
  - A canopy verandah roof is proposed along the street frontage to allow for sheltered pedestrian movement along Barber Street.
  - Signage is proposed along both the front and rear facades.
  - The street façade will consist of stone cladding features, Colorbond wall sheeting, a large number of windows and window shade awnings.

**STATUTORY AND LEGAL IMPLICATIONS**

5. Under Local Planning Scheme No. 3 (“the Scheme”) the use classes Office and Shop are listed as ‘P’ uses in the District Centre zone, meaning the uses are permitted providing the uses comply with the relevant development standard and requirements of the Scheme.
6. In considering an application for planning approval, the Scheme requires the Shire to have due regard to the compatibility of the development within its settings; the preservation of the amenity of the locality; the likely effect of the height, bulk, scale, orientation and appearance of the proposal; whether the proposed means of access and egress from the property are adequate; and any other planning consideration the local government considers relevant.

7. Under the Scheme, the following car parking standards apply for the uses Office and Shop (existing and proposed):

<b>Scheme Parking Requirements</b>	<b>Aggregate Net Lettable Area (NLA)</b>	<b>Car Bays Required</b>	<b>Car Bays Provided</b>
Shop (proposed) 7 bays per 100sqm of NLA	673m <sup>2</sup>	47	
Shop (existing)	885m <sup>2</sup>	62	
Office - 4 bays per 100sqm of NLA	707m <sup>2</sup>	28	
<b>Total Car Bays:</b>		<b>137</b>	<b>49</b>

The development will displace approximately 47 parking bays.

8. Under the Scheme, the following requirements apply for development on properties zoned District Centre:

<b>Site Requirements</b>	<b>Required/Permitted</b>	<b>Proposed</b>
Primary Street Setback (Barber Street)	0m	0m
Side setbacks	0m	0m (From North Boundary)  6m (From South Boundary)
Rear Setback	0m	55.7m
Site Coverage (Includes Existing Development)	100%	40%
Plot Ratio (Includes Existing Development)	1.5	0.6

- 
9. If Council refuses the development, or imposes conditions that are not acceptable to the applicant, there is a Right of Review (appeal) to the State Administrative Tribunal.

## **POLICY IMPLICATIONS**

### **Kalamunda Townsite Improvement Plan**

10. The purpose of KTIP is to provide guidance on the design of new private and public buildings and spaces within the Kalamunda Town Centre, to achieve an enhanced urban environment, to improve the experience of the town for pedestrians, and to reinforce and build upon Kalamunda's established character.
11. The KTIP also provides design principles relating to land use in the context of place-making and urban design, particularly mixed use and commercial development.
12. Each street within the Policy Area has been defined as a "Primary", "General Commercial" or "Green Street", with specific requirements attached to each frontage type. Mead Street and Canning Road are defined as being a "General Commercial Street".
13. The attributes of new development on a General Commercial Street are as follows:
- Moderate to high level of activation.
  - Mix of shops, offices and other commercial tenancies at ground floor level. Residential lobbies are also acceptable.
  - General commercial and residential uses permitted above ground floor level.
  - At ground floor level, the facades of buildings shall address the street with a commercial shop front, primary business entrance and/or residential lobby.
  - Front setback may be a minimum of nil, up to a maximum of 3m, however the setback will be determined after consideration of the front setbacks of any adjoining existing buildings.
  - Any front setback area to be landscaped to a high standard with soft and hard treatments in a manner appropriate to the site's location and context.
  - Pedestrian shelter, through provision of an awning over the front door, must be provided as a minimum requirement.
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- Car parking shall not be located between the building and the street boundary.
  - The number and width of vehicle crossovers to each site shall be minimised, and sharing with adjoining properties encouraged.

The development generally complies with the principles outlined in the KTIP.

## **Parking Issues**

### Proposed parking

14. If Council was to approve the proposal there would be a shortfall of 88 car bays provided on site. It should be noted that the calculation for parking on the existing building was based on the current parking ratio contained in the Scheme. The parking ratio used when the existing shops were developed under then Town Planning Scheme No. 1 was one bay per 9.5m<sup>2</sup> of floor area.

### Parking Study, Kalamunda Town Centre (the Study)

15. A consultant was commissioned to undertake a parking study with a view to develop a strategy to manage parking provision in the Kalamunda Town Centre. The Study was received by the Shire in October 2011.
16. Amongst other recommendations and findings, the study concludes:
- Current parking demand is less than the number of parking bays provided in the study area. Average parking occupancy (based on observations made in Thursdays and Saturdays) indicate between 30-35% occupancy. The subject sites had an average occupancy of 32% and maximum occupancy of 72%.
  - For commercial/ office development, up to 20% of parking bays can be provided as reciprocal arrangement provided that supporting comparative is provided.

### Reciprocal Parking

17. The Scheme allows consideration for a lesser amount of prescribed parking taking into account the nature of the proposed development, including hours of operation and abutting land uses. The development is speculative to the extent that specific occupancy has not been identified. As such, it is assumed that all the floor space has the potential to be occupied during the same hours.

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18. The study states that for commercial / office and retail developments up to 20% of parking can be considered as a reciprocal arrangement provided that supporting comparative survey data is provided.

#### Cash in lieu of Parking

19. The Scheme allows for consideration for a lesser amount of prescribed parking subject to the applicant contributing to the acquisition and development of land for public parking. The Scheme sets out method of calculating the cost per parking bay, including the cost of providing the land and the construction costs. This may include, but not be limited to:
- The market value of the land required for the parking bay and necessary access and manoeuvring space.
  - Improvements, including paving, kerbing, drainage, landscaping, crossovers and lighting.
20. The Scheme allows the Council the discretion to apply a greater or lesser requirement than that stipulated as the minimum. In doing so, Council must form the opinion that proposed use is likely to demand a greater or lesser need for parking having due regard to the scale and nature of the intended use.

#### Proposed Parking

21. Taking into account existing development, the overall parking requirement is 137 bays, with 49 being provided, leaving a shortfall of 88 bays.
22. Council has a number of options in considering the shortfall:
- a. Determine that the shortfall is unacceptable and refuse the proposal.
  - b. Determine that there will be a level of reciprocity between the land uses (existing and proposed) and allow a reduction in the prescribed parking as a 100% offset.
  - c. Determine that there will be a level of reciprocity and allow a reduction in the prescribed parking, with an offset made through the provision of cash in lieu for parking.
23. From a planning perspective, it is recommended c) above be the preferred option based on the following assumptions:
- Despite tenancies not being determined at this stage, allowing for reciprocity of uses discounting 20% of the required parking. This would reduce the parking from 137 bays to 109 bays, and thus an overall shortfall of 60 bays.



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- Payment of a cash in lieu contribution towards the cost of construction of public parking identified in the “Old Road Board” precinct, south of Mead Street. This is within a 100m walkable catchment of the subject site.
  - Under the Parking Study, Kalamunda Town Centre, where the Council holds available land, the value of the land may be able to be discounted from the determination of the overall price of the parking contribution.
  - Based on the above, it is recommended that that applicant pay cash in lieu for the construction cost (but not land component) for 60 parking bays.

Cash in lieu for parking options

24.	<b>Parking Scenario</b>	<b>Number of bays</b>	<b>Quantum</b>	<b>Cost per bay</b>	<b>Approximate total Cost</b>
	Construction cost only with reduction in bays for reciprocity.	60	Construction cost of \$100 per bay at 25sqm per bay.	\$2,500.	\$150,000.
	Construction cost only without reduction in bays for reciprocity.	88	Construction cost of \$100 per bay at 25sqm per bay.	\$2,500.	\$220,000.
	Construction and land cost with reduction in bays for reciprocity.	60	Construction cost of \$100 per bay at 25sqm per bay.  Land value of \$478 sqm at 25sqm per bay.	\$2,500.  <b>Plus</b>  \$11,950.  <b>Total</b>  \$14,450.	\$867,000.
	Construction and land cost without reduction in bays for reciprocity.	88	Construction cost of \$100 per bay at 25sqm per bay.  Land value of \$478 sqm at 25sqm per bay.	\$2,500  <b>Plus</b>  \$11,950.  <b>Total</b>  \$14,450.	\$1,271,600.

25. Construction costs, including earthworks, pavement, asphalt, kerbing, drainage, landscaping, lighting and footpaths are approximately \$100/ sqm.
26. Each bay, including manoeuvring area, requires 25sqm, as such, each bay would cost \$2,500. Based on a shortfall of 60 parking bays, the total cash in lieu of parking contribution would be \$150,000.

## **PUBLIC CONSULTATION/COMMUNICATION**

27. Policy DEV41 – Framework for assessing requests for variations to the number of car parking bays.
28. The principles set out in the above Policy have been used to guide the comments and observations set out in the **Parking Issues** section of this report.

## **FINANCIAL IMPLICATIONS**

29. Consideration of payment of cash-in-lieu for parking. Monies received would be used for the provision of public parking in the town centre.

## **STRATEGIC AND SUSTAINABILITY IMPLICATIONS**

### **Strategic Planning Implications**

30. The property falls within the Kalamunda Town Centre which operates as an 'Activity Centre' in *Directions 2031 and Beyond*, accommodating a range of commercial uses including showroom activities.

### **Sustainability Implications**

#### Social implications

31. Development of this site in accordance with the KTIP and the Planning and Urban Design Guidelines is of significant strategic importance, and will set the pattern for future developments and the long term sustainability of business in the future.

#### Economic Implications

32. Development for commercial purposes will allow for employment opportunities.

#### Environmental Implications

33. A tree identified as "Significant landmark tree to be conserved" was removed prior to consideration of the application. If approved, the development should include trees appropriate for provision of shade within the car park.

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**OFFICER COMMENT**

34. From a planning perspective, the application is worthy of support as it meets the objectives of the Kalamunda Townsite Improvement Plan and could serve as a catalyst for similar proposals. Future proposals in the town centre, particularly those with a shortfall in the prescribed provision of parking bays, will be determined on merit and this proposal should not be seen as setting a precedent.

**OFFICER RECOMMENDATION (PS47/2011)**

That Council:

1. Approves the application received on 28 September 2011 for Shops/Offices on Lot 8 (10), 9 (12) and 10 (14) Central Mall, Kalamunda, subject to the following conditions:
- a. The provision and maintenance of a total of 49 car spaces including a minimum of one (1) disabled bay. The parking area is to include the provision of shade trees.
  - b. No loading or unloading of vehicles is to occur that interferes with the parking of vehicles in the car park by visitors and employees. All car parking bays in the car park are to be made available at all times for the parking of vehicles by employees and visitors.
  - c. All car parking bays and vehicle access ways being line marked, sealed and drained prior to the occupation of the building and maintained thereafter to the satisfaction of Council's Director Engineering Services.
  - d. The provision of a cash in lieu payment for sixty parking bays of \$150,000. The payment shall include the cost of providing paving, kerbing, drainage, landscaping, crossovers and lighting.
  - e. Provision of a colours and textures schedule in accordance with the palette adopted in the Kalamunda Town Centre Improvement Plan.

Moved: **Cr Donald McKechnie**

Seconded: **Cr Bob Emery**

Vote: **FOR**  
**Cr Allan Morton**  
**Cr Noreen Townsend**  
**Cr Justin Whitten**  
**Cr Bob Emery**  
**Cr Donald McKechnie**

**AGAINST**

**Cr John Giardina**  
**Cr Frank Lindsey**  
**Cr Dylan O'Connor**  
**Cr Sue Bilich**  
**Cr Margaret Thomas**

**TIED (5/5)**

*In accordance with section 5.21(3) of the Local Government Act 1995 the presiding member cast a second vote against the Officer Recommendation. The motion was therefore LOST (5/6).*

*Cr Frank Lindsey put forward the following Alternate Motion with changes to part d. regarding Cash in Lieu parking:*

**Motion:**

That Council:

1. Approves the application received on 28 September 2011 for Shops/Offices on Lot 8 (10), 9 (12) and 10 (14) Central Mall, Kalamunda, subject to the following conditions:
  - a. The provision and maintenance of a total of 49 car spaces including a minimum of one (1) disabled bay. The parking area is to include the provision of shade trees.
  - b. No loading or unloading of vehicles is to occur that interferes with the parking of vehicles in the car park by visitors and employees. All car parking bays in the car park are to be made available at all times for the parking of vehicles by employees and visitors.
  - c. All car parking bays and vehicle access ways being line marked, sealed and drained prior to the occupation of the building and maintained thereafter to the satisfaction of Council's Director Engineering Services.
  - d. The provision of a cash in lieu payment for twenty-nine bays of \$419,050. The payment shall include the cost of providing paving, kerbing, drainage, landscaping, crossovers and lighting. The payment of cash in lieu for parking shall be subject to a legal agreement prepared at the expense of the applicant.
  - e. Provision of a colours and textures schedule in accordance with the palette adopted in the Kalamunda Town Centre Improvement Plan.

*Cr Margaret Thomas foreshadowed an amendment, that part d. be looked at in more detail and a new figure be provided based on using the land but discounting it further and allowing the Applicant to pay the fee over a period of time at an amount to be decided at the OCM.*

Moved: **Cr Frank Lindsey**

Seconded: **Cr John Giardina**

Vote: **FOR**  
**Cr John Giardina**  
**Cr Frank Lindsey**  
**Cr Justin Whitten**  
**Cr Dylan O'Connor**  
**Cr Sue Bilich**

**AGAINST**  
**Cr Allan Morton**  
**Cr Noreen Townsend**  
**Cr Bob Emery**  
**Cr Donald McKechnie**  
**Cr Margaret Thomas**

**TIED (5/5)**

*In accordance with section 5.21(3) of the Local Government Act 1995 the presiding member cast a second vote against the Officer Recommendation. The motion was therefore LOST (5/6).*

*Cr Margaret Thomas put forward the below Motion:*

**COMMITTEE RECOMMENDATION TO COUNCIL (PS47/2011):**

That Council:

1. Defers this item to the OCM to allow Officers to investigate the following:

That the provision of a cash in lieu payment for the parking bays be looked at in more detail and a new amount be provided between to the two figures already mentioned in the recommendations above.

Moved: **Cr Margaret Thomas**

Seconded: **Cr Frank Lindsey**

Vote: **FOR**  
**Cr Frank Lindsey**  
**Cr Allan Morton**  
**Cr Noreen Townsend**  
**Cr Justin Whitten**  
**Cr Bob Emery**  
**Cr Dylan O'Connor**  
**Cr Donald McKechnie**  
**Cr Margaret Thomas**

**AGAINST**  
**Cr John Giardina**  
**Cr Sue Bilich**

**CARRIED (8/2)**

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**11.0 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

11.1 Nil.

**12.0 QUESTIONS BY MEMBERS WITHOUT NOTICE**

12.1 Cr Dylan O'Connor

Q. Given that we have deferred Item 47 to the OCM, what parameters will staff take into account when calculating a figure and how will they gain advice or comments from Councillors in the meantime.

A. Director advised he will look at land value rate and get back to Council with further information and potential options.

**13.0 QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN**

13.1 Nil.

**14.0 URGENT BUSINESS APPROVED BY THE PERSON PRESIDING OR BY DECISION**14.1 **Cr Donald McKechnie**

Announced that the Shire has been successful in their application for a grant awarded \$565,178 for the Healthy Communities Plan.

14.2 **Cr Donald McKechnie****Student Citizens Awards:**

Cr McKechnie asked all Councillors to see if they are available to attend any of the following Student Citizen Award Ceremonies, and asked them to contact him if they can attend. Councillors out of the ward were also encouraged to assist.

- Thursday 8 December, 6.00pm – Lesmurdie Primary School
- Thursday 8 December, 7.30pm – Falls Road Primary School
- Thursday 15 December, 7.00pm – Heritage College Perth at Christadelphian Hall Bickley

**15.0 MEETING CLOSED TO THE PUBLIC**

15.1 Nil.



**16.0 CLOSURE**

There being no further business, the Chairman declared the meeting closed at 7:33pm.

I confirm these Minutes to be a true and accurate record of the proceedings of this Council.

Signed: \_\_\_\_\_  
Chairman

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2011.