



# **CITY OF BAYSWATER**

## **MINUTES**

### **FOR THE**

### **SPECIAL MEETING**

### **OF COUNCIL**

**15 APRIL 2009**

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**CITY OF BAYSWATER**

**Minutes** of the Special Meeting of the Bayswater City Council which took place in the Council Chambers, City of Bayswater Civic Centre, 61 Broun Avenue, Morley on Wednesday, 15 April 2009.

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**MINUTES****1 OFFICIAL OPENING**

The Acting Chairperson, the Deputy Mayor, Cr Michael Sabatino, welcomed those in attendance and declared the meeting open for the special business of Council at 6:01pm.

**2 RECORD OF ATTENDANCE****2.1 Attendance and Apologies****Members****Central Ward**

Cr Michael Sabatino, Deputy Mayor      *Acting Chairperson*

Cr Barry McKenna

Cr Sally Palmer

**North Ward**

Cr Ian McClelland, JP

Cr Mike Anderton, JP

**West Ward**

Cr Terry Kenyon, JP

Cr Marlene Robinson

Cr Terry Blanchard

**South Ward**

Cr Sonia Turkington

**Officers**

Ms Francesca Lefante

Mr Des Abel

Mr Doug Pearson

Mr Damien Martin

Mr Gavin Godfrey

Mr Martyn Boyle

Mrs Nola Patricia

Chief Executive Officer

Director of Planning and Development Services

Director of Technical Services

Manager of Planning

Senior Planning Officer

Public Relations Officer

Minutes/Agenda Coordinator

**Apologies**

Cr Lou Magro, Mayor

Cr Sylvan Albert

Mr Andrew Ward

Mr Ted Budzinski

A/Director Administration and Community Services

Director of Finance

Observers

1 Press

17 Public

**2.2 Leave Of Absence (Previously Approved)**

Cr Terry Blanchard                      23 April 2009                      -                      26 April 2009 inclusive.

Cr Lou Magro                                22 April 2009                      -                      13 May 2009 inclusive.

### 3 PUBLIC QUESTION TIME

In accordance with Section 5.24 of the *Local Government Act 1995*, time is allocated for questions to be raised by members of the public.

Pursuant to Regulation Part 4(b) of the *Local Government (Administration) Regulations 1996* questions from the public must relate to the Agenda for the Special Council Meeting

*Preamble and personal statements are placed on file, but do not form part of the minutes. Only public questions are included.*

**Public Question Time commences at 6:02pm.**

**The following questions were submitted both in writing and verbally:**

#### **1. Mr Tayne Evershed, Planning Solutions, PO Box 8701, Perth BC 6849**

Question 1:

Given Council has already granted planning approval for the proposed development on the planning merits of the application, and those merits have not changed, is Council aware that elevating community opposition as the sole criteria for refusal leaves Council susceptible to a claim for cost in any subsequent appeal to the State Administrative Tribunal?

Question 2:

The original decision of Council was considered on the planning merits of the proposal, which have not changed. The City's legal advice confirms the approval was legally able to be made and therefore the decision of Council is valid. That being the case, why is Council considering rescinding this legally valid decision to approve the development?

*Cr Terry Kenyon, JP inquired as to why Mr Evershed knew about the confidential legal advice? The Chief Executive Officer advised that this confidential advice had only been produced for Councillors under a confidential cover, the only public reference to the advice were summaries put in the body of the report.*

*The Deputy Mayor, Cr Michael Sabatino advised that the Council is aware of its responsibilities with regard to this matter.*

#### **2. Mr Patrick Moran, 20 Slade Street, Bayswater**

Question: (Verbal)

The development has been approved and there are many members of our street that would oppose that and my question relates to a letter that was responded to by yourself in regards to considering the development approval there was not significant enough opposition from the residents to justify the development not going ahead. With a petition over 350 people objecting to that development and I don't have all the stats, but there was significant opposition. Lets use 350 people opposing the development, what kind of benchmark does the Council use to place the significance on that opposition?

*The Deputy Mayor, Cr Michael Sabatino advised the item is for Council to make a decision on tonight. He further advised that Council was present to discuss this particular issue because certain Councillors have asked for a rescission, which will be dealt with tonight. Cr Sabatino advised that he wrote the letter you refer to in consideration of the residents, the developer and the development proposal. He further stated that at the time he gave his support to the development that everything stacked up and that the developer has the right to develop that site.*

**3. Ms Joanne Brabazon, 14 Slade Street, Bayswater**

Question 1: *(Verbal)*

I would like to know about the definition of 'Fast Food Outlet' and how the Council decided that a 'Fast Food Outlet' does fit the definition of 'Local Shopping'?

*The Deputy Mayor, Cr Michael Sabatino advised that these definitions are located on the internet.*

Ms Brabazon went on to ask what is the criteria used to judge that a 'Fast Food Outlet' is 'Local Shopping' or what dictionary was used to clarify this.

*The Deputy Mayor, Cr Michael Sabatino advised that this will be discussed during debate on the item and that Ms Brabazon's concerns would be clarified at that time.*

Ms Brabazon went on to request that her concern be answered at the meeting and not in a written response and that would a Technical Officer be able to clarify this under the Scheme.

*The Deputy Mayor, Cr Michael Sabatino advised that this matter will be discussed tonight and that he wasn't prepared to answer Ms Brabazon at this time. He further, advised that he was not prepared to debate the matter during this time, but that it would be discussed during the debate on the item.*

**4. Mr Patrick Moran, 20 Slade Street, Bayswater**

Question: *(Verbal)*

I think it was the 25<sup>th</sup> of February that I attended a Council meeting here, where you declared that you would only proceed with this development with the most appropriate traffic management scheme to go ahead with that. Unfortunately, I couldn't attend last night, but the feedback that I've had from fellow residents, that support seems to be diminishing and I would be interested to hear from yourself whether you will only allow for this development to proceed with what the residents deem to be an appropriate traffic management. I'm quite fearful, as a resident we're losing the grip on the this issue of traffic management within Slade Street associated with the development. I don't feel that we're being heard, do we still have your support as the Deputy Mayor for significant priority placed on Slade Street and the residents of Slade Street and the significant impact that this development has on our street because I feel that it's falling on deaf ears. So I'd like to hear from you as to whether we have your ongoing commitment for an appropriate and timely, so in conjunction with the development the traffic management plan happening at the same time.

*The Deputy Mayor, Cr Michael Sabatino advised that these are two separate issues, one being the development application and the other being the traffic management plan on Slade Street. He further added, that he believed that after last night's meeting that his support for the traffic management issue in Slade Street had increased. The Council gave a commitment to set \$200,000 aside to have the traffic management put in place in Slade Street. He further stated that the developer has the right to develop his land if it fits within the City's Town Planning Scheme.*

Mr Moran went to say that it was his understanding that it was a collective group of street's that would be a priority?

*The Deputy Mayor, Cr Michael Sabatino advised that if a traffic management plan was just done on Slade Street alone, that problems would impinge on other surrounding street's, and that when this assessment is complete the first priority will be the issues associated with Slade Street, and then the others will be taken care of.*

<b>Public Question Time was closed at 6:16pm.</b>
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**4 APPLICATIONS FOR LEAVE OF ABSENCE**

Nil.

**5 DISCLOSURE OF INTEREST SUMMARY**

In accordance with Section 5.60A and 5.65 of the *Local Government Act 1995* the following disclosures of financial interest were made at the meeting:-  
Nil.

In accordance with Section 5.60B and 5.65 of the *Local Government Act 1995* the following disclosures of proximity interest were made at the meeting:-  
Nil.

In accordance with Clause 34C of the *Local Government (Administration) Regulations 1996* the following disclosure of interests affecting impartiality were made at the meeting:-  
Nil.

**6            PETITIONS**

Nil.

**7 URGENT BUSINESS**

Nil.

**8 BUSINESS****8.1 Further Consideration of Proposed Commercial Development**

**Location:** Lot 101, No. 497 Guildford Road, Bayswater  
**Attachments:** [No. 1 - Location Plan and Site Photo](#)  
[No. 2 - Detailed Plans](#)  
[No. 3 - Submissions Table and Map](#)  
[No. 4 - Item 13.7 \(24 February 2009\)](#)  
[No. 5 - Advertising Map](#)  
[No. 6 – Correspondence from Councillor and Submitters](#)  
[No. 7 – \(Confidential\) - Legal Advice](#)  
[No. 8 – \(Confidential\) – Original Letter & Mailing List](#)

**File No:** GUI-29/497  
**Applicant:** Project Development (WA) Pty Ltd  
**Owner:** Project Development (WA) Pty Ltd  
**Officer:** Director of Planning and Development Services  
**Refer:** Item 13.7 : O.C.M. : 24.02.09  
Item 14.15 : O.C.M. : 26.08.08  
Item 12.3.7 : O.C.M. : 22.04.08

Application

1. Council resolved to grant conditional approval for the construction of the proposed commercial development (Fast Food Outlets and Local Shops) at Lot 101, No. 497 Guildford Road, Bayswater at the Ordinary Council Meeting held on 24 February 2009.
2. The proposal presented to Council at the meeting held on 24 February 2009 comprised the development of four (4) separate tenancies as follows:
  - a) Two (2) fast food outlets (drive-through chicken franchise (206m<sup>2</sup>) and drive-thru coffee outlet (19m<sup>2</sup>);
  - b) Liquor store (204m<sup>2</sup>) with drive-through bottle shop component (71m<sup>2</sup>); and
  - c) Shop (205m<sup>2</sup>).
3. Council considered the proposal at the meeting held on 24 February 2009 where the following issues were canvassed:
  - a) The use of ‘Fast Food Outlet’ requires Council to exercise its discretionary power should the use be considered appropriate;
  - b) Variations to the setback to Slade Street, parking and landscaping requirements; and
  - c) As twenty five (25) objections, including four (4) petitions containing 320 signatories, have been received in opposition to the proposal.
4. In accordance with *Section 5.4 of the Local Government Act 1995*, Cr Robinson, Cr Kenyon, Cr McKenna and Cr Palmer being at least one third of the total Councillors in letter dated 1 March 2009 requested the Special Meeting of Council. The purpose of the meeting being to further consider and revoke the planning approval granted by Council at the Ordinary Meeting held on 24 February 2009 for the development at Lot 101, No. 497 Guildford Road Bayswater. This letter and accompanying justification for revocation of the decision is shown in attachments (refer attachment No 6).

5. The justification for the revocation of the Council's planning approval determination made at the Council meeting held on 24 February 2009 relate to the following matters:
- a) The extent of consultation;
  - b) The nomenclature used for the proposed development;
  - c) The zoning of the site;
  - d) The use class(s);
  - e) Whether the determination needed an simple or absolute majority;
  - f) Fast food outlet and its relationship to local shopping;
  - g) The street setback;
  - h) The side setback;
  - i) The amount of landscaping;
  - j) The advice to Council from the applicant regarding showrooms; and
  - k) Public comment on revised plans.
6. A public notice of the Special Meeting of Council stated "The Purpose of the meeting is for Council to further consider the proposed Commercial Development – Lot 101, No 497 Guildford Road, corner of Slade Street, Bayswater."

Background

<b>Town Planning Scheme No. 24 Zoning:</b>	Special Purpose
<b>Permitted Uses :</b>	Tavern Local Shopping
<b>Lot Area:</b>	3136 m <sup>2</sup>
<b>Existing Land Use:</b>	Vacant
<b>Surrounding Land Use:</b>	Residential, Shops, Fast Food
<b>Size/Nature of Proposed Development:</b>	Proposed Fast Food Outlets and Liquor Store with Drive-through facilities and Local Shop

	SCHEME PROVISIONS	REQUIRED	PROVIDED
<b>Setbacks</b>	<b>Primary Street - (Guildford Road)</b>	13.5m	15m
	<b>Secondary Street - (Slade Street)</b>	6m	4.8m*
	<b>Side</b>	Nil	Nil
<b>Maximum Site Cover</b>		30%	22%
<b>Parking</b>		52 bays	47 bays*
<b>Landscaping</b>		11.3% plus 2m strip	9.8% and 1.5m strip*

“\*” denotes variations sought to Scheme standards

1. The Council at the Ordinary Meeting held on 24 February 2009 resolved as follows:-

- “1. Planning Approval be granted for the construction of the proposed Commercial Development (Fast Food Outlets and Local Shop) at Lot 101, No.497 Guildford Road, Bayswater in accordance with the revised plans dated 6 November 2008 and subject to the following planning conditions.*
- a) This approval is valid for a period of two (2) years from the date of this letter. If the development/use, the subject of this approval, is not SUBSTANTIALLY COMMENCED within two years, the approval shall lapse and be of no further effect. Where an approval has lapsed, no development/use shall be carried out without the further approval of the City having first been sought and obtained.*
  - b) The development shall be carried out only in accordance with the terms of the application as approved herein, and any approved plan, including any notations in red on the approved plan.*
  - c) In accordance with the Local Government (Miscellaneous Provisions) Act 1960 and Building Regulations 1989, a building licence application must be obtained prior to the commencement of any building works.*
  - d) Landscaping and reticulation must be completed in accordance with an approved detailed landscape plan(s) prior to occupation of the development and thereafter maintained to the satisfaction of the City of Bayswater.*
  - e) No storage or display of goods outside the building to the satisfaction of the City of Bayswater.*
  - f) The provision of two (2) suitably screened refuse bulk bin area with a minimum area of 10m<sup>2</sup> to the satisfaction of the City of Bayswater. The bin area is to be provided with a permanent water supply and drainage facility for wash-down and is to be screened by a gate and brick walls or other suitable material to a height of not less than 1.8 metres. The bin area shall be accessible via a suitably constructed service road that will allow heavy vehicle movement.*
  - g) All stormwater and drainage runoff produced onsite is to be disposed of onsite via the use of soakwells. The size of the soakwells are to be calculated by use of the formula  $VOL(m^3) = AREA (m^2) \times 0.0125$ , where VOL is total storage volume of soakwells and AREA is total roofed and paved areas. Connection to the City's stormwater system, where available, may be permitted as an overflow only if to the satisfaction of the City of Bayswater.*
  - h) The vehicle parking area shall be sealed, kerbed, drained and line marked in accordance with the approved plans and specifications and shall be thereafter maintained to the satisfaction of the City of Bayswater.*
  - i) All vehicle crossings being upgraded, designed and constructed to the satisfaction City of Bayswater. Payment for the crossover is required prior to the issue of a building licence.*
  - j) Any existing septic tanks, leach drains or soakwells on the property must be pumped out, completely removed and the excavations backfilled with clean sand and compacted. Must be undertaken under the supervision of Environmental Health Officer.*
  - k) All premises to be connected to deep sewerage.*
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- l) *All noise emissions (i.e. exhaust fans, air conditioners etc) must comply with the Environmental Protection (Noise) Regulations 1997.*
  - m) *Compliance with the Health (Food Hygiene) Regulations 1993. Detailed plans of all food preparation, storage and refuse areas must be submitted with an application for approval to establish a food premises in conjunction with the building licence application.*
  - n) *Compliance with Health (Air Handling and Water Systems) Regulations 1994 and relevant Australian Standards e.g. AS1668.2 'the use of mechanical ventilation and air-conditioning in buildings' and AS3666.1 1995 'Air Handling and water systems of buildings – microbial control Part 1: Design, installation and commissioning.*
  - o) *Proposal must comply with the City of Bayswater Local Laws.*
  - p) *No earthworks shall encroach onto the Guildford Road reserve.*
  - q) *No stormwater drainage shall be discharged onto the Guildford Road reserve.*
  - r) *The applicant shall make good any damage to the existing verge vegetation within the Guildford Road reservation.*
  - s) *All vehicle access to or from Guildford Road must be via the existing crossover at Lot 26.*
  - t) *Kerbing being modified as agreed to with the applicant to the satisfaction of the City.*
2. *The applicant be advised that a Liquor Licensing outlet will be refused."*

#### Submissions

2. In accordance with the provisions of Clause 3.3 of the Town Planning Scheme, the proposal for shops and tavern was advertised to the community for twenty-one (21) days. The advertising comprised signs on the site, letters to surrounding landowners and an advertisement in the local newspaper.
3. A total of twenty five (25) written submissions including four (4) petitions containing 320 signatories were received, all opposed to the development. The submissions raised the following issues:
  - a) Traffic and parking;
  - b) Enough liquor outlets in area;
  - c) Increase in anti-social behaviour;
  - d) Devalue of property;
  - e) Child safety; and
  - f) Fumes from fast food outlet.
4. Of the submissions received above, fourteen (14) individual submissions and 266 signatories from three (3) petitions objected to the proposal based on the tavern use. Seven (7) submissions and 54 signatories, from one (1) petition, objected to the proposal based on the bottle shop and fast food uses.

Referrals

5. In accordance with legislative requirements, the current proposal and the traffic management report was referred to Main Roads WA, as Guildford Road is classified as a Primary Regional Road under the Metropolitan Region Scheme.
6. In a letter received 30 January, 2009 Main Roads WA have advised no objection to the proposal subject to standard conditions being met. An advice note stated the ultimate design for Guildford Road includes a median strip that would prevent right hand turn into the site using the existing crossover on Guildford Road to the adjoining Lot 26.
7. During late 2006 the City received a number of complaints from residents in regard to the removal of large trees from the site. Investigations revealed that a number of trees located within the road reserve had been removed without authorisation.
8. The City imposed a fine under the provisions of the Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law. The Council at this time also sought to amend the Local Law to provide a more appropriate deterrent for future offenders by way of increasing the amount of the fine.
9. Further to this, the City advised that replacement trees would be addressed at the Development Approval stage, however given the delay in the proposal being considered, the Engineering Department have further advised, in January 2009, that the City will be undertaking to plant replacement verge trees in July 2009.
10. Around 1996 Lots 101 and 26 were part of a larger singular site. At the time of subdivision, a condition was imposed by the WAPC requiring reciprocal access and parking between the two new lots. This condition resulted in the City becoming party to a deed of reciprocal access.
11. The condition was imposed to ensure that ingress and egress to the site could occur from Guildford Road and Slade Street. Any proposal to alter this agreement would need the concurrence of the neighbouring land owner(s) (i.e. they would have to be party to the application for development) and would need the approval of Main Roads WA.

Comment

1. There were 11 issues raised in the letter requesting the Special Council Meeting. The City sought advice on two aspects of the letter and has received this legal advice from the City's Solicitors. This advice is 'confidential' and under separate cover. The advice specifically deals with the issues of whether the approval needed an absolute majority determination by Council and whether it was open (ie discretionary) to approve the fast food outlets. The advice also canvasses the issue as to if it is possible for Council to revoke the approval.
2. These issues together with the other justification for rescission are addressed below. This discussion also includes detail in regard to the report presented to Council at the Ordinary Meeting held on 24 February 2009 with respect to matters canvassed for variations. Notwithstanding, the previous report has been included as an attachment. The plans from that report have also been included as an attachment.

Extent of Consultation

3. The application was initially presented to Council at its meeting held 25 March, 2008 where it resolved to advertise the proposal for public comment for a period of 21 days prior to further consideration. The proposed development (including shops and tavern) was advertised for public comment by way of letters to immediate adjacent owners, a sign on the site and an advertisement in the local newspaper. The advertising is consistent with normal practice and it is correct that individual letters were not sent to all owners of properties along Slade Street.
4. Details of the extent of properties that were sent letters during the initial consultation are attached to this report (refer Attachment No 5). Unfortunately the City cannot reconcile an allegation that a letter was not received, in so much that all that can be confirmed is that one was sent. Surrounding residents are also likely to be aware of the proposal via the application notification placed in the local newspaper and sign placed on site.

Nomenclature for Proposed Development and Zoning of Property

5. The report was titled “Proposed Commercial Development”. It is correct that there is no zone or use class called “Commercial”. The title of the report is a description that generally portrays the content of the proposal.
6. The actual uses proposed in terms of Town Planning Scheme No 24 are clearly articulated throughout the body and officers recommendation of the report.
7. In the table which appears in the background of the report, the Town Planning Scheme No.24 zoning is portrayed as “Special Purpose – Tavern & Local Shopping”, and the use class is portrayed as “Shop Fast Food Outlet (‘Red Rooster’)Fast Food Outlet (Drive-through Coffee) Shop (Liquor Store & Drive-through Facility)”.
8. It is correct that the actual zoning is “Special Purpose” and the uses that are permitted are “Tavern and Local Shopping”. The information was displayed as detailed within the table to ensure that it was clear as to the detail of the proposal as previously requested by Council as it was Council’s wish to have the proposal detailed by its individual components.
9. Irrespective of this, the table provides a summary of information and the core detail of the use classes and the complexities of what constitutes “Local Shopping” was detailed within the comments section of the report.

Use Class and Fast Food

10. Under Town Planning Scheme No 24 (TPS24) the use class of ‘Local Shopping’ is not currently defined. The use class of ‘Fast Food Outlet’ is defined within Town Planning Scheme No. 24, and it is a matter for Council consideration as to whether a fast food outlet would fit within the use of ‘Local Shopping’. The City’s legal advice details that it was open to Council to approve the two fast food outlets under the use “Local Shopping” on Lot 101. In this regard the decision of Council is not *ultra vires*.

11. In summary the legal advice contends that it would be artificial to use the individual meanings of the words and that as the phrase ‘Local Shopping’ is used in the Scheme consideration should be given to it having a special technical meaning. The advice argues that as the term ‘Local Shopping’ is not defined within TPS 24, it is reasonable and relevant in the context of the Clause 19(1)1 of the *Interpretations Act 1984* to refer to the definition of ‘Local Shopping’ from when it was first applied over the land. The term “Local Shopping is not defined in TPS 24 or TSP 21 but is defined within in Town Planning Scheme No 13 (TPS 13). Under TPS 13 ‘Local Shopping’ was defined as

*“The use of land or buildings for one or more of the following activities – butcher shop, cake shop, green grocer, delicatessen, small goods, hairdresser, newsagent or novelty shop. Any other activities, non conforming with this definition, are only permissible with the approval of Council, if Council considers they serve the day-to-day shopping needs of the locality.”*

12. The core issue regarding the fast food use is whether or not the use is considered consistent with the intent of the Special Purpose zoning of the site, which permits local shopping (i.e: open for Council discretion). Whilst the site is likely to attract patronage from passing traffic due to its location on a major road, the proposed use will provide services for local residents in the area and is considered to be consistent with local shopping in this context. The fast food use is considered to be generally similar in nature with the existing shops on the adjoining Lot 26, which involve the sale of food prepared on site.
13. A number of submissions have objected to the ‘Fast Food Outlet’ and believe that it is not appropriate for the site, based on concerns of loss of amenity, increased traffic, increase in anti-social behaviour and smells and odours from the development. The location of the site and the zoning suggest that a commercial development of some form is acceptable, subject to meeting scheme requirements to Council’s satisfaction.
14. The use of ‘Fast Food Outlet’ is considered to be generally consistent with the intent of ‘local shopping’. The use on the adjoining site is considered to be similar. Whilst some patronage from passing traffic is likely, the proposed use of fast food will provide a service to local residents, consistent with the intent of the Special Purpose zoning.

#### Absolute Majority

15. The City’s solicitors have confirmed that the proposal only required approval by a simple majority of Council as the Special Purpose Zone should not be treated as a use not listed. This being because the use is mentioned in Appendix 3 – Special Purpose Zones under Town Planning Scheme No. 24 , and it would be ‘absurd’ to consider it as a use not listed when it is specifically detailed as a permitted use.

#### Street Setback

16. Clause 8.3.4 provides for the prescribed front setback on a corner lot to be the more important road and the prescribed side setback to be the less important road unless otherwise determined by Council in terms of Clause 8.3.4. Given that Guildford Road is a Primary Regional Road and the vast majority of the development and frontage faces Guildford Road as opposed to Slade Street, it is considered that Guildford Road is the more important road (primary street) In this regard the prescribed setbacks respectively where 13.5m for the primary street, and 6.0m for the secondary street.

Side Setback

17. The table in the report details the side setback as 0.0m. Given that the portion of the development adjacent to the western side boundary was a shop, the side setback as prescribed by the Development Standards Table for shop was applied as Slade Street was considered as the secondary street setback.

Landscaping

18. It is normal practice for items presented to Council that seek a dispensation for landscaping to canvass the issue as it relates to column 9 of the Development Standards Table . In this regard it is correct that the report did not individually canvass clause 8.4.5 of the Scheme which considers the provision for additional landscaping where there is open parking areas with 21 or more parking spaces.
19. The report details that 9.8% of landscaping had been provided in lieu of the prescribed 10% with a 1.5m wide landscaping buffer in lieu of the prescribed 2.0m. With the inclusion of the additional landscaping as detailed in clause 8.4.5 the amount required would increase by 41.2m<sup>2</sup> to 11.3%.
20. Given that the application sought a dispensation for landscaping, from a performance perspective the total area of 308.25m<sup>2</sup> provided for landscaping was considered to be sufficient to cater for the development. The 1.5m wide buffer provided to the Guildford Road frontage was considered to be acceptable given the 13.5 metre setback of the buildings and the extensive verge area in front of the site.

Advice from Council to Applicant

21. It is correct that the applicant advised the City that the showroom component would be modified to shops to comply with the scheme. It is also correct that the permitted uses at this time were Tavern and Local Shopping. Whilst the City cannot dictate what a proponent may or may not change in relation to an application, the City's officer's advice which is likely to have given rise to the applicant modifying the proposal at this time was that in the City's officer's opinion showrooms were not permitted on the site.

Public Comment Advertised.

22. It is correct that further public consultation was not undertaken on the revised application received in November 2008 or the traffic report received in December 2009. There is no mandatory requirements for the advertising of this application under the Scheme however, public consultation was initiated by Council at the meeting on 25 March 2008 as it related to the proposed shops(s) and tavern. As detailed this consultation included letters to immediate neighbours, a sign on the site and notification in the paper. In accordance with clause 3.3 of the scheme any person was able to inspect the application and the accompanying information during advertising.
23. During the public advertising period, the applicant advised that the proposal would be modified to seek approval for a drive through bottle shop, shops and a fast food outlet ('Red Rooster') on the corner of Slade Street and Guildford Road. Objectors to the previous proposal were notified in writing of the change in the application and further submissions were received and accepted. The City has not denied any request to inspect and information. It is worth noting that Main Roads raised no objection to the proposal on traffic grounds.

Other Matters*Parking*

24. The applicant provided thirty-one (31) dedicated parking bays to service the proposed development, which are to be shared by the proposed tenancies. In addition, drive through components of the proposal allows stacking for up to sixteen (16) vehicles at any one time. The TPS requires a total of fifty-two (52) bays to be provided and overall the proposal has a shortfall of five (5) bays.
25. The applicant outlined that three of the four proposed tenancies have drive through components that will reduce the parking demand for these businesses. Up to sixteen (16) cars are able to stack within the site, which is considered to alleviate some demand for parking bays on-site. The applicant has further outlined that the proposal is seeking only a limited amount of GLA, notwithstanding the large area of the site. The inclusion of the drive through component results in a large amount of the site being used for manoeuvring purposes.
26. Clause 8.4.2 of the TPS allows Council to consider joint use of parking facilities where it can be demonstrated that peak time demand for parking does not coincide with those of other uses on the site. In this regard the Fast Food Outlet (drive through coffee) tenancy is likely to have a peak demand in the morning period from approximately 8am to 11am, given the nature of products sold (coffee, cakes etc). The proposed 'Red Rooster' outlet is likely to experience a peak demand during lunchtime (11.30am to 2.00pm) and evening periods (6pm to 8.30pm).
27. The uses on site were considered to have alternate peak demand times that allowed adequate sharing of parking facilities on the site. The drive through components of the proposal are considered to alleviate some demand for parking. Therefore, the number of parking bays provided is considered sufficient to cater for the proposed uses on the site in this instance.

*Setback to Slade Street*

28. The applicant proposed a setback of 4.8 metres to the secondary street (Slade Street), with the TPS requiring a setback of 6 metres. The 4.8 metre setback relates to a minor portion of the 'Red Rooster' tenancy, with the majority of the building setback 5.2 metres from Slade Street. The slope on the site results in this tenancy being cut into the site, which reduces the potential impact of the building from Slade Street.
29. The setback variation to Slade Street is considered to be minor and will not cause impact on adjacent residences, given the wide verge area (6 metres) along the south side of Slade Street and the reduced height of the building, which provides an appropriate buffer to nearby residences.

*Waste Disposal*

30. The City's Health Officers advised that the proposal requires the provisions of two 10m<sup>2</sup> bin compounds based on the nature of the uses proposed on the site.
31. Subsequent discussions with the applicant and the City's engineers have identified that the loading area shown at the rear of 'Shop 2' could be suitable for a bin storage compound. An additional bin compound is required for the 'Red Rooster' tenancy. An appropriate condition was included requiring two bin stores of 10m<sup>2</sup> to be provided, to the satisfaction of the City.

General Issues

32. The submissions received in relation to the proposal raised a number of other matters. The following is considered to address these concerns:
- a) A concern has been raised as to the number of existing liquor outlets in the area. The zoning of the site permits 'Local Shopping', under which a liquor store is permitted as a 'shop' under the Land Use Table in the TPS.
  - b) Concerns have been raised in regard to a likely increase in anti-social behaviour as a result of the development being approved. The applicant has removed the 'tavern' component from the proposal, which is considered to have the greatest potential impact on surrounding properties.
  - c) Impacts to property values is not a relevant land-use planning matter.
  - d) Concerns have been raised for the safety of children in the area, given the close proximity of a child care centre to the site. Whilst some increase in activity in the area is envisaged, the centre is located south of Guildford Road and the subject site to the north, therefore any increase in activity will have marginal direct impact on child safety.
  - e) Submissions received have raised concerns regarding fumes from the fast food components. The City's Health Officers have advised that the fumes from the commercial development proposed, subject to compliance with the relevant health requirements and the Building Codes of Australia, are unlikely to result in major odour concerns. Whilst some odours may occur, these would be considered to be commensurate with the approved zoning of the site.
33. The City's Engineers have recommended that the proposal make minor modifications to kerbing to facilitate improved vehicle circulation, which has been agreed to by the applicant. An appropriate condition has been included in the recommendation.

Summary

1. The legal advice has confirmed that it was open for the Council to consider fast food as being consistent with the permitted use of 'Local Shopping'. An absolute majority was not required in making the determination.
2. Whilst further consultation was not undertaken on the revised proposal including the aspects of the proposed fast food and the traffic management report, consultation was only required by Council on one occasion. Issues relating to the development standards applied to the proposal have been detailed including the side setback, primary street setback and the provision of landscaping all of which are at the discretion of Council.
3. The central issue for Council is the application of the use of fast food and whether it is considered to be a use that is acceptable as falling within 'Local Shopping'. This is a matter which Council needs to form an opinion and as it is open for Council to make a discretionary decision.

Voting Requirements

1. In accordance with *Clause 10 of the Local Government (Administration) Regulations 1996*, it will be necessary for any motion of revocation to be seconded by three elected members and pursuant to this clause any decision to revoke or change the first mentioned decision must be made by an absolute majority.
  2. In the event that a motion for revocation is carried, then a resolution will be required in terms of the application as there will be no current resolution on the proposal.
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3. In the event that a motion of revocation is lost, then no further resolution is required as the first mentioned decision stands.

***ABSOLUTE MAJORITY REQUIRED WHEN CONSIDERING A REVOCATION.***

***Council Discussion:***

*There was debate on this item concerning the reasons for a rescission motion, the City's Town Planning Scheme, Officer/Council interpretation of terminology held within Town Planning Scheme No(s) 13, 23 & 24, traffic impact from the development on local residents, landscaping, parking and setbacks with regard to the development, resident opposition to the development, the City's legal advice and Councillor support/opposition of the development. As a result of this discussion Council resolved to lose the rescission motion and retain the existing Planning Approval from the Ordinary Council Meeting dated 24 February 2009.*

**Officer's Recommendation**

That Council consider the request for the revocation of the Council resolution at the Ordinary Council Meeting held on 24 February, 2009 in relation to Item 13.7 – Construction of the Proposed Commercial Development (Fast Food Outlets and Local Shops) at Lot 101, No. 497 Guildford Road, Bayswater, and determine whether to either:

1. Revoke the Council decision; or
2. Not revoke the Council decision.

**ALTERNATIVE MOTION**

CR MARLENE ROBINSON MOVED, CR TERRY KENYON, JP, CR SALLY PALMER AND CR BARRY MCKENNA SECONDED that Council revoke its resolution at the Ordinary Council Meeting held on 24 February 2009 in relation to item 13.7 – Construction of the Proposed Commercial Development (Fast Food Outlets and Local Shops) at Lot 101, No. 497 Guildford Road, Bayswater due to the proposal not complying with Town Planning Scheme No. 24.

LOST

*Cr Marlene Robinson, Cr Terry Kenyon, JP and Cr Sally Palmer requested that their vote against the outcome be recorded.*

**9 CLOSURE**

**THERE BEING NO FURTHER BUSINESS TO DISCUSS,  
THE ACTING CHAIRPERSON, THE DEPUTY MAYOR, CR MICHAEL SABATINO  
DECLARED THE MEETING CLOSED AT 7:31PM.**