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Date:	27 May 2020
Officer:	Peter Varelis

Memorandum

To: All Councillors
 CC: Rhonda Hardy - CEO
 From: Peter Varelis – Director Development Services
 Subject: **Further Information on key issues raised during deputations from the 19 May 2020 Special Council Meeting and Modified Officer Recommended Conditions – Lot 3 (415) Mundaring Weir Road, Piesse Brook**

Further information on key issues raised during deputations from 19 May 2020 Special Council Meeting and modified Officer Recommended Conditions.

1. *Historic Approvals*

The statement was that the current application is invalid because the 2011 approval for 80 persons was never operational (not substantially commenced) and therefore the current application should be a fresh application.

While the site did not operate as a restaurant at 80 patrons, the City is satisfied that the development was 'substantially commenced' through approvals sought (Building Permit, Effluent Disposal – Department of Health) and physical improvements to the land.

Substantial commencement would be an issue if there was a non-conforming use right, which if not substantially commenced would expire, never to be available again. That is not the case here, as restaurant is currently an 'A' use, which means that as long as a new application is advertised, it's then capable of being determined.

There is no need to add or amend the recommended conditions to address this matter.

2. *Noise*

The following concerns were raised regarding noise:

- a) The Noise Management plan did not include an assessment on whether the development would comply with the Environmental Protection (Noise) Regulations 1997.
- b) No acoustic assessment had been undertaken.
- c) The Noise Management included no provision for measurements of noise emissions to be taken.

Restaurants have the potential to make noise, with the typical noise sources being patron movements to and from the premises, music and plant and equipment. With the relatively large setback distances between residential properties and this development, it is unlikely that plant and equipment create noise issues for nearby residents. The best means for controlling music and patron noise is generally management rather than an engineering solution and this is why the original condition requiring a Noise Management Plan to the City's satisfaction be submitted (noting that the submitted plan was not yet to the City's satisfaction).

The City acknowledges the concerns raised in deputations and submission and accepts that additional certainty regarding potential noise emissions and subsequent compliance of the development is a fair expectation. The City in response to points (a) and (b) above has rephrased condition (n) as follows:

Prior to occupation of the restaurant, the landowner must submit a noise impact assessment, completed by a suitably qualified consultant, to the satisfaction of the City of Kalamunda, to determine the proposals ability to comply with the Environmental Protection (Noise) Regulations 1997. Where such an assessment finds the proposal fails to meet the legislative limits, the proponent must submit an amended noise management plan for approval of the City of Kalamunda prior to occupation of the restaurant, addressing how the legislative requirements will be met. Once approved the noise management plan must be implemented for the duration of the development.

In regard to point (c) the City can confirm that for the noise management plan to be approved by the City it will need to include provisions for the measurement of noise emissions.

3. Bushfire Related Restaurant Closures

The City acknowledges that bushfire risk is a genuine concern for the existing surrounding residents, as well as for visitors to the subject site in the event of a bushfire.

One deputation recommended complete closure of the restaurant on 'Extreme' fire rating days, as well as closure if a bushfire is within certain proximity of the site.

The City accepts that these are measures which were applied to a recent JDAP application on Union Road for a proposed restaurant and chalets. Those measures were subject to significant technical consideration through the State Administrative Tribunal Appeal process (mediation) and were applied through a detailed Bushfire Management Plan.

While the current application provided a Bushfire Attack Level assessment and a Bushfire Management Statement, a Bushfire Management Plan (BMP) was not required to be submitted. However, it would be reasonable for a BMP to be requested, with a specific note that it must include provisions to close the restaurant on certain 'fire risk' days, and when a fire is within a certain proximity – with the exact 'fire risk' level and fire proximity distance to be finalised through the preparation of a Bushfire Management Plan. It would not be appropriate to pick a 'fire risk' rating, or distance, without a detailed report and analysis to justify it.

In this context, the City recommends the following additional condition:

A Bushfire Management Plan must be prepared by a suitable qualified Bushfire Consultant to the satisfaction of the City of Kalamunda prior to occupation of the Restaurant and must be implemented for the duration of the development. The Bushfire Management Plan must determine appropriate provisions to close on days where the 'fire risk rating' poses an evacuation risk, and when a bushfire is too close to the site.

4. Emergency Evacuation – Road Access

The Emergency Evacuation Plan proposes that evacuees will be able to exit the subject site northbound along Mundaring Weir Road, and travel west along Fern Road and Hummerston Road.

It was put to Council that the abovementioned route would not be available, as Hummerston Road is blocked. It is correct that during a normal day the eastern gravel section of Hummerston Road is not available to vehicles as it is locked with a chain. However, in the event of a bushfire, the chain blocking vehicle access would be unlocked to allow vehicles to use it. There are existing arrangements already in place in this regard.

Photos of eastern gate and narrowest section of access road.



5. Patron Numbers

The deputations raised concern with the number of 480 patrons (including staff) per day, generally on the basis that it would have an amenity impact – particularly if the 480 patrons (including staff) were attending the site at the same time, as opposed to being evenly spread out across the day.

From a technical perspective, the applicant has demonstrated that the site is capable of accommodating 480 patrons (including staff) per day, even if they all turn up at the same time, so the City is not able to justify a condition restricting the number of patrons to less than 480 (including staff).

If Council is concerned about the impact of 480 patrons (including staff) attending the site at the same time, the phrasing of condition (a) can be modified to limit the site to a maximum of 480 patrons (including staff) per day, but with an additional restriction that at any one time, a maximum number of XXX (less than 480) patrons can attend the site. This would limit a booking of the restaurant to XXX (less than 480) people.

The City notes that by adding an 'at any one time' patron limit could help reduce the amenity impacts of the restaurant, but it also could impact the viability of the restaurant – and as a result may attract an appeal to the State Administrative Tribunal.

Please note that XXX (less than 480) patrons is an example only, and it would open to Council to consider an appropriate number.

6. Location of spring where carpark stormwater will flow from the subject site, to the adjoining 81 Aldersyde Road.

The City inspected the dam on 81 Aldersyde Road.

There were no signs of water recharging the dam, nor were there other indicators of a spring such as a difference in vegetation types.

It appears that the original purpose of the dam was to capture water from two overland flow channels either side of a large granite outcrop.

7. Ongoing water quality testing.

The City noted comments regarding the regularity of water testing, and it appeared that more detail was desired in conditions of approval.

To provide for a more regular testing interval, the City recommends amending Condition (j) to increase the rate of testing to monthly water testing from July to November and to ensure independence in the testing. Notwithstanding the recommended monthly testing between July to November, the City can request or undertake higher intervals of testing, should an event or issue occur with the system.

To provide greater confidence that the creeks will not be impacted by the Biomax system, more detail is recommended to be added to Condition (i) regarding quarterly water samples from the 'pump out' chamber of the system being tested and having an acceptable composition.

Summary

City Recommended Modified Conditions

(n) – Updated

Prior to occupation of the restaurant, the landowner must submit a noise impact assessment, completed by a suitably qualified consultant, to the satisfaction of the City of Kalamunda, to determine the proposals ability to comply with the Environmental Protection (Noise) Regulations 1997. Where such an assessment finds the proposal fails to meet the legislative limits the proponent must submit an amended noise management plan for approval of the City of Kalamunda prior to occupation of the restaurant, addressing how the legislative requirements will be met. Once approved the noise management plan must be implemented for the duration of the development.

(j) – Updated

Prior to occupation, a Nutrient Management Plan must be submitted, including a water quality monitoring schedule, to the satisfaction of the City of Kalamunda on the advice of the Department of Water and Environmental Regulation. The implementation of the water quality monitoring schedule is to be undertaken independently and is to occur at least monthly from July to November when both Hackett's Gully and Piesse Brook are flowing to ensure that water quality and water runoff is not being impacted by the disposal of wastewater.

(i) - Updated

An On-Site Effluent Disposal System Construction Plan to the satisfaction of the City of Kalamunda on the advice of the Western Australian Department of Health is to be submitted prior to the commencement of works of the on-site effluent disposal system. This plan, upon approval, is to be implemented and maintained in its entirety. The plan is to include the following:

- i) 600mm free draining soil under the irrigation area, granite outcrops are to be avoided;
- ii) Details of how and when the Secondary Infiltrative Area is to be used;
- iii) A contour plan with concept staging prepared by the installer to ensure that terracing is implemented in accordance with the Code of Practice for the Design, Manufacture, Installation and Operation of ATU's Serving Single Dwellings to ensure even and sequential distribution of the wastewater in the Primary Irrigation Area;
- iv) Irrigation areas are to be designed such that wastewater will drain South and West, away from the nearby ephemeral creek, Hackett's Gully;
- v) Bunding or an impermeable barrier is to be installed to prevent wastewater from the irrigation area and Aerobic Treatment Unit travelling toward Hackett's Gully;
- vi) A suitably sized grease trap is to be installed and maintained such that grease is prevented from entering into the Aerobic Treatment Unit;

- vii) The irrigation lines are to be installed with a maximum of 1000mm separation as per the Australian/New Zealand Standard On-Site Domestic Wastewater Management (AS/NZS 1547:2012); and
- viii) A maintenance plan is to be submitted which will include provision for water samples to be taken from the pump out chamber at each quarterly maintenance period and submitted to a NATA accredited laboratory. The sample is to ensure the following effluent standards are being met;
 - (a) Biochemical oxygen demand - $\leq 20\text{mg/L}$
 - (b) Total Suspended Solids - $\leq 30\text{mg/L}$
 - (c) Faecal Coliforms - $\leq 10\text{cfu}/100\text{mL}$
 - (d) Residual Free Chlorine - $\leq 0.5\text{ mg/L}$
 - (e) pH - 6.5 – 8.5
 - (f) Total phosphorus - $\leq 1\text{ mg/L}$
 - (g) Total Nitrogen - $\leq 10\text{mg/L}$

(new condition)

A Bushfire Management Plan must be prepared by a suitable qualified Bushfire Consultant to the satisfaction of the City of Kalamunda prior to occupation of the Restaurant and must be implemented for the duration of the development. The Bushfire Management Plan must determine appropriate provisions to close on days where the 'fire danger rating' poses an evacuation risk, and when a bushfire is too close to the site.

(new condition)

A notification under section 70A of the Transfer of Land Act 1893 or section 6(1) of the Strata Titles Act 1985 being registered over the Certificate of Title of the subject lot, within 90 days, to notify owners and prospective purchasers of the land of the factors affecting the use of the land.

The notification is to be prepared and executed at the applicant's cost to the satisfaction of the City of Kalamunda and is to state as follows:

'This land is within a bushfire prone area as designated by an Order made by the Fire and Emergency Services Commissioner and is subject to a Bushfire Management Plan and Bushfire Evacuation Plan. Additional planning and building requirements may apply to development on this land'

Kind regards,



Peter Varelis
Director Development Services