



Ordinary Council Meeting Agenda

To All Councillors

To be held on Wednesday, 25 May 2016

Commencing 5.00pm at the Seniors Room
Donnybrook Community Library
Cnr Bentley and Emerald Street, Donnybrook

A handwritten signature in black ink, appearing to read 'John Attwood', is written over a horizontal line.

John Attwood
Chief Executive Officer

19 May 2016

Disclaimer

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ORDINARY COUNCIL MEETING AGENDA

25 MAY 2016

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SHIRE OF DONNYBROOK-BALINGUP

ORDINARY COUNCIL MEETING AGENDA

**To be held at the Seniors Room, Donnybrook Community Library
Wednesday, 25 May 2016 at 5.00pm**

MEMBERS PRESENT

COUNCILLORS

Cr Logiudice (President)
Cr Mills (Deputy)
Cr Bailey
Cr Crowley
Cr Dilley
Cr King
Cr Mitchell
Cr Tan
Cr Van Der Heide

STAFF

John Attwood – Chief Executive Officer
Greg Harris – Manager Finance and Administration
Bob Wallin – Principal Planner
Damien Morgan – Manager Works and Services
Kate O’Keeffe – Executive Assistant

PUBLIC GALLERY

1 APOLOGIES

Leigh Guthridge – Manager Development and Environmental Services

2 PUBLIC QUESTION TIME

Questions Taken with Notice prior to the Ordinary Council Meeting on 27 April 2016

The following questions were received prior to the April 2016 Ordinary Council Meeting. A response was provided in writing and distributed to the Councillors and Public Gallery prior to the commencement of the meeting.

Simon Kapel

1. *How can Orchid Court become the access road for Lot 102 South Western Highway?*

Principal Planner

This is not the intent of the proposed plan as submitted. The proposed plan is to use Orchid Court as an access for a first stage. The ultimate use of Orchid Court in the submitted plan is

to provide a low order local connection. It is suggested that the end design of the Orchid Court could include treatments to discourage and slow traffic. This could include providing raised brick paving with narrow and curving alignments. This has worked in other areas to create a safe and shared public space for recreational and traffic use.

Simon Kapel

2. Are there any plans to connect road ways into Leschenaultia circle other than those that already exist (proposed conceptual planned or discussed)?

Principal Planner

No. The plans submitted do not propose any additional connection points.

Simon Kapel

3. What was the advice received from MRWA regards a separate entrance regards?

Principal Planner

Advice from MRWA is that it will not support an additional access point onto the South Western Highway.

Simon Kapel

4. Are there any other recent subdivisions that have entry and exit onto another subdivisions road system?

Principal Planner

Yes. All new subdivisions that include new sections of road require connection to the public road network. Orchid Court is a public road and forms part of the public road network.

Simon Kapel

5. What does the land capability study say regards on site effluent storage?

Principal Planner

The study concludes that the site is capable of sustaining on-site effluent disposal. Analysis of the report has been undertaken by the Shire's Principal Environmental Health Officer to confirm findings. This has included an inspection of the site.

Simon Kapel

6. Is there a recommended soil type by Health Department for onsite effluent disposal?

Principal Planner

The Health department does not have preferred soil types other than free draining soils. Systems can be sized and designed for soil types ranging from sand to loam.

Simon Kapel

7. What is the allowable block size in a subdivision for on-site effluent treatment in Donnybrook Town Site?

Principal Planner

Present standards allow lots of 1000m². However, there are historical lots smaller than this.

Simon Kapel

8. Does lot 102 South West Highway have access to a sewer main?

Principal Planner

No. Water Corporation advises that the pressure main running along the northern boundary is not designed or intended for connection.

Simon Kapel

9. What has been the minimum block size in recent subdivisions outside Donnybrook main town site?

Principal Planner

Recent lot sizes within the Donnybrook town site range from approximately 300m² to 1000m².

Simon Kapel

10. Would the Town Planner explain in his response - Use of Orchid Court as a through-road. That Orchid Court is the same as spur at the Southern end of Leschenaultia Circle which is named Hovea Drive [The Analogy of the comment]?

Principal Planner

Hovea Drive and Orchid Court were placed in the original plan to provide connection options for future development. This is consistent with established town planning practice.

Simon Kapel

11. What are the road reserve, pavement widths, road design parameters (Traffic types volumes ect) Leschenaultia circle and ...?

Principal Planner

The road pavement widths and reserves are fit for purpose and will provide an adequate level of service with the traffic volumes proposed.

Simon Kapel

12. Heading: Capacity of Roads, page 41. The statement is: The traffic study provided shows the majority of new traffic movements will be focused on Marginata Drive. The majority of traffic will not be using Orchid Court or large portions of Leschenaultia Circle. Heading: Staging Impacts, page 42. The statement is: The major access for first stage of subdivision is a proposal to use Orchid Court. The time frame use of Orchid Court is unknown, could be a lengthy time. Which is it to be? .

Principal Planner

The proposed plan indicates the Orchid Court is intended to be used for a first stage. The timeframe will depend on the take up of new land and the extent of what a first stage can be

considered. If there is a slow take up of new lots, the timeframe will be longer, however, the intensity of activity will be less over this time.

Simon Kapel

13. What was the study outcome regards Black Cockatoo habitat and areas that need retention as referred to in council meeting minutes 27/11/2013 pages 46 Retention of remnant vegetation along with page 47 schedule modifications paragraph b.

Principal Planner

The plan proposes public open space and preservation of this area. This approach is supported by the Environmental Protection Authority.

Simon Kapel

14. How were the buffer zones of remnant vegetation area calculated along distance to nearest farming use to lot 102 South Western Highway?

Principal Planner

This was based on analysis of aerial mapping. It is not intended to be exact or a key justification. It has been provided as a secondary fact. The key issues to minimising potential for land use conflict are through the planted buffer, separation distances, setbacks and notice on titles.

Simon Kapel

15. Could full copies of all studies and submissions be table so all parties can view - relating to lot 102 South Western Highway?

Principal Planner

Yes. Please note that the entire document was available during the public advertising period.

Simon Kapel

16. What does contemporary town planning principles along with 'Liveable Neighbourhoods' say that should be include in subdivisions.(i.e. services etc.)

Principal Planner

Liveable Neighbourhoods outlines standards and services that should be provided in a subdivision. The proposed subdivision complies with Liveable Neighbourhood design standards. Servicing outcomes will need to comply with all relevant policies and are enforced through the subdivision process. This will include among other things the need to provide roads, footpaths, street lighting, public open space, underground power and reticulated water.

Questions Taken Without Notice at the Ordinary Council Meeting on 27 April 2016

Simon Kapel

I refer to my question regarding the buffer zone and ask whereabouts is the boundary line for Lot 102 South Western Highway?

Principal Planner

The Boundary Line for Lot 102 is 240 metres in width along the edge of Meldene Estate

Simon Kapel

Are there any landmarks or easements that indicate the boundary line?

Principal Planner

There is a vegetation strip that runs along the edge of Lot 102 South Western Highway that may be used as a landmark for the boundary.

Simon Kapel

The trees on the western parameter and towards town there is a boundary line on the fenceline. Are the buffer zones on the inside or outside of Lot 102 South Western Highway?

Principal Planner

The buffer zone is within Lot 102. This is only one aspect required. Other requirements include noise, odour and spray drift.

Simon Kapel

With regards to the 75 Metres I can only identify the railway easement and the fenceline as landmarks.

Principal Planner

The 75 Metres is taken from aerial maps and takes in the trees from the adjoining property

Simon Kapel

So the 75 Metre setback is possibly not within Lot 102?

Principal Planner

That is correct.

Simon Kapel

I am confused how Orchid Court can become a through-road. I don't agree with the response provided previously. I cannot comprehend how a Court can become a through-road.

Robyn Giudice

My question relates to Question 10 taken with notice: Leschenaultia Circuit was in Stage 2 of the building process and Orchid Road was placed in Stage 3 in 2005. How could it be foreseen that this road would become a through-road when the developers didn't purchase Lot 102 South Western Highway until 2007?

Principal Planner

Designs provide the options for linkages. This is common practice.

Robyn Giudice

Orchid Court is not suitable as a through-road. The road has a 6m width at the beginning.

Simon Kapel

Did you receive a written response from MRWA on installing a separate entrance to Lot 102 South Western Highway?

Principal Planner

MRWA advised during a verbal conversation that they did not support installing a separate entrance to Lot 102. MRWA has recently upgraded the intersection to Meldene Estate and have no plans for creating a separate entrance to Lot 102.

Simon Kapel

Marginata Drive has a 22 Metre width including the verge. How do you calculate this rate?

Manager Works and Services

With new subdivisions, road reserve widths and road pavement widths are mainly determined by the expected volume of traffic to use the road, consistent with guidelines established in Liveable Neighbourhoods.

Simon Kapel

Orchid Court has less of a road width than Marginata Drive and has no footpaths. The safety of our kids is a big concern.

Manager Works and Services

Your quote of 1940 vehicles per day to be ultimately generated by the development I assume would be split between both of the connection roads. I would expect that the traffic flow directly to Marginata Drive would be higher than the through-traffic on Orchid Court once the area is fully developed.

Note: A post-meeting review of the documents outlines that 1940 average weekday vehicle movements (awvm) are estimated only at the existing intersection of SW Hwy with Marginata Drive, which is the total traffic generated by the existing and proposed development. The document outlines the new intersection with Marginata Drive will have 990 awvm whilst Orchid Court awvm is estimate below 100.

Simon Kapel

Marginata Drive is designed for heavier traffic flow, Orchid Court is not.

CB Knight

At the meeting on 22 April 2015 it was stated that the CEO is responsible for overseeing the Tuia Lodge Subcommittee. The CEO failed to bring anything to Council. If the issues had been addressed when requested

Cr Van Der Heide

Point of order – criticising staff.

CB Knight

I contend Tuia Lodge is a Shire facility. Looking at the auditing of Shire accounts, are the

Tuia Lodge accounts that are held in other banking institutions going to be audited?

A/CEO

All finances of Tuia Lodge controlled by the Shire are audited annually in compliance with the Aged Care Act. I am unable to answer questions regarding other bank accounts as these are under legal review.

CB Knight

Who do we deal with when the CEO and Deputy CEO don't adequately address the issues?

President

Point of order; criticising staff is not tolerated. The question you have raised is not appropriate at a public forum and will not be accepted.

CB Knight

Who can we go to if we feel issues have not been adequately addressed?

A/CEO

There are a number of options available including approaching the union if applicable, Workplace Ombudsman or the Industrial Relations Commission.

Christine Benson

I refer to Question 12; three houses were recently built on Leschenaultia Circuit. During the construction phase we were impacted by noise and inconvenience from construction work. This inconvenience will increase with the development of Lot 102.

Principal Planner

Residents may experience a level of discomfort during the construction work phase.

Christine Benson

Leschenaultia Circuit was purchased with the view of a quiet lifestyle. This is going to be jeopardised by the development of Lot 102 South Western Highway.

3 APPLICATION FOR LEAVE OF ABSENCE

4 DECLARATION OF FINANCIAL/IMPARTIALITY INTEREST

5 PETITIONS/DEPUTATIONS/PRESENTATIONS

Mr John Tillman has requested to present to Council to provide an overview of the Bushfire Risk Management Planning program. DFES (OBRM - Office of Bushfire Risk Management) have funded the appointment of the Bushfire Risk Management Planning Coordinator. The position is shared between the Shires of Donnybrook – Balingup, Boyup Brook and Bridgetown –Greenbushes) for the purpose of developing a Bushfire Risk Management Plan for each local government.

The roll out of this risk management approach to bushfire management follows the recommendations made by the Perth Hills Bush Fire Review 2011 (Keelty Report).

The State Emergency Management Plan for Fire (Westplan Fire) requires an integrated Bushfire Risk Management Plan (BRMP) be developed for each local government outlining a strategy to treat bushfire related risk across all land tenures.

Mrs Linda Brown has requested to present to Council regarding Gas Gun Noise emissions.

6 LATE ITEMS

Nil

7 CONFIRMATION OF MINUTES

7.1 Ordinary Council Meetings

Council Decision

Moved: Cr

Seconded: Cr

That the minutes of the ordinary meeting held on 27th April 2016 and the special council meetings held on 2nd and 12th May 2016 be confirmed as a true and accurate record.

8 DEFERRED ITEMS

Nil

9 ELECTED MEMBERS MOTIONS

Nil

10 MINUTES OF PREVIOUS MEETINGS

10.1 Committee Minutes

Council Decision

Moved: Cr

Seconded: Cr

That the following Committee minutes be received:

- Donnybrook Cultural Planning Advisory Committee Meeting – 5 May 2016
 - Donnybrook Community Awards and Grants Committee Meeting – 9 May 2016
-

11 REPORTS OF COMMITTEES

11.1 Community Awards and Grants Committee

11.1.1	SUBJECT:	COMMUNITY GRANTS SCHEME
	Location:	N/A
	Applicants:	Various
	Zone:	N/A
	File Ref:	FNC 08/6
	Author:	J Attwood (<i>Deb Vanallen, Community Development Recreation Team Leader</i>)
	Report Date:	14 March 2016
	Attachments:	11.1.1 (1) Summary of Applications 2016/17 11.1.1 (2) Community Grant Funding Scheme Information Kit and Application Forms 11.1.1 (3) Summary of Previous Community Grants

Background

The new Community Grants Funding Scheme was adopted in March 2016. It aims to eliminate inconsistencies which were identified in the previous policy, while ensuring a more all-encompassing policy/scheme which will better service the needs of the community.

The new Community Grants Funding Scheme welcomes submissions from individuals, community groups, not-for-profit and commercial organisations that are seeking support for projects, activities and events that address identified community needs.

Full details of the Community Grants Funding Scheme are outlined in the Information Kit and Guidelines (Attachment 5.1.1(2)). This document provides information regarding eligibility, how to apply, and assessment criteria. The Guidelines and Application forms can be downloaded from the Shire Website, or alternatively hard copies can be issued for the relevant funding scheme the applicant wishes to apply for.

The Community Grant Funding Scheme differs in a number of areas to the previous Community Grants Policy/Guidelines. Of significance is the timing/closing date for applications.

Under the new Community Grant Funding Scheme, applicants for Minor Community Grants, Minor Event Sponsorship, Waiver of Fees, Donations and KidSport can apply at any time throughout the year. These applications, to a maximum of \$500, will be assessed by Shire Officers, and approved by the CEO under delegated authority. This will enable the Shire to be more responsive to applications for minor funding assistance, and aids in simplifying and streamlining the assessment process.

The Major Community Grants and Major Event Sponsorship Funding Grants require applicants to apply as part of an annual funding round. This year's funding round closed on 29th April, 2016 and these applications will be assessed by the Community Grants and Awards Committee against the relevant Assessment Sheet (Attachment 5.1.1 (3)).

Comment

Preliminary promotion of the new Community Grants Funding Scheme commenced in March 2016. The advice to community groups and event organisers stated that full details of the new Scheme would be available soon, and that the closing date would be towards the end of April, 2016.

The new Grant Funding Information Kit, Guidelines and applications forms were distributed at the beginning of April, 2016, and closed on 29th of April 2016.

Several applications were received for Minor Community Grants, Minor Event Sponsorship, Waiver of Fees, Donations and KidSport. These will be assessed by Shire Officers and approved by the CEO under delegated authority.

A total of ten Major Community Grants and Major Event Sponsorship Funding applications have been received for consideration in the 2016/2017 Budget. These consisted of:

- six applications for the Major Community Grants, totalling \$10,040
- four applications for the Major Event Sponsorship, totalling \$8,000
- Recurrent funding applications

Attachment 5.1.1(1) provides a summary of the applications received. The Committee are required to assess these applications using the criteria detailed in the Grant Assessment Sheets.

In addition to this, three applications have been received to date for recurrent funding. These applications will be submitted to Council as part of the annual budget review process.

Consultation

N/A

Policy/Statutory/Voting Implications

Simple majority

Financial Implications

\$7,500 is allocated each year in the Major Community Grants

\$7,500 is allocated each year in the Major Event Sponsorship

\$3,000 is allocated each year in the Minor Community Grants

\$3,000 is allocated each year in the Minor Event Sponsorship

\$2,000 is allocated each year in Cash Donations

\$2,000 is allocated each year in Non-cash donations and waiver of fees

\$10,000 is available through the KidSport funding program

These are indicative figures only and are subject to variation by Council during Budget deliberations.

Strategic Implications

The Community Grants policy assists Council to achieve Outcome 2 of the Shire Strategic Plan 'the welfare needs of the community are met' and Outcome 9 'community participation in recreation, leisure and cultural activities'.

Officer's Recommended Resolution

Moved: Cr

Seconded: Cr

That Council receive the prioritised recommendations of the Community Grants Committee in respect to the 2016/17 year Community Grants Funding Scheme to be considered during deliberations of the 2016/17 year budget.

The vegetation to be removed is typically either street trees, trees in power lines, road construction clearing or isolated trees on roads or reserves.

With the recent expiry of the existing Shire of Donnybrook-Balingup, Tree Pruning and Removal contract, a request for tender was advertised, to establish a new contract. The tender was advertised from Thursday, 7th April 2016 and closed on Wednesday, 27 April 2016. Adverts were placed in the West Australian and South West Times newspapers, along with LG Net and the Shire's website.

Comment

In accordance with the SoDB Administration Policy – 2.26 “Purchasing and Tender Policy”, Staff called for suitably skilled contractors to provide an offer to undertake the works as defined within the tender specifications.

The tender outlined that a contract for the provision of the defined service would be awarded for two (2) years, with an option of two (2) one-year periods to be negotiated subject to ongoing performance and price.

Within the tender document, all tenderers were advised that their offers would be assessed against the following criteria:

Compliance – Each tender was assessed on a Yes/No basis as to whether they had satisfied the following criteria within their offer:

Description of Compliance Criteria	Yes/No
(a) Compliance with the Specification contained in the Request.	Yes/No
(b) Compliance with the Conditions of Tendering - Tender Offer.	Yes/No
(c) Compliance with the Conditions of Tendering – Price Schedule.	Yes/No
(d) Compliance with the Conditions of Tendering – Schedule of Plant.	Yes/No
(e) Compliance with the Conditions of Tendering – OS & H Questionnaire.	Yes/No

Quantitative and Qualitative – total 100% weighting as follows:

Criteria	Weighting
Price & Price Structure in accordance with Policy 2.21 (see below)	40%

Description of Qualitative Criteria	Weighting
(a) Technical and physical capacity to perform services including traffic management.	25%
(b) Previous experience or past performance.	25%
(c) OH&S Compliance	10%

Council received submissions from five tenderers. One tenderer submitted their application electronically, which was clearly outlined as not allowed under the provisions of the Tender. This tender has been ruled disqualified, by the tender assessment panel.

Tender submissions were then assessed against the defined compliance and qualitative criteria by the tender evaluation panel.

All submissions were also assessed against Council Administration Policy 2.21 Regional Price Preference Policy, with the Policy applied to submissions that qualified.

The final rankings of the tender assessment are outlined in confidential Attachment 12.2.1 - RFT 01/2016 – Tree Pruning & Removal – Tender Assessment Matrix, along with a listing of the rates offered for various services.

Two Tenders were very competitive in terms of rates offered along with their company's resources, experience and OH & S procedures.

The assessment panel has determined that the tender submission from BDA Tree Management Services provides the best value for money when considered against the compliance and qualitative criteria of the tender, along with the relevant Council Policies and references.

Consultation

The tender was advertised from Thursday, 7th April 2016 and closed on Wednesday, 27 April 2016. Adverts were placed in the West Australian and South West Times newspapers, along with LG Net and the Shire's website.

Policy/Statutory Implications

Statutory

The *Local Government Act 1995* and *Local Government (Functions and General) Regulations 1996* detail the requirements for local government tendering.

Policy

The tender process including assessment was undertaken in accordance with the Shire's Administration Policy 2.26 Purchasing & Tender.

The Shire's Administration Policy 2.21 Regional Price Preference was given consideration in the assessment and applied to submitters eligible.

Voting

Simple Majority

Financial Implications

Funding is provided within Councils annual allocated budget (account number 133700) for street tree pruning and clearing works for road construction and maintenance projects.

Strategic Implications

The following outcomes from the Strategic Community Plan relate to this proposal:

Outcome 1.7 - A well-used and efficient transport network.

Outcome 4.2 – Maintain long term financial viability

Outcome 4.3 – An open and accountable Local Government that is respected, professional and trusted.

Outcome 4.7 – Maintain and enhance Shire assets.

Officer's Recommended Resolution

Moved: Cr

Seconded: Cr

That Tender RFT 01/2016 – Tree Pruning and Removal be awarded to BDA Tree Management Services for the tendered rates for a period of two (2) years, with two (2) optional one (1) year annual extensions.

12.3 Manager Development and Environmental Services

Nil

12.4 Principal Planner

12.4.1	SUBJECT:	PROPOSED AMENDMENT NO. 2 TO LOCAL PLANNING SCHEME NO.7.
	Location:	Lot 102 South Western Highway, Donnybrook
	Applicants:	Impact Urban Design
	Zone/Reserve:	Residential
	File Ref:	TP17 Amd2
	Author:	Bob Wallin, Principal Planner
	Report Date:	28 April 2016
	Attachments:	12.4.1(1) – Development Layout with Staging Plan 12.4.1(2) - Schedule of Submissions 12.4.1(3) – Alternative Road Pattern 12.4.1(4) – Path Plan

Background

Council considered this item at its meeting 27th April 2016 where it resolved to:

“defer the motion for 1 month to discuss with the developer the staging of the development and alternate road plans”

A meeting was held on 9th May 2016 and attended by a number of elected members, the developer and staff to discuss the above items. In summary, additional information was provided to clarify the following points:

- Provision of a draft staging plan;
- Arrangements to limit heavy vehicle activity on Orchid Court associated with subdivision works;
- Arrangements to implement an ultimate road treatment for Orchid Court; and
- Rationale for the design of the road network.

In addition to the above, further clarification about the plan has been provided:

- a) Written confirmation from Main Roads Western Australia that no additional access point to the South Western Highway will be supported;
- b) Confirming the purpose of the 18 metre protection zone. This is required to provide a hazard separation distance for fire safety;
- c) The distance of constructing Marginata Drive to the boundary of Lot 102 is approximately 215m;
- d) There have been irregular isolated complaints received regarding gas gun activity. This includes one recent compliant. There is on average one compliant received every two to three years.

- e) The edge of the current orchard activity is approximately 219m at its closest point to the western boundary of Lot 102. The current distance to the established Meldene estate lots is 460m;
- f) The existing vegetation on the adjoining property to the west consists of vegetation of a similar composition as those identified for preservation on Lot 102. This vegetation is very likely to have habitat conservation value and there would be need to obtain support from the Department of Environmental Regulation to remove it. Obtaining approval to remove significant areas of this adjoining vegetation may not be possible due to its important habitat values. This approach would be consistent with the position taken in relation to Lot 102 where the majority of the vegetation is required to be retained.

Comment

In considering this proposal, based on the new information provided, it is worth looking in more detail at the following key points.

Buffer Design

The plan includes a buffer along the western edge of the property consisting of a hazard separation zone of 18m and a 10m planting for the northern portion of the site. Treatments of the balance of the western boundary include using a road alignment, setbacks and building envelopes.

In order to establish whether this buffer is adequate, it is first necessary to understand what the purpose of a buffer is. A buffer is intended to reduce potential for land use conflict between two land uses. In this case, “sensitive residential” land uses and commercial orchid activity.

In terms of orchard operations, the key issues relate to odour, noise (gas guns) and spray drift. In this case, the buffer is not only considered in terms of physical barrier. There are a number of other supporting measures in place:

- a) Including notices on title to advise prospective purchasers of impacts on their enjoyment of the land resulting from nearby orchard activities such as noise, odour, dust, vibration; and
- b) A noise management plan that requires gas guns to be located at least 300m from a property boundary. It is noted that this will restrict future orchard activity.

Based on the combination of these measures, specifically the noise management plan which requires a 300m separation distance, the proposed buffer is considered reasonable.

To ensure that future purchasers are aware of the notice on title, it will be desirable that this information be provided as part of a purchaser information package.

Road Design

The road design submitted reflects a significant improvement on the previous design that Council rejected. The intent of the design is to create an interesting alignment. The applicant has explained that a more direct and straighter north-south alignment would encourage speeding and promote through-traffic should there ever be a connection with Bentley Street.

Attachment 12.4.1(3) shows an alternative route prepared by staff. This plan has been presented to the developer for consideration. The developer has indicated a strong preference to retain the design as currently proposed.

The key element of this alternative plan is to further discourage the southern portion of the site to using Orchid Court for access. It creates a more direct path. Traffic speed can be controlled through design solutions such as a round-about.

It is worth noting that traffic volumes for Orchid Court, using either design would comply with Liveable Neighbourhood requirements when considering volumes and construction standards.

Staging

At the April 2016 Ordinary Council meeting there was some uncertainty about the intent of staging and the extent of the proposed use of Orchid Court. This was a key issue of concern.

The applicant has now provided a more definitive proposal on how staging may occur (Attachment 12.4.1(1)) and has advised that heavy vehicular traffic associated with subdivisional works may be able to use Marginata Drive for access.

It is noted that the staging plan now presented has changed from a previous staging plan discussed at the meeting on 9th May 2016. The changes have resulted from looking at the economic and marketing viability of the project. The plan shows a first stage of 39 lots and a second stage connecting to Marginata Drive.

In understanding the staging plan, it is worth noting the following points:

- a) The purpose of a staging plan is to provide information and to indicate that services and facilities will be developed in an orderly and proper manner. Staging plans are usually prepared at the detailed subdivision stage. It is noted that staging plans often change from time to time depending on new information becoming available. This may include detailed engineering design investigations, market conditions etc.;
- b) Staging plans are helpful to make sure that new residents and existing residents are serviced by safe and efficient road networks, and facilities and infrastructure are available when needed (public open space, paths, lighting, power, water...);
- c) A benchmark for testing the reasonableness of a staging plan is the degree to which it complies with Liveable Neighbourhoods criteria;

- d) Movements associated with building construction are unlikely to be greater than 390 trips per day towards the final phases of Stage 1. During most of the Stage 1, traffic will be significantly less than this as construction will occur in incremental steps. It is very unlikely that development of the 39 lots will occur at the same time;
- e) The traffic flows and demands on Orchid Court will comply with Liveable Neighbourhoods. It is worth noting that traffic volumes will be less than the lowest order roads envisaged by Liveable Neighbourhoods. Liveable Neighbourhoods identifies the lowest order road as a rear laneway. These have a pavement and total reserve width of 6m and are considered acceptable for 300 vehicle movements a day. Liveable Neighbourhoods also identifies a slightly higher order road as "Access Streets". Access streets can have reserves of 14.2m and pavements of 5.5-6m and are considered suitable for 1000 vehicle trips per day. Orchid Court has a 5.8m pavement and a reserve of 20m. Towards the completion of Stage 1, it is estimated that the total traffic volume will be less than half that tolerated by Liveable Neighbourhoods;
- f) Building construction traffic movements would be similar in volume to normal residential traffic. The difference may be in the type of vehicles. However, this would not be excessive when taking into account a staggered timeframe for constructing new homes;
- g) There are no paths or street lighting within the existing Meldene Estate. In considering this, it is worth remembering that:
 - additional linkage paths and open space connections will be provided;
 - the ultimate design of Orchid Court will ensure a low speed, low traffic environment; and
 - Meldene is a low density estate with relatively large street setbacks and good sightlines. It is not a tightly packed dense urban area that required paths and street lighting at the time of approval.
- h) The reasonableness of stipulating or construction traffic to use Marginata Drive from Stage 1. There are a number of tests for establishing the reasonableness of a condition. It is unlikely that stopping all construction traffic to Orchid Court will be reasonable. More details on the tests of what makes a reasonable condition is explained below.

Other things to think about

This proposal has raised a number of concerns and objections from the public (see Attachment 12.4.1(2) – schedule of submissions). There are a lot of competing objectives and views hovering around this proposal and it is often difficult to decide how to correctly give priority to particular views and perspectives. The following is intended to provide a way of objectively comparing positions.

Cost and Utility

One of the key guiding principles of town planning is the maximisation of benefit to the most people and the minimisation of costs. In this case, there is a potential temporary benefit to nearby landowners (near Orchid Court) if stage 1 of the project does not use it. The cost of this arrangement is a burden to the developer. Care needs to be taken in considering the extent and permanence of any benefit. It is essential to establish the extent of any temporary loss of amenity and if this matches on-ground realities or a perceived reality. Does a solution represent a reasonable return for the cost?

Limits to free will

In making a decision, Council needs to be mindful that it is not the ultimate decision maker and does not have absolute free will in the decision making process. Decisions are constrained within a planning and policy framework. In this case the decision about the end use of the land is already decided. It is urban. The decision to not go ahead, to start and or the pace of construction is up to the developer, future purchasers and market demand. These are constraints that Council has no control. In this case, Council is limited to looking at design issues and conditions. In looking at design issues and conditions, Council is further constrained by the need to ensure that:

- 1) conditions or modifications proposed are reasonable and serve a planning purpose;
- 2) the need for the conditions are directly created by the proposal; and
- 3) the conditions are essential to making the proposal acceptable.

To assist with this, the following comments are provided on what makes a reasonable planning condition or modification.

Tests for a valid condition

Tests for a valid condition were established by *Newbury DC vs Secretary of State for the Environment (1981)*. In summary, for a condition to be valid, it must:

- Be imposed for a planning purpose;
- Fairly and reasonably relate to the development which permission is given;
- Be reasonable, that is, be a condition which a reasonable planning authority, properly advised, might impose.

These points are explored as follows:

Planning Purpose

There are two aspects here. The first is to ensure that the condition has a relationship to planning theory and policy. The second aspect is to determine if the condition, in the particular circumstance fulfils a proper planning purpose.

To help, the question should be asked, if this condition was not imposed, would the structure plan be refused?