



## **Special Council Meeting**

**Notice** is given that a Special Meeting of the Kingston City Council will be held at 7.30pm at 1230 Nepean Highway, Cheltenham, on Tuesday 10 April 2012.

- 1 Apologies**
- 2 Declaration by Councillors, Officers or Contractors of any Conflict of Interest**
- 3 Items of Business**

**City of Kingston  
Special Council Meeting**

**Agenda**

**10 April 2012**

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**Notice** is given that a Special Meeting of the Kingston City Council has been scheduled for 7.30pm at 1230 Nepean Highway Cheltenham on Tuesday 10 April 2012.

***Business will be as follows:***

- 1. Apologies**
- 2. Disclosures of conflicts of interest**
- 3. Items of Business**

**O 46** Consideration of Rescission of Motions O26, O41 and O25 as proposed by Cr West

**Part A**

To consider whether the Notices of Rescission are considered at this Special Meeting or at the Ordinary Council Meeting on 23 April 2012.

**Part B**

To consider the Notices of Rescission if resolved by Council to be considered at the Special Meeting.

**O 47** Amendment C118 – Capital Golf Course

**O 46                      Part A**

**Recommended Motion**

Council resolves to determine the rescission motions contained in Part B of this Agenda Item O 46 at this Special Council Meeting.

**O 46                      Part B**

**1.     Notice of Rescission – Green Wedge**

**Notice of Motion to Rescind Council Resolution:**

I move that the confidential resolution of Council at the Ordinary Meeting on Monday 27 February for agenda item O 26 regarding Kingston's Green Wedge (Motion 8/2012) be rescinded at the next Ordinary Meeting.

Cr Rosemary West  
Central Ward

**Officer Comment**

Refer to Confidential Attachment – Council Minutes – Item O 26 - 27 February  
Council Meeting

O 46                      Part B

2.     **Notice of Rescission – Green Wedge**

**Notice of Motion to Rescind Council Resolution:**

I move that resolution of Council at the Ordinary Meeting on Monday 26 March for agenda item O 41 to action Kingston's confidential Green Wedge Motion 9/2012 be rescinded at the next Ordinary Meeting.

Cr Rosemary West  
Central Ward

**Officer Comment**

Refer to Attachment 2 – Council Minutes – Item O 41 – 26 March Council Meeting



Ordinary Meeting of Council

Minutes

26 March 2012

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**AMENDMENT**

Moved: Cr West

- A. That the Chief Executive Officer be instructed to brief Peter Soding and Planisphere on the contents of the confidential Notice of Motion Item O26 resolved at the 27 February 2012 Ordinary Council Meeting.

The Amendment Moved by Cr West was not allowed by the Chairperson.

**AMENDMENT**

Moved: Cr West

Seconded: Cr Brownlees

- B. That the February resolution referred to in this motion be released to the public in the interest of transparency and to avoid the generation of mistrust in a process that until now has been exemplary.

The Amendment was Put and **LOST**

**A Division was called:**

**DIVISION:**                      **FOR:**                      Crs West, Shewan and Brownlees (3)  
   **AGAINST:**                      Crs Dundas, Peulich, Athanasopoulos,  
   Moloney and Ronke (5)

**LOST**

## Ordinary Meeting of Council

Minutes26 March 2012**AMENDMENT****Moved: Cr Shewan****Seconded: Cr West**

- A. That the Chief Executive Officer be instructed to brief Peter Soding and Planisphere on the contents of the confidential Notice of Motion Item O26 resolved at the 27 February 2012 Ordinary Council Meeting.
- B. That the Chief Executive Officer be instructed that in order to action the confidential Notice of Motion Item O26 resolved at the 27 February 2012 Ordinary Council Meeting, Council Officers begin discussions and obtain any required information from Peter Soding, Planisphere or any other relevant parties that they believe may assist in providing a response to this resolution of Council.
- C. That Council confirms its intention as expressed in the Notice of Motion Item O26 resolved at the 27 February 2012 Ordinary Council Meeting that Council Officers are to be formally involved in assisting Council in the finalisation of the Kingston Green Wedge Plan.
- D. That a sub committee of interested Councillors be formed to investigate Green Wedge valuations and recommend possible dealings of land in the Green Wedge.
- E. Defer these actions until after Council formally adopts the Kingston Green Wedge Plan, and reconsider them in the light of the adopted plan, as premature action along the lines proposed would:
- Pre-empt the recommendations of the Kingston Green Wedge Plan;
  - Put unfair and inappropriate pressure on the Kingston Green Wedge Plan consultants;
  - Compromise the independence of the Kingston Green Wedge Plan
  - Damage the credibility of the Kingston Green Wedge Plan;
  - Raise the hopes of Green Wedge landholders who want to achieve windfall gains by subdividing or using their land for more intensive or urban development.

The Amendment was Put and **LOST**

A Division was called:

**DIVISION:**      **FOR:**            Crs West and Shewan (2)  
**AGAINST:**      Crs Dundas, Peulich, Athanasopoulos,  
                                 Moloney, Brownlees and Ronke (6)

**LOST**



Ordinary Meeting of Council

Minutes

26 March 2012

**AMENDMENT**

**Moved: Cr Brownlees**

**Seconded: Cr Peulich**

- A. That the Chief Executive Officer be instructed to brief Peter Soding and Planisphere on the contents of the confidential Notice of Motion Item O26 resolved at the 27 February 2012 Ordinary Council Meeting.
- B. That the Chief Executive Officer be instructed that in order to action the confidential Notice of Motion Item O26 resolved at the 27 February 2012 Ordinary Council Meeting, Council Officers begin discussions and obtain any required information from Peter Soding, Planisphere or any other relevant parties that they believe may assist in providing a response to this resolution of Council.
- C. That Council confirms its intention as expressed in the Notice of Motion Item O26 resolved at the 27 February 2012 Ordinary Council Meeting that Council Officers are to be formally involved in assisting Council in the finalisation of the Kingston Green Wedge Plan.
- D. That a sub committee of interested Councillors be formed to investigate Green Wedge valuations and recommend possible dealings of land in the Green Wedge.
- E. That this resolution not take effect until Planisphere's final presentation to the Councillor Information Session on 2 April 2012.

The Amendment was Put and **CARRIED**

**A Division was called:**

**DIVISION: FOR:** Crs Peulich, Moloney, Brownlees and Ronke (4)

**AGAINST:** Crs Athanasopoulos, West, Shewan and Dundas(4)

CARRIED on the casting vote of the Chairperson.

The Amendment became the motion before the chair.

The Motion was Put and **CARRIED**

**A Division was called:**

**DIVISION: FOR:** Crs Dundas, Peulich, Moloney, Brownlees and Ronke (5)

**AGAINST:** Crs Athanasopoulos, West and Shewan (3)

**CARRIED**

**O 46                      Part B**

**3.     Notice of Rescission – Bay Trail**

**Notice of Motion to Rescind Council Resolution:**

I move that the resolution of Council at the Ordinary Meeting on Monday 27 February for agenda item O 25 to relocate part of Kingston's Bay Trail along the cliff top (Motion 7/2012) instead of along the roadside as previously resolved be rescinded at the next Ordinary meeting.

Cr Rosemary West  
Central Ward

**Officer Comment**

Refer to Attachment 3 – Council Minutes – Item O 25 - 27 February Council Meeting

Ordinary Meeting of Council

Minutes

27 February 2012

**O 25 Notice of Motion No 7/2012 – Cr Dundas - Item N 150 – Kingston Bay Trail**

**Preamble**

At the Ordinary Meeting of Council meeting to be held on Monday 27 February 2012 I move the following Notice of Motion:

That Council alter the previous resolution of 26 September 2011 – Item N 150 – (Kingston Bay Trail Report)

Part a) to read:

a) The section of trail from Charman Road (McBean Ramp) to Mundy Street car park will use the existing informal path located on the edge of cliff. The section of the trail to be a minimum of 2.5 metres, maximum 4.5 metres in width and be constructed out of granitic sand.

**Moved: Cr Dundas**

**Seconded: Cr Brownlees**

That Council alter the previous resolution of 26 September 2011 – Item N 150 – (Kingston Bay Trail Report)

Part a) to read:

a) The section of trail from Charman Road (McBean Ramp) to Mundy Street car park will use the existing informal path located on the edge of cliff. The section of the trail to be a minimum of 2.5 metres, maximum 4.5 metres in width and be constructed out of granitic sand.

**Procedural Motion**

**Moved: Cr Brownlees**

**Seconded: Cr Peulich**

That the Ordinary Meeting of Council be extended for 30 minutes to finish at 11.30pm.

**CARRIED**

**Procedural Motion**

**Moved: Cr West**

**Seconded: Cr Moloney**

That Cr West be granted an extension of time to speak to the item.

**CARRIED**

The Motion was Put and **CARRIED**

A Division was called:

**DIVISION:** **FOR:** Crs Peulich, Dundas, Moloney, Brownlees and Ronke (5)

**AGAINST:** Crs Staikos, Shewan and West

**CARRIED**

Agenda Item No: O 47

## **RESPONSE TO REQUEST FOR MINSITERIAL INTERVENTION CAPITAL GOLF COURSE – CENTRE DANDNENONG ROAD, HEATHERTON**

Contact Officer: Jonathan Guttman

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### **Purpose of Report**

The purpose of this report is to obtain a decision from Council on how it wants to respond to the possible intervention of the Minister for Planning about the Planning Scheme provisions relating to the Capital Golf Course in Heatherton.

### **Disclosure of Officer / Contractor Direct or Indirect Interest**

No Council officer/s and/or Contractor/s who have provided advice in relation to this report have declared a Conflict of Interest regarding the matter under consideration.

### **Recommendation**

Officers recommend that Council resolves to:

1. Forward the letter prepared as Appendix 3 to this report to the Department of Planning and Community Development in response to its correspondence of the 27 February 2012.

### **1. Executive Summary**

Council received correspondence from the Department of Planning and Community Development (the Department) on 28 February 2012 about a request by the Capital Club Pty Ltd to the Minister for Planning to intervene under section 20(4) of the Planning and Environment Act 1987 to rectify an anomaly affecting the Capital Golf Course land in Heatherton (refer Appendix 1).

The Department have indicated that the anomaly relates to a site specific control introduced through Amendment L35 to the Moorabbin Planning Scheme that provided for the development of the Capital Golf Course. Although the Capital Golf Course and associated golf facilities (Clubhouse etc) are now developed the Existing Provision Document No. 7 contained in Clause 52.03 of the Kingston Planning Scheme included provision for 195 golf lodge units which are not constructed yet (refer Appendix 2). As there are specific expiry provision at Clause 52.03 it is understood the Department have formed the view that the entitlement to further pursue development in accordance with the Existing Provisions Document has lapsed. This point is not disputed by Council Officers and is consistent with legal advice sought by Council Officers.

Officers believe it is appropriate that the letter provided as Appendix 3 be forwarded to the Department of Planning and Community Development. The letter reinforces the relevant provisions of the Kingston Planning Scheme as they now exist and requests that the Minister has regard to these provisions. It also recommends that the Minister contacts relevant authorities prior to resolving whether or not to approve the Amendment request; and also consider whether public consultation should be undertaken.

## 2. Background

### 2.1 Correspondence from the Department of Planning and Community Development

Council received correspondence from the Department of Planning and Community Development dated 27 February 2012, seeking Council's comments on the possible intervention by the Minister for Planning in relation to the provisions in the Kingston Planning Scheme about the Capital Golf Course land in Heatherton. Having discussed this matter with the Department, Council has been granted an extension of time to provide the Minister any comments by the week of the 10 April 2012.

The correspondence from the Department highlights that the following has occurred:

1. In 1994 Amendment L35 to the then Moorabbin Planning Scheme introduced site specific controls to facilitate the development of the Capital Golf Course.
2. The translation of these controls into the Kingston New Format Planning Scheme (NFPS) in 1999 utilised Clause 52.03 (Specific Sites and Exclusions) of the Planning Scheme.

The Department's correspondence indicates that in relation to point 2 above '*the translation was not intended to affect existing use and development rights pertaining to the land, however, Clause 52.03 includes expiry provisions and as a consequence the site specific provisions have expired unintentionally*'.

### 2.2 Clause 52.03 of the Kingston Planning Scheme

A copy of Clause 52.03 of the Kingston Planning Scheme is provided at Appendix 4. The expiry provisions relevant to the Departments correspondence, taken directly from the Kingston Planning Scheme, read as follows:

#### ***Expiry of a specific control***

*If a specific control contained in an incorporated document identified in the schedule to this clause allows a particular use or development, that control will expire if any of the following circumstances applies:*

- *Te development and use is not started within two years of the approval date or another date specified in the incorporated document.*
- *The development is not completed within one year of the date of commencement of works or another date specified in the incorporated document.*

*The responsible authority may extend the periods referred to if a request is made in writing before the expiry date or within three months afterwards.*

*Upon expiry of the specific control, the land may be used and developed only in accordance with the provisions of this scheme.*

It is evident that the Department of Planning and Community Development have formed the view that the controls have expired which is consistent with the legal advice Council has received.

### **2.3 Historical Context - New Format Planning Scheme Translation**

As part of creating the Kingston New Format Planning Scheme (KNFPS) a process of public exhibition of the proposed planning scheme was conducted as well as the establishment of an Independent Panel and Advisory Committee.

The Panel hearing was conducted in June 1998 and Submission No. 150 was received from the Capital Club Pty Ltd. The extracts of the Independent Panel and Advisory Committee report are provided as Appendix 5 for background. It is understood that the Capital Club Pty Ltd are seeking to rely in part on the submissions made through this hearing by the Council of the time and advice contained in the Panel and Advisory Committee Report to suggest that it was not the intention for the existing use right to expire through the scheme translation.

### **2.4 Ministerial Intervention**

The Planning and Environment Act 1987 provides the Minister for Planning with the power to act in the capacity of Planning Authority to prepare a Planning Scheme Amendment in a local area and through the provisions of Clause 20 (4) exempt him/herself from notification requirements.

In this instance it is apparent that the Capital Club Pty Ltd has requested that the Minister for Planning use his powers to act as Planning Authority in relation to determining its Amendment request.

## **3. Discussion**

### **3.1. Council Plan Alignment**

Planned Outcome 2 – A Sustainable Environment  
Strategy 2.1 – Insightful intergenerational planning and delivery

A response to the correspondence from the Department assists to reinforce the role Council performs in relation to land use planning.

### **3.2. Consultation/Internal Review**

Advice has been sought from the City Development Department in relation to its discussions with the Capital Club Pty Ltd.

Legal advice regarding whether or not the control had expired was sought from Maddocks Lawyers last year. The advice provided by Maddocks Lawyers is consistent with the view formed by the Department of Planning and Community Development that the control had expired and hence a request has seemingly been made to the Minister by the Capital Club Pty Ltd.

### **3.3. Operation and Strategic Issues**

The draft letter in response to the Department's correspondence sets out the following matters that the Minister should consider.

#### **3.3.1. Airport related considerations**

Since the planning undertaken for the Capital Golf Course in the early to mid 1990's there has been substantial changes to the content of the Kingston Planning Scheme including the introduction of controls to protect the aviation operations of the Moorabbin Airport. These changes also saw the introduction of Australian Noise Exposure Forecasts as the measure for identifying areas impacted by aircraft noise. The new provisions should be considered before a decision is made on the possible amendment.

Several iterations of the Moorabbin Airport Masterplan have been prepared and approved by the Commonwealth Minister that may also have relevance in relation to the matters before the Minister.

It is considered appropriate that the Minister seek advice from the Moorabbin Airport Corporation and Commonwealth Department of Infrastructure and Transport.

### 3.3.2. Requirements of Servicing Agencies

Given the length of time that has transpired between the original planning approvals in the early to mid 1990's the Minister should consider whether there are any infrastructure constraints for the potential development. Officers recommend that the Minister seek the views of the relevant service agencies.

### 3.3.3. Community Consultation

As the request has been made directly to the Minister for Planning it is up to the Minister to determine whether he believes it necessary to provide for broader community consultation. Officers consider it appropriate that the Minister consider whether any circumstances have changed that may warrant him to give Notice of the Amendment. Giving notice would provide for community consultation and review by a Planning Panel prior to determining the Amendment.

### 3.3.4. Establishment of the Urban Growth Boundary / Green Wedge Core Planning Provisions

Since the planning of the Capital Golf Course, a suite of statutory changes has been introduced in the mid 2000's relating to the Green Wedge areas in Melbourne. Those which are relevant to this matter include:

- The introduction of the Urban Growth Boundary through legislative changes to the Planning and Environment Act 1987 and consequential provisions relating to land subdivision in areas outside the Urban Growth Boundary.
- The introduction of the Green Wedge Core Planning Provisions at Clause 57 of the Kingston Planning Scheme.
- The development of new zones to be applied to areas outside the identified Urban Growth Boundary.

The Minister should consider the current legislation before making a decision on the amendment.

## 3.4. **Options**

The following are the options for Council to respond to the letter from the Department

### 3.4.1. Option 1 - Council supports the Amendment

This option would involve Council indicating to the Minister for Planning that it believes the Amendment should be supported based on it being of a minor nature.

If Council were to form a definitive view to support this Amendment it would need to be fully satisfied that all the necessary matters had been given due regard. Based on the limited amount of information made available by the Department of Planning and Community Development, Officers do not consider that Council is in the position to present a definitive position.

### 3.4.2. Option 2 – Council requests refusal of the Amendment

This option would involve Council indicating to the Minister for Planning that it is of the view that the Amendment should be refused.

As per the advice in Option 1 Officers believe that in this instance rather than definitively forming a view on a matter Council is not being asked to determine Council should perform the role of highlighting matters which it believes the decision maker should have regard to. If Council were to form a definitive view to suggest to the Minister that he refuse this Amendment it should only do so if it were fully satisfied that all the necessary matters had been given due regard. Based on the limited amount of information made available by the Department of Planning and Community Development, Officers do not believe Council is in the position to present a definitive position.

### 3.4.3. Option 3 – Council sets out key issues the Minister consider before deciding on the Amendment

As the matter is before the Minister for Planning and Council is not the decision making authority, it may be most appropriate for Council to highlight matters it considers to be relevant to the decision maker (the Minister). A letter has been drafted (Appendix 3) which reinforces the following issues which relevant to the Minister's deliberations:

1. Any planning implications associated with the construction of the Golf Lodge Units and the relationship to the Moorabbin Airport.
2. The changes in relation to planning policy associated with the introduction of the Urban Growth Boundary and Green Wedge Core Planning Provisions.
3. The views of servicing agencies given the length of time between the original approval and current day.
4. Whether the Minister for Planning believes it appropriate to undertake any form of community consultation in relation to the request before him.

Option 3 is the recommended option.

## **4. Conclusion**

Officers consider that given this matter is before the Minister for Planning the role Council should perform is to highlight to the Minister matters which it believes he should have regard to in assessing the request. It is recommended that a letter to be sent to the Minister outlining the issues relevant to the Minister in forming a view on the request for an Amendment.

### **4.1. Environmental Implications**

Officers consider that the interface between the Golf Club and the Moorabbin Airport as well as the land's location outside the Urban Growth Boundary are relevant considerations.

### **4.2. Social Implications**

The Minister needs to consider whether additional community consultation is required.

### **4.3. Resource / Economic Implications**

The matter is before the Planning Minister for consideration and therefore resources required to give this matter further consideration will be largely those of the Department of Planning and Community Development.

Should the Amendment proceed, it would it provide an opportunity to complete the 195 golf lodge units identified in the Existing Provision Document. The construction work associated with these units would provide for employment in the construction sector.



Based on the limited information available Officers are unable to determine the role the amendment would play in relation to the economic viability of the Capital Golf Course.

#### **4.4. Legal / Risk Implications**

The State Government Department of Planning and Community Development have sought comments from Council in relation to a decision which is before the State Minister for Planning. The provision of comments in the form of the letter drafted in Appendix 3 is deemed an appropriate response from Council.

### **5. Appendices**

- 5.1.** Appendix 1 – Letter from Department of Planning and Community Development – 27 February 2012
- 5.2.** Appendix 2 – Kingston Planning Scheme Existing Provisions Document 7 – Capital Golf Course
- 5.3** Appendix 3 – Suggested Draft Response to the Department of Planning and Community Development
- 5.4** Appendix 4 – Clause 52.03 of the Kingston Planning Scheme
- 5.5** Appendix 5 - Relevant content from New Format Planning Scheme Panel Report – June 1998

Author: Jonathan Guttman – Manager City Strategy

Reviewed and Approved By: Rachel Hornsby, General Manager Environmental Sustainability

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# APPENDIX 1



## Department of Planning and Community Development

File: L1/008374-01

Mr John Nevins  
Chief Executive Officer  
Kingston City Council  
PO Box 1000  
MENTONE VIC 3194

CITY OF KINGSTON

2 8 FEB 2012

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Facsimile: (03) 9208 3680  
ABN: 30485673497  
www.dpcd.vic.gov.au

2.7 FEB 2012

Dear Mr Nevins

- PERMANENT
- 1 - 10 YEARS
- 11 - 35 YEARS

### **REQUEST FOR MINISTERIAL INTERVENTION TO RECTIFY AN ANOMALY (PROPOSED AMENDMENT C118), CAPITAL GOLF COURSE, CENTRE DANDENONG ROAD, OLD DANDENONG ROAD, MADDEN ROAD AND ROSS STREET, HEATHERTON**

I refer to correspondence from Urbis Pty Ltd, acting on behalf of Capital Club Pty Ltd requesting the Minister for Planning to intervene under section 20(4) of the *Planning and Environment Act 1987* to rectify an anomaly affecting the Capital Golf Course land in Heatherton.

In 1994 Amendment L35 to the Moorabbin Planning Scheme introduced site specific controls to facilitate the development of the Capital Golf Course. The translation of these controls into the Kingston New Format Planning Scheme (NFPS) in 1999 utilised Clause 52.03 (Specific Sites and Exclusions) of the Planning Scheme. This translation was not intended to affect existing use and development rights pertaining to the land, however, Clause 52.03 includes expiry provisions and as a consequence the site specific provisions have expired unintentionally.

The Ministerial Amendment requested by Capital Club Pty Ltd would replace the 'Existing Provision Document 7' incorporated at Clauses 52.03 and 81.01 of the scheme with a revised 'Existing Provision Document 7 (2011)' that would, in effect 'turn off' the expiry provision. The amendment would also make related referencing changes to the Schedules to Clauses 52.03 and 81.01.

To assist the Minister to make a decision on the requested amendment, I seek your Council's comments within 30 days from the date of this letter.

Should you require have any questions about this letter, please contact Jane Monk, Director, State Planning Services on 03 9098 8914.

Yours sincerely

**David Hodge**  
Executive Director  
State Planning Services and Urban Development

#### Privacy Statement

Any personal information about you or a third party in your correspondence will be protected under the provisions of the Information Privacy Act 2000. It will only be used or disclosed to appropriate Ministerial, Statutory Authority, or departmental staff in regard to the purpose for which it was provided, unless required or authorised by law. Enquiries about access to information about you held by the Department should be directed to the Manager Privacy, Department of Planning and Community Development, GPO Box 2392, Melbourne, 3001.



# APPENDIX 2

## EXISTING PROVISIONS DOCUMENT 7

Capital Golf Course – Centre Dandenong Road, Old Dandenong Road, Madden Road and Ross Street, Heatherton

Part Crown Allotments 1, 2 and 3 Section 15 Parish of Mordialloc

On land known as Capital Golf Course Centre Dandenong Road, Old Dandenong Road, Madden Road and Ross Street, Heatherton. Part Crown Allotments 1, 2 and 3, Section 15 Parish of Mordialloc, the following uses, buildings and works do not require a permit if they are in accordance with the "Capital Golf Course Concept Plan- dated January, 1994" and with an approved Development Plan for the site:

- \* Eighteen hole golf course, practice fairways and greens, driving range and other golfing facilities.
- \* Clubhouse including bars, dining rooms and pro shop.
- \* Golf lodge units up to a maximum number of 195 units.
- \* Other ancillary facilities.

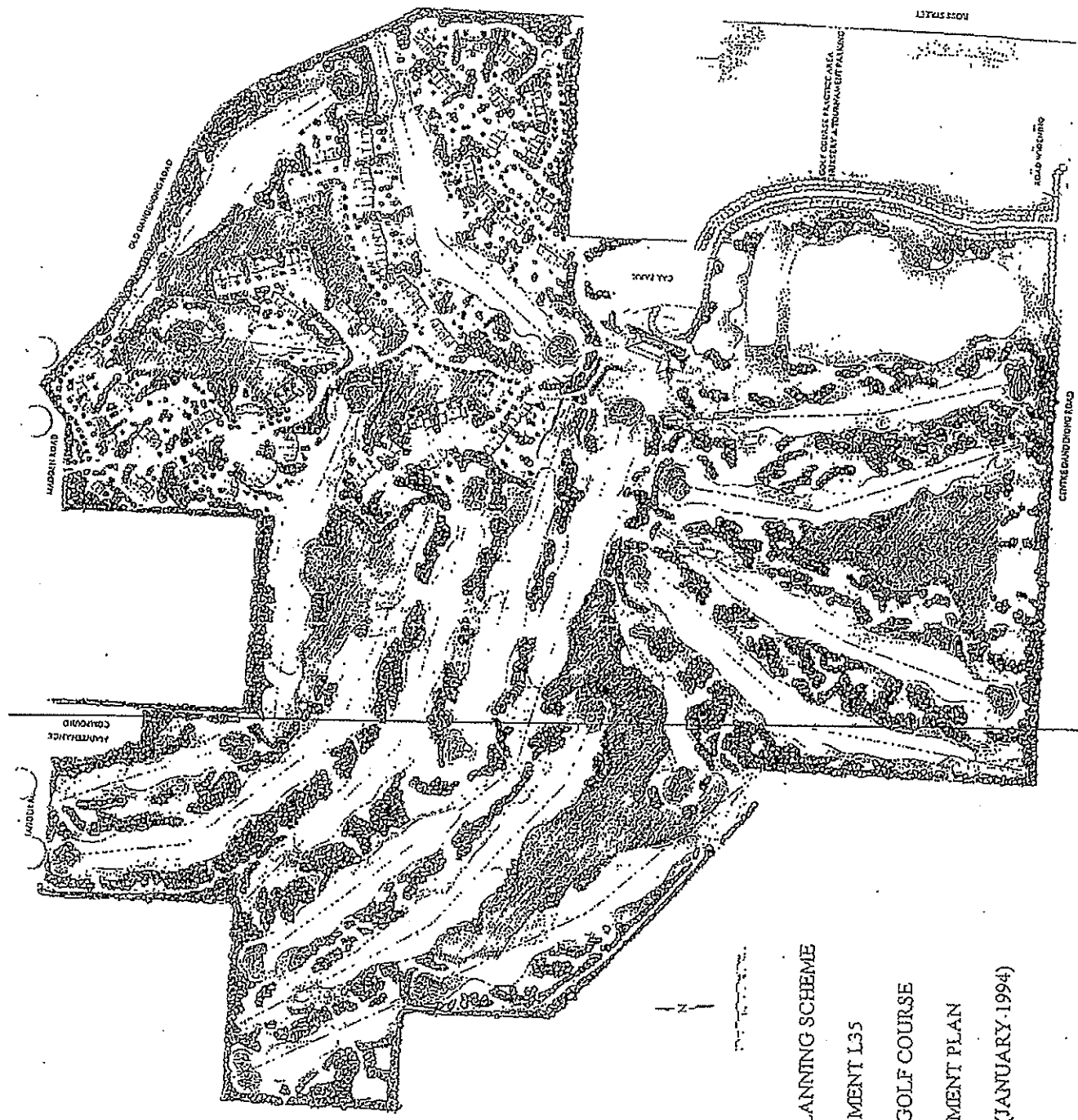
However, the following requirements must be met:

- \* A plan of the development, including the layout and design of all golf lodge units, must be prepared to the satisfaction of the responsible authority.

The development plan must be substantially in accordance with the approved "Capital Golf Course Concept Plan, dated January, 1994"

The development plan must show:-

- . The layout of the proposed golf course and in particular the relationship of greens and tees to adjacent properties.
- . The relationship of the proposed golf course to Moorabbin Airport and the designated flight paths and Australian Noise Exposure Forecasts.
- . The staging of the construction of the 195 golf lodge units.
- . The location, height, dimensions and floor area of all buildings.
- . The elevations and architectural treatment of all buildings and works.
- . Pedestrian and vehicle access ways within and to and from the site.
- . Details of site contouring and finished levels.
- . Methods of site drainage.
- . The provision of services to the satisfaction of the relevant referral authority listed in Clause 66.01
- . Landscaping areas including the name, location and height on maturity of all species.
- . Car parking areas and loading and servicing facilities.
- . The provision of temporary car parking in the event of tournaments.



MOORABBIN PLANNING SCHEME  
 AMENDMENT L35  
 PROPOSED GOLF COURSE  
 DEVELOPMENT PLAN  
 MOORABBIN (JANUARY 1994)

# APPENDIX 3



City of  
**KINGSTON**

**Kingston City Council**

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11 April 2012

Department of Planning and Community Development  
GPO BOX 2392  
Melbourne 3001  
Attention: Mr. David Hodge

Dear Sir

**Re: Request for Ministerial Intervention (Proposed Amendment C118)  
Capital Golf Course, Heatherton**

I am writing in regard to the above matter and wish to thank the Department for seeking the comments of the City of Kingston in relation to the request before the Minister for Planning.

Council has now had the opportunity to consider this matter at a Special Council Meeting on Tuesday 10 April 2012 and resolved to request that the Minister give consideration to the following:

1. Any possible implications of the proposed Planning Scheme Amendment proceeding on the aviation functions of the Moorabbin Airport.

The regulatory provisions which are now in existence on and around Moorabbin Airport differ from those which were in place at the time of the preparation of the Capital Golf Course Concept Plan. In determining the amendment the Minister may be assisted by obtaining advice from the Commonwealth Department of Infrastructure and Transport and the Moorabbin Airport Corporation in regard to the merits of the Amendment.

2. Whether the changes which have occurred to the Planning and Environment Act 1987 and Victorian Planning Provisions which established the Urban Growth Boundary and Metropolitan Green Wedge Land Core Planning Provisions are relevant to the deliberations before the Minister. These changes may well have been introduced post the expiry of the site specific provision.

In relation to this consideration, should the Minister determine to approve the Amendment, Council would appreciate confirmation from the Department as to whether the act of amending the Planning Scheme creates any triggers associated with the provisions contained in Part 3AA (Metropolitan Green Wedge Protection) of the Planning and Environment Act 1987 particularly if the land would be further subdivided.



3. Given the work to formulate the Capital Golf Course Concept Plan was undertaken in the early to mid 1990's Council is unable to advise the Department on whether relevant servicing authorities have sufficient infrastructure capacity to service the as yet completed components of the Concept Plan.
4. Whether the Department believe it appropriate to advise the Minister to intervene in the manner as requested by the Capital Club Pty Ltd by using the powers provided to the Minister pursuant to Section 20 (4) of the Planning and Environment Act 1987. The use of these provisions would prevent public notification of the proposed Amendment and as a consequence would not provide for an Independent Panel to hear submissions to the Amendment and provide advice to the Minister in relation to its relative merit.

Should you have any queries regarding this matter please contact Rachel Hornsby, General Manager Environmental Sustainability on 9581 4708.

Yours faithfully

John Nevins  
**CHIEF EXECUTIVE OFFICER**

# APPENDIX 4

## **SPECIFIC SITES AND EXCLUSIONS**

### **Purpose**

To recognise specific controls designed to achieve a particular land use and development outcome existing on the approval date.

To provide in extraordinary circumstances specific controls designed to achieve a particular land use and development outcome.

### **Use or development**

Land identified in the schedule to this clause may be used or developed in accordance with the specific controls contained in the incorporated document corresponding to that land. The specific controls may:

- allow the land to be used or developed in a manner that would otherwise be prohibited or restricted;
- prohibit or restrict the use or development of the land beyond the controls that may otherwise apply;
- exclude any other control in this scheme.

### **Expiry of a specific control**

If a specific control contained in an incorporated document identified in the schedule to this clause allows a particular use or development, that control will expire if any of the following circumstances applies:

- The development and use is not started within two years of the approval date or another date specified in the incorporated document.
- The development is not completed within one year of the date of commencement of works or another date specified in the incorporated document.

The responsible authority may extend the periods referred to if a request is made in writing before the expiry date or within three months afterwards.

Upon expiry of the specific control, the land may be used and developed only in accordance with the provisions of this scheme.

# APPENDIX 5

# **KINGSTON**

## **NEW FORMAT PLANNING SCHEME**

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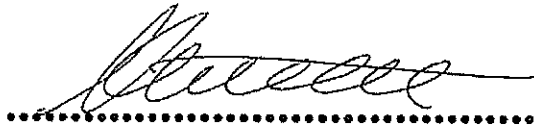
### **REPORT OF THE PANEL AND ADVISORY COMMITTEE**

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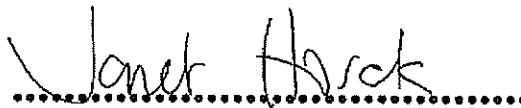
**JUNE 1998**

**KINGSTON NEW FORMAT  
PLANNING SCHEME**

**REPORT OF THE PANEL AND  
ADVISORY COMMITTEE**



.....  
**Kathryn Mitchell (Chair)**



.....  
**Janet Horak**



.....  
**Egils Stokans**

**June 1998**

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As this issue relates to as site specific control, the Panel supports the Council in issuing a planning permit for the site, the details of which will be negotiated between the two parties after adoption of the scheme but prior to gazettal.

*The Panel recommends no change to the exhibited Planning Scheme arising from this submission.*

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**SUBMISSION NO:** 149  
**Submitter:** Hansen Planning Consultants on behalf of MDC Management  
**Location:** Parkdale Plaza Shopping Centre  
Nepean Highway, Parkdale  
**Existing Zone:** Mordialloc Special Peripheral Business Zone  
**Exhibited Zone/Overlay:** Business 1 zone with Design and Development Overlay No. 10.

**Summary of Submission:**

The submission expresses general support for the proposed zoning and overlay controls for the above land under the new Kingston Planning Scheme.

**Strategic Assessment:**

The submission does not request any changes to the exhibited zone or overlay. The application of the design and development overlay to the site is intended to provide for specific buildings and works and floor area requirements for the shopping centre, which are reflected in the current zone provisions for the site.

Council has applied the Business 1 zone and design and development overlay to the site as a means of promoting high amenity retail and commercial development on the site and providing increased flexibility in the use and development of the centre.

**Council Comment and Recommendation:**

- No change to exhibited zone and overlay.

**Panel Comment and Recommendation:**

It is considered that the Business 4 zone would have been the most direct translation of the existing zone, but it would appear that discussions between the two parties indicated that the preferred zone from the perspective of the shopping centre was the Business 1 zone, which will give the centre more flexibility. A number of adjacent properties were notified of this proposed zone for the Parkdale centre.

*The Panel recommends no change to the exhibited Planning Scheme arising from this submission.*

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**SUBMISSION NO:** 150  
**Submitter:** Capital Club Pty Ltd  
**Location:** Capital Golf Course

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**Existing Zone:** Intensive Agriculture D zone  
**Exhibited Zone/Overlay:** Special Use Zone No.1 (Golf Courses) and Airport Environs Overlay

**Summary of Submission:**

The submission makes comment on the proposed Development Plan Overlay and Airport Environs Overlay provisions affecting the above land under the new Kingston Planning Scheme. A number of minor changes to the overlay provisions are suggested.

**Strategic Assessment:**

The proposed Development Plan Overlay for the Capital Golf Course represents a direct translation of the existing site specific controls affecting the site under the existing Kingston Planning Scheme. Following the exhibition of the scheme Council has reviewed the purpose of this overlay and it is considered that Clause 52.03 of the scheme offers a more appropriate way of dealing with the existing site specific controls. This will not affect the existing use and development rights of the golf course. The submitter's comments can be summarised as follows:-

- The submission makes reference to Clause 1.2 of the schedule to the Development Plan Overlay, which requires the development plan for the site to show Australian Noise Exposure Forecasts for Moorabbin Airport. The submitter argues that there is no approved ANEF in place for the airport at present, and hence the relevant ANEC should be annexed to the schedule.
- The submission also comments on Clause 1.3 of the schedule to the Development Plan Overlay which deals with referral authorities, and requests a number of technical changes to the names of the authorities listed.
- A number of comments are also made on the provisions of the Airport Environs Overlays.

Councils' response to the above matters is as follows:-

- It is Council's understanding that an approved ANEF will be in place for the Moorabbin Airport before the approval of the planning scheme, and hence Clause 1.2 should not require modification;
- The suggested changes to the referral authorities are generally supported.
- Council is unable to consider the submitter's comments on the provisions of the Airport Environs Overlay as they request changes to the standard clauses of the Victorian Planning Provisions.

**Council Comment and Recommendation:**

- Remove Schedule No. 2 to the Development Plan Overlay (Capital Golf Course) from the planning scheme and include existing site specific provisions for the golf course at Clause 52.03 of the scheme;
- Agree to minor corrections to referral authorities listed in the site specific provisions.

**Panel Comment and Recommendation:**

Golf courses are a major feature of Kingston and the Capital Golf Course is one of the most recently developed. It is not located in an existing urban zone and it currently forms part of the Heatherton non-urban area. It is located adjacent to the north west boundary of Moorabbin Airport. The Panel considers that in this regard, the Special Use Zone No. 1 is the appropriate designation for the golf course. Other issues and recommendations relating to the Capital Golf Course are further discussed in Section 5.

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<b>SUBMISSION NO:</b>	151
<b>Submittor:</b>	Beveridge Williams on behalf of GPU Powernet Pty Ltd
<b>Location:</b>	Terminal Stations at:- a) Warrigal Road, Moorabbin b) Cnr Mills Road and Boundary Roads, Mordialloc
<b>Existing/ Exhibited zone:</b>	a) Part Public Purpose No.13 part Light Industrial to part Public Use No 1 and part Industrial 1 zone. b) Public Purpose No.13 to Public Use No.1.
<b>Requested zone:</b>	a) Special Use zone b) Special Use zone

**Summary of Submission:**

The submission requests the application of a special use zone to the above sites as GPU Powernet is no longer a public utility.

**Strategic Assessment:**

Council recognises the need to review the exhibited zoning of these sites as the manual to the VPPs makes it clear that it is not appropriate to include land in private ownership in a public use zone. The request to include the sites in special use zones is not supported by Council as the Manual to the VPPs clearly discourages the use of special use zones for utility installations, except where the adjoining zone is inappropriate. It is considered that as these sites are located within established industrial areas the Industrial 1 zone provides the most appropriate zoning for these sites.

**Council Comment and Recommendation:**

- Remove exhibited Public Use zones for both sites and apply Industrial 1 zone.

**Panel Comment and Recommendation:**

The Ministerial Direction on the form and content of planning schemes makes it clear that the public use zones should not be used for utilities which are no longer public authorities. The Manual for the Victoria Planning Provisions indicates that minor utility installations such as electricity substations do not require specific zoning recognition in the Planning Scheme. They will either be exempt buildings and works as set out in Clause 62.01 or they will fall into the definition of minor utility installation which is a Section 1 use in most zones.

The Panel supports the assessment provided by the Council in this regard, and endorses the general principle of applying the underlying or surrounding zoning to privately

An issue arose as to where the boundary of AE01 and the Moorabbin Airport Environs Policy area pass through one title, should the more restrictive provisions automatically apply. Clause 2.1.1 of AS2021 suggests that this is the approach to be taken. The Panel recommends that the boundaries of AE01 and the Moorabbin Airport Environs Policy be drawn accordingly.

## 5.6 Site Specific Issues

### (i) Capital Golf Course

Clause 126-6B of the Kingston Planning Scheme is a site specific control relating to the Capital Golf Course which permits:

- an 18 hole golf course, practice fairways and greens, driving range and other golfing facilities;
- a club house including bars, dining rooms and professional shop;
- golf lodge units up to a maximum number of 195 units;
- other ancillary facilities.

Clause 126-6B evolved out of two previous planning scheme amendments. Amendment L11 permitted a golf lodge providing temporary accommodation with a maximum of 200 bedrooms. Subsequent correspondence between the owner of the golf course and Council refers to "a resort type development" and "golf lodge units", although there is no indication in the correspondence that the accommodation would only be used for short term accommodation.

Although the earlier version of the proposed development clearly indicated the temporary nature of the accommodation, subsequent modifications made by Amendment L35 have made the nature of the accommodation proposed unclear, and reference to the units being for temporary accommodation was deleted. The end result is that there is considerable uncertainty about the definition of "golf lodge unit."

In the exhibited Planning Scheme, the golf course is included within a Special Use Zone (Schedule 1 - Private Golf Course). The golf course is also covered by Schedule 2 of the Development Plan Overlay which is merely a direct translation of the site specific provisions of clause 126-6B of the planning scheme. Council now proposes to translate the site specific control into a site specific consent at Clause 52.03 of the new Planning Scheme.

In order to take account of the new ANEF, an alternative proposal was suggested by the FAC. It was submitted that the Capital Golf Course be divided into 3 separate sections and:

- Within Area A housing would be prohibited.
- Within Area B up to 195 residential golf lodge units, the occupation of which would be of a temporary nature and linked with the golf course, could be carried out without further planning permission.

- Within Area C development not sensitive to aircraft noise and related to the use of the Club facilities would be allowed subject to a planning permit.

Given that the owner of the golf course was not present, and may not be aware of the FAC position, it would be a denial of natural justice for the Panel consider the FAC proposal further.

Translating clause 126-6B of the current planning scheme into a site specific clause as a schedule to clause 52.03 of the new planning scheme is appropriate given the unusual nature of the "residential" component in the overall development, the statutory framework within which the land lies, and the history of the development controls applicable to the site.

Adopting such a course however still leaves two unresolved issues. Firstly the term "golf lodge units" requires clarification, and secondly the need to relocate some of the existing approved golf lodge units to a more suitable location to take account of the new ANEF contours.

The Panel concurs with the responsible authority that the resolution of these issues is not easy. Questions of existing use rights, compensation and orderly and proper planning may arise. Council should continue its dialogue with the owner of the golf course in an endeavour to reach a negotiated settlement. If the matter cannot be resolved in this manner, then declaratory proceedings at the Administrative Appeals Tribunal will become necessary.

(ii) *Kingston Centre*

The Kingston Centre is on the corner of Kingston Road and Warrigal Road, Heatherton. The site contains the Kingston Centre, and the recently decommissioned Heatherton Hospital. The Kingston Centre is a facility delivering aged care services to the people of south east Melbourne, and is about to undergo extensive refurbishment. The Heatherton Hospital and the area of the site not required for the continued operation of the Kingston Centre total approximately 40 hectares. These lands have been designated as surplus to the Governments' operational requirements and will be disposed of by the Victorian Government Property Group (VGPG).

Consultants have been engaged to find the best land use options for the property. Preliminary assessment indicates that land of that area could result in a mix of uses with the potential for approximately 300 dwellings. VGPG fears that the impact of the airport overlay control may severely impact on the redevelopment potential of the land.

Under the 1977 ANEF which the Panel was advised was based on 500,000 aircraft movements, all of the former Heatherton Hospital and most of the Kingston Centre were within the 25ANEF contour, and some of the land currently being considered for residential development was in the 30 ANEF contour.

Within the proposed Kingston Planning Scheme the land is currently zoned PU23-Public Use Zone Health and Community. Within this zone a permit is not required to