



## Statutory Planning Committee

Notice is hereby given that the next meeting of the Statutory Planning Committee will be held on:

**Tuesday 24 April 2012  
10.00 am**

**Level 2, Room 2.40  
One40 William Street  
Perth**



**Noelene Jennings**  
Executive Director, Governance and People Services

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Please convey apologies to Luke Downes on 655-19549 or email  
[luke.downes@planning.wa.gov.au](mailto:luke.downes@planning.wa.gov.au)

# Statutory Planning Committee

## Membership:

Member	Representation – <i>Planning and Development Act 2005</i>	Term of office ends
Mr Gary Prattley	Chairperson, WAPC Schedule 2 clause 4(2)(a)	20/4/2013
Ms Sue Burrows	Nominee of the Director General, Department of Planning Schedule 2 clause 4(2)(b)	16/4/2013
Mr Henty Farrar	Regional Minister nominee Schedule 2 clause 4(2)(c)	26/9/2013
Ms Elizabeth Taylor	Community representative Schedule 2 clause 4(2)(d)	1/2/2012
Mr Ian Holloway	Professions representative Schedule 2 clause 4(2)(e)	1/2/2012
Mayor Carol Adams	Local Government representative Schedule 2 clause 4(2)(f)	1/2/2012
Vacant	WAPC Nominee Schedule 2 clause 4(2)(g)	

## Quorum: 4

In accordance with the Western Australian Planning Commission (WAPC) Standing Orders 2009, 3.7 - Quorum for meetings:

- (2) A quorum for a meeting of a committee is at least 50% of the number of offices (whether vacant or not) of members of the committee.

## Role:

Schedule 2(4)(4) of the *Planning and Development Act 2005*

The Statutory Planning Committee is the WAPC's regulatory decision-making body and performs such of the statutory planning functions of the WAPC under the *Planning and Development Act 2005* and Part II of the *Strata Titles Act 1985* as are delegated to the Statutory Planning Committee under section 16 and such other functions as are delegated to it under that section. These functions include approval of the subdivision of land, approval of leases and licenses, approval of strata schemes, advice to the Minister for Planning on local planning schemes and scheme amendments, and the determination of certain development applications under the Metropolitan Region Scheme.

## Delegated Authority

- 2.1 Power to determine applications for approval to commence and carry out development lodged with or referred to the WAPC pursuant to the provisions of a region scheme.
- 2.2 Power to approve detailed plans requiring the subsequent approval of the WAPC as a condition of development approval pursuant to the provisions of a region scheme and power to confirm that conditions imposed by the WAPC on a development approval pursuant to the provisions of a region scheme have been complied with.
- 2.3 Power to determine whether or not proposals and the ongoing implementation of a region scheme comply with conditions (if any) applied pursuant to sections 48F and 48J of the *Environmental Protection Act 1986*.
- 2.4 Power to determine whether or not applications to commence and carry out development are of State or regional importance, or in the public interest, pursuant to any resolution of the WAPC made under a region scheme requiring such determination.
- 2.5 Power to request the Minister for Planning to approve the WAPC disregarding the advice of the Swan River Trust in whole or in part in relation to the approval of development of land within the Riverbank or Development Control Area as defined under the *Swan and Canning Rivers Management Act 2006* where the determining authority is the WAPC.
- 2.6 All functions if the WAPC as set out in -
  - (i) Sections 14(a), 14(c), 34, 97, 98, 100, 104, 105, 106, 107, 109, 110, 111, 134, 135, 136, 138, 139, 140, 142, 143, 144, 145, 147, 151, 153, 154, 157, 169, 185, 214, 215, 216 of the Act;
  - (ii) Town Planning Regulations 1967;
  - (iii) Regulations 21, 22, 24 and 27 of the Planning and Development Regulations 2009;
  - (iv) *Strata Titles Act 1985* or the provisions of a strata or survey-strata scheme;
  - (v) Strata Titles General Regulations 1996;
  - (vi) Section 52 and section 85 of the *Land Administration Act 1997*;
  - (vii) Section 40 of the *Liquor Control Act 1988*;
  - (viii) *Perry Lakes Redevelopment Act 2005*.
- 2.7 Power to determine requests for variations to plans of subdivision where WAPC approval is required pursuant to the provisions of an approved local planning scheme.
- 2.8 Power to provide comment on and grant approval to plans known generally as outline development plans, structure plans and similar plans, and to planning policies and similar documents or amendments thereto, requiring the approval or endorsement of the WAPC pursuant to the provisions of a local planning scheme.
- 2.9 Power to provide comments or advice on behalf of the WAPC to a local government or a redevelopment authority where a provision of a local planning scheme or a redevelopment scheme requires comments from the WAPC.

- 2.10 Power to execute and accept the benefit of easements in gross, covenants in gross, records on title and other instruments for dealings in land for subdivisions, strata subdivisions and developments in accordance with any applicable policy and legislation.
- 2.11 Power to make recommendations to the Minister for Planning in relation to requests from local governments to expend monies paid by subdividing land owners in lieu of setting aside free of cost to the Crown, areas of land for public open space, where such recommendations are in accordance with WAPC policy.
- 2.12 Power to determine whether or not a proposal is likely to have a significant effect on the environment pursuant to section 38(1) of the *Environmental Protection Act 1986* and to refer such proposal to the Environmental Protection Authority.
- 2.13 Power to waive or clear conditions affixed as conditions of approval.
- 2.14 Power to endorse diagrams and plans of survey and deposited plans involving the acquisition and resumption of land created pursuant to Part 11 of the Act and the *Land Administration Act 1997*.
- 2.15 Power to advise the Minister for Planning on any appeal or matter arising therefrom pursuant to Part 14 of the Act.
- 2.16 Power to defend and otherwise deal with applications for review lodged with the State Administrative Tribunal and to appeal, defend, respond and otherwise deal with any matter that may be appealed to the Supreme Court on a question of law.
- 2.17 Power to defend, respond, appeal and otherwise deal with legal proceedings.
- 2.18 Power to prepare and approve, subject to the prior approval of the Minister for Planning, policies relating to planning matters and/or the functions of the WAPC, save and except for State Planning Policies under Part 3 of the Act.
- 2.19 Power to determine matters under Regional Interim Development Orders.

**This meeting is not open to members of the public.**

## RELEVANT INFORMATION FOR MEMBERS

### Disclosure of interests

In accordance with the *Planning and Development Act 2005* and Part 6 of the Standing Orders 2009, members of Committees (and certain employees) are required to disclose the following types of interests that they have or persons closely associated to them, have:

- direct and indirect pecuniary interests (financial);
- proximity interests (location); and
- impartiality interests (relationship).

A “**direct pecuniary interest**” means a relevant person’s interest in a matter where it is reasonable to expect that the matter if dealt with by the board or a Committee, or an employee in a particular way, will result in a financial gain, loss, benefit or detriment for the person.

An “**indirect pecuniary interest**” means a relevant person’s interest in a matter where a financial relationship exists between that person and another person who requires a board or Committee decision in relation to the matter.

A “**proximity interest**” means a relevant person’s interest in a matter if the matter concerns -

- (i) a proposed change to a planning scheme affecting land that adjoins the person’s land;
- (ii) a proposed change to the zoning or use of land that adjoins the person’s land; or
- (iii) a proposed development, maintenance or management of the land or of services or facilities on the land that adjoins the person’s land.

An “**Impartiality interest**” means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the member having the interest and includes an interest arising from kinship, friendship, partnership or membership of an association or an association with any decision making process relating to a matter for discussion before the board or a Committee.

Members disclosing any pecuniary or proximity interests for an item can not participate in discussion or the decision making procedure relating to the item and must leave the meeting room during the discussion of the item. Members disclosing an impartiality interest in an item must also leave the room during the discussion or the decision making procedure relating to the item unless the Committee, by formal resolution, allows the member to remain. The reason to allow a member to remain must be stated in the formal resolution and will be minuted.

### Disclosure of representations

Where a member has had verbal communication with or on behalf of a person with an interest in a matter which is before a meeting, the member is to disclose the interest.

Where a member is in receipt of relevant written material (including email) from or on behalf of a person with an interest in a matter which is before a meeting, the member is to table the material at the meeting for the information of members and relevant employees.

## **ORDER OF BUSINESS**

- 1. Declaration of opening**
- 2. Apologies**
- 3. Members on leave of absence and applications for leave of absence**
- 4. Disclosure of interests**
- 5. Declaration of due consideration**
- 6. Deputations and presentations**
- 7. Announcements by the Chairperson of the board and communication from the WAPC**
- 8. Confirmation of minutes of 10 April 2012**
- 9. Reports (see attached index of reports)**
- 10. Confidential items (see attached index of reports)**
- 11. General business**
- 12. Items for consideration at a future meeting**
- 13. Closure - next meeting to be held on 8 May 2012**

## Statutory Planning Committee

Minutes  
of ordinary meeting 7456  
held on Tuesday 10 April 2012

### Attendance

#### Members

Mr Gary Prattley  
Mayor Carol Adams  
Ms Sue Burrows

Mr Henty Farrar  
Mr Ian Holloway  
Ms Elizabeth Taylor

WAPC Chairman (Presiding Member)  
Local Government nominee  
Nominee of the Director General, Department of  
Planning  
Regional Minister's nominee  
Professional representative  
Community representative

#### Officers

Ms Emma-Lee Groser  
Ms Frances Page-Croft  
Mr Mat Selby

#### Department of Planning

Planning Officer, Metropolitan North East  
Senior Planning Officer, Perth and Peel Planning  
Planning Director, Perth and Peel Planning

#### Presenters

Mr David Caddy  
Mr Paul Kotsoglo  
Mr Brian McCubbing  
Mr Edward Turner

TPG Town Planning  
Planning Solutions  
Landowner  
Turner Master Planners Australia

#### Observers

Mr George Hajigabriel  
Mr David Lombardo  
Mr William Natlor  
Ms Claire Richards  
Mr Mehran Zare

Greg Rowe & Associates  
Landowner  
Planning Solutions  
Greg Rowe & Associates  
Lakewide Pty Ltd

#### Committee Support

Mr Luke Downes

Committee Support Officer - Department of Planning

### 7456.1 Declaration of Opening

The Presiding Member declared the meeting open at 10.03 am, acknowledged the traditional owners and custodians of the land on which the meeting is taking place and welcomed members.

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### 7456.2 Apologies

Nil.

### 7456.3 Members on Leave of Absence and Applications for Leave of Absence

Nil.

### 7456.4 Disclosure of Interests

Member/Officer	Minute No.	Page No.	Nature of Interest
Ms Sue Burrows	9.1	4	Impartiality
Mayor Carol Adams	9.2	9	Impartiality

#### Resolved

***Moved by Mr Holloway seconded by Ms Taylor***

*In accordance with clause 6.10(7) of the Standing Orders 2008, members of the Statutory Planning Committee agree that the members listed above, who have disclosed an impartiality interest, are permitted to participate in discussion on the items, however will not be voting.*

***The motion was put and carried.***

### 7456.5 Declaration of Due Consideration

No declarations were made.

### 7456.6 Deputations and Presentations

#### 7456.6.1 **Adoption of Drovers Place Precinct Local Structure Plan No.80**

Presenters Mr David Caddy, TPG Town Planning;  
Mr Mehran Zare, Lakewide Pty Ltd;  
Mr David Lombardo, landowner;  
Mr Edward Turner, Turner Master Planners  
Australia

Mr Turner and Mr Caddy presented to the Committee supporting the item.

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### 7456.6.2 **Adoption of Drovers Place Precinct Local Structure Plan No.80**

Presenters Ms Claire Richards, Greg Rowe & Associates;  
Mr George Hajigabriel, Greg Rowe & Associates;  
Mr Brian McCubbing, landowner

Mr McCubbing presented to the Committee concerns with the land uses proposed in Precinct C as they are inconsistent with State Planning Policy 4.2, the City of Wanneroo's draft Activity Centres Strategy and Council resolution of 6 March 2012.

A 'Deputation to Statutory Planning Committee, Tuesday 10 April 2012, Drovers Place Precinct Local Structure Plan No.80' was tabled at the meeting. A copy has been placed on file.

#### Moved to item 9.1 •

### 7456.6.3 **Subdivision of Lot 26 Riverview Place, Lot 27 The Coombe, Mosman Park**

Presenters Mr Paul Kotsoglo, Planning Solutions;  
Mr William Natlor, Planning Solutions

Mr Kotsoglo presented to the Committee his support for the proposed subdivision as he believes the proposal meeting the relevant performance criteria of the residential design codes.

#### Moved to item 9.3 •

### 7456.7 **Announcements by the Chairperson of the Board and communication from the WAPC**

Nil.

### 7456.8 **Confirmation of Minutes**

#### 7456.8.1 **Minutes of the Statutory Planning Committee meeting held on Tuesday 27 March 2012**

Ms Taylor noted that her name should not have been recorded in the minutes as voting on the item 7456.10.1, as she had declared an interest impartiality interest and had left the room during discussion by members.

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The Committee agreed that movements of members from the room after item 7455.6.4 for a short period should be removed as the item was not discussed during this time.

### Resolved

#### ***Moved by Mayor Adams, seconded by Mr Holloway***

- 1. to amend the minutes of the Statutory Planning Committee meeting of 27 March 2012 to show that Ms Taylor was not present and did not vote on item 7456.10.1.*
- 2. to amend the minutes of the Statutory Planning Committee meeting of 27 March 2012 to remove movements of members from the room after item 7455.6.4 as the item was not discussed during this time;*
- 3. that the minutes of the Statutory Planning Committee meeting held on Tuesday 27 March 2012 as amended, be confirmed as a true and correct record of the proceedings.*

***The motion was put and carried.***

### **7456.9 Reports**

#### **7456.9.1**

#### **Adoption of Drovers Place Precinct Local Structure Plan No.80**

File	SPN/0125
Report Number	SPC/162
Agenda Part	C
Reporting Officer	Senior Planning Officer: Schemes and Appeals

<b>Member</b>	<b>Nature of Interest</b>
Ms Burrows	Impartiality

The Committee agreed to remove the words 'liquor store' from Recommendation 1, point 1.

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### Officer's Recommendation

That the Western Australian Planning Commission resolves to:

1. adopt the Drovers Place Precinct Local Structure Plan No.80, subject to the schedule of modifications as follows:
  - Table C of Part 1 to include the following additional discretionary uses and any associated development provisions: car wash; club (non-residential); dry cleaning premises; liquor store; mast or antennae; place of assembly; recreation centre; telecommunications infrastructure; and vehicle sales/hire premises;
  - Table C of Part 1 to replace the discretionary uses of 'Plant Nursery' with 'Retail Nursery'. In addition, the following definition of 'Retail Nursery' is to be included in Section 2.4 of Table C of Part 1: "Retail Nursery - means land and/or buildings used for the storage, display and retail sale of nursery and horticultural products including plants, seeds, bulbs, seedlings, trees, and other nursery stock and products associated with horticulture, domestic gardens, outdoor living, garden decor and clothing for gardening and may include associated outdoor leisure products and an incidental cafe";
  - Table D of Part 1 to include the average lot size requirement of 3000m<sup>2</sup> in the "Special Residential" zone in accordance with Clause 3.19.1 of the City's District Planning Scheme No.2;
  - The "Site Contamination" section of Table E of Part 1 to read as follows: "Prior to commencement of site works on Lots 1, 10 and 132 Wanneroo Road and Lot 5 Drovers Place, investigation for soil and groundwater contamination is to be carried out to the specifications of the Department of Environment and Conservation. Any remediation works, including validation of remediation, is to be completed to the specifications of the Department of Environment and Conservation prior to the commencement of any site works";

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- The "Urban Water Management" section of Table E of Part 1 to read as follows: "An Urban Water Management Plan is to be prepared prior to the commencement of site works to the specifications of the Department of Water. The approved Urban Water Management Plan is to be implemented by the landowner, including construction of identified wastewater, stormwater and groundwater management systems";
  - The "Acid Sulphate Soils" section of Table E of Part 1 to read as follows: "Acid sulfate soils investigations are required at the subdivision and development stages of the planning process. The submission of an acid sulfate soils self-assessment form and preparation of an acid sulfate soils management plan is required as a condition of subdivision and development approval for proposals in moderate to high risk areas" in accordance with the WAPC's Planning Bulletin 64/2009 "Acid Sulphate Soils";
  - Plan 1 to identify the 12 metre wide north-south local access road in the Southern Precinct from Ashley Road to Wanneroo Road with a width of 15 metres;
  - Plan 1 to depict the Metropolitan Region Scheme "Primary Regional Roads" reserve affecting the Structure Plan area;
  - The "Conditions - Lots 6, 7 and 8 Drovers Place" section of Table B of Part 1 to include reference to FESA in terms of a traffic impact assessment being prepared and submitted to the specifications of the City, in consultation with FESA, as part of a development application for any educational establishment, advertised for public comment and referred to MRWA for comment prior to determination by the City;
2. advise the City of Wanneroo to submit a request to the Western Australian Planning Commission to revoke existing Drovers Place Precinct Local Structure Plan No.47 in accordance with Clause 9.7 of the City's District Planning Scheme No.2.

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### Resolved

#### **Moved by Mayor Adams, seconded by Mr Holloway**

*That the Western Australian Planning Commission resolves to:*

1. *adopt the Drovers Place Precinct Local Structure Plan No.80, subject to the schedule of modifications as follows:*

- *Table C of Part 1 to include the following additional discretionary uses and any associated development provisions: car wash; club (non-residential); dry cleaning premises; mast or antennae; place of assembly; recreation centre; telecommunications infrastructure; and vehicle sales/hire premises;*
- *Table C of Part 1 to replace the discretionary uses of 'Plant Nursery' with 'Retail Nursery'. In addition, the following definition of 'Retail Nursery' is to be included in Section 2.4 of Table C of Part 1: "Retail Nursery - means land and/or buildings used for the storage, display and retail sale of nursery and horticultural products including plants, seeds, bulbs, seedlings, trees, and other nursery stock and products associated with horticulture, domestic gardens, outdoor living, garden decor and clothing for gardening and may include associated outdoor leisure products and an incidental cafe";*
- *Table D of Part 1 to include the average lot size requirement of 3000m<sup>2</sup> in the "Special Residential" zone in accordance with Clause 3.19.1 of the City's District Planning Scheme No.2;*
- *The "Site Contamination" section of Table E of Part 1 to read as follows: "Prior to commencement of site works on Lots 1, 10 and 132 Wanneroo*

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*Road and Lot 5 Drovers Place, investigation for soil and groundwater contamination is to be carried out to the specifications of the Department of Environment and Conservation. Any remediation works, including validation of remediation, is to be completed to the specifications of the Department of Environment and Conservation prior to the commencement of any site works";*

- *The "Urban Water Management" section of Table E of Part 1 to read as follows: "An Urban Water Management Plan is to be prepared prior to the commencement of site works to the specifications of the Department of Water. The approved Urban Water Management Plan is to be implemented by the landowner, including construction of identified wastewater, stormwater and groundwater management systems";*
- *The "Acid Sulphate Soils" section of Table E of Part 1 to read as follows: "Acid sulphate soils investigations are required at the subdivision and development stages of the planning process. The submission of an acid sulphate soils self-assessment form and preparation of an acid sulphate soils management plan is required as a condition of subdivision and development approval for proposals in moderate to high risk areas" in accordance with the WAPC's Planning Bulletin 64/2009 "Acid Sulphate Soils";*
- *Plan 1 to identify the 12 metre wide north-south local access road in the Southern Precinct from Ashley Road to Wanneroo Road with a width of 15 metres;*
- *Plan 1 to depict the Metropolitan Region Scheme "Primary Regional*



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### Officer's Recommendation

That the Western Australian Planning Commission resolves to approve amended plans received 19 January 2012 for the development of 10 dwellings for aged and/or dependant persons at Lot 697 Hennessy Avenue, Orelia subject to the following condition:

Condition:

1. Stormwater being contained on site.

### Resolved

***Moved by Mr Farrar, seconded by Ms Taylor***

*That the item be deferred to allow further discussion to take place with the Department of Housing and review of the suggested conditions from council officers with a view of relocating the communal open space.*

***The motion was put and carried.***

Moved to item 9.4 •

#### 7456.9.3 Subdivision of Lot 26 Riverview Place, Lot 27 The Coombe, Mosman Park

File 144722  
Report Number SPC/164  
Agenda Part G  
Reporting Officer Manager Metropolitan Central

Members discussed the wording of condition 2 and resolved to make changes to replace the words 'Dwellings being constructed to plate height' with 'On site civil works including retaining walls and laying of slabs be undertaken'.

A paper titled 'Memorandum – Riverview Place Aged Persons Dwelling Application' was tabled at the meeting. A copy has been placed on file.

### Officer's Recommendation

That the Western Australian Planning Commission resolves to approve the subdivision of Lot 26 Riverview Place, Mosman Park subject to the following conditions:

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1. Prior to the WAPC's endorsement of an appropriate form for the creation of the lots proposed by this application, the lot the subject of this application being created on a separate Deposited Plan;
2. Dwellings being constructed to plate height on proposed Lots X and Y, consistent with the Aged or Dependent Persons' Dwellings clause 6.11.2 of the Residential Design Codes 2010, prior to the approval of the Deposited Plan by the WAPC; (Local Government)
3. A Restrictive Covenant, pursuant to section 129BA of the Transfer of Land Act 1893 (as amended) is to be placed on the Certificates of Title of the proposed lots advising of the existence of a restriction on the use of the land. Notice of this restriction to be included on the Deposited Plan. The restrictive covenant is to bind the owner, their heirs and successors in title to the requirement that at least one occupant is disabled or physically dependent person or aged over 55, or is the surviving spouse of such a person;
4. Suitable arrangements being made with the Water Corporation so that provision of a suitable water supply service will be available to lot(s) shown on the approved plan of subdivision; (Water Corporation)
5. Suitable arrangements being made with the Water Corporation so that provision of a sewerage service will be available to the lot/s shown on the approved plan of subdivision; (Water Corporation)
6. Arrangements being made to the satisfaction of the Western Australian Planning Commission and to the specification of Western Power for the provision of an underground electricity supply service to the lot(s) shown on the approved plan of subdivision. (Western Power)

### Advice:

1. In order to fulfil Condition 2, the applicant must first obtain development approval for the development of an aged or dependent persons' dwelling on each of the approved lot(s), in accordance with clause 6.11.2 of the Residential Design Codes 2010.
2. The approval to subdivide issued by the WAPC should not be construed as an approval to commence

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development on any of the lots proposed. Approval to Commence Development may be required to be issued by the local government.

3. With regard to Conditions 4 and 5, Water Corporation policy and practice for the locality may involve the provision of land (for plant and works), easements and/or the payment of financial contributions towards infrastructure. You are advised to contact the Water Corporation.
4. Upon the receipt of a request from the subdivider, a Land Development Agreement under section 67 of the Water Agencies (Powers) Act 1984, will be prepared by the Water Corporation which will document the specific requirements for the proposed subdivision.
5. With regard to Condition 6, Western Power provides only one point of electricity supply per freehold (green title) lot and requires that any existing overhead consumer service is required to be converted to underground.
6. If an existing aerial electricity cable servicing the land the subject of this approval crosses over a proposed lot boundary as denoted on the approved plan of subdivision, satisfactory arrangements will need to be made for the removal and relocation of that cable.

### **Resolved**

#### ***Moved by Mr Holloway by Ms Taylor***

*That the Western Australian Planning Commission resolves to approve the subdivision of Lot 26 Riverview Place, Mosman Park subject to the following conditions and advice:*

1. *Prior to the WAPC's endorsement of an appropriate form for the creation of the lots proposed by this application, the lot the subject of this application being created on a separate Deposited Plan;*
2. *On site civil works including retaining walls and laying of slabs be undertaken on proposed Lots X and Y, consistent with the Aged or Dependent Persons' Dwellings clause 6.11.2 of the Residential Design*

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*Codes 2010, prior to the approval of the Deposited Plan by the WAPC; (Local Government)*

3. *A Restrictive Covenant, pursuant to section 129BA of the Transfer of Land Act 1893 (as amended) is to be placed on the Certificates of Title of the proposed lots advising of the existence of a restriction on the use of the land. Notice of this restriction to be included on the Deposited Plan. The restrictive covenant is to bind the owner, their heirs and successors in title to the requirement that at least one occupant is disabled or physically dependent person or aged over 55, or is the surviving spouse of such a person;*
4. *Suitable arrangements being made with the Water Corporation so that provision of a suitable water supply service will be available to lot(s) shown on the approved plan of subdivision; (Water Corporation)*
5. *Suitable arrangements being made with the Water Corporation so that provision of a sewerage service will be available to the lot/s shown on the approved plan of subdivision; (Water Corporation)*
6. *Arrangements being made to the satisfaction of the Western Australian Planning Commission and to the specification of Western Power for the provision of an underground electricity supply service to the lot(s) shown on the approved plan of subdivision; (Western Power)*

### *Advice:*

1. *In order to fulfil Condition 2, the applicant must first obtain development approval for the development of an aged or dependent persons' dwelling on each of the approved lot(s), in accordance with clause 6.11.2 of the Residential Design Codes 2010.*
2. *The approval to subdivide issued by the WAPC should not be construed as an*

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*approval to commence development on any of the lots proposed. Approval to Commence Development may be required to be issued by the local government.*

3. *With regard to Conditions 4 and 5, Water Corporation policy and practice for the locality may involve the provision of land (for plant and works), easements and/or the payment of financial contributions towards infrastructure. You are advised to contact the Water Corporation.*
4. *Upon the receipt of a request from the subdivider, a Land Development Agreement under section 67 of the Water Agencies (Powers) Act 1984, will be prepared by the Water Corporation which will document the specific requirements for the proposed subdivision.*
5. *With regard to Condition 6, Western Power provides only one point of electricity supply per freehold (green title) lot and requires that any existing overhead consumer service is required to be converted to underground.*
6. *If an existing aerial electricity cable servicing the land the subject of this approval crosses over a proposed lot boundary as denoted on the approved plan of subdivision, satisfactory arrangements will need to be made for the removal and relocation of that cable.*

**Two members of the Committee voted against the item but wished not to be named.**

***The motion was put and carried.***

**Moved to item 9.2 •**

**7456.9.4**

**Endorsement of Foreshore Management Plan.  
Scarborough Beach Urban Design Master Plan**

File	DP/11/01792
Report Number	SPC/165
Agenda Part	G
Reporting Officer	Planning Officer

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### Resolved

#### **Moved by Ms Burrows, seconded by Mr Holloway**

*That the Western Australian Planning Commission resolves to:*

- 1. endorse the revised Scarborough Beach Urban Design Master Plan dated July 2011 as recommended by the City of Stirling at the ordinary meeting of Council on 2 August 2011;*
- 2. advise the City of Stirling that a coastal hazard risk management and adaptation plan should be prepared in accordance with the requirements outlined in the draft revised State Planning Policy 2.6, sections 5.5, 5.7 and 5.11, Schedule One and Parts 4, 6 and 10 of the draft SPP 2.6 Guidelines, prior to the commencement of any development within any Parks and Recreation reserved land.*

***The motion was put and carried.***

7456.9.5

#### **Endorsement of Dwellingup Structure Plan, Shire of Murray**

File SPN/0051/3 and 801/6/16/4P  
Report Number SPC/166  
Agenda Part G  
Reporting Officer Planning Manager

### Resolved

#### **Moved by Mr Farrar, seconded by Ms Taylor**

*That the Western Australian Planning Commission resolves to:*

- 1. determine the submissions received on the Dwellingup Structure Plan in accordance with the Schedule of Submissions at Attachment 5 of this report;*
- 2. endorse the Dwellingup Structure Plan, subject to the schedule of modifications at Attachment 6 of this report.*

***The motion was put and carried.***

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### 7456.10 Confidential Items

- 7456.10.1 Proposed Subdivision: Lot 251 Victoria Road, Wattle Grove**
- |                   |  |
|-------------------|--|
| File              | 143036                                       |
| Report Number     | SPC/167                                      |
| Agenda Part       | C  |
| Reporting Officer | A/Planning Manager - Metropolitan North East |

**THIS ITEM IS CONFIDENTIAL**

- 7456.10.2 Shire Of Chittering - Local Planning Scheme Amendment - For Final Approval**
- |                   |                             |
|-------------------|-----------------------------|
| File              | TPS/0580/1                  |
| Report Number     | SPC/168                     |
| Agenda Part       | E                           |
| Reporting Officer | Director – Wheatbelt Region |

**THIS ITEM IS CONFIDENTIAL**

### 7456.11 General Business

- 7456.11.1 Progress of Residential Codes and local authorities submitting under SP3.6 for developer contributions**

Mr Holloway sought information regarding progress of Residential Codes and local authorities submitting under SP3.6 for developer contributions. Mr Prattley advised that the review is still progressing and undertook to seek advice on the progress of the review of the Residential Codes.

- 7456.11.2 Metropolitan Region Scheme (MRS) and Local Scheme Amendments**

Ms Taylor enquired whether the MRS and Local Scheme Amendments would be brought to the meeting. Ms Burrows noted that they were available and would be distributed to members.

- 7456.11.3 Site visit to Lancaster Winery**

The Committee noted that they would be attending a site visit to Lancaster Winery on Monday 16 April 2012 ahead of the item being put on the agenda for the meeting of 24 April 2012.

**Statutory Planning Committee**

Minutes  
of ordinary meeting 7456  
held on Tuesday 10 April 2012

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**7456.12 Items for Consideration at a Future Meeting**

Nil.

**7456.13 Closure**

The next ordinary meeting is scheduled for 10.00 am on 24 April 2012.

There being no further business before the Committee, the Presiding Member thanked members for their attendance and declared the meeting closed at 11.54 am.

**PRESIDING MEMBER** \_\_\_\_\_

**DATE** \_\_\_\_\_

UNCONFIRMED

# INDEX OF REPORTS

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## ITEM NO: 9.1

### LANCASTER WINERY CONCERT VENUE - LOTS 2,3 AND 200 WEST SWAN ROAD, WEST SWAN - APPROVAL SOUGHT TO HOST BETWEEN 4-6 CONCERT EVENTS EACH YEAR

<b>WAPC OR COMMITTEE:</b>	<b>Statutory Planning Committee</b>
REPORTING AGENCY:	Department of Planning
REPORTING OFFICER:	Planning Manager, Metropolitan Planning North East
AUTHORISING OFFICER:	Director, Metropolitan Planning North East
AGENDA PART:	C
FILE NO:	21-50177-2
DATE:	15 March 2012
ATTACHMENT(S):	1 - Development Plans 2 - Aerial photograph 3 - Swan Valley Planning Act Plan 4 - Swan Valley Planning Committee decision sheet and explanation. 5 - Plan depicting position of temporary barrier to mitigate spray drift.
REGION SCHEME ZONING:	MRS: Rural, Heritage Area 02495 , Bush Forever Site 302, Swan River Trust, Swan Valley Planning Act, Acid Sulfate Soils High Risk Area, Geomorphic Wetland Conservation Management Buffer, Win Area
LOCAL GOVERNMENT:	City of Swan
LOCAL SCHEME ZONING:	Swan Valley Rural
LGA RECOMMENDATION(S):	Refusal
REGION DESCRIPTOR:	Perth Metro North East
RECEIPT DATE:	20 April 2011
PROCESS DAYS:	57
APPLICATION TYPE:	Development
CADASTRAL REFERENCE:	Lots 2, 3 & 200 West Swan Road, West Swan

#### RECOMMENDATION:

***That the Western Australian Planning Commission resolves to approve the development application for a proposed concert venue at Lancaster Winery at Lots 2,3 and 200 West Swan Road, West Swan subject to the following conditions:***

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## CONDITIONS

1. ***This approval grants temporary planning approval for Lancaster Wines to host up to six (6) concerts/events per calendar year at Lots 2, 3 and 200 West Swan Road, West Swan, in accordance with the following conditions, for a time period limited to five (5) years from the date of this decision.***
  
2. ***This approval relates to the following plans and information:***  
  
***Development Application Report – March 2011, prepared by TPG Town Planning and Urban Design;***  
  
***Development Application Drawings - (LW-SITE-02, LW-AR-02, Seating Plan Rev 09, LW-GRAD-03, LW-GRAD-03 (Air photo grading plan)) prepared by Michael Coate Golf Design and stamp dated by the Department of Planning 4 August 2011.***
  
3. ***Prior to each event the applicant shall prepare the following documents, to be implemented during the events, to the specifications of the City of Swan and the satisfaction of the Western Australian Planning Commission:***
  - \* ***Traffic management plan;***
  - \* ***Noise management plan to be prepared by a suitably qualified acoustic engineer;***
  - \* ***Event management plan detailing on site and off site security/crowd control provisions, fire and safety and first aid;***
  - \* ***Wastewater/effluent management plan;***
  - \* ***Spray Drift plan; and***
  - \* ***Dust Management Plan.***
  
4. ***Concert event hours shall be restricted to between 4.00pm and 11.00pm.***
  
5. ***The number of patrons attending an individual event shall not exceed 8,000.***
  
6. ***Prior to the commencement of any concerts, West Swan Road is to be upgraded to the specifications of the City of Swan and the satisfaction of the Western Australian Planning Commission***
  
7. ***The owner of the Lancaster Wines Site shall ensure that the lease is maintained over Lot 3 for the benefit of the Lancaster Wines Site at all times and for so long as the Lancaster Wines Site is used for concerts or***

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*similar events and Lot 3 is required for access and parking, under the terms of this approval.*

- 8. Prior to each event an artificial barrier is to be erected along the western boundary of 5228 (Lot 2) West Swan Road to the specifications of the City of Swan and the satisfaction of the Western Australian Planning Commission.*
- 9. All ablution facilities and generators shall be positioned a minimum of 100 metres from the edge of the Swan River.*
- 10. No soil, building materials, rubbish or any other deleterious matter shall be allowed to enter the Wandoo Creek or the river as a result of events and earthworks on the site. Details of the proposed containment method to be installed during all events and earthworks shall be provided to the Trust for approval within two (2) months of the date of this approval.*
- 11. All fill and topsoil used on site must be certified clean, uncontaminated and free of rubble (including weed and disease free). The Swan River Trust may request that this be demonstrated prior to fill being brought onto the site.*
- 12. A Landscaping Plan for the for the creek line and swale structures shall be forwarded to the Swan River Trust for approval within two (2) months of the date of this approval.*
- 13. The approved Landscaping Plan required under Condition 14 shall be completed within six (6) months of the approval of the plan.*
- 14. All plant species are to be locally native and suited to the soil type of the area to sustain local biodiversity and due to their low fertiliser and water requirements. Information on appropriate species can be obtained from the Swan River Trust.*

**ADVICE TO APPLICANT:**

- 1. All development must comply with the provisions of the City of Swan Local Planning Scheme No. 17, Health Regulations, Building Code of Australia, Public Building Regulations, and all other relevant Acts, Regulations and Local Laws. This includes the provision of access for people with disabilities in accordance with the Building Code of Australia.*
- 2. In accordance with the Local Government (Miscellaneous Provisions) Act 1960 and Building Regulations 1989 a Building Licence application must be submitted to, and approved by the City's Principal Building Surveyor prior to any construction or earthworks commencing on site.*

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3. ***Any additional development, which is not in accordance with the application the subject of this approval or any condition of approval, will require further approval.***
  4. ***The applicant is required to obtain a 'non-complying event' noise approval (Regulation 18) for all events likely to result in noise emissions in contravention of the standard prescribed under regulation 7, of the Environmental Protection (Noise) Regulations 1997. Applications are to be received by the City not less than 60 days prior to the event. Regulation 18 approvals will only be issued when the Chief Executive Officer is satisfied in accordance with the provisions of the Regulations***
  5. ***The applicant is required to obtain public building approval from the City's Health Service for each event. Applications are to be received by the City not less than 60 days prior to the event.***
  6. ***The applicant is advised that the noise generated by activities on site, including machinery motors or vehicles is not to exceed the levels as set out under the Environmental Protection (Noise) Regulations 1997. All development works are to be carried out in accordance with control of noise practices set out in Section 6 of AS 2436-1981 or the equivalent current Australian Standard.***
  7. ***The City of Swan advises that it will not approve the issue of any approval pursuant to Regulation 18 of the Environmental Protection (Noise) Regulations 1997 to either Lancaster or Sandalford for events proposed to be held by them on the same date.***
  8. ***The Department of Indigenous Affairs advises that all development is to be setback a minimum of 20 metres from the Wandoo Creek, and a minimum of 30 metres from the Swan River. Any development that is proposed to be closer than this will require the prior consent of the Minister for Indigenous Affairs under section 18 of the Aboriginal Heritage Act 1972. It is noted that the approved plans achieve these setbacks. Any proposals for development within these setbacks will require a separate application for approval to commence development.***
  9. ***The Department of Indigenous Affairs advises that the applicant/owner is advised to brief all persons involved in site works and associated activities of their legal obligations with respect to the Aboriginal Heritage Act of WA (1972) prior to construction work.***
  10. ***The Swan River Trust advises that the Landscaping Plan should address, but not be limited to the following:***
    - a) ***Landscape site plan including a list of the species to be used, their location and densities. Please note that all plan species are to be locally native and suited to the soil type of the area to sustain local biodiversity and due to their lor fertiliser and water requirements.***
    - b) ***The retention of existing vegetation.***

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- c) *Plans showing site preparation and rock work.*
  - d) *Potential environmental impact of the proposed works.*
  - e) *Work schedule and site preparation details*
  - f) *Planting methods*
  - g) *Details of any chemicals to be used such as fertilisers and herbicides*
  - h) *Details of any fencing/screening to be implemented if applicable*
  - i) *Environmental objectives of the management plan*
  - j) *Performance indicators/criteria. For example, ANZECC water quality criteria, site specific criteria, vegetation diversity and/or density, Australian Standards.*
  - k) *Management actions for each stage of the project (design, construction, operation, closure) including responsibilities and schedules.*
  - l) *Monitoring and reporting plan for compliance with objectives and criteria; and*
  - m) *Contingency actions, including responses to complaints and trigger criteria.*

*The proposed development is within a moderate to high acid sulphate soil risk area. The applicant should contact the Department of Environment and Conservation for advice prior to any excavation or soil disturbance as an acid sulphate soil investigation may be required.*

11. *The Department of Water advises that proposed development located outside the 100 year ARI floodway should achieve a minimum habitable floor level of 0.5 metres above the relevant 100 year ARI flood level.*
12. *The spray drift plan is to include the requirement for a 40 metre setback between the spraying operations and the concert area and is to stipulate the circumstances in which a 40 metre setback is to apply, where spraying of pesticide or the like is likely to coincide with a concert event.*

#### **SUMMARY:**

- The application seeks approval for a concert venue for the purpose of hosting the 'A Day on the Green' (ADOTG) events at Lancaster Wines, West Swan. The proponent seeks approval to host between 4-6 concerts annually between the months of October and April. Concerts will commence in the late afternoon and conclude by 10.30pm. (refer **Attachment 1** - Development plans & **Attachment 2** - Aerial photograph)

- The main issue for consideration in this report is whether the proposal is consistent with the planning objectives for Area B under the Swan Valley Planning Act 1995. (SVP Act) and can be considered for support by the Western Australian Planning Commission (WAPC). Issues relating to the potential impact of the proposed concerts on adjacent viticultural practices and productivity, management of amenity impacts (traffic and noise) and potential land use conflict (spray drift) will be discussed further in the comments section of this report.
- The application does not address the time length of approval sought, however it is recommended that any approval be time limited to 5 years. This is consistent with the WAPC's approval of a similar application by Sandalford Wines in 2010. The applicant does not object to a time limited (5 year) approval being granted
- The proposal requires WAPC determination under the Metropolitan Region Scheme (MRS) as the property abuts waters (Swan River) within the Swan River Trust Development Control Area. The proposed development is classified as a 'Place of Assembly' under the City's Local Planning Scheme 17 (LPS 17) and is a discretionary 'D' use under the 'Swan Valley Rural' zoning. The subject land is located within Area B of the Swan Valley Planning Act 1995 (SVP Act). (**Attachment 3** - SVP Act plan)
- It is considered that potential impacts of the proposal on adjacent viticultural practices and productivity are unlikely to be significant, and that land use conflict, amenity and traffic can be adequately managed by imposition of appropriate development conditions. It is recommended that the WAPC support the proposal to hold up to 6 concerts/events in any one year for a 5 year time limited period, subject to conditions.

## **LEGISLATION / STRATEGIC PLAN / POLICY:**

**Legislation** Subdivision / Development Approval / Reconsiderations - Part 10 of the P&D Act 2005  
 Section: Strategic Goal 2: Planning

**Strategic Plan**  
 Strategic Goal: Strategic Goal 2: Planning  
 Outcomes: State-wide integrated Policy frameworks  
 Strategies: Implement State and Regional Priorities

**Policy**  
 Number and / or Name: State Planning Policy 2.5. Agricultural and Rural Land Use Planning.

## **BACKGROUND:**

On 30 November 2011 the City of Swan Council considered a report that recommended the proposal be approved subject to conditions. However, Council resolved to recommend that the application be refused by the WAPC for the following reasons:

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*The proposal is not considered to be compatible with objective (d) applicable to the subject lots' Swan Valley Rural zoning by virtue of it not being considered to accord with the following objectives for Area B of the Swan Valley Planning Act 1995:*

- i. Protection of viticulture (potential inability to reconcile spraying activities of adjoining viticultural properties with concert events);*
- ii. Encouragement of tourist facilities provided that they do not detract from the rural character of the area; and*
- iii. Discouragement of uses that are incompatible with the rural character and traditional agricultural activities of the area (where resultant traffic and noise are considered to have an adverse impact on the rural character of the locality).*

The recorded reason for changing the report recommendation was '*the proposed concert venue is not appropriate for the subject site and its location in close proximity to adjoining viticulture businesses would have a detrimental impact on their operation and is contrary to the objectives of the Swan Valley Planning Act*'.

On the 23 January 2012 the Swan Valley Planning Committee (SVPC) considered the proposal, however resolved to defer its decision to a special meeting of the SVPC on the 2 February 2012 in order to allow further time to consider the proposal within the context of the SVP Act and to formulate its final recommendation.

At the meeting held 2 February 2012 the SVPC resolved that the proposal contravened objectives 1, 2, 3, 4, 6 and 10 of Area B of the SVP Act and that it should not be approved. In addition, the SVPC provided a detailed explanation of its decision, which is discussed in the comments section below (**Attachment 4** - Swan Valley Planning Committee decision sheet and Explanation).

On the 28 September 2010 the WAPC granted development approval for Sandalford Wines, West Swan Road, Caversham to host up to 10 concert events per year for a period of 5 years. The approval included a condition limiting the number of patrons to 12,000 for each concert.

## **INTRODUCTION:**

The application seeks approval to develop the subject lots for use as an outdoor concert venue to host the ADOTG event. The applicants propose to host up to six (6) concerts per annum between the months of October to April. In previous years ADOTG has been held at Sandalford Wines in the Swan Valley, however the event promoters have now sought to relocate the event to the Lancaster Wines property. ADOTG events are currently held at Kings Park and Botanic Gardens. The Swan Valley location will provide an alternate venue and location for events. Notably, the proposal, if approved, is unlikely to result in any significant increase in concert events within the locality.

The subject land comprises Lots 2 (5228), Lot 200 (5180) and a portion of Lot 3 (5080) West Swan Road, West Swan. Lots 2 and 200 are owned by Lancaster Wines. Lot 3 is owned by Claredon Developments P/L and is under lease to Lancaster Wines. The site is located north of Reid Highway and is opposite the

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Margaret River Chocolate Factory. The Yahava Koffee Works outlet and the Penny Garden restaurant are located to the south of the subject land. The subject land and the immediately adjoining properties are currently used for viticulture.

The proposal involves site re-contouring and subsequent turfing to create an amphitheatre. Other physical works include a new hardstand 'back of house' area, as well as the construction of a 30m x 10m shed (for entry/ticket collection/security check purposes), which also contains a small 'box' office. New vehicle access (entry and exit) routes are also proposed, including a new road to the 'back of house' hardstand area.

The proposal also involves the removal of 7.6ha of diseased vines on Lots 2 and 3 for the provision of 2,992 unpaved car bays. Vine removal does not require planning approval under LPS17 or the MRS. The applicant advises that officers of the Department of Agriculture and Food WA, in consultation with the landowner of Lot 37, adjoining the southern boundary of Lot 3, have recommended that the diseased vines be removed. City of Swan officers are satisfied vine removal would occur independent of this proposal given their diseased state. The landowner has verbally advised Department of Planning officers that they will be undertaking planting of additional vines on their broader landholdings. As such it is not considered that there will be a net loss of area under vines in the locality.

All physical improvements required for each event will be brought onto the site prior to each event and then removed following the concert, except in instances where concerts are to be held on concurrent weekends. Two entry points are proposed from West Swan Road with the entry point to the north being restricted to coaches and VIP vehicles while both access points will be used for vehicles to exit the property after an event.

The proposed venue will have a maximum capacity of 8,000 people. Lots 2 and 200 will be developed primarily for access into and out of the venue and for the development of the amphitheatre, stage and seating area. Adjoining Lot 3, which forms part of the application area, is proposed to be leased to Lancaster Winery for the purposes of concert patron parking. Lancaster Wines will continue to operate as a winery in conjunction with the concert venue.

The application is supported by a risk management plan, concert noise modelling report and event traffic management plan.

The proposed use is considered a 'Place of Assembly' land use class under LPS 17. 'Place of Assembly' is a discretionary use in the Swan Valley Rural zone. The City of Swan has previously supported a similar application to host concert events at Sandalford Wines, which is also on land zoned Swan Valley Rural, under the 'Place of Assembly' land use class.

#### **CONSULTATION:**

The City of Swan Council considered the application at its meeting held on 30 November 2011. At that meeting the Council resolved, against the recommendation of the reporting planning officer, to not support the proposal for reasons relating to: potential land use conflict with adjacent vineyards and the proposal being in conflict

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with the objectives of the SVP Act. These issues are discussed in further detail in the comments section of this report.

The application was subject to two public advertising processes conducted by the City of Swan. The first occurred for a period of 21 days from 5 May 2011. Written notification was sent to 42 properties within a 500 metre radius of the lots subject to the proposal, a sign erected onsite and advertisements placed in the local newspaper. A total of 3,635 submissions were received, 3,462 non-objections (comprising a petition of 2943 signatures and 519 individual submissions) and 173 objections (comprising a petition of 103 signatures and 70 individual submissions).

The second public advertising process was undertaken for 191 properties that were considered by the City to fall within modelled noise contours that would result from the proposed concerts at Lancaster Wines, and the existing concerts at Sandalford. The second advertising process was undertaken to help the City officers establish the level of support or opposition as set out under Regulation.18 of the *Environmental Protection (Noise) Regulations 1997*. Of the 191 surveyed properties, 69 surveys were completed and returned to the City. Of these responses, 34 respondents specifically objected based on noise. Three non objectors also raised concerns regarding traffic.

The main objections raised in submissions relate to:

- Land use conflict
- Traffic and noise/amenity impacts
- Management of the proposed use and site constraints
- Compliance with SVP Act Area B objectives

These issues are discussed below in the comments section of this report.

Main Roads Western Australia (MRWA) did not raise any objections to the proposal, subject to a traffic management plan being submitted to MRWA prior to each event.

Department of Environment and Conservation (DEC) did not raise any objections to the proposal, however advised that based on a concert noise modelling report submitted by the applicant, it was likely that noise levels would exceed the prescribed standard Environmental Protection (Noise) Regulations 1997 at nearby residences. In this case the event promoter will be required prior to each concert to apply and obtain approval of a non complying event from the City of Swan.

The Department of Water (DoW) and the Department of Health did not raise any objections to the proposal.

The Swan River Trust raises no objections to the proposal subject to conditions.

An assessment has indicated that the traffic report submitted by the applicant demonstrated that traffic, parking, and pedestrian safety issues have been adequately addressed.

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The Department of Indigenous Affairs (DIA) advise that the subject land is affected by registered site (3536) (Swan River). A minor tributary of the Swan River, the Wandoo Creek, flows through the north eastern corner of lot 200, and is in close proximity to the proposed temporary back of house facilities. DIA advise that any alteration of land within 20 metres of Wandoo Creek will require the prior consent in accordance with the Aboriginal Heritage Act 1972. As a result of this advice the applicant has agreed to move the back of house facilities to ensure a 20 metre setback is achieved. The applicant has subsequently provided modified plans depicting this increased setback.

The SVPC resolved that the proposal contravened objectives 1, 2, 3, 4, 6 and 10 of Area B of the SVP Act and that it should not be approved. In addition, the SVPC provided a detailed explanation of its decision, which is discussed in the comments section below.

### **COMMENTS:**

The City of Swan Council resolved to recommend to the WAPC that the application be refused for reasons including,

- The proposed development not being compatible with the objectives of Area B of the SVP Act relating to the protection of viticulture (potential inability to reconcile spraying activities of adjoining viticultural properties with concert events);
- Encouragement of tourist facilities provided that they do not detract from the rural character of the area; and
- Discouragement of uses that are incompatible with the rural character and traditional agricultural activities of the area (where resultant traffic and noise are considered to have an adverse impact on the rural character of the locality; and
- The proposed concert venue is not appropriate for the subject site and its location in close proximity to adjoining viticulture businesses would have a detrimental impact on their operation and is contrary to the objectives of the SVP Act.

The following comments are made in relation to the issues raised in submissions to and reasons for refusal of the City of Swan.

### Sandalford Wines & Lancaster Wines - total number of events per year & potential for co-incidence of events

Sandalford Wines currently has approval to host up to 10 concert events per year. The relevant WAPC approval was granted on 28 September 2010 for a period of 5 years. Should the current application be approved, this would result in approval for a total 16 concert events being held annually between Sandalford Wines and Lancaster Wines within the locality. The applicant has advised that this possibility is highly unlikely to occur, however, for a range of reasons including:

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- Promoters of each venue will seek to maximise their potential for ticket sales by ensuring that only one event is held on any particular date.
  - The number of ADOTG events hosted at Sandalford Wines in previous years is between 5-7; Sandalford Wines has never hosted 10 concert events in one year.
  - ADOTG concerts proposed to be hosted at Lancaster Wines were originally held at Sandalford Wines, thus there may be a reduction in the number of events hosted at Sandalford Wines.
  - The Perth Arena is planned to open in late 2012 and will be managed by AEG OGDEN (AEG), a major international entertainment company. It is likely that for commercial reasons concerts currently promoted by AEG and held outdoors, will be moved into the Perth Arena, thus resulting in a net reduction of outdoor concerts.

The information provided by the applicant has been reviewed and it is considered unlikely that in the event the subject proposal is approved, there would be a significant increase in the number of events hosted in the Swan Valley between Sandalford Wines and Lancaster Wines

### Traffic

The applicant has submitted a Transport Assessment which concludes that the proposal is acceptable subject to a range of measures being implemented to minimise disruption to and improve access, egress and traffic flows. These measures are detailed below. In addition, a traffic management plan would be required to the specifications of the City of Swan prior to each event to optimise the management of traffic entering and leaving the venue.

The Transport Assessment notes that West Swan Road has a nominal traffic capacity of 15,000 vehicles per day. Presently, this road handles approximately 14,000 vehicles per day and based on a recent traffic count (October 2011) 10,000 per day on a Saturday. The proposed concert venue will result in an additional 5,000 trips on days when events are held. Should such events be held on a Saturday evening the traffic count on West Swan Road would increase to approximately 15,000 vehicles which is the estimated capacity of West Swan Road.

Access to and egress from the site onto West Swan Road will be via two accessways within the subject land. The City of Swan has conducted an analysis which modelled the impact of projected traffic volumes on signalised intersections resulting from concerts at both Sandalford Wines, and Lancaster Wines. This analysis showed that the average delay for traffic travelling on West Swan Road would be 12 minutes for concerts held at Lancaster Wines, and 22 minutes for concerts held at Sandalford Wines. These results were forwarded to MRWA who reviewed the modelling and advised that queue lengths could effectively be managed through the individual Traffic Management Plans.

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The applicant has agreed to implement the following recommendations of the Transport Assessment:

- Localised road widening on West Swan Road abutting the site;
- Two entry and exit points to the venue using existing driveways and crossovers;
- The presence of traffic controllers to prevent patrons leaving the venue via local side streets;
- Concert promotion will encourage public transport and shuttle bus options; and
- Traffic controllers employed to implement agreed, audited and approved traffic management and parking plans for each and every event.

Conditions to this effect are recommended. As noted, MRWA supports the proposed development subject to a Traffic Management Plan being required prior to each event.

Having regard to the above comments, it is considered that the proposed transport and traffic management arrangements have been adequately addressed by the applicant and can be managed through conditions of development approval.

### Noise

As noted, prior to each event, the applicant will be required to obtain a Regulation 18 (Environmental Protection (Noise) Regulations) approval from the City of Swan to exceed the prescribed standards relating to noise levels. This was also the approach taken with Sandalford in their approval for 10 concert events per year.

### Security Risk & Management

The applicants have submitted a risk management plan as part of the application which addresses key issues such as littering, anti-social behaviour, vandalism, criminal activity, and alcohol and drug affected people.

This report is considered to sufficiently address community concerns and with the proper ongoing monitoring these concerns can be adequately managed to ensure the impact these events will have on nearby properties is minimal.

### **Swan Valley Planning Act (1995)**

#### General Planning Objectives.

The general planning objectives for the Swan Valley under section 6 of the SVP Act are the encouragement of the traditional agricultural and other productive uses of the area that compliment its rural character, the protection of the environment and the

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character of the area and the promotion of tourism that compliments the rural character of the Swan Valley.

In this instance, a large area (7.6ha) of vines on the subject land will be removed to provide parking for concert attendees. Notwithstanding that these vines will be removed due to disease, for at least the term of any approval this area will remain essentially a grassed paddock and will not be put to productive rural uses consistent with the SVP Act. In addition, whilst it could be argued that winery concerts are a widely accepted use in rural areas, and are considered complimentary to the primary 'winery' land use, due to the scale of the proposed events (8,000 attendees), it is possible that the amenity of surrounding residences in the rural area will be impacted during concert events.

The Department of Planning (DoP), the Swan Valley Planning Committee and the City of Swan are working cooperatively to develop a strategic land use plan for the Swan Valley, and to develop policies that will enable officers of the City of Swan and DoP to conduct a more objective assessment of a development proposal against the planning objectives under the SVP Act. Although no objection is raised regarding the proposed land use, at this time no guidelines or policy has been developed which would enable the size and scale of a proposed development to be objectively assessed against the objectives of the SVP Act.

#### Swan Valley Planning Committee - Explanation of decision

Following is a summary and discussion of the explanation provided by the SVPC of its recommendation to not support the proposed development. As noted, the SVPC advises that the proposal contravenes objectives 1, 2, 3, 4, 6 and 10 of the SVP Act.

The relevant Area B objectives applicable to the proposal are as follows:

**Objective 1.** The protection of viticulture.

**Objective 2.** The provision of water for viticulture and horticulture and the discouragement of activities that have high water demands

**Objective 3.** The encouragement of tourist facilities provided that they do not detract from the rural character of the area.

**Objective 4.** The encouragement of traditional activities of the Swan Valley and industries associated viticulture, horticulture and cottage industry provided that they are compatible with the rural character of the area.

**Objective 6.** The compatibility of design, siting and landscaping with the character of the area.

**Objective 7.** The discouragement of uses that are incompatible with the rural character and traditional agricultural activities of the area.

**Objective 10.** The avoidance of overstocking, of activities causing pollution or degradation of the environment and of any other land management practices detrimental to the amenity of the area.

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State Planning Policy No. 2.5 Agricultural and Rural land Use Planning (SPP 2.5)

The SVPC refers to SPP 2.5 within the explanation of its decision.

SPP 2.5 states that ..."planning powers should be used to protect productive agricultural land from those development activities or influences that lead to its alienation of diminished productivity, while always accepting the need for land for expanding urban areas and other uses of State significance."

SPP 2.5 identifies the Swan Valley as a "Priority Agriculture Zone", that is, an agricultural area of State or regional significance. The Department of Agriculture identifies the subject land as having a high land capability for both vines and for annual horticulture.

SPP 2.5 includes recommended provisions for land zoned 'Priority Agriculture' under local planning schemes which are designed to protect agricultural land, and provide for a range of other uses, including tourist based uses, subject to these uses being incidental to the primary agricultural use of the land, and their impact on the agricultural use being minimised.

Accordingly, the SVPC considers that priority is given to the protection and encouragement of viticulture. Restrictive impacts of tourism on viticulture and horticulture should be minimised and tourism services/facilities should not detract from the rural character or amenity of the Swan Valley.

It is acknowledged that the proposal will result in the removal of a substantial area of vines to provide for concert parking. However, the time limited nature of any approval would mean that the cleared land would not be 'sterilised' permanently, and could be returned to productive viticulture at some future time. Further, the application is for only up to 6 concert events per year, and that virtually all of the concert equipment and structures are temporary, that the impact on the Priority Agriculture land is minimal.

The Protection of Viticulture

The proposal involves the removal of 7.6ha of diseased vines. The SVPC has been advised that the vines on Lot 3 are of the Shiraz variety and have not been attended to over the last 4 years as this variety is not profitable. As a result the vines have become subject to seasonal infestation of powdery mildew and downy mildew. The recommendation for their removal was a result of a complaint from the landowner of adjoining Lot 37 to the south that the infections of the vines could be transmitted to his vineyard. Removal of vines does not require planning approval from the City of Swan. The SVPC considers the removal of vines contrary to Area B objective 1.

The Lancaster Winery operation will continue on site, and there is potential for additional planting on the broader Lancaster Wines landholding within the Swan Valley. As a part of the commercial arrangement with the concert promoter, only Lancaster wines will be sold during concert events. The proposal to pursue a larger scale commercial venture on site other than wholly viticulture should not in itself be grounds to refuse the application, so long as the impacts of the proposed development on adjacent vineyards and residences can be adequately mitigated and managed. This issue is discussed below.

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The removal of diseased vines is not considered to be inconsistent with objective 1 of Area B

It is considered that the proposed concert events will support, and be complimentary to the primary agriculture land use. A time limited approval preserves the possibility of the land being returned to wholly viticultural use in future. Considering this, and the limited number of concerts per year, it is considered the proposal is generally consistent with Objective 1.

#### Restrictive Impacts on Viticulture Practice

The primary matter for consideration is the potential conflict caused by spraying of vines on adjacent lots affecting concert patrons. Lots 1, 9 and 37 directly abut the subject land and are under permanent cultivation for table grapes. Depending on seasonal conditions spraying of vines may be carried out intermittently between September to May. Some spraying equipment discharges a plume which may have a diameter of 6 metres. The *Environmental Guidelines for Vineyards 2011* recommended a vegetated buffer of trees and shrubs to minimise the impact of spraying, at least 40 metres wide with 20 metres planted with trees. There are currently no vegetated buffers between the subject land and Lots 1 and 9. On concert days when spraying is to occur the applicant proposes to erect a temporary artificial barrier of 50% porosity and height of 1.8m along the western boundary of Lot 2. No barrier is proposed between the southern barrier and adjoining Lot 37. The SVPC considers that this barrier is inadequate and that conflict arising from spraying, even though the probability may be low, is real.

The SVPC also raises the issue of the potential civil liability of adjoining owners for injurious affect (financial, physical, health impacts) of spraying upon persons associated with the concerts held at the venue. The liability of grape growers is untested but is of concern to the industry.

Other impacts relate to odour and dust from standard viticultural practices, and noise and light from machinery used at night, and the resultant possibility of complaints (environmental nuisance, noise pollution) by the subject landowner, or concert promoter under the *Environmental Protection Act*. Again the SVPC notes that the probability of complaint and prosecution is small, but considers it is real and as a result at variance with Area B planning objectives 1 and 3.

In response, the applicant advises that abutting vineyard operators may need to spray vines at night, potentially at the same time concerts are being held. However it is considered unlikely that such conflict will occur for the following reasons:

- The application only seeks approval for up to 6 concerts per year between October to April.
- No spraying of vines occurs post harvest (February - April) once all fruit has been picked, thus further minimising the times during the year when conflict may occur; and
- A common boundary with an adjoining landowner only exists for approximately 100 metres, with Lot 9 West Swan Road to the north west.

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In respect of adjoining Lot 37 to the south, which abuts the proposed car parking area, an officer of the City of Swan advises that the Department of Health does not consider spray drift to be a public health issue in areas used for car parking. Accordingly, the main area of concern relates to Lots 1 and 9 which abut the north-western boundary of subject Lot 2 and are in proximity to the concert amphitheatre. The City officers in the report to Council advised that spray drift can be mitigated by a temporary artificial barrier being erected. The barrier would be required on event days at times of the year when spraying may occur. This approach is based on research undertaken in South Australia which confirmed the efficiency of artificial barriers matches that of natural barriers in capturing spray drift. In this regard the City of Swan Council and WAPC has recently supported the permanent use of an artificial barrier (50% porosity) on residential zoned land in Caversham where this land abuts operational vineyards on West Swan Road within the Swan Valley Planning Act area (Area B).

In this instance the temporary barrier would be erected along the western boundary of Lot 2 (5228) West Swan Road, abutting the eastern edge of adjoining Lots 1 and 9. A gap in the barrier for the access track to cross is permitted for access to the back of stage area. The artificial barrier would be required to be constructed with a porosity of 50% and a height of 1.8 metres unless otherwise required by the City's Health Services. The artificial barrier would be required to be positioned as proposed on the applicant's site plan (**Attachment 5** – Proposed location of artificial barrier). If spraying is undertaken by neighbouring properties at the same time as a concert event, the event organiser and property owner will be required to provide an additional buffer distance for the period of spraying so as that the overall buffer is not less than 40 metres. The proposed access track may form part of the required buffer.

In addition, the applicant has engaged a specialist consultant to prepare an analysis of the potential impact of the proposed concert venue on the spraying operations of the adjacent table grape growers to the west of the proposed development (Lots 1 and 9). A copy of this report can be provided to the Statutory Planning Committee on request. The purpose of the report is to detail the potential impact on spraying operations for table grape production to the west (Lots 1 & 2) of the proposed concert venue. The report considers three key factors including: the operator's legal responsibilities in relation to spraying operations, weather requirements for spraying particular products; and historical weather data as a guide to potential impact on spraying operations. The report also considers the application of both scheduled (poisonous) products and unscheduled products.

The report makes a number of findings, including:

- On nights where conditions are suitable for pesticide application and a concert were to be conducted, there would be no impact on the application of unscheduled products to the table grapes to the west of the proposed concert area.
- There would also be no impact on spraying operations for any other products when the wind is away from the proposed concert area (which occurs on approximately 50% of the time on nights suitable for spraying)

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- The only potential impact on spraying operations would be when a scheduled product needed to be applied during a concert event, and the wind direction is towards the concert area. In such instances the blocks adjacent to the boundary of Lot 2 would have to be sprayed outside the scheduled concert hours.
  - The scheduled products which may be affected include some insecticides and fungicides, and the application and efficacy of these would not significantly impacted by a delay in spraying of up to 12 hours.
  - There should be no impact on the efficacy of any product applied to the table grapes as a result of concerts being conducted.

In summary, the applicant has seriously considered the impact of the proposed concert venue development on the spraying operations of adjacent vineyards. This is notwithstanding that the legal liability to contain all spray products within lot boundaries remains with the landowner on whose land vines are being sprayed. The applicant has agreed mitigation measures (artificial barrier) with the City of Swan officers in consultation with the Department of Health, and has commissioned specialist advice in response to concerns raised by the City of Swan Council and SVPC. Based on the information provided it is very unlikely that the proposed concerts will impact upon the spraying operations of adjacent vineyards. Accordingly, it is considered the proposal is generally consistent with Objectives 1 and 3 of the SVP Act.

#### Detrimental Impact on Productivity

The SVPC considers that dust raised by vehicles driven across the unsealed car parking area which accumulates on grapes, in particular table grapes, adversely affects their marketability. The water used to settle dust will be sourced from existing licensed bores on the subject lots. The SVPC consider that the diversion of water allocations away from viticulture is detrimental to the viticulture industry and should be discouraged. The proposed use of water in this manner is contrary to the intention of Area B planning objective 2.

In response, this concern is acknowledged. The City of Swan has recommended that a condition be imposed for a dust management plan to be prepared and approved by the City prior to any event.

#### Rural character of the Swan Valley

A central consideration of the SVP Act is the protection and maintenance of the Valley's rural character. Area B planning objectives 3, 4, 6 and 10 require that due consideration be given to the protection of rural character. Area B planning objective 7 discourages land uses that are incompatible with the rural character and traditional agricultural activities of Area B. In addition, the purpose and intent of the Swan Valley Rural zone is to promote the area primarily as a horticultural, recreational, tourism and landscape resource with areas containing high quality horticultural soils receiving special attention. The SVPC consider that the application jeopardises high quality agricultural soils by changing a portion of the subject land to car park; and that the application detracts from the rural character and amenity of the area by the production of dust, noise and other pollutants.

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As noted, in September 2010 the WAPC granted a 5 year approval for Sandalford to hold up to 10 concert events per year. Concert events have also been held over a number of years at other venues in the Swan Valley, including Houghton Wines and Belviour Estate, with many other wineries hosting smaller concerts or featuring live music as part of their regular marketing promotions. Accordingly, it is considered that concert events are a land use that a visitor to the Swan Valley would expect to experience in such a rural tourism precinct. Questions of size and scale, and the resultant impact on rural character are difficult to assess objectively; as noted above, at this time no guidelines or policy has been finalised which would enable the size or scale of a proposed development to be objectively assessed against the objectives of the SVP Act.

In addition, Lancaster Wines is situated in what could be considered a recognised tourism precinct being in close proximity to the Margaret River Chocolate Factory and Yahava Koffee. This location is arguably preferable to other similar establishments which are surrounded by extensive areas of operational vineyards, and a much greater number of residences. For example, the applicant advises that there are approximately 200 residences within a 1km radius of Sandalford Wines, compared to approximately 20 residences within a 1km radius of Lancaster Wines.

Impacts relating to traffic management and amenity are noted. It is considered that though the imposition of relevant development conditions and statutory regulations (noise), that traffic, parking and noise impacts can be managed in a manner that minimises the impact on the rural character of the area. Prior to each event the applicant will prepare a traffic management plan, a noise management plan, an event management plan, dust management plan and a wastewater management plan to the specification of the City of Swan.

Following consideration of the above discussion, and having regard to the previous approval granted to Sandalford Wines, it is considered that the proposal is generally consistent with the Area B objectives 3, 4, 6 and 10 and is unlikely to significantly impact on the rural character and traditional agricultural activities of the area.

#### Concert venues in the Swan Valley

The SVPC has provided details of some other venues in the Swan Valley that host concert events. Sandalford Wines (47ha in area) has approval to host up to 10 concerts per year for up to 12,000 patrons at each concert. Belvoir (40ha in area) hosts concerts for up to 4,500 patrons. The amenity impact of concerts held at Sandalford and Belvoir is considered to be minimised due to the relative size of the host properties. Further, the SVPC notes that the Lancaster Wines operation on the subject site consists of only cellar door sales from a 'outdoor tasting shed', with the Lancaster wine being produced off-site by an independent winemaker. The SVPC notes that comparisons between Sandalford Wines and Lancaster are not directly relevant; however the following comments are pertinent. Sandalford Wines has a substantial winery operation and vineyard on site and the concert area is flanked by vines that are within the Sandalford landholding. Belvoir does not have any vines on site, however Belvoir is a long established function centre with a developed amphitheatre. The amphitheatre is approximately 500m metres from the Belvoir Homestead and approximately 900 metres from Great Northern Highway. The nearest residences are on the opposite bank of the river.

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Due to the size of Sandalford, the distance from adjoining vineyards, the location of the vines, the winery and the concert venue, Sandalford effectively has its own buffer and is able to manage the impacts of spraying on site. The SVPC contends that the proposed development is not consistent with Area B objective 6, and is inappropriate in terms of scale and impact.

In response, the size of the subject land relative to the proposed number of concert patrons is acknowledged. However, as noted Lancaster Wines is within a recognised tourism precinct and is not in proximity to density development. Concert events are to be held during the evening on a temporary stage with a dome backdrop. The concert area is situated in the north eastern corner of Lot 200 which is adjacent to the river. This structure including all seating, stage, marquees, shelters, temporary toilets and lighting equipment will be dismantled and removed from site following each event, with the exception of times when concerts are proposed over concurrent weekends. As noted above, issues of size and scale are difficult to assess objectively; no guidelines or policy has been developed which would enable the scale of a proposed development to be objectively assessed against the objectives of the SVP Act.

#### Timeframe for Approval

Consistent with the WAPC development approval issued to Sandalford Wines in 2010, it is recommended that any approval be limited to 5 years. Accordingly, it is considered the proposal to host up to 6 concert events each year for 5 years will have a minimal impact on the character of the area.

## **CONCLUSION**

The proposed development is generally consistent with the Area B objectives under the Swan Valley Planning Act. It is not disputed that the proposal will involve some amenity impact in the immediate locality on days on which a concert is being held. However impacts relating to amenity and traffic can be adequately managed by imposition of appropriate development conditions. The issue of spray drift and potential impact of the proposed concerts on spraying operations on adjoining vineyards has been investigated by the proponent. An artificial barrier will be erected on concert days when spraying is to occur. The research undertaken by the proponent's consultant indicates that there should be no impact on spraying operations as a result of concerts being held, and that even where a 12 hour delay occurred to spraying due to a concert, there should be no impact on the efficacy of any product applied to the table grapes.

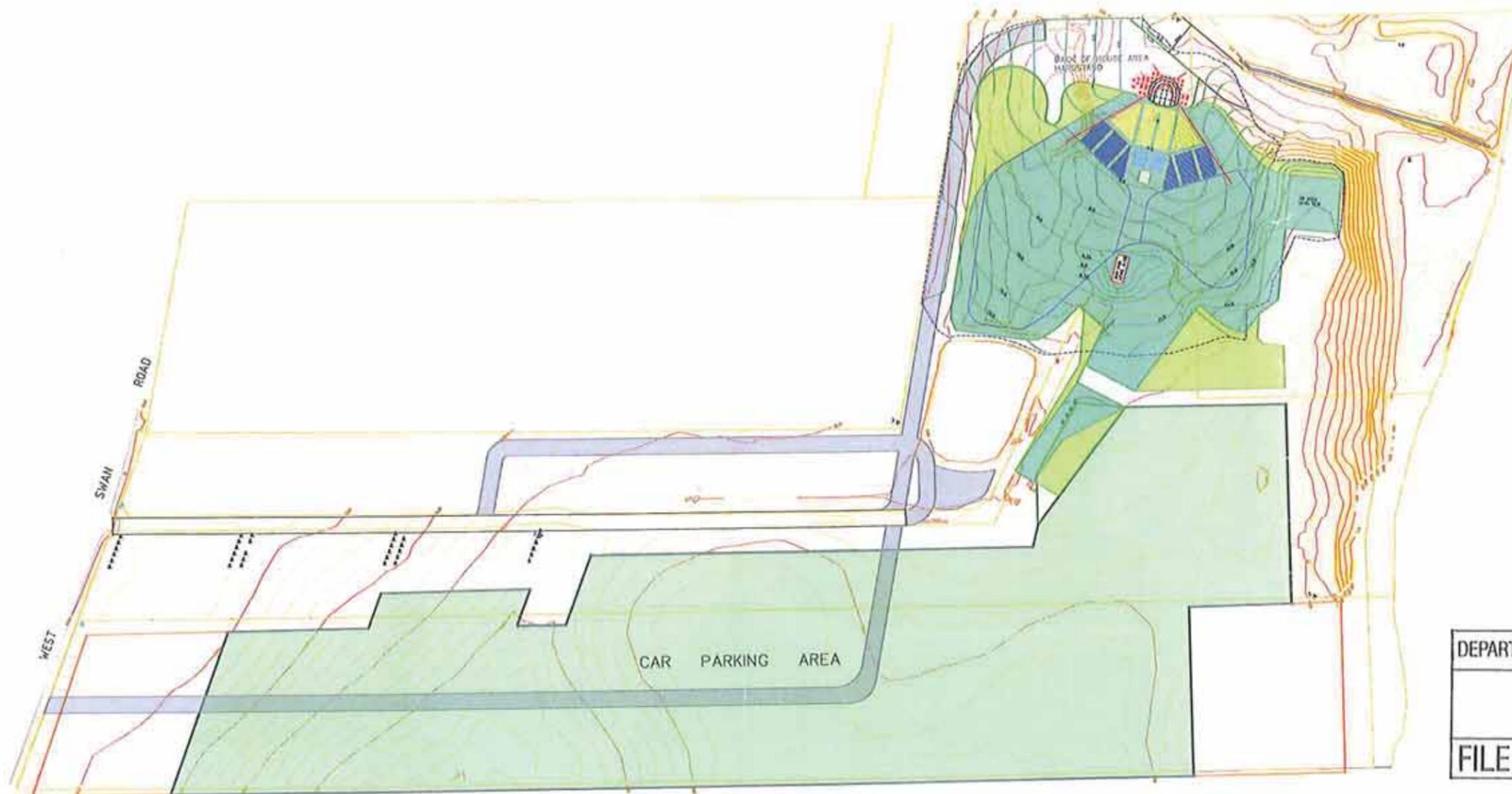
Issues of the size and scale of the proposed development cannot be objectively assessed in the absence of clear criteria under the SVP Act. A time limited 5 year approval will enable the City of Swan to monitor the impacts and management of the concerts, and will provide time for the SVPC, the City of Swan and the WAPC to finalise its strategic plan for the Valley and develop objective criteria against which a future development proposal may be assessed. If nuisance is recognised and recorded within the 5 year approval time limit, re-approvals are unlikely to be granted.

It is recommended that the application be approved for 5 years (from the date of approval) subject to conditions.

# LANCASTER WINERY CONCERT VENUE

WEST SWAN

WESTERN AUSTRALIA



DEPARTMENT OF PLANNING
4 AUG 2011
FILE 21-50177-2



20 100 200  
 scale : 1: 2000 metres  
 date : 6 July 2011  
 dwg No: LW-SITE-02

## OVERALL SITE LAYOUT PLAN



# LANCASTER WINERY CONCERT VENUE

WEST SWAN

WESTERN AUSTRALIA

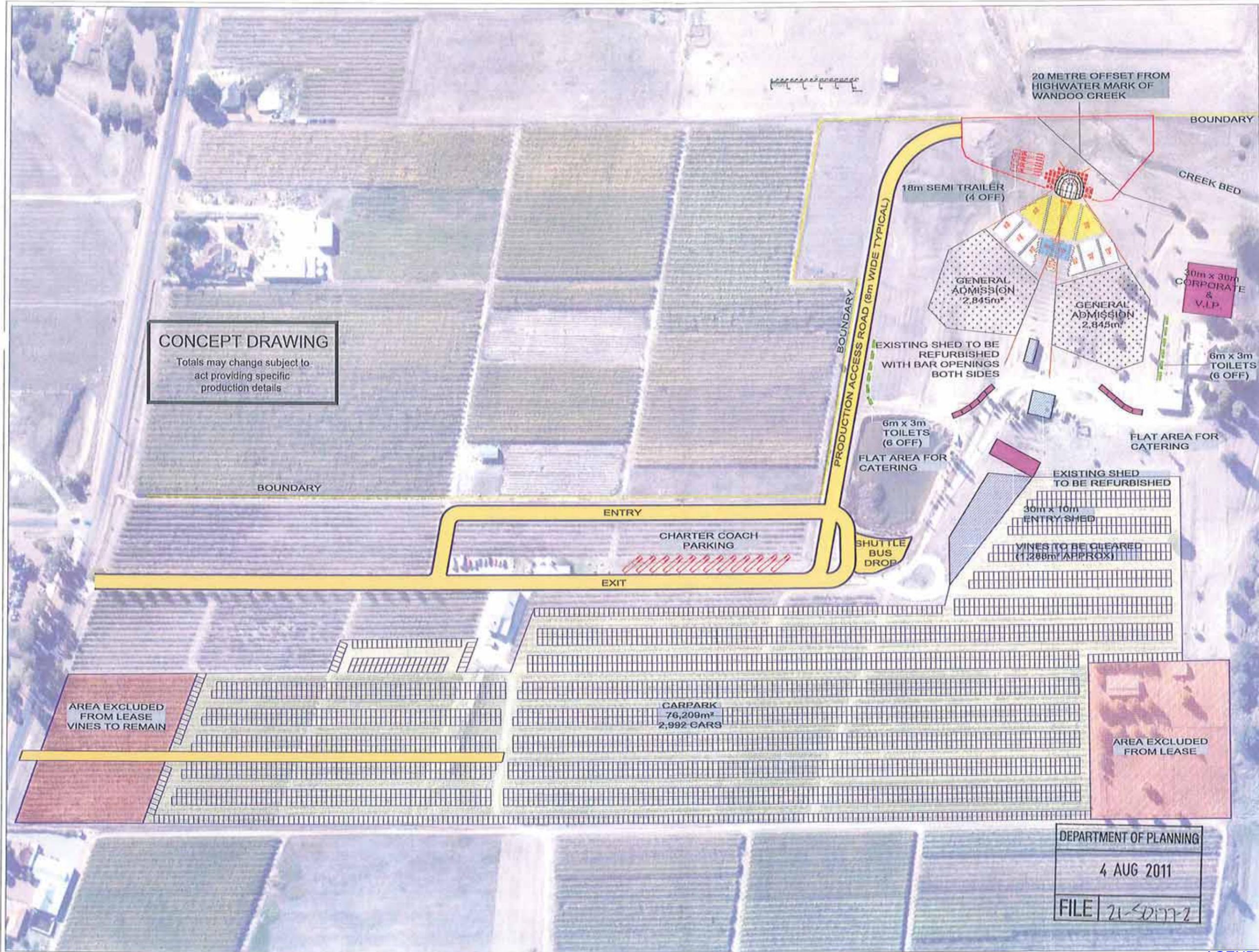


 **MICHAEL COATE**  
GOLF DESIGN  
100/1000 South Beach Rd, West Perth, WA 6005  
Tel: (08) 9437 0000  
www.michaelcoategolf.com.au

5 25 50  
scale : 1: 500 metres  
date : 6 July 2011  
dwg No: LW-AR-02

Area of Turf under Irrigation: 29,191 m<sup>2</sup>  
Area of Solid Turf to be Laid: 21,621 m<sup>2</sup>  
Area of Back of House: 2,574 m<sup>2</sup>  
Area of Proposed Roads: 11,054 m<sup>2</sup>

## AREAS OF TURFGRASS, ROADS & HARDSTAND



**CONCEPT DRAWING**  
 Totals may change subject to act providing specific production details

Total Seats on Ground  
**3,324**

Total GA  
**4,740**  
 Based on 1.2 sqm per Person

**Note:**  
 This plan is for Discussion Purposes ONLY. It is not intended to sell tickets from.  
 Plan is subject to Approval by the Venue and all the Relevant Authorities.

AREA EXCLUDED FROM LEASE VINES TO REMAIN

CARPARK  
 76,209m²  
 2,992 CARS

AREA EXCLUDED FROM LEASE

DEPARTMENT OF PLANNING  
 4 AUG 2011  
 FILE 21-50177-2

Project: 500m x 1m BTB  
 Lancaster Winery  
 Western Australia  
 Drawing:  
**Seating Plan**  
 Date: 6.7.11  
 Revision: 09  
 Scale: 1:1000 @ A1 Size

# LANCASTER WINERY CONCERT VENUE

WEST SWAN

WESTERN AUSTRALIA

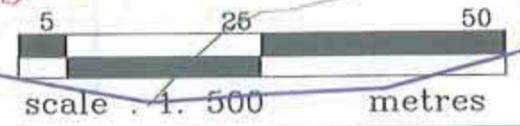
No modifications to the embankment are to occur due to requirements of the Department for Indigenous Affairs

VIP AREA  
LEVEL 12.0

BAR PAD  
LEVEL 9.125

DEPARTMENT OF PLANNING
4 AUG 2011
FILE 21-S/177-2

## VENUE GRADING PLAN



date : 8 July 2011  
dwg No: LW-GRAD-03

# LANCASTER WINERY CONCERT VENUE

WEST SWAN

WESTERN AUSTRALIA

No modifications to the embankment are to occur due to requirements of the Department for Indigenous Affairs

VIP AREA  
LEVEL 12.0

BAR PAD  
LEVEL 9.125

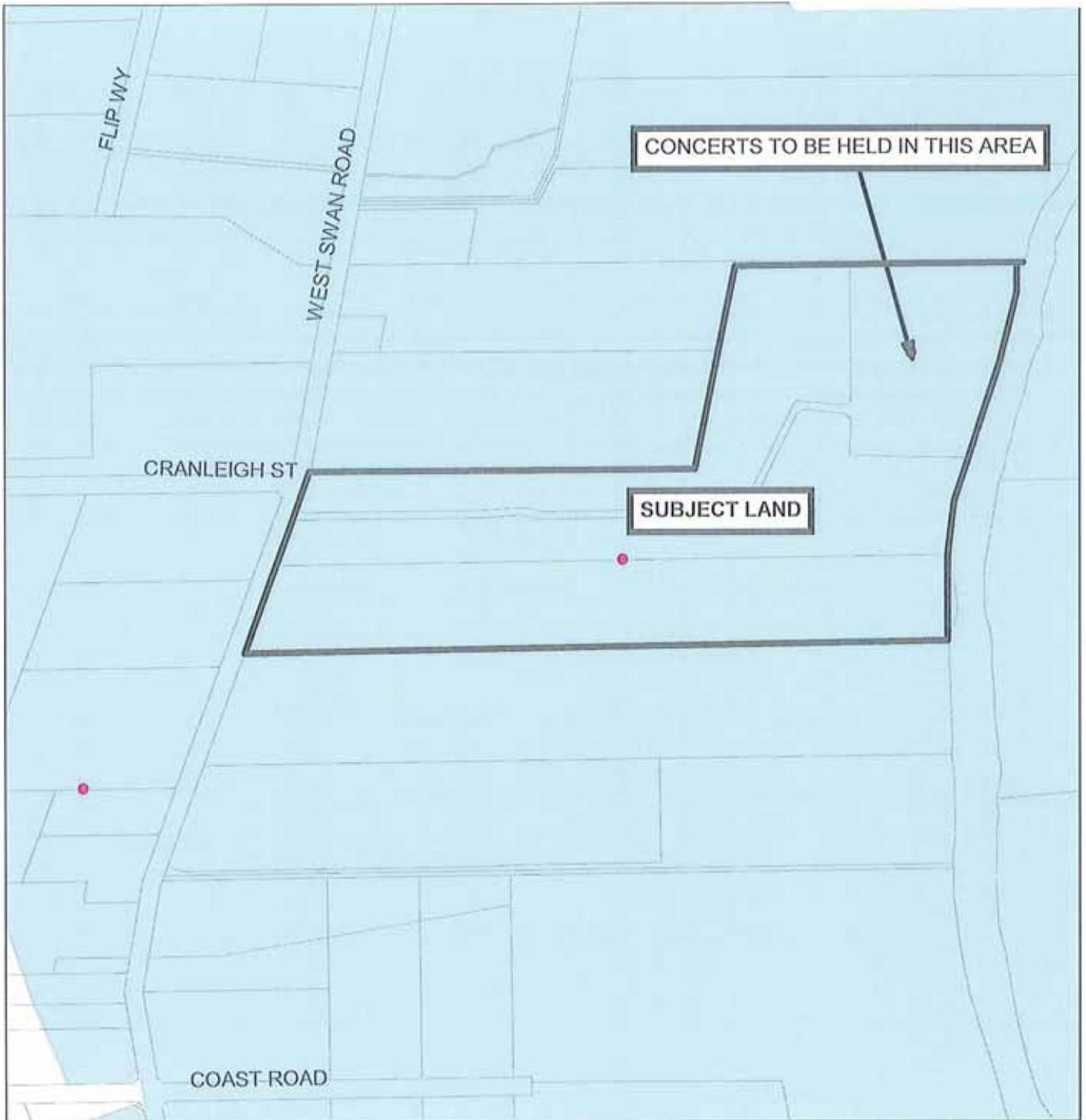
DEPARTMENT OF PLANNING
4 AUG 2011
FILE 21-50177-2

MICHAEL COATE  
ARCHITECTURE  
DESIGN

scale : 1 : 500 metres

date : 8 July 2011  
dwg No: LW-GRAD-03

## VENUE GRADING PLAN



-  Cadastre with Lot Numbers
-  Area B - Primary Production Area

0 Scale 1:6,500 125 m

Prepared by: rcull  
Prepared for:  
Date: Thursday, March 15, 2012 09:58  
Plot identifier: P20120315\_0958



Government of Western Australia  
Department of Planning

**DP INTERNAL USE ONLY**



## DECISION SHEET

Record of Advice Given or Report Made

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### Swan Valley Planning Committee

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Record of advice given in accordance with Section 24 (1) and (2) of the *Swan Valley Planning Act 1995*

**195.9.1 Proposed Outdoor Concert Venue At Lancaster Winery**

File 21-50177-2  
Report Number SVPC/85  
Reporting Officer Senior Planning Officer

The committee does not support the recommendation as it contravenes with planning objectives 1, 2, 3, 4, 6 and 10 of Area B of the Swan Valley Planning Act 1995 and clauses 3 and 4 of paragraph 5.2.1 of the Statement of Planning 2.5. It is not compatible with the rural character and amenity of the area and, in accordance with Planning Objective 7, should be discouraged.

The Committee, therefore, resolves to recommend that the development application not be approved.

#### Officer's Recommendation

That the Swan Valley Planning Committee resolves to support the proposed development of an outdoor concert venue at Lancaster Wines subject to the Western Australian Planning Commission (WAPC) and the City of Swan imposing relevant conditions to manage impacts relating to traffic, noise, amenity and potential land use conflict with adjacent vineyards.

#### Resolved

*Moved by Ms Taylor seconded by Mr Vuleta*

*The proposed outdoor concert venue at Lancaster Wines contravenes with planning objectives 1, 2, 3, 4, 6 and 10 of Area B of the Swan Valley Planning Act 1995 and clauses 3 and 4 of paragraph 5.2.1 of the Statement of Planning Policy 2.5. It is not compatible with the rural character and amenity of the area and, in*

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## DECISION (CONT.)

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*accordance with Planning Objective 7, should be discouraged.*

*The Swan Valley Planning Committee recommends that the development application not be approved.*

*The motion was put and carried.*

**This decision sheet has been forwarded to you as the officer responsible for the report.  
It is your responsibility to commence any action required in relation to this decision including contacting any other officer who may need to action it.**

AUTHORISED OFFICER: Dominic White  
DATE OF DECISION: 02 February 2012

## EXPLANATION

The principal issue to be decided by the Swan Valley Planning Committee (the Committee) is whether the proposal for a 'place of assembly' to be used as an outdoor concert venue meets the planning objectives for Area B of the *Swan Valley Planning Act, 1995* (the Act).

The question of whether the application for concerts should be approved is not within the purview of the Swan Valley Planning Committee. It is a matter for decision by the City of Swan and the WA Planning Commission. The Committee's brief is restricted to planning issues.

The pertinent planning objectives for Area B as described in s.8 of the Act are:

1. The protection of viticulture;
2. The provision of water for viticulture and horticulture and the discouragement of activities that have high water demands;
3. The encouragement of tourist facilities provided that they do not detract from the rural character of the area;
4. The encouragement of traditional activities of the Swan Valley and industries associated with viticulture, horticulture and cottage industry provided that they are compatible with the rural character of the area;
6. The compatibility of design, siting and landscaping with the character of the area;
7. The discouragement of uses that are incompatible with the rural character and traditional agricultural activities of that area; and
10. The avoidance of overstocking, of activities causing pollution or degradation of the environment and of any other land management practices detrimental to the amenity of the area.

The general planning objectives for the Swan Valley as described in s.6 of the Act, also are pertinent:

The general planning objectives of the Swan Valley are the encouragement of the traditional agricultural and other productive uses of the area that complement its rural character, the protection of the environment and character of the area, the reduction of nutrient levels in the Swan River and the promotion of tourism that complements the rural character of the area.

Those objectives must be read with the Policy Measures for a Priority Agricultural Zone as recommended in the *Statement of Planning Policy No.2.5, (previously No.11), Agricultural and Rural Land Use Planning* (Government Gazette, Tuesday 12 March 2002, No 42). The government's stated general objective of that policy regarding productive agricultural land is that 'the exercise of planning powers should be used to protect such land from those development activities or influences that lead to its alienation or diminished productivity, while always accepting the need for land for expanding urban areas and other uses of State significance.' (Government Gazette, 12 March 2002, No 42, section 2, p. 1009)

The Policy is focused upon the long-term protection and support for agriculture. It identifies the Swan Valley as a "Priority Agriculture Zone", that is, an agricultural area of State or regional significance. The Department of Agriculture identifies the majority of the application site as having high land capability for both vines and for annual horticulture. (Department of Agriculture, Soil Landscape Mapping, November 2009)

Amongst other provisions for local planning schemes recommended for Priority Agricultural Zones by *Planning Policy No.2.5 (previously No.11)*, the following are directly relevant to the Swan Valley:

- (ii) In the "Priority Agricultural" zone the following land uses should be permitted: agriculture-intensive, agriculture-extensive and a single dwelling. The following should be discretionary uses: animal husbandry-intensive, industry-rural, industry-extractive and farm worker's accommodation.
- (iii) The town planning scheme should make provisions to minimize the impact of adjoining uses on the "Priority Agriculture" zone that may restrict or conflict with the continued use for agriculture.
- (iv) Town Planning scheme provisions may be appropriate within the "Priority Agriculture" zone to allow small farm stay, chalets, and bed and breakfast, where they are incidental uses to the primary agricultural use of the land. All impacts associated with these tourist activities must be contained on site. (para 5.2.1, p.1011)

Those principles are reflected in the permitted, discretionary and authorised land uses in the Swan Valley Rural Zone of the City of Swan *Local Planning Scheme No. 17* (Gazetted: 18 February 2008).

When read together, the general planning objectives for the Swan Valley, the specific planning objectives for Area B, the guidelines for Priority Agricultural Zones under *Statement of Planning Policy No.2.5 (previously No.11)*, and Local

Planning Scheme 17, indicate the following principles as relevant considerations for the assessment of the proposed outdoor concert venue at Lancaster Winery:

- Priority is given to the protection and encouragement of the traditional agricultural activities of the Swan Valley, notably viticulture;
- Restrictive impacts of tourism amenities and services upon viticulture and horticulture are to be minimized; and
- Facilities or services for tourism should not detract from the rural character or the amenity of the Swan Valley.

Development proposals which offend against these principles should be discouraged.

## THE PROTECTION OF VITICULTURE

The proposal requires the removal of 7.6 hectares of vines on Lot 3 for the provision of 2,992 unpaved car bays. The applicant contends that the vines are diseased and, on the recommendation of the Department of Food and Agriculture, must be removed. A further unspecified area of vines will be removed on Lot 2 for the provision of transit bus parking and internal roads for vehicular access to and egress from the concert venue and a 'back of the house' hardstand area. The applicant contends that these vines also are diseased.

The Committee has been advised that the vines on Lot 3 are of the shiraz variety, grafted onto existing old stock by the current owner some 7 years ago. In the past four years, these vines have not been attended to because shiraz grape production is unprofitable. The vines have been subject to seasonal infestations of powdery mildew and downy mildew. The recommendation for their removal was at the complaint of the adjoining landowner of Lot 37 that fungal infections of the vines on Lot 3 could be transmitted to his vineyard, and that he would prefer that the vines be removed than to have them untended and infecting his vines.

The Committee observes that both fungal infestations, powdery and downy mildew, are readily controlled by appropriate canopy management and the application of fungicidal sprays before and during infestation.

The removal of vines does not require planning approval. Their removal, particularly for the purpose of providing internal roads and parking for a concert venue, is unfortunate, but at the sole discretion of the landholder.

Even though the removal of vines is contrary to Planning Objective 1, the Committee can only bring their concerns to notice.

## RESTRICTIVE IMPACTS UPON VITICULTURE

✧ Restrictive impacts between the proposed outdoor concert venue and vineyards in the vicinity may be considered as of two kinds; those which inhibit standard viticulture practice, and those which have direct and detrimental impact upon productivity.

### Viticulture Practice

The applicant proposes that the primary matter for consideration is potential conflict caused by spraying affecting concert goers. He contends that will be unlikely because of the timing of concerts (held on four to six Saturday or Sunday evenings between October and April), and that a common boundary exists only with Lot 9 West Swan Roads.

The Committee observes:

- a. That the proposed concert venue and parking area has common boundaries with Lot 37 to the South and lots 1 and 9 to the North and West;
- b. Lots 1, 9 and 37 are under permanent cultivation for table grapes, and are among the most productive in the Swan Valley;
- c. Depending upon seasonal conditions, spraying vines with pesticides, fungicides or other specific-purpose chemicals may be carried out intermittently from September until May.
- d. Growers spray their crops when necessary, not always at their own convenience or forward planning, regardless of time of day;
- e. Commonly used sprayers in Swan Valley vineyards (*Turbo Miser* and *Air Blaster*) discharge a plume which may have a diameter of at least six metres, depending upon purpose and type of chemical used;
- f. The recommended vegetative buffer zone of trees and shrubs around or within vineyards to minimize the impact of spraying should be at least 40 metres wide with 20 metres planted with trees. (*Environmental Guidelines for Vineyards 2011*, p.21)

There are no vegetative buffer zones between the subject Lot 2 and the adjoining Lots 1 and 9. Productive vines abut the boundaries of all three lots. At present, lot 3 has 7.6 hectares of neglected vines which are to be replaced by the unpaved car park. Productive vines on Lot 37 abut the proposed car park.

The applicant proposes to erect a temporary artificial barrier with a porosity of 50% and a height of 1.8 metres along the western boundary of Lot 2 abutting the eastern boundaries of Lots 1 and 9. No treatment is suggested between the southern boundary of Lot 3 and the northern boundary of Lot 37.

The Committee contends that the artificial barrier proposed is inadequate and conflict arising from spraying, even though the probability may be low, is real.

Conflict between the concert venue and adjoining vineyards exposes growers to injunctions against spraying during specified periods before and during and after concerts. Even the possibility of such conflict inhibits the willingness of growers to pursue standard viticulture practices essential to the prosperity of their enterprises.

An untested concern is the civil liability of adjoining growers for injurious affect of spraying upon persons associated with concerts held at the venue. It is possible that litigation may be initiated by the venue owner, the concert promoter or concert-goers for injurious financial, physical or health impacts. The liability of growers for accidental impacts is untested, but of concern to the industry.

Other potential nuisances are odour and dust from standard viticulture practices and noise and light from machinery used at night. Noise from tractors, sprayers and other equipment used in viticulture is loud, constant, and unavoidable. It also can be intrusive and pervasive upon adjoining properties. Similarly, fugitive light from agricultural machinery used at night can, under prescribed circumstances, be deemed an environmental nuisance,

Prosecution against offending grape growers can be initiated on the complaint of any 3 or more persons occupying premises affected by noise pollution. An authorized officer may issue abatement notices upon offending grape growers and, in the event of their not complying, may seize their equipment.  
(*Environmental Protection Act, 1986*, ss. 80 and 81A)

Standard viticulture practices are not environmental nuisances until there are complainants against them. An outdoor concert venue in the locality proposed and in such close proximity to productive vineyards opens a potential for complaint and the conversion of standard viticulture practice into environmental nuisance.

Again the probability of complaint and prosecution might be small, but it is real.

**Potential negative impacts of the proposed outdoor concert upon vineyards in the locality are at variance with Planning Objectives 1 and 3.**

Productivity and Water Allocation

Dust raised by vehicles driven across bare ground in close proximity to vineyards, in this instance the unpaved car park immediately adjoining Lot 37 and internal roads adjoining lots 1 and 9, and accumulating on grapes, in particular table grapes, has an adverse affect upon their marketability.

The applicant acknowledges that there is a likely impact of dust raised by vehicular traffic within the venue upon adjoining vineyards, and suggests this will be ameliorated by growth of natural grasses and watering unsealed access roads to the car park as part of a management plan of conditional development approval.

The applicant advises that the water to be used to settle dust will be sourced from an existing licensed allocation across the subject Lots 2, 3 and 200. The proposed hard-turfed amphitheatre comprising 29,919m<sup>2</sup> also will be irrigated from the same licensed water allocation. The Committee has concern about that strategy.

Planning Objective 2 requires the provision of water for viticulture and horticulture and the discouragement of other activities that have high water demands. That is compounded by the over-allocation of water from the Gnangara Mound and the Department of Water's 'use-it-or-lose-it' policy directed at reducing the allocation for viticulture in the Swan Valley by 20%.

Any diversion of water allocations from viticulture to other uses is detrimental to the viticulture industry across the whole of the Swan Valley, and, in accordance with Planning Objective 2, should be discouraged.

**The proposed diversion of water allocated for viticulture to other uses on the subject lots is contrary to the intention of Planning Object 2.**

## **THE RURAL CHARACTER OF THE SWAN VALLEY**

The Swan Valley is designated a priority agriculture zone by statute, public policy and local planning regulations. Traditional agricultural activities, notably viticulture and horticulture, are afforded priority by each of those measures.

A central consideration of the Act is the protection and maintenance of the Valley's rural character. Different emphases are afforded that objective in each of the planning areas A, B and C. Whereas Area A is focused on rural character that is aligned with residential use, and Area C is focused on the establishment of a wide range of agricultural activities that are compatible with the rural character of the area, Area B is the priority viticulture and horticulture area of the Swan Valley. Planning Objectives 3, 4, 6 and 10 for Area B require that due consideration be given to the protection of its rural character. Planning Objective

7 discourages land uses that are incompatible with the rural character and traditional agricultural activities of Area B.

Reference to rural character is a reference to the identity of the Swan Valley and

- comprises a visual landscape that is compatible with viticulture in particular, and
- has regard to its current and historical land use configuration, physical characteristics, environmental and heritage values.

Those principles are reinforced by the City of Swan policy for building and development standards in the Swan Valley Rural Zone (i.e. Area B of the Act). The application site is located within the Swan Valley Rural Zone. The objective of this policy is to "ensure that the development of land within rural areas is consistent with the principles of proper and orderly planning and furthers the objectives of the relevant zone." (City of Swan, POL-TP-126, section 1, p.1) This City of Swan policy amplifies the development conditions applicable to the Swan Valley Rural Zone and states, "The purpose and intent of the Swan Valley Rural Zone is to promote the area primarily as a horticultural, recreational, tourism and landscape resource, with areas containing high quality horticultural soils and high quality plastic clays receiving special attention".

Having regard to the purpose and intent of the zone, the policy requires the application of the following guidelines when dealing with applications for approval to commence development or otherwise planning for development within the zone:

- "a) The Council shall not approve of any development where, in its opinion, such development would:
  - (i) conflict with the planning objectives of Area B as specified in the Swan Valley Planning Act
  - (ii) jeopardize high quality horticultural soils:"and
  - (iv) detract from the rural character and amenity of the area; or
  - (v) cause any nuisance by the production of noise, dust, smell, or other pollutants." (City of Swan, POL-TP-126, section 2.9, p. 10)

It is contended that the Lancaster application fails on each of the above criteria as follows:

- The application jeopardizes high quality agricultural soils changing its use from agriculture (viticulture) production to car park in support of the proposed use "Place of Assembly";
- The application detracts from the rural character and amenity of the area by the development of the proposed site and the holding of large outdoor concerts which will cause a nuisance to existing residents and patrons by the production of noise, dust and other pollutants (viz. visual intrusion from

the concert related activities including lights from the concert venue and potentially 3,000 vehicles at night).

The large scale of the proposed use has the potential to detract from the purpose and intent of the zone and is not compatible with the rural character of the locality.

## CONCERT VENUES IN THE SWAN VALLEY

Several outdoor concert venues already exist in the Swan Valley Area B. The largest of them, Sandalford, caters for audiences of up to 12,000 people. When the Swan Valley Planning Committee considered the development application for a 'Place of Assembly' on 22 June 2009, it did not support the proposal. Sandalford had hosted a number of concerts under special approval for 10 years before it was granted planning approval as a 'Place of Assembly' after appeal to the State Administrative Tribunal.

The Belvoir Amphitheatre caters for audiences of up to 4,500 and is associated with a reception centre which preceded the Swan Valley Planning Act. Other venues, such as Houghton and Upper Reach, cater for much smaller audiences of occasional visitors, or as musical entertainment during special events like 'Spring in the Valley'.

The applicant draws comparisons between the proposal for Lancaster Wines and the existing venue at Sandalford. The differences are instructive:

Venue	Lot Size	Maximum Audience	Concerts per Year
Lancaster	21 hectares	8,000	6
Sandalford	47 hectares	12,000	10
Belvoir	40 hectares	4,500	10

Belvoir is not a vineyard, but has productive vineyards near its southern boundary. It is an historic property with a homestead built shortly after the establishment of the Swan River Colony. The concert venue is a developed amphitheatre which runs down to the left bank of the Swan River and is located the behind the reception centre. The amphitheatre is separated by distances of approximately 500 metres from Belvoir Homestead to North and 900 metres from Great Northern Highway to the East. The nearest residences are located on the opposite bank of the river. When noise levels are anticipated to exceed prescribed standards, concerts may be conducted only with approval from the City of Swan under Regulation 18 (Environmental Protection (Noise) Regulations).

Sandalford is one of the larger commercial wineries in the Swan Valley. It has a long-established vineyard, but the primary land use is a winery with an ancillary restaurant. Ten hectares of vines were removed to make room for a temporary car park, but the majority of the land not used for the winery, restaurant and concert venue is under well maintained vines. The bulk of juice used in wine production on site is sourced from the company's Margaret River vineyards.

Lancaster Wines is a vineyard with cellar door sales from what its promotional material presents as an 'outdoor tasting shed'. There are neighbouring vineyards producing table grapes located on the southern, northern, part of the western boundaries and Houghton Wines on the opposite bank of the Swan River. The company's wines are produced off-site by an independent wine maker and bottled under the Lancaster Wines label. The western portion of Lot 2 fronting West Swan Road is under well-maintained vines. The eastern portion of Lot 2 and Lot 200, together comprising the site of the proposed concert venue, contain only remnant vines. The site of the concert venue is almost wholly situated below the 7 metre contour running down to the right bank of the Swan River and forms part of the flood-fringe of the 100-year flood plain of the Swan River. It is subject to inundation during exceptional flood events.

Comparisons between Sandalford and Lancaster are not directly relevant to the Committee's deliberations, but were raised in the development application and in oral presentation by the proponents to the Committee at its meeting on January 23 and must be addressed. Such comparison does not favour the Lancaster proposal.

The pertinent different land use of the existing concert venue at Sandalford and that proposed for Lancaster relate to the relative sizes of the host properties; management of spraying and noise; impacts upon adjoining properties; and their compatibility of design, siting and landscaping with the character of the area.

- The Sandalford venue located in the south-eastern corner of the property behind the winery and restaurant has not diminished the primary viticulture activities on the property; the Lancaster venue takes up more than half of the property as well as the bulk of the adjoining Lot 3 to be developed as a car park, and will diminish significantly the current viticulture enterprise.
- Sandalford vineyard, winery, restaurant and concert venue are owned by a family company who can exercise maximum control over conflicting operations between concerts and viticulture practices; Lancaster Wines and the proposed concert venue also will be owned by a single company, but because of the size of the property and the proximity of adjoining vineyards, Lancaster has no direct control over conflict between concerts and neighbouring viticulture activities.
- Neither Sandalford nor Lancaster can manage noise pollution from concerts. Under conditions where excess noise is anticipated, they will be

able to operate only under regulatory approval. That is a matter for decision by the City of Swan, but the Committee observes here that noise pollution from concert performances does not enhance the ambience of the Valley.

Because of the size of the property, distance from adjoining vineyards, the location of vines, the winery and the concert venue, Sandalford effectively has its own buffer zone and is able to manage impacts of spraying on site; as discussed above, spraying on adjoining vineyards is problematic for the Lancaster concert venue and for offending landowners.

- The concert venue at Sandalford is a naturally occurring grassed amphitheatre. No additional construction was required to accommodate the concert venue. Other facilities at Sandalford have been developed to a high standard; the restaurant and winery reception area are of a rustic style construction which complements the rural character of the locality; hardstand areas are red oxide bitumen and are screened by well maintained landscaping.

The development proposal for Lancaster Wines requires the following works:

- site-recontouring and subsequent turfing to create an amphitheatre;
- a new hardstand 'back of house' area;
- construction of a 30m x 10 m shed (for entry/ticket collection/security check purposes), which also contains a small 'box' office; and
- new vehicle access (entry and exit) routes, including a new road to the 'back of house' hardstand area.

The development proposal offers limited specifications for these works and their compatibility with the rural character of the area cannot be judged.

**The Committee has insufficient information to judge whether the design of proposed new buildings and ancillary constructions for the concert venue meet the requirements of compatibility with the character and amenity of the area, but the scale and location of the proposed venue is not consistent with planning objective 6.**

## **CONCLUSION**

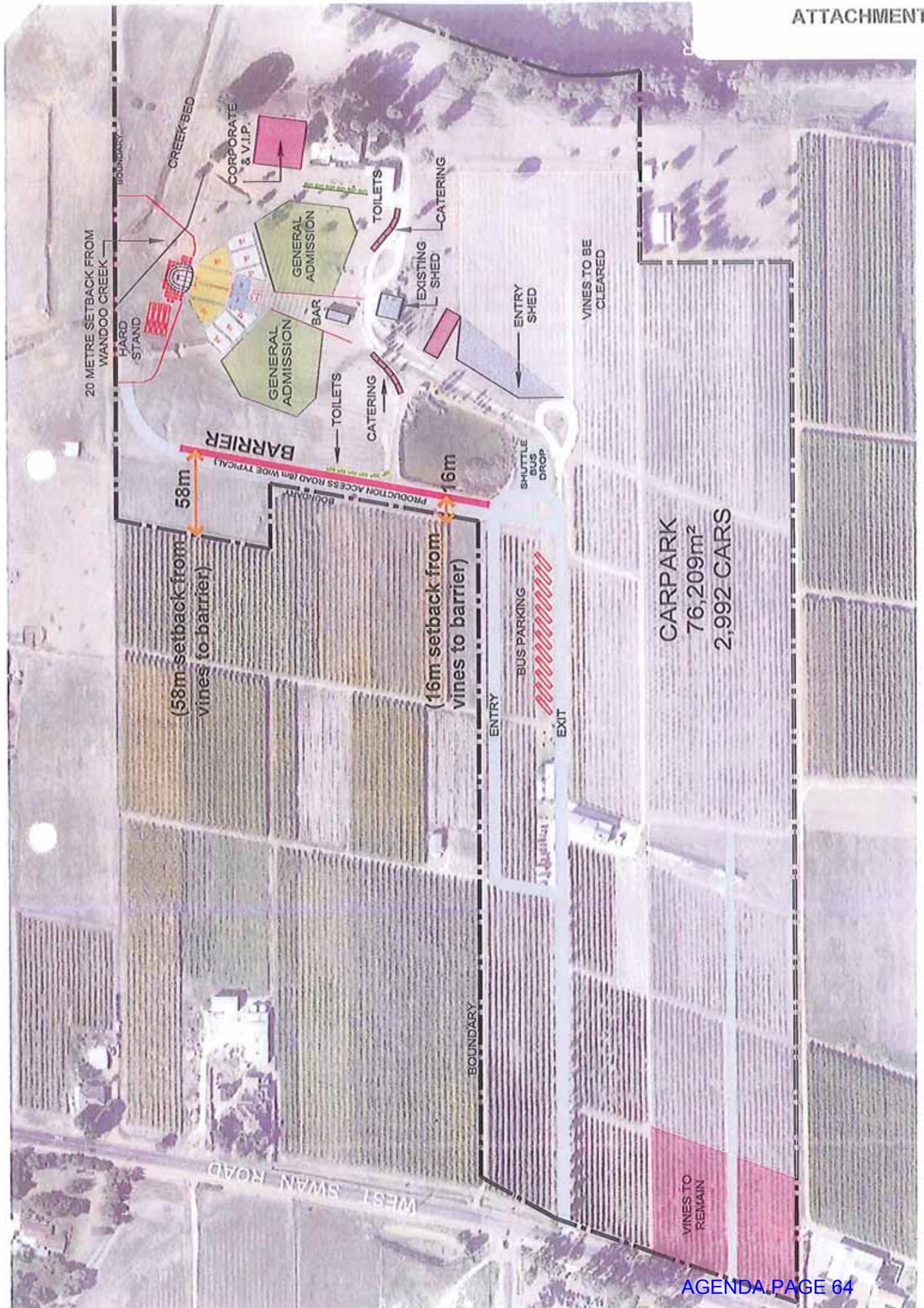
The Swan Valley Planning Committee supports the 'vertical integration' of other land uses with viticulture and particularly tourist facilities as outlined in planning objective 3 for Area B:

- "3. The encouragement of tourist facilities provided that they do not detract from the rural character of the area."

The test for such proposals could be scale and impact. Scale could be determined when the tourist facility becomes the dominant use either in its physical expression or its economic impact relative to the base land use of agriculture.

Impact can be considered where the tourist facility has a detrimental effect on viticulture both within and without the property and has adverse external impacts in terms of traffic, noise, amenity and the like.

The current proposal is considered as inappropriate both in scale and impact.



20 METRE SETBACK FROM WANDOO CREEK

CREEK BED

CORPORATE & V.I.P.

GENERAL ADMISSION

GENERAL ADMISSION

BAR

TOILETS

CATERING

EXISTING SHED

ENTRY SHED

VINES TO BE CLEARED

BARRIER

58m

(58m setback from vines to barrier)

16m

(16m setback from vines to barrier)

PRODUCTION ACCESS ROAD (6m WIDE TYPICAL)

SHUTTLE BUS DROP

CARPARK  
76,209m<sup>2</sup>  
2,992 CARS

BUS PARKING

ENTRY

EXIT

VINES TO REMAIN

BOUNDARY

WEST SWAN ROAD