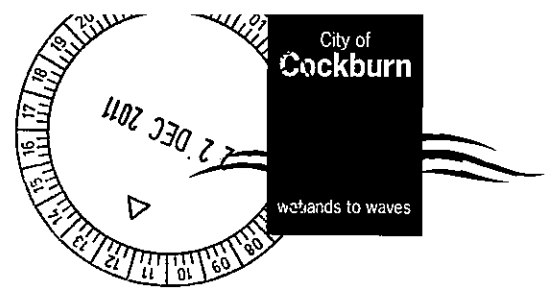


Inquiries: Andrew Trosic – 9411 3675
Our Ref: SM/M/015
Your Ref: Petition 136



21 December 2011

Standing Committee on Environment and Public Affairs
Parliament House
St George's Terrace
PERTH WA 6000

Attention: Hon Brian Ellis MLC

(Also via email dwong@parliament.wa.gov.au)

**PETITION NO. 136 - KWINANA AIR QUALITY BUFFER ZONE
EXTENSION (MANDOGALUP)**

I refer to your letter dated 24 November 2011 regarding the petition received regarding the Kwinana Air Quality Buffer Zone Extension. Please find the following response from the City of Cockburn ("City").

The three questions you have asked are quite specific, and answering only them may not necessarily provide a useful overview to the key issue of the RDA buffer. The City certainly understands the complexities associated with buffers, and has taken this opportunity to expand a little further in answering the three questions. The City has also referenced the recent State Administrative Tribunal decision in respect of *Wattleup Road Development Company Pty Ltd and Western Australian Planning Commission (2011) WASAT 160* - this is a relevant decision to read in respect of the questions you are asking. This is available via www.sat.justice.wa.gov.au. The City gave evidence in this case on behalf of the applicant, and would see the judgement as useful to further explaining this matter.

The City believes the way in which the RDA buffer has been handled has not been optimal, and has created challenges in terms of what was understood to be a supported planning direction for development within the City, specifically the locality of Wattleup. Please note the following comments in this respect:

1. Please advise whether the RDA Buffer is reflected in the City's planning framework. If not, when is this anticipated to occur?

The RDA Buffer is not reflected in the City's planning framework. But to make this point more correct, the City's planning framework (and the State Government's planning framework for that matter) has not shown land within the urban planned localities of Wattleup or Hammond Park to be affected by an RDA buffer. On the contrary, significant strategic planning for these localities by the City and WAPC for many years has identified urban development (and specifically residential development) as a desired form of development to take place.

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This point was noted at Paragraphs 19 to 21 of WASAT 160:

- 19 *The town planning experts who gave evidence, Mr Trefry, Mr Andrew Trosic, the City's Manager of Strategic Planning, who was also called by the applicant, and Mr Andrew Trevor, a Principal Planning Officer with the Department of Planning, who was called by the Commission, gave the following joint evidence:*

The subject land has consistently been designated for residential development in strategic planning documents produced by the WAPC, the Department of Planning, City of Cockburn and landowner and their predecessors since 1987. These include:

- SW Corridor Structure Plan 1993*
- Jandakot Mandogalup District Planning Study 1993*
- Southern Suburbs District Structure Plan 1999*
- Southern Suburbs District Structure Plan - Stage 3 Hammond Park/Wattleup*
- Local Structure Plan - Lots 121/122/801 - Wattleup Road - 2008*

The subdivision application for Lots 121, 122 and 801 is consistent with the 2005 Southern Suburbs District Structure Plan - Stage 3 Hammond Park/Wattleup and the Local Structure Plans approved by the City of Cockburn for the subject land.

- 20 *The proposed subdivision is also consistent with the Development zoning of the site under TPS 3 and the Urban zoning of the site under the MRS. As noted earlier, the Urban Deferred classification was 'lifted' as recently as 30 October 2008.*
- 21 *Subject to the weight to be given to the definition of an offsite buffer under State Planning Policy No. 4.1 - State Industrial Buffer Policy (SPP 4.1) (see below), the proposed subdivision is consistent with the strategic and statutory planning framework for the site. Such a finding would usually be a powerful and compelling consideration in deciding whether to grant subdivision approval in the exercise of planning discretion. However, consistency with the strategic and statutory planning framework does not set aside environmental planning considerations in cases where they properly arise for consideration in a planning assessment. In particular, consistency with the planning framework does not negate the precautionary principle in circumstances where it applies.*

In giving evidence in this matter, the joint evidence the City gave in conjunction with Mr Andrew Trevor of the Department of Planning and Mr Tim Trefry for the applicant was that land within the urban locality of Wattleup had consistently been identified for urban residential development. In other words, no buffer had been contemplated for such land.

This was until the decision of the WAPC in September 2010, which was communicated by way of letter dated 4 October 2011. This point came under careful consideration of the Tribunal as follows:

- "1 *This case concerned an application for review of the refusal of a residential subdivision application in Hammond Park. The site is approximately 1.2 to 1.7 kilometres north-east of the edge of a property*

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used for drying and disposal of bauxite residue resulting from alumina production in the Kwinana Industrial Area. The site is also located proximate to a large sand quarry. The Urban Deferred classification of the site under the Metropolitan Region Scheme was lifted on 31 October 2008.

- 2 The resolution of the matter ultimately involved the balancing, in the exercise of planning discretion, of the following two considerations:
 - (a) A finding that the proposed subdivision is consistent with the long-term strategic and statutory planning framework for the site, which would usually be a powerful and compelling consideration in favour of approval of the proposal; and
 - (b) The precautionary principle which, in the circumstances of this case, was an overwhelming consideration in favour of refusal of the proposed subdivision.
- 3 The Tribunal found that there is a threat of serious or irreversible environmental damage for residents of the proposed subdivision in relation to dust from the residue disposal area and the sand quarry. The Tribunal also found that there is scientific uncertainty as to the environmental damage. The conditions precedent to the satisfaction of the precautionary principle were therefore established. Consequently, a precautionary measure may be taken to avert the anticipated threat of environmental damage, provided that it is proportionate to the threat. The Tribunal determined that precluding subdivision until adequate air quality monitoring at the site demonstrates acceptability is proportionate to the threat, appropriate and cost-effective. The Tribunal found that adequate air quality monitoring would require prior consultation with the Department of Environment and Conservation, monitoring for a period of at least 12 months and assessment and reporting in relation to relevant health and amenity standards and chemical composition of dust.
- 4 The Tribunal found that no weight should appropriately be placed on the definition by the Western Australian Planning Commission of an off-site buffer from the residue disposal area affecting the site, because of significant methodological concerns in relation to the scientific assessment utilised for the purpose of establishing the buffer. The Tribunal observed that it would seem sensible for the air quality monitoring and assessment in relation to the site referred to in the previous paragraph to inform the confirmation or variation of the buffer by the Western Australian Planning Commission. The Tribunal also suggested that, in light of the significant methodological concerns raised in the evidence and the inadequate duration of the monitoring that underlay the scientific assessment used by the Western Australian Planning Commission to define the buffer, the buffer should not be reflected in the town planning framework at this stage, and that any amendment of the planning framework in this respect should await the results of the air quality monitoring and assessment at the site.
- 5 Balancing the planning considerations, the Tribunal found that the precautionary principle warranted refusal of the proposed subdivision, unless and until adequate air quality monitoring is undertaken and reviewed in relation to the site demonstrating that the proposed subdivision would be acceptable in relation to the health and amenity.

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impacts of dust. The Tribunal therefore affirmed the Western Australian Planning Commission's decision to refuse subdivision approval."

This is a concise summary of where the City currently sees the issue of the RDA buffer designation. The City acknowledges and agrees with the views of the Tribunal at this point in time, and is the reason why the RDA buffer has not been formally progressed since the City formally received written letter on 4 October 2011 regarding the buffer decision.

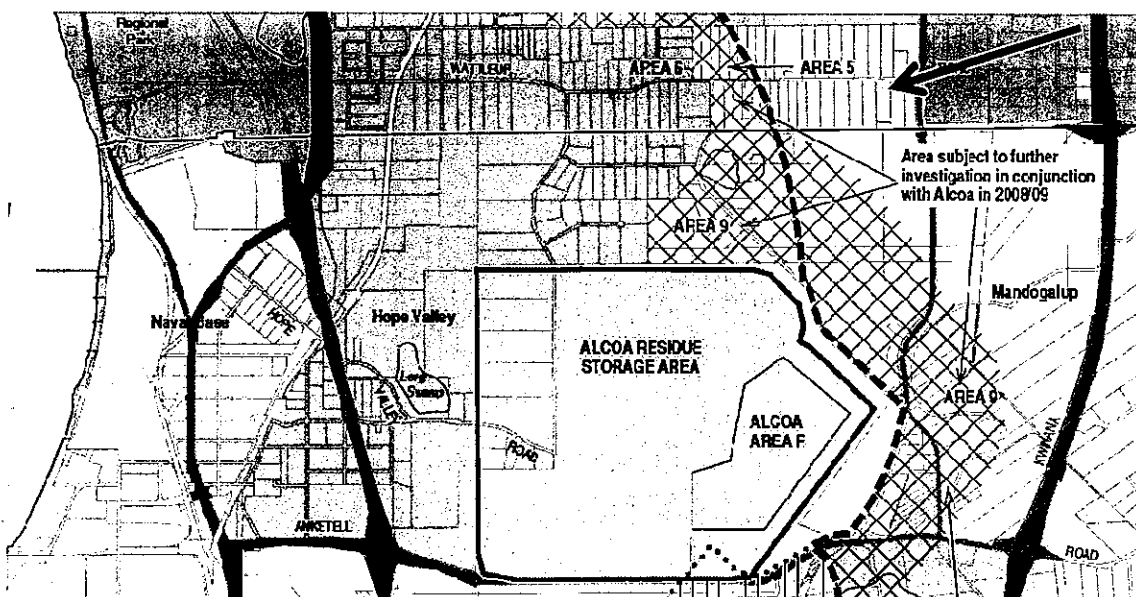
2. What is the effect of the RDA Buffer on the land situated within the buffer?

In short the effect on land within the buffer within the City of Cockburn is dramatic. As mentioned previously, in respect of the subject localities of Wattleup and Hammond Park, it is evident to the City that significant strategic planning has been based upon residential development occurring.

While it is commonplace for planning to evolve as circumstances change, it was a surprise for the City to learn that a buffer had effectively been imposed by virtue of the WAPC's decision of September 2010. This was particularly in light of the most recent direction provided by the WAPC's Review of the Kwinana Air Quality Buffer - Position Paper (2008). In respect of this policy position issued in the 2008 Position Paper, the extent of a buffer associated with Alcoa's residue disposal area has been considered in detail by the Kwinana Air Quality Buffer Review Committee of the WAPC, and noting the need for further information and studies to take place.

To deal with this, the 2008 Position Paper concluded that while some areas in close proximity to the Alcoa residue storage area within the locality of Mandogalup (Town of Kwinana) may be affected by dust issues and further investigation was needed, this did not extend to any urban portion of land within the City of Cockburn.

Figure 1 of the 2008 Position Paper shows this in respect of the locality of Wattleup:



This 2008 Position Paper in the City's view provided for a sound approach of identifying an area where there was some degree of uncertainty. Note that

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coordinated between landowners and only permitted in safe areas which will protect and maintain current and future residential amenities. Health issues are a clear part of this, and I can speak on behalf of the City of how serious this consideration is. However, as mentioned above, the City does not believe the matter of designating an RDA buffer has been performed to an appropriate level at this point in time.

This is consistent with the advice of the SAT in its decisions in WASAT 160 as per Paragraphs 4 and 5 previously quoted.

I hope this letter is of assistance. If you have any further questions please contact myself on 9411 3675.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Andrew Trosic', written over a faint circular stamp or watermark.

Andrew Trosic
MANAGER STRATEGIC PLANNING

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