



22nd June 2009

Dear Hon Brian Ellis MLC

Submission – Petition No.30

Collie Shire Council's Town Planning Scheme No. 5 (TPS5) and Associated Local Planning Strategy (LPS) – Request Legislative Council oppose

I am pleased to put forward this submission outlining the issues regarding my petition. I am the secretary of the Rural Action Group (RAG) which is a residents' group representing rural ratepayers in Collie Shire. The petition was accompanied by a covering letter outlining the key community requests identified by RAG. This is a complex issue but I will endeavor to outline the main concerns. Community concerns are further detailed in submissions to council on TPS5 and the LPS. Please do not hesitate to contact me for additional information. We have not taken the complaint to the Ombudsman at this time.

Draft TPS5 was initially advertised by the council in May 2008. It met community outrage, mainly due to the proposed rezoning of a number of selected private properties on the coal basin "Rural" zoning to a "Rural/Mining" zone along with extremely severe land use restrictions. The reasoning was to "protect future access to the coal resources" and effectively devalued our properties and sterilized the land. At least three property sales have been badly affected with the major banks refusing loans on the affected land in the last year.

About 400 public submissions condemning the provisions in proposed TPS5 were received by council and as a result of this and community pressure, the council recommended to the WAPC that a number of changes be made to the draft, including changing the zone name to "Rural 2", easing land use restrictions for this zone but also proposing to rezone many more properties into this zone.

The changes the council have recommended to WAPC mitigate some of the community's initial protests but do not address the underlying factors.

According to the Mining Act: "the provisions of any such (town planning) scheme shall not operate to prohibit or affect the granting of a mining tenement or the carrying out of any mining operations authorised by this Act". The Planning and Development Act: Schedule 7 sets out "matters which may be dealt with by a planning scheme", and these do not include either mining or economic considerations.

Having aims, zoning and land use / development restrictions in a town planning scheme specifically to address issues for future mining is therefore not appropriate. Collie Shire Council have not liaised with the mining companies who hold leases in the area (Wesfarmers-Premier Coal and Griffin) who, when asked, state they do not know if, when or where they will mine next. There are no plans to mine the land proposed to be rezoned. TPS5 will therefore cause landowners to have their land devalued, future development plans thwarted and the possibility of selling their property vastly decreased, for an unknown and probably very lengthy period of time based on the whim and supposition of TPS5.

When councillors voted to adopt TPS5 and send to the WAPC for approval, they also voted to insert a new clause, without allowing any community discussion, which would allow council to insert a memorandum onto the Certificate of Title of any property on the coal basin mentioning that the land may be mined for coal in future. Interestingly, although there are also bauxite leases in the Shire, it is only coal mining that is addressed in TPS5.

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Although TPS5 aims to "protect the access to coal resources for future generations by limiting development on land in the coal basin", this appears to apply only to private land. Council has not objected to the current application by Perdaman Chemicals and Fertilisers to develop land within the coal basin to build a multi-billion dollar industrial plant.

The affected landowners have no objection to mining or industry *per se* but do object to unnecessary and unfair devaluation of land, restriction of land use and the limiting of private development. The current process for compulsory acquisition of land for mining is adequate without town planning provisions confusing the matter and causing undue distress to residents. Because the land is not being officially reserved (although putting aside the land for future mining is effectively the aim of the Scheme) there is little chance of any compensation under the 'injurious affection' clause in TPS5.

Conversely, the LPS features a "limit line of development" and suggests mining will not occur inside this line. As mining leases are held over this land (as with much of the land in WA), this is contrary to the Mining Act and misleading to landowners in that zone.

The second major issue is that for private rural land not on the coal basin, council proposes to rezone properties to "rural residential". Whilst many residents bought these properties because they were zoned Rural, and want to remain zoned Rural, submissions offering a reasonable compromise of rezoning these properties from Rural to Rural Smallholdings were dismissed by Council, despite this land and its uses conforming to the provisions of this zoning. WAPC Publication "Guidelines for the Preparation of a Local Rural Strategy" recognizes two broad types of small rural lots - those strictly rural residential and those better described as mixed use, the latter of which is further defined as "land used for a wide range of domestic and small scale commercial activities, such as hobby farming and small scale commercial agriculture". Rural Residential land uses are more restrictive than Rural 2 land uses even though most of these properties are not on the coal basin and there is no reason for restricting land use / development in this zone. No valid reasoning was given by council for dismissal of this request.

The third major concern is environmental issues. TPS5, as a successor to TPS4 which was not approved due to issues with the EPA, deliberately omits certain development proposals so as to circumvent the requirement for costly environmental assessments, even where some proposals have been planned for some time and even are already approved. For example, the Shotts Industrial Park, already approved by State Government, and already with an agreed tenant (Perdaman Chemicals), is not re-zoned in TPS5 (the area remains 'state forest'). Council is anxious to get TPS5 approved as soon as possible so that an amendment may be made to facilitate Perdaman's application. RAG is disgusted that council is able to circumvent environmental issues in this way.

Council have in fact indicated they expect TPS5 to be gazetted in the next few weeks. I implore you to treat this matter with urgency. Once gazetted, I understand there is no right to appeal a Town Planning Scheme, even if it contravenes State law. If possible, I request you contact the Minister for Planning and ask him to postpone final approval on TPS5 until your investigation is complete.

Yours sincerely

Kathy Miller

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