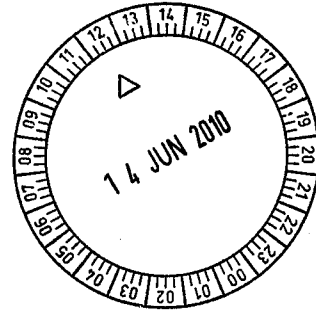


File Ref:
Your Ref:
Enquiries: Len Kosova (9405 5433)



9 June 2010

Hon Brian Ellis MLC
Chairman
Standing Committee on Environment and Public Affairs
Legislative Council, Parliament House
PERTH WA 6000

Dear Sir

PETITION NO. 55 – STRAWBERRY PACKAGING SHED ON A RURAL RESOURCE PROPERTY

Thank you for your letter dated 20 May 2010, seeking information from the City in response to a petition tabled by Hon Michael Mischin MLC in the Legislative Council on 3 March 2010, regarding the above matter.

Earlier this year the principal petitioner, Ms Donna North, lodged a complaint with the Ombudsman of Western Australia in relation to the City's approval of the packing shed at 5 Hawkins Road, Wanneroo. This matter was the subject of a detailed investigation by the Ombudsman and in conclusion the Ombudsman found that *"In this case I am of the view that the decision itself was one which was within the City's power to make and one which is not, of itself, unreasonable"* and also that *"no evidence was found of defective administration"*.

The matters that you have raised in your letter and to which you are seeking a response from the City were either directly or indirectly addressed in the Ombudsman's investigation and in the City's response thereto. I am therefore of the view that providing you with all of the background pertaining to the Ombudsman's enquiry will no doubt address the points raised in your letter. To this end, I enclose for the Committee's consideration:

- A copy of the Ombudsman's letter to the City dated 19 January 2010, requesting information regarding this matter;
- A copy of the City's letter dated 11 February 2010 (including all attachments referred to therein) in response to the Ombudsman's aforementioned letter;
- A copy of the Ombudsman's letter dated 25 February 2010 to Ms Donna North, outlining the Ombudsman's preliminary view that Ms North's complaint is not sustained;
- A copy of the Ombudsman's letter dated 17 March 2010 to Ms Donna North confirming that the Ombudsman's preliminary view has now become their final view; and

Petition No. 55 - Strawberry Packaging Shed on a Rural Resource Property.DOC

- A copy of the Ombudsman's letter dated 17 March 2010 to the City, providing a copy of the Ombudsman's letters to Ms North and advising that their enquiries into Ms North's complaint have been concluded.

Further to the attached information, it should also be noted that the City has recently undertaken a complete audit of this development to identify any non-compliance with Council's development approval. Some areas of non-compliance were identified as a result of these investigations and these will be pursued directly with the landowner in accordance with the City's standard development compliance and enforcement practices.

I trust the attached information will be sufficient to assist the Committee in its investigation of this matter.

Please do not hesitate to contact the undersigned if you should require additional information regarding this matter.

Yours sincerely



Daniel Simms
CHIEF EXECUTIVE OFFICER

Ombudsman Western Australia
Serving Parliament - Serving Western Australians

Our ref: C/18157
Enquiries: Christina Anthony
Tel/Email: 9220 7555

PUBLIC

19 January 2010

Mr Daniel Simms
Chief Executive Officer
City of Wanneroo
Locked Bag 1
WANNEROO WA 6946

Dear Mr Simms

Ms Donna North

I enclose a copy of correspondence from Ms North concerning her complaint about the City of Wanneroo (**the City**).

Ms North has made a number of allegations about the 'packing shed' located at 5 Hawkins Road, Wanneroo. In particular, Ms North alleges that:

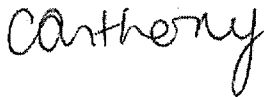
1. The packing shed is not classified as 'Industry – Rural' and should not have been approved.
2. The City has not enforced compliance with the conditions of approval for this development dated 18 November 2008, and in particular:
 - (1) Condition 1 because the produce being packed is not just local produce.
 - (2) Condition 9 because the noise regulations are not being adhered to and the packing shed continuously exceeds the assigned levels.
 - (3) Condition 10 because the packing shed is operating outside of its approved hours.
 - (4) Condition 11 because the reverse beepers on the trucks are not being minimised.

I would appreciate it if you could provide me with a report addressing Ms North's concerns together with any background information, copies of relevant correspondence or other documents that may assist me to specifically address the above allegations.

When I receive a report from an agency, it is my usual practice to discuss it with or give a copy of it to the complainant for comment. If you consider that there are special reasons why all or part of the information in your report or its attachments should not be made known to the complainant please advise me of those reasons and I will consider your request.

I would appreciate receiving your report within 14 days of the date of this letter. If you are likely to have any difficulty writing to me within that timeframe, please contact me as soon as possible so that we can agree on an alternative timeframe.

Yours sincerely



Christina Anthony
A/Investigating Officer

Enc.

CC: Mayor Jon Kelly
Mayor, City of Wanneroo

PUBLIC

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Dear Sir

My name is Donna North. I am writing to you on behalf of myself and my neighbours; Mr & Mrs Gill of Hawkins Rd & Mr & Mrs Cavlovic of Badgerup Rd, Wanneroo. We live directly opposite & alongside the business at 5 Hawkins Rd.

We are in the Rural Resource Zone of the City of Wanneroo.

On the 3rd October, 2008, we received a letter from the City of Wanneroo, advising us of a development - a "packing shed" would be built at 5 Hawkins Road. They would employ 12 people for packing strawberries and work from 10am to 11pm. Our phone enquiries revealed the "shed" would be approx. 1,100 sq metres in size, but very little else.

As this area is rural resource with priority uses, ^{being} intensive agriculture, animal husbandry, dog kennels, catteries, market gardens, plant nurseries etc, this business at 5 Hawkins Road does not meet this criteria.

They are in the wholesale, export agency business - a cold storage, warehouse/distribution facility handling strawberries for export. They are not growing on the property. They buy from growers and transport them to the warehouse, where they store and re-pack ready for overseas export, and local & interstate markets.

Businesses like this operate from places like Market City, Canningvale & other industrial areas. An identical business, Jmark, is a 24hr vegetable processing/packing operation located in Wangara Industrial. On their website, Ti Produce Marketing describe their premises as a warehouse - firstly at 2 Ross St (19/11/08) and then at 5 Hawkins Road (2009).

In a discussion with the City of Wanneroo Planning Director, Mr Kosova, on 18th May 2009, he admitted this business should not be here - Planning Dept did not do the right thing.

From 9/10 to 19/10

I have had a noise monitor in my house. It has been collected

1009/5157

1009/5158

and we should have the results in 2-3 weeks. Prior to that a neighbour & I had been keeping noise logs which had been given to City of Wanneroo Health Services Dept.

Since then the CEO, Mr Simms, and the Director of Planning, Mr Kosova, have visited the owner, Mr Michael, and explained to him the problems the neighbours are having.

We have been subjected to unnecessary stress & harm to our health during the approval & construction phases, and now especially with operational activities of this business.

Why was this development approved, and has it set a precedent? Has there been a failure on the part of the City of Wanneroo to enforce the Zoning regulations of their District Planning Scheme?

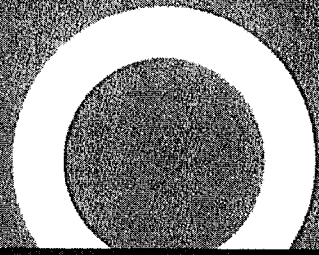
At a "Meet the Mayor" day appointment, Friday 14/11/08 we were informed by the Councillor sitting in for the Mayor, that if Council did not conditionally approve Planning Dept's recommendations, that they were afraid the proponents would immediately appeal to SAT & be given permission to operate without any conditions & constraints at all on hours of operation.

As it is now, every day, including Sundays, I am confronted with the view from my living room of a huge industrial building/facility, and the activities of trucks, forklifts, employees coming and going in vans and other vehicles, and bright lights also at night. This is a visually and mentally debilitating experience.

The activities are having an adverse impact on the amenity of our homes, and our health and lifestyle. They will also affect the financial return we may expect to receive when and if we sell our properties, and the ability to do so may be compromised.

Regards
Lonna Noit

Ombudsman Western Australia
Complaint Form



Please use this form to make a complaint about a State Government department or agency or Local Government.

(See the About the Ombudsman Brochure for information on what you can and cannot complain about or go to 'Complaints' on our website at www.ombudsman.wa.gov.au)

| | | |
|--|---|----------------|
| Your title (please circle one) | Mr Mrs Ms Miss Dr Other: | |
| Your family name | NORTH | |
| Your given name/s | Donna Ellen | |
| Your address | Street Address: | |
| | 8 HAWKINS ROAD | |
| | Suburb: | JANDABUP |
| | Postcode: | 6077 |
| Your telephone number(s) | (home) | (08) 9405 1227 |
| | (work) | |
| | (mobile) | 0438 937 860 |
| Your email address | austlann@inet.net.au | |
| Your date of birth | 02/06/1946 | |
| In which country were you born? | AUSTRALIA | |
| Are you of Aboriginal or Torres Strait Islander origin? | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> | |
| Do you have an ongoing disability? | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> | |
| | Do you require assistance to access our services? If so, please explain: | |
| What is the name of the State Government Department, Agency or Local Government you wish to complain about? | CITY OF WANNEROO | |

Ombudsman Western Australia

Details of your complaint

(Explain what your complaint is about. It is important that you try to clearly identify the issues of your complaint. Please add extra pages if necessary and attach copies of relevant documents such as letters, reports, photographs etc. If you do not have access to a photocopier, you can ask us to copy and return any original documents you send to us).

RE: THE SITING OF, AND SUBSEQUENT OPERATIONS OF, A WAREHOUSE/
DISTRIBUTION DEPOT AT 5 HAWKINS ROAD, WANNEROO.

We received a letter from the City of Wanneroo on 3rd October, 2008, advising us that a proposed shed for packing and exporting strawberries would be built at 5 Hawkins Road, Wanneroo.

We were given 5 working days to respond (to 10/10) and when we protested were given until 15/10.

We were concerned regarding the number of staff required, the hours of operation, the noise generated and traffic concerns.

There are 4 homes on the boundaries of 5 Hawkins Road. 3 of them are approx. 80-100 metres from this facility and 1 is approx. 200m. We are living on properties zoned Rural Resource. The owners of 5 Hawkins Road use the property for business only.

We advised the City of Wanneroo this business operation should be located in an Industrial area. This is also what Councillors said when we spoke to them after receiving the notification letters.

The City of Wanneroo has a Zoning Table indicating the locations in which different businesses should be operating. This table shows that any Warehouse/Depot type businesses are not permitted in the Rural Zones.

We discovered the business, Ti Produce, was currently operating from a leased shed nearby in Ross Street, and had been doing so for several years without any Council approval or conditions relating specifically to it. Monitoring of the business in October 2008 revealed extremely noisy and nuisance operations well past 11pm.

We wrote to the City of Wanneroo objecting to this development, as this type of business and the way it operates does not fit within the rural zone. It is a handling facility - a warehouse/distribution depot, needing to be in an Industrial area.

We have spoken on the phone, had numerous meetings and written letters to the City of Wanneroo, and done Deputations to Council.

