

Memorandum

CRIME & MISCONDUCT COMMISSION
 No. 2005-5 Date 17 NOV 05
 IN THE MATTER OF:



TO : Cr David Power *OP GRAND*

COPY : Warren Rowe, I EXHIBIT No. 206 A port
AKN CLERK

FROM : Dale Dickson, Chief Executive Officer

SUBJECT : Cr Sarroff's submission to the Crime & Misconduct Commission dated 18 August 2004

DATE : 9 November 2005

FILE NO :

I refer to your request for information dated 3 November 2005, relating to a letter addressed to the Assistant Commissioner, Crime and Misconduct Commission dated 18 August, 2004 from Cr Eddy Sarroff in regard to an item considered by Council's Planning Committee on 3 August, 2004 and determined by Council on August 2004.

The letter deals with the changes made to the Officers recommended conditions by the Planning Committee at its meeting of 3 August, 2004, the recording of the minutes of the Planning Committee's recommendation and the final conditions of approval resolved by Council.

The letter draws upon alleged discussions held between Cr Sarroff and Council officers in regard to the formation of the conditions and the recording of the minutes. In regard to the various matters raised in the letter the Director Planning Environment and Transport has provided the following response:

"Background information

The application to Council was for a development permit for a Material Change of Use establishing land uses and levels of assessability for future development applications. Whilst the report and conditions referred to specific lots, the approval was not granted for a detailed allotment design. In essence this would be submitted later to Council for further assessment under a development permit for a reconfiguration of a lot (ROL).

The ROL application is the development permit that establishes the final design and lot configuration and yield based upon detailed site analysis and compliance with the conditions of the Material Change of Use approval including the resolution of the stormwater management regime.

Relevant points

- Council Officers report did recommend the removal of lots 24 to 30 to facilitate stormwater treatment outside of the creek corridor.
- Council was advised that Main Roads do require the retention of stormwater to match pre-developed flows but they did not specify any specific lots for deletion.
- Council Officers report did recommend the removal of lot 206 because it was identified as a future shop and the application submitted did not deal with any change in use. The lot was considered unsuitable as a single residential lot due to its isolation.
- The Planning Committee was advised of an error in the recommended condition 40(d) which should have read "In order to accommodate stormwater quality improvement devices outside of the waterway buffers the applicant shall delete Lots 24 - 30 and use this area of the site for stormwater management purposes (both quality and quantity)."

proposed conditions arose from the intent of the Committee's recommendation with changes to make them logical and workable.

- Council Officers were not directed by any Councillor to change, amend or bring forward conditions in any format. The minutes presented to Council reflect the consequences of the Planning Committee recommendations. The recommended conditions were not complete or workable and a revised set of conditions were drafted to capture the intent and presented to Council with a supporting explanation. This is not an unusual occurrence where conditions are changed in Committee without fully exploring the flow-on effects and consequences."

You would recall when this incident occurred Cr Sarroff requested that I investigate the process whereby the minutes of the City Planning Committee as presented to Council did not, in his opinion reflect the Committee's changed recommendations. I investigated the matter and my views expressed to the Council were as follows:

1. In my experience, it is not uncommon for a standing committee to propose a change to an officer's recommendation(s) whereby it is impossible to finalise the wording of the revised conditions at that same meeting. In practical terms, officers have to seek further information and carefully review the impact on all conditions. Depending on the complexity of the issue, it is not unusual for a degree of 'word smithing' to take place between Council officers and the chairperson to appropriately reflect the intention of the standing committee decision.
2. Importantly, given that the City Planning Committee did not have a "delegated power" to make a final decision, the report by the standing committee was therefore only a recommendation and the final decision (with or without amendment) was made by Council. All Councillors therefore had the opportunity to contribute to, or challenge, the standing committee recommendation at the Council meeting when the decision is made.
3. The only real issue with what transpired, as I saw it, was that the record of the minutes of the City Planning Meeting of 3 August, 2004 were not an accurate record in that Cr Sarroff is recorded at Page 21 as requesting that his vote be recorded in the 'negative'. This was the only issue notwithstanding that the Council was initially presented with report of the Committee and that, at that time, a correction should have been made. In fact Council accepted the minutes of that meeting as presented as a true and correct record. Of course, this is a matter which should have been corrected at the Council meeting.
4. In my view, ideally all that should have occurred is that where it was understood that the Committee's recommendation was not finalised 'absolutely' (ie. Officers had to finalise all conditions after the meeting had concluded), the matter should have laid on the table, and the suite of proposed conditions circulated prior to the Council meeting.



Dale Dickson
Chief Executive Officer