

1. ADDINGTON RACEWAY LIMITED/WESTPAC TRUST ENTERTAINMENT CENTRE CAR PARKING

Officer responsible Property Manager	Author Property Projects Manager, Angus Smith DDI 371-1502
Corporate Plan Output: 8.6.5 Information and Advice	

The purpose of this report is to reconsider an easement swap proposal from Addington Raceway with the benefit of further information, as requested by resolution of the Council on 24 August 2000.

BACKGROUND

In August the Council considered a report through the Projects and Property Committee that presented a proposal, from Addington Raceway, for an exchange of property rights associated with car parking areas at the Addington Raceway/WestpacTrust Entertainment Centre.

In summary, we reiterate that the proposal is for the Council to surrender its car parking easement, held for the benefit of the WestpacTrust Entertainment Centre, over the land owned by Addington Raceway marked "E" on the attached plan. In exchange they are offering one of two swap options, which are indicated "A" and "B" on the same plan. The purpose of this swap is to enable the Raceway to incorporate the then unencumbered area "E" into their plans for a residential development at the end of Moule Street. The Raceway will continue with residential development of their site on Moule Street (area marked "X") whether or not the Council takes up the Raceway proposal.

In considering this matter the Council resolved:

"That the proposal be referred back to the Projects and Property Committee for further consideration of the relative merits of options "A" and "B"."

It was also our interpretation, although not recorded by way of resolution, that the Council was desirous of reconsidering this issue following the outcome of negotiations with the Raceway over compensation both financially and in terms of the aesthetic and reverse sensitivity issues. This report accordingly addresses both of these matters.

MERITS OF OPTIONS "A" AND "B"

The relative merits of options "A" and "B" are:

Option "A"

- Fully sealed
- Better security compared to area "E"
- Better lighting compared to area "E"
- Sealed access to the Entertainment Centre

Option "B"

- 60% sealed/40% grassed
- Provides good run-off
- Better security compared to area "E", although only marginally better than "A"
- Better lighting compared to area "E", although only marginally better than "A"
- Formalises what is happening in practice
- NCC prefers and has used this option in the past in preference to the subject site
- Access is more direct than option "A"
- This option is slightly closer than option "A"
- Provides partly covered access under some circumstances

Both options are considered an improvement over the existing easement area.

COMPENSATION

A letter setting out the outcome of negotiations with Addington Raceway is attached. In summary the following is offered:

1. **Reverse Sensitivity**

The Raceway has offered to place restrictive covenants on the section titles upon development. We comment that it is possible and practicable to place restrictive covenants on the title that will create a binding acknowledgment from owners, including future owners in perpetuity, that they will not make attempts to restrict the use of the WestpacTrust Centre as it is considered a valuable resource. This can be achieved with agreement of all parties ie in this instance the developer (Addington Raceway) and Council.

This is seen as a lawful way of dealing with reverse sensitivity issues where the activity of nuisance is not going away. There has been some preliminary legal debate over such a mechanism in other circumstances and at that time it was resolved that such a restrictive covenant is not a breach of the bill of rights. However, the matter has not been fully argued in court and therefore there is no supporting case law. Hence, there is a small risk of ineffectiveness if the matter is vigorously challenged.

2. **Aesthetics**

The Raceway has offered to erect a 1.8m boundary fence with planting on the WestpacTrust Centre side. This should serve to provide both a visual and sound buffer.

3. **Financial**

The Raceway has offered by way of financial consideration the sum of \$40,000 (GST inclusive) by way of landscape improvements to the area immediately in front of the WestpacTrust Centre. In terms of their likely development profit from the subdivision this is considered quite reasonable if not generous.

SUMMARY

The facts of our original report remain the same.

Should the Council agree to the proposal it is considered that swap option “B” is more preferable to “A”. In addition it would be prudent to cover the following matters in any resolution agreeing to the proposal:

1. The Raceway Club developing the land as generally outlined in the previous report and the proceeds of such development being utilised for further development of the club and its facilities.
2. The Raceway Club meeting all costs incurred by the Council.
3. The Raceway Club accepting responsibility and indemnifying the Council for any and all compliance issues, including any costs related thereto, to include (but not to be limited to) future reverse sensitivity issues and any mitigating measures the Council, acting in its capacity of a property owner, deems necessary.
4. Acceptance of the Raceway Club’s compensation offers in respect of reverse sensitivity, aesthetics and financial issues.

The Committee was unable to agree on a recommendation to the Council, a motion and an associated amendment both being lost. The report is therefore being referred to the full Council for a decision.

Recommendation: For decision by the Council.