

Tue 5/04/2011 9:57 PM

Supporting Documentation -Senate Enquiry into the Health, Sustainability and Future of the Koala in Australia - Paulette Oldfield

Dear Chris,

As per our conversation, attached is some further supporting documentation for my submission.

I would like to reply to Mr Rix's comments in the letter he posted in response to my submission. May I firstly clarify that when I stated that the bulldozer driver waited for the Koala to move out of the tree, this happened overnight eg. The Bulldozer driver left the tree and the next day the Koala had moved out. Then the Bulldozer Driver knocked the tree down. Given this was some time ago, I had contacted my colleagues who were also monitoring this situation at the time who also reminded me that this particular Koala was then seen wandering in a daze and had to be relocated to the Currumbin Wildlife Sanctuary.

Attached is supporting information from the Logan City Council with respect to this particular development . In short, the developer in this case only had to rehabilitate the area and did not have to pay recompense. Not much of an option when you are clearing old growth and re-planting little seedlings. No Koala, or any other native animal is going to survive on a seedling!

Also attached is a very recent case, in the last week where the spotter/catcher resources were inadequate. This case was at Worongary, just south of Coomera at the Gold Coast. Please see attached information relating to this case.

Essentially the area was cleared and the chainsaw operator did not take any notice of a Koala sitting in the tree whilst continuing his activities. When a community member saw what was happening, the person doing the clearing became angry and confronted the community member. One can only assumed, because he got caught out. This is only one incident that is caught. There are so many other incidents of clearing, and in alot of cases illegally, in our area that go unpunished or ignored by the authorities.

In short, there is a serious lack of adherence to spotter/catcher requirements in south east Queensland and the penalties associated inadequate to deter the development industry from doing whatever they like with absolutely no consideration of the wildlife of the area, in particular the Koala. As you can also see from the articles, the outrage from the community is very apparent. Something needs to be done very soon to stop this from happening in the future. The Koala supporters of Australia are counting on the Senate enquiry to help save the Koala.

<http://www.dailyexaminer.com.au/story/2011/03/30/koalas-homes-being-bulldozed-ross-gardner/>

<http://www.bombnail.com/nature/endangered-koala-in-bulldozed-gum-tree-pacific-view-estate/>

Response from the community member who saw the incident - "Well, the EPA rang me today, seems that the rangers couldn't get their in time and the Koala was removed before they got there, I did a drive-by an hour after the first set of photos and the branch and the Koala where both gone, to me it looked as if they did it in haste, and just cut the branch at the base and let both Koala and branch come down, if that was the case, the Koala would have taken a 4 metre fall, I would be surprised if the Koala would have survived if that was the case, so dam sad..."

If you have any questions, please don't hesitate to contact me.

Kind Regards
Paulette Oldfield

HS9 File No: 392701(P2) Id No: 4026521
PROPOSED REHABILITATION OF AN AREA OF LAND TO BE
TRANSFERRED TO THE COUNCIL
113-131 DAISY HILL ROAD, DAISY HILL QLD 4127 (location)
REPORT OF: CITY STANDARDS MANAGER

Created: 09/02/2007

PURPOSE OF REPORT

The purpose of the report is to obtain approval to execute an "Agreement in Respect of the Rehabilitation of Land to be transferred to the Council."

BACKGROUND OF REPORT

Following the consideration of a report detailing the unlawful clearing of protected vegetation at 113-131 Daisy Hill Road, Council at its meeting of 31 October 2006, Minute Number 336/20063 resolved:

1. *That Council's solicitors be instructed to commence prosecution proceedings against NCR Securities Pty Ltd, Burchill VDM, and Hepburn and Thorpe (Qld) Pty Ltd for breaches of either the Development Permit conditions by commencing assessable development without approval, or for breaches of the Court Order/Operational Works permit for committing harm outside the permitted zone.*
2. *That the property owner, developer and project manager be advised, in writing, of Council's decision.*

Council further resolved at its meeting of 12 December 2006, Minute Number 379/2006, the following after considering an update on the status of the proceedings:

1. *That the Rehabilitation Plan attached as Appendix 3 to the report of the City Standards Manager dated 29 November 2006 (ID: 3970558), be endorsed.*
2. *That the Chief Executive Officer and His Worship the Mayor be delegated authority to:*
 - (a) *negotiate and execute a rehabilitation agreement that will give legal affect to the rehabilitation plan attached as Appendix 3 to the report of the City Standards Manager dated 29 November 2006 (ID: 3970558); and*
 - (b) *such negotiations referred to in Clause (a) above shall include seeking a contribution towards the Environment Reserve.*
 - (c) *further consider the public interest of pursuing prosecution proceedings in this matter on an ongoing basis and to determine the conduct of the enforcement proceedings.*

HS9

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Continued:

Both reports are contained in Background Papers.

REHABILITATION AGREEMENT

The rehabilitation agreement, at the time of writing this report, is expected to be executed by NCR Securities Pty Ltd as the owners of land and Hepburn & Thorpe (QLD) Pty Ltd as NCR Securities Pty Ltd's Project Manager, by 12 February 2007.

The rehabilitation agreement essentially prescribes for the rehabilitation work to be effected in accordance with the rehabilitation plan that was endorsed by Council on 12 December 2006. The agreement provides:

- (i) The rehabilitation works are to be completed within 30 days of the execution of the agreement.
- (ii) The rehabilitation works are required to be maintained for 3 years.
- (iii) Security to be provided to Council for the maintenance of the rehabilitation works to the amount of \$45,000.00 (as approved by Council's Natural Area Coordinator).
- (iv) Payment to the Council of a Infrastructure Contribution to the amount of \$15,000.00.
- (v) Payment of Council's reasonable legal cost incurred to the amount of \$8,000.

The Mayor and Chief Executive Officer have endorsed the negotiations to this point. Both the Mayor and the Chief Executive Officer, whilst having Council approval to execute the agreement, have requested the decision to execute such be made by Council.

PROSECUTION PROCEEDINGS

It is considered, that upon execution of the rehabilitation agreement and the successful implementation of the initial completion of the works within 30 days, the community interest to continue prosecution proceedings should be reviewed.

This is not unique to this case. Numerous reports have been submitted to Council in recent years detailing the withdrawal of prosecution proceedings where the defendants have either complied with requirements or remedied a breach prior to a court date. Council, upon documented evidence of compliance and settlement on a contribution to its legal cost, has withdrawn proceedings. Such decisions are based on community interest and the commercial reality of pursuing cases further in the current legal system. This issue was discussed in the report to Council on 12 December 2006.

It is considered Council should offer a "without prejudice" commitment in this respect.

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Continued:

IT IS RECOMMENDED:-

1. That His Worship the Mayor and the Chief Executive Officer be delegated authority to execute the "Agreement in respect of the rehabilitation of land to be transferred to the Council" which include the following elements:
 - (a) The rehabilitation works are to be completed within 30 days of the execution of the agreement.
 - (b) The rehabilitation works are required to be maintained for 3 years.
 - (c) Security to be provided to Council for the maintenance of the rehabilitation works to the amount of \$45,000.00 (as approved by Council's Natural Area Coordinator).
 - (d) Payment to the Council of a Infrastructure Contribution to the amount of \$15,000.00.
 - (e) Payment of Council's reasonable legal cost incurred to the amount of \$8,000.
2. That defendants be advised, "without prejudice", that Council will withdraw the current prosecution proceedings on the basis that:
 - (a) The rehabilitation works are completed within 30 days of the date of execution of the agreement.
 - (b) The security amount of \$45,000.00 for maintenance of the rehabilitation work is received at the time of execution of the agreement.
 - (c) The amount of \$15,000.00 for the Infrastructure Contribution is received at the time of execution of the agreement.
 - (d) The amount of \$8,000.00 is received as a contribution to Council's legal costs at the time of execution of the agreement.
3. That His Worship the Mayor and the Chief Executive Officer be delegated authority to decide on the continuation of the current prosecution proceedings based on the requirements detailed in Clause 2 above.

At this stage of the meeting the time being 2.00pm, the meeting was closed to the public in accordance with Section 463(1)(h) of the *Local Government Act 1993*.

The general discussions, opinions of others and documentation presented to the closed meeting are to be kept confidential until otherwise resolved by Council.

At this stage of the meeting the time being 2.15pm, the meeting was re-opened to the public in accordance with Section 462 of the *Local Government Act 1993*.

The Health & City Standards Committee recommended:

That the report be received and adopted.

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File No: 392701(P2)

Continued:

Against: Councillors Byron, McLindon and Power

Adopted by Council at its meeting of 20/02/2007 Minute No 44/2007

BACKGROUND PAPERS

PROPOSED REHABILITATION OF AN AREA OF LAND TO
BE TRANSFERRED TO THE COUNCIL
113-131 DAISY HILL ROAD, DAISY HILL QLD 4127 (location)

(REFER ITEM HS9)

REFER TO: Health & City Standards Committee

REPORT BY: Environmental Management Officer

BRANCH: CityStds

HS7

File No: 392701(P2)

Id No: 3928216

CLEARING OF PROTECTED VEGETATION FROM WITHIN
PROPOSED ENVIRONMENTAL PARK, CONTRARY TO
OPERATIONAL WORKS DEVELOPMENT PERMIT
113-131 DAISY HILL ROAD, DAISY HILL 4127 (location)
LOT 2 ON SP168264 (RPD)
NCR SECURITIES PTY LTD (owner)

REPORT OF: CITY STANDARDS MANAGER

Created: 18/10/2006

PURPOSE OF REPORT

The purpose of this report is to advise elected members of an issue relating to the harming of protected vegetation from a proposed environmental park to be dedicated to Council as part of a residential subdivision situated at 113-131 Daisy Hill Road, Daisy Hill. This clearing has occurred as part of operational works surrounding the proposed park site and it is requested that the elected members consider this matter and consider the course of action recommended.

CURRENT DEVELOPMENT APPROVALS

On 12 April 2005 Council approved Development Application (COM/51/2004) for Reconfiguring a Lot (180 residential lots - including lot sizes prescribed by the Scheme for the R1 area) and Preliminary Approval for Operational Works and Preliminary Approval to permit development in accordance with the table of development for the R1 and R2 areas as appropriate, where the proposed residential precincts extend beyond the boundaries of the R1 and R2 areas respectively at 113-131 Daisy Hill Road, Daisy Hill.

A submitter appeal from the Wildlife Preservation Society of Queensland, Logan Branch Incorporated was filed 2 June 2005 in the Planning and Environment Court (appeal no. 1993/05). On 7 September 2005 the Planning and Environment Court approved the development application, subject to conditions.

The proposal can be summarised as follows:

- 180 residential lots in two residential precincts (other lots in the plan are for the original house block, a park, an environment park and a State Forest).
- Environment Park (5.085 hectares) and Park (3.411 hectares). The environment park included a small 2458m² (0.2458 hectares) parcel of land being the proposed lot 205 of this subdivision, abutting the Chatswood Road road reserve. It is this parcel that is the subject of the report.

REFER TO: Health & City Standards Committee

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Continued: 2

- State Forest (18.24 hectares).
- Extensive internal road network.
- Rehabilitation of three main areas of the 'open space network' on the premises. These areas are that of the creek corridor (in particular the area of rainforest in the south of the subject premises), the eastern bushland (to be dedicated to QPWS) and the bushland in the northwest of the premises (to be retained in an environment park).

The subject land is designated a category 1 vegetation management area under the provisions of the Planning Scheme 2006 and previously under Local law No 8 (Environment Management) 1999.

This means that all native vegetation in this area, including grasses, shrubs and trees are protected unless a permit to harm had been issued by Logan City Council permitting such harm to occur.

Operational Works Approval OW/243/2005 of 21 June 2006 allows "vegetation management" clearing on the development. Please refer to the Plans in background papers.

COMPLIANCE ISSUES

Council first became involved in an investigation of possible harm to vegetation following a complaint from a local environmentalist that a portion of the dedicated environment park had been removed.

This resulted in a site visit on 17 October 2006 by the Development Assessment Manager and officers from the Development assessment Branch. During that inspection the site foreman admitted that a mistake had been made and verbal directions were given to revegetate the site and provide Council with a revegetation plan for approval. The direction given requires the rehabilitation of this portion of proposed parkland in accordance with Council and Wildlife Preservation Society guidelines.

The property owner has since given a verbal undertaking that the site will be revegetated as a matter of priority.

A further inspection of the premises was conducted by Development Control officers from the City Standards Branch on Wednesday 18 October 2006 in the presence of the site foreman acting on behalf of Hepburn & Thorpe (Qld) Pty Ltd, the construction and project managers performing the Operational Works upon this property.

The subject of the visit was discussed and the site foreman led the investigating officers to an area which was vaguely pegged out, and consisted of a gully swale comprising a number of clumps of large trees and an area of slashed land.

REFER TO: Health & City Standards Committee

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The foreman indicated to some pegs visible within the scrubby area and indicated a particular peg which had allegedly been installed by previous surveyors in association with a previous plan of development. Pegs from this previous survey, as well as new survey pegs, were clearly evident and it is alleged that machinery operators had apparently mistaken one of the original pegs to be part of the designated clearing area, and sections of this proposed environmental park were cleared of significant trees in one area, and understorey vegetation, being mostly lantana, in others.

It is considered that of this proposed environmental park approximately 50% - 70% had been harmed, however, it was noted that in the remaining area in excess of 46 significant trees remained, some visibly containing wildlife. It is noted the trees containing wildlife are clearly marked and these marked trees remain even in the cleared areas.

OPTIONS FOR RESOLUTION

It is evident that the terms of the Court Order, and Operational Works Order OW/243/2005, have not been complied with in that this area intended for dedication for an environmental park has been harmed, and is outside the approved areas for vegetation removal.

The company responsible for this apparent mistake has admitted responsibility for the harm incurred. The company has accepted a direction from the Development Assessment Manager to rehabilitate the area to Council and Wildlife Preservation Society guidelines, which given the substantial remaining significant trees in this dedicated environment park, would appear to provide a feasible short and long term remedy.

The rehabilitation program could be formalised by issuing Show Cause Notices pursuant to the provisions of the Integrated Planning Act 1997 against the property owner, developer and project manager requiring the lodgement of a Development Application to harm protected vegetation, being the vegetation the subject of this report. This would allow a separate Rehabilitation Order to be issued thereby compelling the owner/ project manager to rehabilitate the subject area prior to the dedication of this land being effected. The issue of responsibility for making that application is a matter between the parties.

A second option is for Council to commence prosecution. This could be either for a breach of the Development Permit conditions in relation to the commencement of assessable development contrary to the VMA provisions of the Planning Scheme, or for a breach of the combined Court Order/Operational Works permit for committing harm outside the permitted zone.

It would be appropriate to consider directing those proceedings against:

- NCR Securities Pty Ltd (the property owner);
- Burchill VDM (the developer); and
- Hepburn and Thorpe (Qld) Pty Ltd (the project manager).

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If the prosecution option is taken Council would need to develop a formal rehabilitation plan for the consideration of the Court and inclusion in any order made. The first option places that responsibility on the applicant.

Any consideration of prosecution should be balanced against the verbal directions and agreements already reached between the project manager and owner in relation to the rehabilitation of the harmed area, and the fact that if those agreements are honoured it is likely that rehabilitation would be completed well before the matters are brought before a Court. This may constitute a strong defence against the prosecution.

SUMMARY

Council can consider two options to deal with this breach of the Development Permit conditions, being either:

1. That the offenders in this instance, being the project manager and the owner of this property be directed to make a Development Application to harm protected vegetation, being the vegetation the subject of this report, which would allow a separate Rehabilitation Order to be issued thereby compelling the owner/ project manager to rehabilitate the subject area prior to the dedication of this land being effected; or
2. That Councils solicitors be instructed to advise on the commencement of prosecution proceedings against NCR Securities Pty Ltd, Burchill VDM, and Hepburn and Thorpe (Qld) Pty Ltd for breaches of either the Development Permit conditions by commencing assessable development without approval, or for breaches of the Court Order/Operational Works permit for committing harm outside the permitted zone.

IT IS RECOMMENDED:-

1. That the offenders in this instance, being the project manager, developer and the owner of this property be directed to make a Development Application to harm protected vegetation, being the vegetation the subject of the report of the City Standards Manager dated 18 October 2006 (ID: 3928216), which would allow a separate Rehabilitation Order to be issued thereby compelling the owner/ project manager to rehabilitate the subject area prior to the dedication of this land being effected.
2. That in the event that the subject application in clause 1 of the recommendation is not made within seven (7) days of Council's direction, Council's solicitors be instructed to advise on the commencement of prosecution proceedings against NCR Securities Pty Ltd, Burchill VDM, and Hepburn and Thorpe (Qld) Pty Ltd for breaches of either the Development Permit conditions by commencing assessable development without approval, or for breaches of the Court Order/Operational Works permit for committing harm outside the permitted zone.
3. That the property owner, developer and project manager be advised, in writing, of Council's decision.

REFER TO: Health & City Standards Committee

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An inspection was carried out at 113-131 Daisy Hill Road, Daisy Hill.

The Health & City Standards Committee recommended:

1. That Council's solicitors be instructed to commence prosecution proceedings against NCR Securities Pty Ltd, Burchill VDM, and Hepburn and Thorpe (Qld) Pty Ltd for breaches of either the Development Permit conditions by commencing assessable development without approval, or for breaches of the Court Order/Operational Works permit for committing harm outside the permitted zone.
2. That the property owner, developer and project manager be advised, in writing, of Council's decision.

Adopted by Council at its meeting of 31/10/2006 Minute No 336/2006

REFER TO: Health & City Standards Committee

REPORT BY: City Standards Manager

BRANCH: CityStds

HS10 File No: 392701(P2) Id No: 3970558STATUS OF PROCEEDINGS - UNLAWFUL CLEARING OF
PROTECTED VEGETATION

113-131 DAISY HILL ROAD, DAISY HILL 4127 (location)

LOT 2 SP 168264 (RPD)

NCR SECURITIES PTY LTD (owner)

REPORT OF: CITY STANDARDS MANAGER

Created: 29/11/2006

PURPOSE OF REPORT

The purpose of this report is to provide the status on the approved prosecution proceedings for the unlawful clearing of protected vegetation at 113-131 Daisy Hill Road, Daisy Hill. In particular the report details the significant co-operation of Hepburn and Thorpe and representatives of the Wildlife Preservation Society of Queensland Inc - Logan Branch (WPSQ-LB) in developing a rehabilitation plan for the area harmed.

BACKGROUND OF REPORT

The report contained in Appendix 1 was considered by the Health & City Standards Committee on 23 October 2006. The Committee also conducted a field inspection of the area at 113-131 Daisy Hill Road, Daisy Hill that was subject to the unlawful clearing.

The following resolution was adopted by Council at its meeting of 31 October 2006, Minute No 336/2006:

- 1. That Council's solicitors be instructed to commence prosecution proceedings against NCR Securities Pty Ltd, Burchill VDM, and Hepburn and Thorpe (Qld) Pty Ltd for breaches of either the Development Permit conditions by commencing assessable development without approval, or for breaches of the Court Order/Operational Works permit for committing harm outside the permitted zone.*
- 2. That the property owner, developer and project manager be advised, in writing, of Council's decision.*

MEETINGS WITH PARTIES ON 31 OCTOBER 2006

A "without prejudice" meeting was convened on 31 October 2006 with Council Officers and representatives of NCR Securities Pty Ltd (NCR), Burchill VDM Pty Ltd and Hepburn & Thorpe (Qld) Pty Ltd advising them of Council's decision. A representative from NCR's legal advisers, Phillips Fox, were also present. NCR, being the owners of the land where the clearing took place, maintained their innocence at this meeting. Council's Officers confirmed, however, that Council had resolved to prosecute all three parties for the unlawful clearing of vegetation.

REFER TO: Health & City Standards Committee

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Discussions were then focussed on a proposal for rehabilitation. Dr Darren Draper of Belleng VDM Pty Ltd who was present at the meeting advised that he was commissioned to prepare a rehabilitation plan for the area harmed. Council Officers agreed to entertain the proposal for the development of a rehabilitation plan subject to the involvement of WPSQ-LB. NCR did not, however, commit to the process as it considered that doing so would be tantamount to an admission of guilt. All other parties agreed to the objective of securing a rehabilitation plan irrespective of the recent Council decision to prosecute for the offence.

Immediately after this meeting Council Officers met with Mr David Keogh of the WPSQ-LB to determine the extent of discussions with environmental consultants, Belleng VDM Pty Ltd. Mr Keogh confirmed that the WPSQ-LB had agreed to work with the consultants to obtain an appropriate plan of rehabilitation. Dr Darren Draper was invited to join these discussions with a view to finalising a plan of rehabilitation.

STATUS OF PROSECUTION PROCEEDINGS

Council's Solicitors are in the process of preparing the appropriate Complaints & Summons for all three parties to secure the commencement of prosecution proceedings for the unlawful clearing of vegetation at 113-131 Daisy Hill Road, Daisy Hill.

The Complaints & Summons have not been issued at this stage as it was considered appropriate for Elected Members to be apprised of the significant progress in finalising a rehabilitation plan for the area subject to unlawful clearing.

STATUS OF REHABILITATION PLAN

As of 17 November 2007 Hepburn & Thorpe, the WPSQ-LB and Council Officers (City Standards Branch & Parks Branch Officers) have agreed to the content of a plan of rehabilitation. The final version of the plan of rehabilitation, as prepared by Belleng VDM Pty Ltd, for Hepburn & Thorpe, was received by Council on 20 November 2006.

It should be noted at this stage of the report that numerous meetings were convened with representatives of the WPSQ-LB, Council Officers and Dr Darren Draper of Belleng VDM Pty Ltd before the final version was reached. At the very first on-site meeting of all parties it was obvious that the representatives of the WPSQ-LB had never been to the site since the unlawful clearing and were pleased that there were trees left on the premises as well as a link to the forest being kept.

The representatives of the WPSQ-LB openly stated it would be "easier to revegetate than they originally thought and they believed it could be done quickly and effectively". The final e-mail of the WPSQ-LB of 17 November 2006, is attached in Appendix 2 for information.

Since this time Council's solicitors have been instructed to draft the appropriate rehabilitation agreement to which the rehabilitation plan will be annexed. The rehabilitation agreement will be the legal mechanism that will make NCR responsible for carrying out the rehabilitation works, namely, complying with the rehabilitation plan. The detail of the

REFER TO: Health & City Standards Committee

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Continued: 3

rehabilitation works required are contained in the rehabilitation plan attached to Appendix 3.

NCR will also need to apply to the Council for a development approval for operational works to carry out the rehabilitation and if approved it is envisaged that it will be a condition of that approval that NCR comply with the terms of the rehabilitation arrangement. It should be noted at this stage of the report, development of the rehabilitation plan was not funded by Council. Council's only expense is the rehabilitation agreement.

FUTURE DIRECTION

The proposed rehabilitation agreement will be required to be executed by NCR, the owners of 113-131 Daisy Hill Road.

Council's Solicitors advise that the existence of a rehabilitation agreement prior to prosecution is only a factor to be raised by the defence in mitigation of any penalty to be imposed following a guilty plea or verdict. Due to the serious nature of this matter and the negligence that would be alleged by the Council with regard to the clearing that took place, particularly given the terms of the Court approval and the direction given by the Council officer that the area be clearly marked and fenced to prevent the occurrence of such clearing, it is considered that this case clearly passes the public interest test for prosecution.

Council's Solicitors further advise that the prosecution of this case would be one where the Council should seek a conviction be recorded, a substantial penalty, costs and a rehabilitation order. In the event, therefore, that a rehabilitation agreement is reached and actioned prior to the initiation of the prosecution they consider it would be a credit to the Council as well as the Defendants to demonstrate that such proactive steps had been taken. Whilst this may mitigate the level of penalty to be imposed on the Defendants it is unlikely to impact on any award of costs due to the serious circumstances of the clearing.

Attached in Appendix 4 are some Court cases provided by Council's solicitors with respect to the rehabilitation of land or dedication of land where the mitigation of eventual penalties occurred.

Council's solicitors have confirmed they consider there is a prima facie case against the owner and developers at this stage, although the evidence in this area will need further review in preparation for any trial that may arise from a prosecution.

In the event of execution by the owner of any rehabilitation agreement, there is no guarantee of how this will be accepted by the Court in mitigation of any penalty to be imposed following a guilty plea or verdict.

Should Council pursue the prosecution of the owners, in particular, the likely penalty range is considered to be \$5,000 to \$20,000, including costs. For the other parties it would be a similar range. Council's legal services would cost in the vicinity of \$60,000 to \$80,000.

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Continued: 4

Whilst a definitive public interest originally existed to pursue the prosecution, the fact that the WPSQ-LB (a significant public interest group) have fully supported the rehabilitation plan process and have questioned the need for prosecution, it is considered that the public interest test needs to be reassessed. In particular, Council has not funded the development of the rehabilitation plan, only the overriding agreement.

SUMMARY

In the event that NCR executes the rehabilitation agreement there is no doubt as defendants to the prosecution they would raise such in mitigation of any penalty. Whilst Council is confident it has a sound case, the decision of the Court cannot accurately be predicted in terms of what penalty will be applied. Costs awarded in the criminal jurisdiction are minimal, however, will not be affected by the existence of the rehabilitation agreement.

It is considered at this stage that the Council should continue with the prosecution as it remains in the public interest to do so. The Council should however give delegated authority to the Chief Executive Officer and the Mayor to execute a rehabilitation agreement and secondly to carry out an ongoing assessment of the public interest of the prosecution in this matter.

IT IS RECOMMENDED:-

1. That the Rehabilitation Plan attached as Appendix 3 to the report of the City Standards Manager dated 29 November 2006 (ID: 3970558), be endorsed.
2. That the Chief Executive Officer and His Worship the Mayor be delegated authority to:
 - (a) negotiate and execute a rehabilitation agreement that will give legal effect to the rehabilitation plan attached as Appendix 3 to the report of the City Standards Manager dated 29 November 2006 (ID: 3970558); and
 - (b) further consider the public interest of pursuing prosecution proceedings in this matter on an ongoing basis and to determine the conduct of the enforcement proceedings.

The Health & City Standards Committee recommended:

That the matter be deferred to Council's Ordinary meeting to be held on 12 December 2006 to allow for further legal advice.

Moved: Cr Pidgeon, Cr Grant

1. That the Rehabilitation Plan attached as Appendix 3 to the report of the City Standards Manager dated 29 November 2006 (ID: 3970558), be endorsed.

REFER TO: Health & City Standards Committee

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Continued: 5

2. That the Chief Executive Officer and His Worship the Mayor be delegated authority to:
 - (a) negotiate and execute a rehabilitation agreement that will give legal affect to the rehabilitation plan attached as Appendix 3 to the report of the City Standards Manager dated 29 November 2006 (ID: 3970558); and
 - (b) such negotiations referred to in Clause (a) above shall include seeking a contribution towards the Environment Reserve.
 - (c) further consider the public interest of pursuing prosecution proceedings in this matter on an ongoing basis and to determine the conduct of the enforcement proceedings.

In the event that the above motion was lost, Councillor McLindon foreshadowed his intention to move the following amendment:

"That Logan City Council prosecute NCR Securities in relation to a conditional breach resulting in the clearing of protected vegetation at 113-131 Daisy Hill Road, Daisy Hill."

379/2006 **Resolved:** Cr Pidgeon, Cr Grant

1. That the Rehabilitation Plan attached as Appendix 3 to the report of the City Standards Manager dated 29 November 2006 (ID: 3970558), be endorsed.
2. That the Chief Executive Officer and His Worship the Mayor be delegated authority to:
 - (a) negotiate and execute a rehabilitation agreement that will give legal affect to the rehabilitation plan attached as Appendix 3 to the report of the City Standards Manager dated 29 November 2006 (ID: 3970558); and
 - (b) such negotiations referred to in Clause (a) above shall include seeking a contribution towards the Environment Reserve.
 - (c) further consider the public interest of pursuing prosecution proceedings in this matter on an ongoing basis and to determine the conduct of the enforcement proceedings.

Against: Councillors Power, Smith, McLindon & Byron

Adopted by Council at its meeting of 12/12/2006 Minute No 379/2006

Item HS10 File No: 392701(P2) Id No: 3970558
**STATUS OF PROCEEDINGS - UNLAWFUL CLEARING OF PROTECTED
VEGETATION**
113-131 DAISY HILL ROAD, DAISY HILL 4127 (LOCATION)
LOT 2 SP 168264 (RPD)
NCR SECURITIES PTY LTD (OWNER)

Moved: Cr Pidgeon, Cr Grant

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- (c) further consider the public interest of pursuing prosecution proceedings in this matter on an ongoing basis and to determine the conduct of the enforcement proceedings.

Against: Councillors Power, Smith, McLindon & Byron

Pet1 File No: 392701(P2) Id No: 4077340
CLEARANCE OF OLD GROWTH VEGETATION - 113-135 DAISY
HILL ROAD, DAISY HILL

REPORT OF: CITY GOVERNANCE MANAGER

Created: 04/04/2007

Councillor McLindon tabled a petition containing one hundred and seventy-nine (179) signatures requesting that Logan City Council amend its codes to guarantee that all future land clearing in Logan be undertaken in a humane, gradual way over a period of months to allow for wildlife to safely dissipate and establish new territories and that this is not undertaken in the breeding season.

106/2007 **Resolved:** Cr McLindon, Cr Pidgeon

That the petition be received and referred to the Deputy Chief Executive Officer - Strategy & Development for investigation.

Adopted by Council at its meeting of 03/04/2007 Minute No 106/2007

NoRM1

File No: 392701(P2)

Id No: 3983507

NOTICE OF REPEAL MOTION - COUNCIL RESOLUTION DATED 12 DECEMBER 2006, MINUTE NO. 397/2006 - STATUS OF PROCEEDINGS, UNLAWFUL CLEARING OF PROTECTED VEGETATION, 113-131 DAISY HILL ROAD, DAISY HILL 4127 (LOCATION, LOT 2 SP 168264 (RPD) NCR SECURITIES PTY LTD (OWNER)

REPORT OF: CITY GOVERNANCE MANAGERCreated: 14/12/2006

Councillor Power submitted a letter to the Chief Executive Officer on 13 December 2006 giving notice of his intention to move the following motion at today's meeting:

That the Council resolution for Item HS10, adopted at the Ordinary Council meeting on 12 December 2006, Minute No. 379/2006 as detailed below, be repealed:

1. *That the Rehabilitation Plan attached as Appendix 3 to the report of the City Standards Manager dated 29 November 2006 (ID: 3970558), be endorsed.*
2. *That the Chief Executive Officer and His Worship the Mayor be delegated authority to:*
 - (a) *negotiate and execute a rehabilitation agreement that will give legal affect to the rehabilitation plan attached as Appendix 3 to the report of the City Standards Manager dated 29 November 2006 (ID: 3970558); and*
 - (b) *such negotiations referred to in Clause (a) above shall include seeking a contribution towards the Environment Reserve.*
 - (c) *Further consider the public interest of pursuing prosecution proceedings in this matter on an ongoing basis and to determine the conduct of the enforcement proceedings.*

In the event that the foregoing motion to repeal is successful, Councillor Power has also given notice of his intention to move the following motion in its place:

'That Logan City Council prosecute NCR Securities in relation to a conditional breach resulting in the clearing of protected vegetation at 113-131 Daisy Hill Road, Daisy Hill.'

For consideration.

Moved: Cr Power, Cr McLindon

That the Council resolution for Item HS10, adopted at the Ordinary Council meeting on 12 December 2006, Minute No. 379/2006 as detailed below, be repealed:

NoRM1

File No: 392701(P2)

Id No: 3983507

1. *That the Rehabilitation Plan attached as Appendix 3 to the report of the City Standards Manager dated 29 November 2006 (ID: 3970558), be endorsed.*
2. *That the Chief Executive Officer and His Worship the Mayor be delegated authority to:*
 - a. *negotiate and execute a rehabilitation agreement that will give legal affect to the rehabilitation plan attached as Appendix 3 to the report of the City Standards Manager dated 29 November 2006 (ID: 3970558); and*
 - b. *such negotiations referred to in Clause (a) above shall include seeking a contribution towards the Environment Reserve.*
 - c. *Further consider the public interest of pursuing prosecution proceedings in this matter on an ongoing basis and to determine the conduct of the enforcement proceedings.*

LOST**Council of 30/01/2007**

HS10 File No: 392701(P2) Id No: 3970558

STATUS OF PROCEEDINGS - UNLAWFUL CLEARING OF
PROTECTED VEGETATION

113-131 DAISY HILL ROAD, DAISY HILL 4127 (location)

LOT 2 SP 168264 (RPD)

NCR SECURITIES PTY LTD (owner)

REPORT OF: CITY STANDARDS MANAGER

Created: 29/11/2006

PURPOSE OF REPORT

The purpose of this report is to provide the status on the approved prosecution proceedings for the unlawful clearing of protected vegetation at 113-131 Daisy Hill Road, Daisy Hill. In particular the report details the significant co-operation of Hepburn and Thorpe and representatives of the Wildlife Preservation Society of Queensland Inc - Logan Branch (WPSQ-LB) in developing a rehabilitation plan for the area harmed.

BACKGROUND OF REPORT

The report contained in Appendix 1 was considered by the Health & City Standards Committee on 23 October 2006. The Committee also conducted a field inspection of the area at 113-131 Daisy Hill Road, Daisy Hill that was subject to the unlawful clearing.

The following resolution was adopted by Council at its meeting of 31 October 2006, Minute No 336/2006:

1. *That Council's solicitors be instructed to commence prosecution proceedings against NCR Securities Pty Ltd, Burchill VDM, and Hepburn and Thorpe (Qld) Pty Ltd for breaches of either the Development Permit conditions by commencing assessable development without approval, or for breaches of the Court Order/Operational Works permit for committing harm outside the permitted zone.*
2. *That the property owner, developer and project manager be advised, in writing, of Council's decision.*

MEETINGS WITH PARTIES ON 31 OCTOBER 2006

A "without prejudice" meeting was convened on 31 October 2006 with Council Officers and representatives of NCR Securities Pty Ltd (NCR), Burchill VDM Pty Ltd and Hepburn & Thorpe (Qld) Pty Ltd advising them of Council's decision. A representative from NCR's legal advisers, Phillips Fox, were also present. NCR, being the owners of the land where the clearing took place, maintained their innocence at this meeting. Council's Officers confirmed, however, that Council had resolved to prosecute all three parties for the unlawful clearing of vegetation.

ITEM NO: HS10**FILE NO:** 392701(P2)Continued

Discussions were then focussed on a proposal for rehabilitation. Dr Darren Draper of Belleng VDM Pty Ltd who was present at the meeting advised that he was commissioned to prepare a rehabilitation plan for the area harmed. Council Officers agreed to entertain the proposal for the development of a rehabilitation plan subject to the involvement of WPSQ-LB. NCR did not, however, commit to the process as it considered that doing so would be tantamount to an admission of guilt. All other parties agreed to the objective of securing a rehabilitation plan irrespective of the recent Council decision to prosecute for the offence.

Immediately after this meeting Council Officers met with Mr David Keogh of the WPSQ-LB to determine the extent of discussions with environmental consultants, Belleng VDM Pty Ltd. Mr Keogh confirmed that the WPSQ-LB had agreed to work with the consultants to obtain an appropriate plan of rehabilitation. Dr Darren Draper was invited to join these discussions with a view to finalising a plan of rehabilitation.

STATUS OF PROSECUTION PROCEEDINGS

Council's Solicitors are in the process of preparing the appropriate Complaints & Summons for all three parties to secure the commencement of prosecution proceedings for the unlawful clearing of vegetation at 113-131 Daisy Hill Road, Daisy Hill.

The Complaints & Summons have not been issued at this stage as it was considered appropriate for Elected Members to be apprised of the significant progress in finalising a rehabilitation plan for the area subject to unlawful clearing.

STATUS OF REHABILITATION PLAN

As of 17 November 2007 Hepburn & Thorpe, the WPSQ-LB and Council Officers (City Standards Branch & Parks Branch Officers) have agreed to the content of a plan of rehabilitation. The final version of the plan of rehabilitation, as prepared by Belleng VDM Pty Ltd, for Hepburn & Thorpe, was received by Council on 20 November 2006.

It should be noted at this stage of the report that numerous meetings were convened with representatives of the WPSQ-LB, Council Officers and Dr Darren Draper of Belleng VDM Pty Ltd before the final version was reached. At the very first on-site meeting of all parties it was obvious that the representatives of the WPSQ-LB had never been to the site since the unlawful clearing and were pleased that there were trees left on the premises as well as a link to the forest being kept.

The representatives of the WPSQ-LB openly stated it would be "easier to revegetate than they originally thought and they believed it could be done quickly and effectively". The final e-mail of the WPSQ-LB of 17 November 2006, is attached in Appendix 2 for information.

Since this time Council's solicitors have been instructed to draft the appropriate rehabilitation agreement to which the rehabilitation plan will be annexed. The rehabilitation agreement will be the legal mechanism that will make NCR responsible for carrying out the rehabilitation works, namely, complying with the rehabilitation plan. The detail of the rehabilitation works required are contained in the rehabilitation plan attached to Appendix 3.

ITEM NO: HS10**FILE NO:** 392701(P2)Continued

NCR will also need to apply to the Council for a development approval for operational works to carry out the rehabilitation and if approved it is envisaged that it will be a condition of that approval that NCR comply with the terms of the rehabilitation arrangement. It should be noted at this stage of the report, development of the rehabilitation plan was not funded by Council. Council's only expense is the rehabilitation agreement.

FUTURE DIRECTION

The proposed rehabilitation agreement will be required to be executed by NCR, the owners of 113-131 Daisy Hill Road.

Council's Solicitors advise that the existence of a rehabilitation agreement prior to prosecution is only a factor to be raised by the defence in mitigation of any penalty to be imposed following a guilty plea or verdict. Due to the serious nature of this matter and the negligence that would be alleged by the Council with regard to the clearing that took place, particularly given the terms of the Court approval and the direction given by the Council officer that the area be clearly marked and fenced to prevent the occurrence of such clearing, it is considered that this case clearly passes the public interest test for prosecution.

Council's Solicitors further advise that the prosecution of this case would be one where the Council should seek a conviction be recorded, a substantial penalty, costs and a rehabilitation order. In the event, therefore, that a rehabilitation agreement is reached and actioned prior to the initiation of the prosecution they consider it would be a credit to the Council as well as the Defendants to demonstrate that such proactive steps had been taken. Whilst this may mitigate the level of penalty to be imposed on the Defendants it is unlikely to impact on any award of costs due to the serious circumstances of the clearing.

Attached in Appendix 4 are some Court cases provided by Council's solicitors with respect to the rehabilitation of land or dedication of land where the mitigation of eventual penalties occurred.

Council's solicitors have confirmed they consider there is a prima facie case against the owner and developers at this stage, although the evidence in this area will need further review in preparation for any trial that may arise from a prosecution.

In the event of execution by the owner of any rehabilitation agreement, there is no guarantee of how this will be accepted by the Court in mitigation of any penalty to be imposed following a guilty plea or verdict.

Should Council pursue the prosecution of the owners, in particular, the likely penalty range is considered to be \$5,000 to \$20,000, including costs. For the other parties it would be a similar range. Council's legal services would cost in the vicinity of \$60,000 to \$80,000.

Whilst a definitive public interest originally existed to pursue the prosecution, the fact that the WPSQ-LB (a significant public interest group) have fully supported the rehabilitation plan process and have questioned the need for prosecution, it is considered that the public

ITEM NO: HS10**FILE NO:** 392701(P2)Continued

interest test needs to be reassessed. In particular, Council has not funded the development of the rehabilitation plan, only the overriding agreement.

SUMMARY

In the event that NCR executes the rehabilitation agreement there is no doubt as defendants to the prosecution they would raise such in mitigation of any penalty. Whilst Council is confident it has a sound case, the decision of the Court cannot accurately be predicted in terms of what penalty will be applied. Costs awarded in the criminal jurisdiction are minimal, however, will not be affected by the existence of the rehabilitation agreement.

It is considered at this stage that the Council should continue with the prosecution as it remains in the public interest to do so. The Council should however give delegated authority to the Chief Executive Officer and the Mayor to execute a rehabilitation agreement and secondly to carry out an ongoing assessment of the public interest of the prosecution in this matter.

IT IS RECOMMENDED:-

1. That the Rehabilitation Plan attached as Appendix 3 to the report of the City Standards Manager dated 29 November 2006 (ID: 3970558), be endorsed.
2. That the Chief Executive Officer and His Worship the Mayor be delegated authority to:
 - (a) negotiate and execute a rehabilitation agreement that will give legal effect to the rehabilitation plan attached as Appendix 3 to the report of the City Standards Manager dated 29 November 2006 (ID: 3970558); and
 - (b) further consider the public interest of pursuing prosecution proceedings in this matter on an ongoing basis and to determine the conduct of the enforcement proceedings.

The Health & City Standards Committee recommended:

That the matter be deferred to Council's Ordinary meeting to be held on 12 December 2006 to allow for further legal advice.

Moved: Cr Pidgeon, Cr Grant

1. That the Rehabilitation Plan attached as Appendix 3 to the report of the City Standards Manager dated 29 November 2006 (ID: 3970558), be endorsed.
2. That the Chief Executive Officer and His Worship the Mayor be delegated authority to:

ITEM NO: HS10**FILE NO:** 392701(P2)Continued

- (a) negotiate and execute a rehabilitation agreement that will give legal affect to the rehabilitation plan attached as Appendix 3 to the report of the City Standards Manager dated 29 November 2006 (ID: 3970558); and
- (b) such negotiations referred to in Clause (a) above shall include seeking a contribution towards the Environment Reserve.
- (c) further consider the public interest of pursuing prosecution proceedings in this matter on an ongoing basis and to determine the conduct of the enforcement proceedings.

In the event that the above motion was lost, Councillor McLindon foreshadowed his intention to move the following amendment:

"That Logan City Council prosecute NCR Securities in relation to a conditional breach resulting in the clearing of protected vegetation at 113-131 Daisy Hill Road, Daisy Hill."

379/2006 **Resolved:** Cr Pidgeon, Cr Grant

1. That the Rehabilitation Plan attached as Appendix 3 to the report of the City Standards Manager dated 29 November 2006 (ID: 3970558), be endorsed.
2. That the Chief Executive Officer and His Worship the Mayor be delegated authority to:
 - (a) negotiate and execute a rehabilitation agreement that will give legal affect to the rehabilitation plan attached as Appendix 3 to the report of the City Standards Manager dated 29 November 2006 (ID: 3970558); and
 - (b) such negotiations referred to in Clause (a) above shall include seeking a contribution towards the Environment Reserve.
 - (c) further consider the public interest of pursuing prosecution proceedings in this matter on an ongoing basis and to determine the conduct of the enforcement proceedings.

Against: Councillors Power, Smith, McLindon & Byron

Adopted by Council at its meeting of 12/12/2006 Minute No 379/2006

ITEM NO: HS10

FILE NO: 392701(P2)

Continued

HS7 File No: 392701(P2) Id No: 3928216

CLEARING OF PROTECTED VEGETATION FROM WITHIN
PROPOSED ENVIRONMENTAL PARK, CONTRARY TO
OPERATIONAL WORKS DEVELOPMENT PERMIT
113-131 DAISY HILL ROAD, DAISY HILL 4127 (location)
LOT 2 ON SP168264 (RPD)
NCR SECURITIES PTY LTD (owner)

REPORT OF: CITY STANDARDS MANAGER

Created: 18/10/2006

PURPOSE OF REPORT

The purpose of this report is to advise elected members of an issue relating to the harming of protected vegetation from a proposed environmental park to be dedicated to Council as part of a residential subdivision situated at 113-131 Daisy Hill Road, Daisy Hill. This clearing has occurred as part of operational works surrounding the proposed park site and it is requested that the elected members consider this matter and consider the course of action recommended.

CURRENT DEVELOPMENT APPROVALS

On 12 April 2005 Council approved Development Application (COM/51/2004) for Reconfiguring a Lot (180 residential lots - including lot sizes prescribed by the Scheme for the R1 area) and Preliminary Approval for Operational Works and Preliminary Approval to permit development in accordance with the table of development for the R1 and R2 areas as appropriate, where the proposed residential precincts extend beyond the boundaries of the R1 and R2 areas respectively at 113-131 Daisy Hill Road, Daisy Hill.

A submitter appeal from the Wildlife Preservation Society of Queensland, Logan Branch Incorporated was filed 2 June 2005 in the Planning and Environment Court (appeal no. 1993/05). On 7 September 2005 the Planning and Environment Court approved the development application, subject to conditions.

The proposal can be summarised as follows:

- 180 residential lots in two residential precincts (other lots in the plan are for the original house block, a park, an environment park and a State Forest).
- Environment Park (5.085 hectares) and Park (3.411 hectares). The environment park included a small 2458m² (0.2458 hectares) parcel of land being the proposed lot 205 of this subdivision, abutting the Chatswood Road road reserve. It is this parcel that is the subject of the report.
- State Forest (18.24 hectares).
- Extensive internal road network.

ITEM NO:**HS7****FILE NO:** 392701(P2)Continued

- Rehabilitation of three main areas of the 'open space network' on the premises. These areas are that of the creek corridor (in particular the area of rainforest in the south of the subject premises), the eastern bushland (to be dedicated to QPWS) and the bushland in the northwest of the premises (to be retained in an environment park).

The subject land is designated a category 1 vegetation management area under the provisions of the Planning Scheme 2006 and previously under Local law No 8 (Environment Management) 1999.

This means that all native vegetation in this area, including grasses, shrubs and trees are protected unless a permit to harm had been issued by Logan City Council permitting such harm to occur.

Operational Works Approval OW/243/2005 of 21 June 2006 allows "vegetation management" clearing on the development. Please refer to the Plans in background papers.

COMPLIANCE ISSUES

Council first became involved in an investigation of possible harm to vegetation following a complaint from a local environmentalist that a portion of the dedicated environment park had been removed.

This resulted in a site visit on 17 October 2006 by the Development Assessment Manager and officers from the Development assessment Branch. During that inspection the site foreman admitted that a mistake had been made and verbal directions were given to revegetate the site and provide Council with a revegetation plan for approval. The direction given requires the rehabilitation of this portion of proposed parkland in accordance with Council and Wildlife Preservation Society guidelines.

The property owner has since given a verbal undertaking that the site will be revegetated as a matter of priority.

A further inspection of the premises was conducted by Development Control officers from the City Standards Branch on Wednesday 18 October 2006 in the presence of the site foreman acting on behalf of Hepburn & Thorpe (Qld) Pty Ltd, the construction and project managers performing the Operational Works upon this property.

The subject of the visit was discussed and the site foreman led the investigating officers to an area which was vaguely pegged out, and consisted of a gully swale comprising a number of clumps of large trees and an area of slashed land.

ITEM NO: HS7**FILE NO:** 392701(P2)Continued

The foreman indicated to some pegs visible within the scrubby area and indicated a particular peg which had allegedly been installed by previous surveyors in association with a previous plan of development. Pegs from this previous survey, as well as new survey pegs, were clearly evident and it is alleged that machinery operators had apparently mistaken one of the original pegs to be part of the designated clearing area, and sections of this proposed environmental park were cleared of significant trees in one area, and understorey vegetation, being mostly lantana, in others.

It is considered that of this proposed environmental park approximately 50% - 70% had been harmed, however, it was noted that in the remaining area in excess of 46 significant trees remained, some visibly containing wildlife. It is noted the trees containing wildlife are clearly marked and these marked trees remain even in the cleared areas.

OPTIONS FOR RESOLUTION

It is evident that the terms of the Court Order, and Operational Works Order OW/243/2005, have not been complied with in that this area intended for dedication for an environmental park has been harmed, and is outside the approved areas for vegetation removal.

The company responsible for this apparent mistake has admitted responsibility for the harm incurred. The company has accepted a direction from the Development Assessment Manager to rehabilitate the area to Council and Wildlife Preservation Society guidelines, which given the substantial remaining significant trees in this dedicated environment park, would appear to provide a feasible short and long term remedy.

The rehabilitation program could be formalised by issuing Show Cause Notices pursuant to the provisions of the Integrated Planning Act 1997 against the property owner, developer and project manager requiring the lodgement of a Development Application to harm protected vegetation, being the vegetation the subject of this report. This would allow a separate Rehabilitation Order to be issued thereby compelling the owner/ project manager to rehabilitate the subject area prior to the dedication of this land being effected. The issue of responsibility for making that application is a matter between the parties.

A second option is for Council to commence prosecution. This could be either for a breach of the Development Permit conditions in relation to the commencement of assessable development contrary to the VMA provisions of the Planning Scheme, or for a breach of the combined Court Order/Operational Works permit for committing harm outside the permitted zone.

It would be appropriate to consider directing those proceedings against:

- NCR Securities Pty Ltd (the property owner);
- Burchill VDM (the developer); and
- Hepburn and Thorpe (Qld) Pty Ltd (the project manager).

ITEM NO: HS7**FILE NO:** 392701(P2)Continued

If the prosecution option is taken Council would need to develop a formal rehabilitation plan for the consideration of the Court and inclusion in any order made. The first option places that responsibility on the applicant.

Any consideration of prosecution should be balanced against the verbal directions and agreements already reached between the project manager and owner in relation to the rehabilitation of the harmed area, and the fact that if those agreements are honoured it is likely that rehabilitation would be completed well before the matters are brought before a Court. This may constitute a strong defence against the prosecution.

SUMMARY

Council can consider two options to deal with this breach of the Development Permit conditions, being **either**:

1. That the offenders in this instance, being the project manager and the owner of this property be directed to make a Development Application to harm protected vegetation, being the vegetation the subject of this report, which would allow a separate Rehabilitation Order to be issued thereby compelling the owner/ project manager to rehabilitate the subject area prior to the dedication of this land being effected; **or**
2. That Council's solicitors be instructed to advise on the commencement of prosecution proceedings against NCR Securities Pty Ltd, Burchill VDM, and Hepburn and Thorpe (Qld) Pty Ltd for breaches of either the Development Permit conditions by commencing assessable development without approval, or for breaches of the Court Order/Operational Works permit for committing harm outside the permitted zone.

IT IS RECOMMENDED:-

1. That the offenders in this instance, being the project manager, developer and the owner of this property be directed to make a Development Application to harm protected vegetation, being the vegetation the subject of the report of the City Standards Manager dated 18 October 2006 (ID: 3928216), which would allow a separate Rehabilitation Order to be issued thereby compelling the owner/ project manager to rehabilitate the subject area prior to the dedication of this land being effected.
2. That in the event that the subject application in clause 1 of the recommendation is not made within seven (7) days of Council's direction, Council's solicitors be instructed to advise on the commencement of prosecution proceedings against NCR Securities Pty Ltd, Burchill VDM, and Hepburn and Thorpe (Qld) Pty Ltd for breaches of either the Development Permit conditions by commencing assessable development without approval, or for breaches of the Court Order/Operational Works permit for committing harm outside the permitted zone.
3. That the property owner, developer and project manager be advised, in writing, of Council's decision.

ITEM NO: HS7**FILE NO:** 392701(P2)Continued

An inspection was carried out at 113-131 Daisy Hill Road, Daisy Hill.

The Health & City Standards Committee recommended:

1. That Council's solicitors be instructed to commence prosecution proceedings against NCR Securities Pty Ltd, Burchill VDM, and Hepburn and Thorpe (Qld) Pty Ltd for breaches of either the Development Permit conditions by commencing assessable development without approval, or for breaches of the Court Order/Operational Works permit for committing harm outside the permitted zone.
2. That the property owner, developer and project manager be advised, in writing, of Council's decision.

Adopted by Council at its meeting of 31/10/2006 Minute No 336/2006

