



# Town of Cottesloe

I hereby certify that the minutes of the Council meeting held on

**Tuesday, 11 December 2018**

were confirmed as a true and accurate record by Council resolution.

Signed:

A handwritten signature in blue ink, appearing to read 'F. ...', is written over the 'Signed:' label.

Presiding Member

Date:

19/3/2019

# TOWN OF COTTESLOE



## ORDINARY COUNCIL MEETING

# MINUTES

ORDINARY COUNCIL MEETING  
HELD IN THE  
Council Chambers, Cottesloe Civic Centre  
109 Broome Street, Cottesloe  
6:00 PM Tuesday, 11 December 2018

**GARRY BIRD**  
Acting Chief Executive Officer

19 December 2018

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## TABLE OF CONTENTS

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| ITEM | SUBJECT   | PAGE NO |
|------|---|---------|
| 1    | DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS .....   | 5       |
| 2    | DISCLAIMER .....  | 5       |
| 3    | ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION .....  | 5       |
| 4    | PUBLIC QUESTION TIME .....  | 5       |
|      | 4.1 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE .....   | 5       |
|      | 4.2 PUBLIC QUESTIONS .....  | 5       |
| 5    | PUBLIC STATEMENT TIME.....  | 9       |
| 6    | ATTENDANCE .....  | 18      |
|      | 6.1 APOLOGIES .....   | 18      |
|      | 6.2 APPROVED LEAVE OF ABSENCE.....  | 18      |
|      | 6.3 APPLICATIONS FOR LEAVE OF ABSENCE .....   | 18      |
| 7    | DECLARATION OF INTERESTS.....   | 19      |
| 8    | CONFIRMATION OF MINUTES.....  | 19      |
| 9    | PRESENTATIONS .....   | 19      |
|      | 9.1 PETITIONS .....   | 19      |
|      | 9.2 PRESENTATIONS.....  | 19      |
|      | 9.3 DEPUTATIONS .....   | 20      |
| 10   | REPORTS.....  | 21      |
|      | 10.1 REPORTS OF OFFICERS.....   | 21      |
|      | PLANNING .....  | 21      |
|      | 10.1.1 PLANNING APPLICATIONS DETERMINED UNDER DELEGATION  | 21      |
|      | 10.1.2 PROPOSED SCHEME AMENDMENT 9 TO LOCAL PLANNING<br>SCHEME NO. 3 (SEAPINES)                               | 24      |
|      | 10.1.3 LOCAL PLANNING POLICY NO. 2 - WEARNE REDEVELOPMENT, LOT<br>87 (8) WARTON STREET, COTTESLOE             | 37      |
|      | ADMINISTRATION .....  | 44      |
|      | 10.1.4 REVIEW OF COUNCIL WARD BOUNDARIES AND NUMBER OF<br>ELECTED MEMBERS - OUTCOME OF COMMUNITY CONSULTATION | 44      |
|      | 10.1.5 REVIEW OF PURCHASE ORDERS POLICY   | 48      |
|      | ENGINEERING .....   | 53      |

---

10.1.6 INDIANA TEA HOUSE TOILET CLEANING SHORT AND LONG TERM ARRANGEMENTS 53

10.1.7 1 VERA STREET REMOVAL OF STREET TREES 55

10.1.8 NAPIER STREET NO STOPPING YELLOW LINE INSTALLATION 59

**FINANCE ..... 63**

10.1.9 SEA VIEW GOLF CLUB INC. - REQUEST FOR VARIATION TO FUNDING CONTRIBUTION 63

10.1.10 FINANCIAL STATEMENTS FOR THE PERIOD 1 JULY 2018 TO 30 NOVEMBER 2018 70

**EXECUTIVE SERVICES..... 74**

10.1.11 AGREEMENT DEFERRING AMALGAMATION OF LOTS 7 AND 8 (UNITS 7 AND 8, FLOOR 1) OF 22 AVONMORE TERRACE, COTTESLOE 74

**10.2 RECEIPT OF COMMITTEE MINUTES ..... 76**

**10.3 REPORTS OF COMMITTEES ..... 76**

**11 ELECTED MEMBERS MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN ..... 77**

**11.1 COUNCILLOR MOTION - GIDGUP FAMILY AND LAND & CULTURE PROTECTOR, IVA HAYWARD-JACKSON DEPUTATION NOTICE OF MOTION CR BOULTER..... 77**

**11.2 COUNCILLOR MOTION - NOTICE OF MOTION OBJECTING TO GRANT OF CLUB RESTRICTED LIQUOR LICENCE TO THE NORTH COTTESLOE SURF LIFE SAVING CLUB ..... 78**

**11.3 COUNCILLOR MOTION - COUNCIL THANKS AND RESPONSE TO THE REPRESENTATIVES OF THE GIDGUP FAMILY ..... 92**

**12 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING BY:..... 94**

**12.1 ELECTED MEMBERS ..... 94**

**12.2 OFFICERS..... 94**

**13 MEETING CLOSED TO PUBLIC..... 94**

**13.1 MATTERS FOR WHICH THE MEETING MAY BE CLOSED..... 94**

13.1.1 STREET TREE REMOVAL - 4 AND 6 TORRENS STREET, COTTESLOE 94

**13.2 PUBLIC READING OF RECOMMENDATIONS THAT MAY BE MADE PUBLIC..... 96**

**14 MEETING CLOSURE ..... 96**

**1 DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS**

The Presiding Member announced the meeting opened at 6:05pm.

**2 DISCLAIMER**

The Presiding Member drew attention to the Town's Disclaimer.

**3 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION**

The Presiding Member announced that the meeting is being recorded, solely for the purpose of confirming the correctness of the Minutes.

**2018 Road Ribbon for Road Safety Campaign**

The Town of Cottesloe is showing our commitment and contribution to road safety by supporting the WALGA RoadWise Road Ribbon for Road Safety campaign. The campaign commenced on Sunday, 18 November 2018, in support of World Day of Remembrance for Road Traffic Victims, and runs through until Friday, 4 January 2019.

The campaign enables everyone with the opportunity to directly contribute to road safety and work towards achieving zero deaths and serious injuries on our roads this festive season by:

- ✓ Turning off your mobile phone before driving;
- ✓ Adapting your speed for the weather, light, traffic and road conditions;
- ✓ Buckling up when travelling in a vehicle;
- ✓ Taking a break, having a rest or if possible swapping drivers;
- ✓ If you are planning to drink, arrange a skipper, organise public transport or stay overnight.

The Town will be promoting these campaign messages through Facebook, the local papers and will be distributing road ribbons through the Grove Library and the Town's administration counter display. We are also encouraging our local primary schools to promote the campaign messages to parents.

**4 PUBLIC QUESTION TIME****4.1 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**

Nil

**4.2 PUBLIC QUESTIONS****Standing Order 8 – Questions Submitted by Cr Boulter via email 28 November 2018**

- Q1. Was a Development Approval sought or obtained from the WAPC/DPLH for the new universal access path at Cottesloe Main Beach? If not, on

which exemption under the definition of “public works” did the TOC rely having regard to WAPC Planning Bulletin 94?

**A1. No. This has been exempted by WAPC under section 6(1) of the Planning and Development Act.**

Q2. Was a building licence sought or obtained for the new universal access path and associated works? If not, on which exemption did the TOC rely having regard to WAPC Planning Bulletin 94?

**A2. Yes, a Building Application was submitted for the works.**

Q3. How much is the new universal access path and associated works costing?

**A3. Approximately \$633,000 (as per the Tender previously awarded by Council).**

Q4. Were quotes obtained for the new universal access path works under the TOC purchasing policy? If so, can a copy of the quotes be provided to Elected Members?

**A4. No – the works were the subject of a tender which Council have already approved.**

Q5. Who drew up the building, engineering and landscape plans for the new universal access path and associated works?

**A5. Emerge.**

Q6. Can a copy of these documents be provided to Elected Members?

**A6. Yes. A copy of the design can be made available at the Civic Centre.**

Q7. Have modifications been made to the plans since works began? If yes, what are the changes and why were the changes necessary?

**A7. Yes. Additional limestone walls and earthworks were required due to unforeseen site conditions to achieve the design grades.**

Q8. Was a Development Approval for the new Beach Access Paths currently under construction sought or obtained from the WAPC/DPLH? If not, under which exemption under the definition of “public works” did the TOC rely, having regard to WAPC Planning Bulletin 94?

**A8. No. This has been exempted by WAPC under section 6(1) of the Planning and Development Act.**

Q9. Was a Development Approval for the new Beach Access Paths Signage sought or obtained from the WAPC? If not, on which exemption under the definition of “public works” did the TOC rely having regard to WAPC Planning Bulletin 94?

**A9. As above.**

Q10. Was a building licence sought or obtained for the new Beach Access Paths and/or new BAP signage? If not, on which exemption did the TOC rely having regard to WAPC Planning Bulletin 94?

**A10. Yes, a Building Application was submitted for the works.**Statement by Margaret Gidgup – 50 Porter Gardens, Leda

My Dad, Ron Gidgup here, is a Gidgup Elder, this has to be said – you don't do welcome to country well and for us that's very important and we have an Elder here. I'd like to say that any meetings that we attend please pay your respects because you're standing on our country – this is our Budja and we want to pay respect to our past, present and future leaders.

Kaya, Wandju, Wandju – welcome everyone.

The Presiding Member clarified that there is a process in place to determine an appropriate welcome to country which is being undertaken at the moment and will come back to Council for approval but we do run by process here so thank you.

Jack Walsh, 35 Grant Street, Cottesloe – Item 10.1.2

Q1: Seapines site – who is the owner of the site and is it the current proponent for this amendment?

A1: The CEO advised there were 28 owners individually at the site of Seapines. The current proponent does own properties within that property boundary area, it is a strata, they don't own all of them but they own a number of them.

Q2: With no requirement to provide retail space on the ground floor, and the financial incentive for retail accommodation, how will this development add vibrancy and vitality to the beachfront?

A2: Taken on notice.

Q3: At the time much of the site was purchased, there was a two storey limit. The current five storey limit gives considerable profit to the developers. How would allowing a six storey in breach of the TPS4 advantage the Cottesloe Community?

A3. Taken on notice.

Q4. Why was there no community consultation on this matter before these advanced discussions with the developer, and the WAPC?

A4. With regards to no community consultation, the previous officer's recommendation did recommend consultation with the community prior to initiation. Council resolved to do consultation with the Foreshore Committee and the Design Advisory Panel which led to consultations with the WAPC before it came back to Council.

Q5. Did the Town of Cottesloe Elected Members and officers learn nothing from the Baverstock debacle in Railway Street?



- A5. Taken on notice.
- Q6. Is the responsible officer of the Foreshore Precinct Implementation Committee aware that a clause very like the new clause 3b proposed here tonight (3b under Schedule 15) is exactly what was used in South Perth by the DAP to approve 36 storeys in an area zoned eight storeys, with a little addition, with a bonus for designer excellence, which is on page 13 of the agenda.
- A6. With regards to the clause that you referenced with the City of South Perth Scheme, no, there is a fundamental difference – the Town's Scheme has an absolute height limit of 21 metres, the City of South Perth Scheme had no such height limit.
- Q7. Did the new 3b actually come from the South Perth TPS?
- A7. Taken on notice.

Barbara Dobson – 20 Florence Street, Cottesloe – Items 11.1 and 11.3

- ) Regarding Cr Boulter's item 11.1, which I fully support - I was actually present last week with the Elders when we were blocked from attending the 5:30pm meeting and I was only aware at the last minute that there was a full Council meeting at 5:30pm
- ) The Noongar people had a demonstration at Cottesloe – all the Councillors, the CEO, everybody was invited, but unfortunately I think it was a last minute invitation so I guess they were pretty busy but one Councillor did make the effort to turn up and that was Cr Boulter
- ) They asked anyone who could come down from the Council to hear their concerns about Mudurup Rock, it was just called a gathering but Cr Boulter was the only one who turned up and she was able to listen to some of their concerns and it was someone from the media I was talking to, because they were there, and they were off to a Council meeting at 5:30 which was open to the public (a continuation of an adjourned meeting).
- ) I came with the Noongar Elders, the Gidgups, the Elders and Iva-Hayward-Jackson and when we arrived here about 5:20pm or 5:15pm, intending to come to the 5:30 meeting but the CEO and others who met us at the gate, basically told all of us that it was a closed meeting and we could only go to the 6:00 pm Agenda meeting so we abided by that, but unfortunately there's no minutes attached to the Agenda Forum meetings. I don't think we were aware of that, they certainly weren't, so their deputation last week is not going to be included in the minutes and I believe they should be included in the December minutes, as Cr Boulter has suggested, because they were intending to attend the 5:30 Council meeting, which does have minutes.

- ) I was a bit upset being blocked from attending a public meeting, I know there were confidential issues, I know there was secret voting, but at the beginning or at the end, there's always room for the public.
- ) I support Cr Boulter's motion 11.1. I'd also like to reject 11.3, Cr Sadler/Tucak motion and support the Cr Boulter foreshadowed motion please.

Cr Young – can I please put forward for the record - I was not aware of the meeting and received no notification of it and I checked with Cr Sadler and she didn't receive it either so that the statement that we were invited and didn't attend is not correct.

The Presiding Member advised Cr Young that her comments were noted.

## 5 PUBLIC STATEMENT TIME

Jack Walsh, 35 Grant Street, Cottesloe – Item 10.1.2

- ) In the early 2000s developers decided Cottesloe was not so much a pleasant place to live as a great money-making opportunity.
- ) Considerable pressure was exerted on changing building heights on the foreshore at six storeys or more. The residents were consulted at least five time times and consistently said (between 66% and 84%) they wanted only 3 storeys, 12 metres.
- ) The six storey Mayor was voted out, with only a third voting for him, despite a strong campaign, including a letter to every resident from Messrs Sierakowski, Beech, Dawkins, Jeans and Rowell but Colin Barnett's government talking to developers overrode the TPS 3 with the current heights that are now applying.
- ) July 2018 - Council deferred considering any amendment to this site while deciding on 1) advantages to the community – have the advantages been decided, what are they besides extra traffic? 2) they talked about protection to the streetscape and affect of street activation but as shown in South Perth, accommodation can be classed as retail so it may all be rental accommodation in this building here.
- ) On Page 13 the officer sees no problems with the amendments but WAPC has the ultimate control and it will be speaking, according to the press to Whiting and Barnett. Cottesloe may have no say whatsoever and I would point out that the new Clause 3b is very similar to what caused disaster at South Perth so please vote this down if you even discuss it.
- ) There have been a number of cases where JDAPS have referred to a height clause in the TPS, there is another clause here that says you can have all these extra storeys, we're going with all the extra storeys.
- ) This decision is seemingly being driven by the partly unelected Foreshore Committee that contains a number of developers who don't have to declare a conflict of interest, if such a thing does exist. If we can learn anything from the Baverstock debacle, vote against this officer recommendation.

The Presiding Member advised that he had just been through the public statements and found some further questions so Council would revert back to the three public questions before proceeding with public statement time.

Margaret Gidgup – 50 Porter Gardens, Leda

- ) We came and were given 20 minutes the other night and I just wanted to ask, further to that, what the plans are – I want to know exactly what’s happening around Mudurup Rocks and with the signage and beach path access. I’ve heard that it’s all been approved.
- ) I want to know exactly what’s happening there because I think we’ve been misled on what’s really going on and I think if Iva Jackson was here, he’d want to know that same thing.
- ) That’s what we are here for – we want to know that that is going to be protected. We want to know exactly what’s going on. We’re still in the dark about it.
- ) As the only connected people to that area, you have an advisory group, who aren’t connected to that area, and we were excluded, that’s what we’re talking about, we were deliberately excluded and I want to know why the Council has allowed that to happen.

The CEO advised that with the signs specifically, Council at its last meeting, required works to stop on the signs and the design of the beach access path designs would be put back to the Beach Access Signs Committee early in the year so no decision has been made there.

There are no works planned for the Mudurup Rocks area that have been approved by Council. There is discussion around an ocean pool adjacent to it but that hasn’t been approved at this stage.

With regards to the consultation process, yes we did consult through South West Aboriginal Land and Sea Council. I acknowledge that there was an error made in that process and we will seek to remedy that in the future.

Mr Wilson

- Q1. I need your advice on this. There has been some offensive language used twice by a person here tonight. How do I lodge a protest about this.?
- A1. The Presiding Member advised Mr Wilson to contact the CEO or himself after the meeting.

Karen Liggins - 7 Geraldine Street, Cottesloe – Item 11.2

- Q1. I would just like to know if Sandra Boulter is aware that there are 1200 senior members at North Cottesloe Surf Life Saving Club (NCSLSC) that have now been informed of her inappropriate objections to the granting of a liquor licence to NCSLSC. Also, the members are now aware that she initially objected to the grant of \$10,000 to NCSLSC in respect of its Centenary celebrations.

- A1. Taken on notice.
- Q2. Is Sandra Boulter aware that North Cottesloe has over the past 10 years been the most successful surf club in this state for its governance and community work?

A2. Taken on notice.

David Ulbrick – 12a Mengler Avenue, Claremont – Item 11.2

Q1. With the supporting material of 11.2 I would like to ask some questions of Cr Boulter starting with paragraph five, if the Councillor could explain to me why policies for shires that are several hundred kilometres away are relevant?

A1. Taken on notice.

Q2. Moving on to paragraph six, there is a suggestion that the Councillor suggests that the surf club is a high risk drinking setting – could the Councillor explain that suggestion to the Council and the gallery?

A2. Taken on notice.

Q3. Moving on to paragraph 20 the Councillor suggests in paragraph 20 that potential crowding cannot be ascertained or compliance with the Town's occupation permits be ascertained. Can the Councillor explain to the Council and the meeting why that is the case?

A3. Taken on notice.

Q4. Moving on to paragraph 40 the Councillor suggests in the event the application is granted that the licence should be coming by conditions and suggesting a closing time of 7pm, could she explain the evidential basis for that suggestion if there is one?

A4. Taken on notice.

Q5. Could the Councillor explain the relevance, if any, of attachment 1 the material in support of her motion?

A5. Taken on notice.

Q6. Are Councillors aware of an email that the Councillor sent to an undisclosed email list yesterday. I would be grateful if Council could explain the public consultation, if any, that was undertaken to support that email.

A6. Taken on notice.

The Presiding Member advised he and the CEO can't speak on Cr Boulter's behalf so the questions will be taken on notice and the questions will have to be addressed to Cr Boulter.

At this point in the meeting, Public Statement Time continued.

Bill Cox – 69 Grant Street, Cottesloe (representing Sea View Golf Club) – Item 10.1.9

) My statement today is with regard to the officer's recommendations that all the money is repaid.

) I'd like to make it clear we are not in any way negative towards the Council's decision on the depot – we're quite pleased to have the freedom of no mini

depot. With regards to the master plan, obviously a key component of the master plan for the precinct, and have are very strong views, however, we've tried to be positive and noted local feedback and look forward to doing so in the future.

- ) Our issue, on the other hand, with 10.1.9 would be the control of events leading to where we are now, starting with the Council Meeting in April last year – I said we'd really like the money so we could fix the club house and bring more business and tidy the place up. A couple of my other members said the same thing.
- ) The then Mayor moved the motion herself and the motion was that TOC provide us with \$48,000 to improve the clubhouse in order to help us bring more money in the door. Some of our functions help our membership.
- ) Since then we've been sent all of the \$98,000. The idea that that money was in any way linked or dependent on us providing disability facilities completely has evaded me, I've seen it nowhere, not in the minutes or any documentation provided to me, it's a newcomer to the scene.
- ) We have spent a \$100k plus a lot of hard labour from volunteers and I would like to request that prior to voting on this, that the Council goes away, through the officers and has a closer look at the subject.
- ) We have a mountain of documentation, quotes, meetings, interactions with yourselves and we believe it would be worth a closer look.

Mr Michael Blakiston – 143 Forrest Street, Peppermint Grove – Item 11.2

- ) I am here on behalf of Marylyn New, a resident opposite the Surf Club.
- ) Ms New doesn't object to licence being there but she has concerns regarding the opening hours.
- ) In the Officer's comments it's been noted that the timeframe was too short in order for Council to be able to derive some comments from residents and other stakeholders, therefore Council should not indicate whether it does or does not support the application.
- ) For Council not to take up the position of residents and find out what their views are is a shortcoming. There is the ability for Council to object, obtain the views of residents and other stakeholders and then form a view and if necessary record the objection.
- ) Ms New hasn't lodged an objection with Council, she has taken it up directly with the Club, rather than getting Council involved and any objection she will be lodging, she will go on oath as saying she has done that on multiple occasions.
- ) The circumstances of a licence operating 12 times a year versus 365 days a year, from noon until midnight and to be told that the concessions that have been taken into account in this fresh application is to shorten the hours up from 11am to 12 noon through midnight is little bit of a lip service to local residents.

Mr Rick Smith – C/- 151 Marine Parade, Cottesloe – (General Manager of Surf Life Saving Club) - Item 11.2

) There appears to be in circulation a number of incorrect facts and assumptions with respect to the Club's application for a Club Restricted Liquor Licence.

1. Nature of Licence

- a. It's a Club Restricted licence – NOT open to members of the Public, it's for members and their guests only. It's not a pub or hotel. We are a Surf Club first and foremost. The Liquor Licence is sought to provide an ancillary service to our members and lessen the burden of having to apply for 12 occasional licences per year.
- b. Hours of Operation – we've applied for restricted hours - 12 noon to 12 midnight and 2am on New Years Day. It is not intended that the Club will be open 365 days a week, between 12 noon and 12 midnight, that is not the intention. The intention is to relieve the administrative burden and on occasions allow our members to have a casual drink on the deck on a Friday night at sunset.
- c. Application characteristics – there's an email being circulated by the Rate Payers Association that talks about *"Without notification to the residents the NCSLC engaged law firm Lavan Legal to seek a Directors Approval which does not require advertising"*. That is totally incorrect, that is not something that can be applied for.  
Facts:
  - i. The Club instructed Lavan Legal to apply for the licence. They were waiting on the advertising requirements. We were advised by Lavan that there was no requirement to advertise. That advice came from the Department of Racing Gaming and Liquor (DRGL). Subsequently that advice was changed and there has been an advertising period. We have not set the 14 day advertising period, that is set by the DRGL.

2. Noise

- a. The Club has strengthened its noise management policy. In the past three years, there have been no complaints made to the Club or to Council. The licenced area provides a buffer to the residents. The Club has been very diligent and courteous to residents. We've provided FAQs to the residents without the need to do so before the advertising period requirements were provided to us.

3. Juveniles

- a. We have addressed this issue in the PIA. Juveniles will be required to be under the supervision of an Adult when the bar is open. The bar will NOT BE OPEN DURING junior only activities. The Club will

comply with all Liquor Control Act requirements as per the Liquor Control Act.

Claire Jordan -16/31 Wellington Street, Mosman Park– Item 11.2

- ) I'm also here on behalf of NCSLC and with regards to noise – we've undertaken noise monitoring and it's just come back at acceptable levels.
- ) We have done letter drops prior to certain events to let residents know of events that we're holding.
- ) Whilst there are others here tonight that will talk on how we're going to control the liquor licence etcetera it would be great for our club in terms of its social fabric as well and allow our members to come down and have a drink on a Friday evening to build on the social network of the club and give somewhere for members of the club to go.
- ) It's not an uncommon or unusual thing for sports clubs to do and the majority of surf clubs around the State and the rest of Australia do have these sorts of liquor licences. These licences are designed for clubs so that we can operate properly and have some control over the supply of alcohol rather than functioning as a BYO.

David Ulbrick – 12a Mengler Avenue, Claremont – Item 11.2

- ) I speak in support of NCSLSC's application and in objection to motion at 11.2 on your agenda. I'm the Chair of the Governance at NCSLSC and I've been involved in the application process.
- ) The application is currently before the DRGL and I do want to emphasise the point that Mr Smith made earlier that the application was put in in the ordinary course of direction that was made by the Director of the DRGL that there would be no advertising required.
- ) In advance of the application being put in, because the club is concerned to be a good neighbour, it circulated a FAQ document to neighbours to appropriately advise of its operation and that's consistent with its normal operations, we often do that.
- ) Subsequent to that the Director directed a short advertising period be undertaken. It's completely nonsensical that there's not been the proper time to object. It's been well-known by the local community, so that point raised by Cr Boulter is completely nonsensical.
- ) I wanted to ask the Council to consider this – the Club currently applies for 12 applications a year on a temporary application basis, which it's entitled to do. The DRGL is obliged to consider the applications and make a decision and that decision is invariably that we can have the licence and the club's got great experience in running licenced events. That person's time could be better spent, and the taxpayers' money could be better spent in other ways. The potential for the objection translates to a complete waste of the taxpayers' money so I would ask Council to consider that in their deliberations.

- ) We've heard tonight that Ms New has applied to the Surf Club directly on multiple occasions – that is categorically incorrect. My contact details are freely available in the Surf Club and the FAQ paper which we circulate to local membership and I make myself available to members of the local community to discuss their concerns.
- ) None of the members who will rise to speak in support of the objection motion tonight have made any sensible approach to me, a sensible, professional discussion about the application.
- ) The Club will derive income from running a bar. That income will be directly invested into the operation of the Surf Club and Surf Life Saving Australia, of which we are an intimate part of, and is one of the great volunteer organisations in this country. Consider the iconic nature of the surf life saver and that is what the application is in support of.

Ashley Wilson – 3/162 Marine Parade, Cottesloe – Item 11.2

- ) It is fact that an objection cannot be lodged to a liquor licence application unless it is formally advertised.
- ) The course taken by the Director to not advertise the application, until that decision was changed, meant that it was impossible to object to the application. That has now been rectified.
- ) I'm a resident of 162 Marine Parade, there are six dwellings at that residence, it's 50 metres to the north-east of the Club. I object to the grant of the licence there without a condition preventing live entertainment and amplified music after 9pm Monday to Thursday and on Sunday and after 10pm on Friday and Saturday.
- ) The history of past Club functions where there is a DJ and live entertainment shows that the associated noise frequently continues past the advertised closing time at unacceptably high levels. The level of annoyance and disturbances and inconvenience is undue because it interferes and prevents sleep when live music is played at the premises.
- ) I don't object to the Club holding functions until 10pm Friday or Saturday, or until 9pm any other day but I do object to the midnight closing hours sought by the Club's application for every day of the year, especially on Sunday, which is exceeding the trading hours, even for a hotel.
- ) The physical location of the club and the open courtyard design buys zero sound protection at the premises. Noise travels from the open courtyard to the north, north-east and does impact on residents.
- ) The implied proposition for residents who live in close proximity to the Surf Club, should this be approved, to tolerate the same level of disturbance as the hotel is patently ridiculous.
- ) It is the case that FAQs documents, which were circulated before the application was lodged, did refer to a noise management plan but when I contacted Mr Ullbrick directly to request a copy of that noise management



plan he refused to provide it to me. He claimed on advice from solicitors that it was a confidential document and would not be disclosed.

- ) I support Cr Boulter's recommendation but I ask Council to determine to intervene or object to the liquor licence application.

Mrs Rosie Walsh – 35 Grant Street, Cottesloe – Item 11.2

- ) Interesting to note that the most forceful speakers tonight are non-residents of Cottesloe so their amenity won't be affected at all.
- ) The Surf Lifesaving Club exists to rescue and render first-aid to drowning people, to promote and demonstrate classes of instruction, particularly for juniors and to control beaches. Surf clubs, unlike other sporting clubs are not social clubs, they exist to provide a community service.
- ) The North Cottesloe Surf Club has morphed into a social playground for members, many of whom are not Cottesloe residents nor life savers.
- ) The Club's foray into local politics shows that it's strayed from its purpose. In a concerted campaign, in collaboration with three current Council members, Surf Club insiders access the Club's database for member details unavailable to others and urged hundreds to vote with the group of three.
- ) The North Cottesloe Primary School database was similarly utilised and the Council elections were reduced to a charade.
- ) This application is to serve alcohol to members seven days a week for 12 hours until midnight, essentially turning a surf lifesaving club into a commercial enterprise: a pub, not being open to the public.
- ) There are multiple neighbouring licenced outlets, the restaurant that shares the premises contributes significant rent to the Club and provides it with exclusive space for regular sundowners.
- ) The Club lawyer has extolled the wonderful location, omitting to say that it's built there to effect surf rescues, not to provide a social mecca from which to profit financially.
- ) The area is residential, a licence would potentially generate noise and disturbance during 12 hours every day, to and from the venue, not simply to immediate neighbours but throughout local streets, including the routes to train stations.
- ) The Club has no parking or drop off facilities. Associated traffic would profoundly disrupt community amenity.
- ) A Liquor licence would create an adverse atmosphere and juniors who join to fulfil the Club's role to serve the community and their first lesson should be that alcohol and swimming should never mix.
- ) Surf Life Saving Australia states no agenda or publication shall represent Surf Life Saving Australia in any political meeting or gathering unless to further the

objectives of Surf Life Saving Australia so what does a surf club expect in return for its political advocacy?

- ) There is snowballing community demand for a receptive, open-minded, transparent Council, yet despite their clear ethical responsibilities, Council members' declarations of impartiality have been questionable. Unquestionable, however are dictionary definitions of impartiality including non-partisanship, without bias, neutrality and probity. For the definitive reasons listed above, which should have been detailed in tonight's officer's report, I urge Council on behalf of the community, to lodge a submission objecting to this application without delay.

Lee Barker – 16 Blincoe St, Fremantle – Item 11.2

- ) I refer to the motion by Sandra Boulter – the statement is so clearly factually incorrect. We applied for a restricted licence, similar to those we currently enjoy, which are obviously very restricted, and there are only several activities throughout the year, not daily or weekly.
- ) Noise – interesting that I hear tonight about a noise issue when there's actually been no noise complaints made to the Club and the noise. Noise monitoring undertaken by the club on the street adjacent to homes near the club are well below standards.
- ) The Club, is in fact, not Council property, as obviously Sandra Boulter guessed in her statement, so therefore it's owned by the Club.
- ) The insinuation around under-age drinking is kind of offensive. We're a responsible provider of sport and life saving activities and to suggest otherwise is just ridiculous. We clearly support the juniors and their development.

Yvonne Hart – 26 Mann St, Cottesloe

- ) Christmas is not too far off and questions are often asked - what's your wish for Christmas? We have prepared a list of Christmas wishes from the Cottesloe ratepayers to the Mayor and Elected Members:
- o Our first wish is that tonight Council will vote to disallow the proposed Seapines Scheme Amendment. Our Christmas wish is that Council does not hand the control process straight to the Minister but advertise before initiating the scheme amendment. We ask that you support ratepayers who are unit owners – do not support the developers who want more than they're entitled to and who have been reported in the Post Newspaper that they are in high level discussions with overseas financiers.
  - o Our second wish for tonight is that Council will not continue with a major land transaction with the Town of Mosman Park. Future generations in Cottesloe should not be encumbered with a 21 year

burden because a Council in 2018 failed to find better alternatives to the depot site.

- Our third wish is that Council will object to the granting of a restricted licence for the North Cottesloe Surf Life Saving Club. A restricted licence simply means that an organisation cannot sell packaged alcohol. Granting a restricted licence to the surf club will allow the possibility of unrestricted function and event opportunities 365 days a year. Our Christmas wish is for Council to support the nearby residents and their object to the NCSLSC liquor licence application.
- Our wishes for 2019 are that Cottesloe Council will not employ more staff, nor consultants, nor seek tenders for any projects, not hold confidential meetings, not undertake any further projects and not invite submissions from ratepayers for which we have responded to 10 this year, we're simply over it.
- Our final wish for tonight is to wish the Mayor and Elected Members and Staff a Merry Christmas and a Happy New Year. We ask that you stay safe, stay healthy, and we look forward to sharing interesting times in 2019.

## **6 ATTENDANCE**

### **Present**

Cr Mark Rodda  
Cr Michael Tucak  
Cr Sandra Boulter  
Cr Helen Sadler  
Cr Lorraine Young  
Cr Rob Thomas  
Cr Sally Pyvis (to 10.48pm)  
Cr Melissa Harkins

### **6.1 APOLOGIES**

Mayor Philip Angers

#### **Officers Apologies**

Nil

### **6.2 APPROVED LEAVE OF ABSENCE**

Nil

### **6.3 APPLICATIONS FOR LEAVE OF ABSENCE**

Nil

**7 DECLARATION OF INTERESTS**

- Cr Pyvis – declared an IMPARTIALITY INTEREST in item 10.1.7
- Cr Pyvis– declared an IMPARTIALITY INTEREST in item 13.1.1
- Cr Pyvis – declared an IMPARTIALITY INTEREST in item 11.2
- Cr Thomas - declared an IMPARTIALITY INTEREST in item 10.1.4
- Cr Harkins - declared an IMPARTIALITY INTEREST in item 10.1.4
- Cr Harkins - declared an IMPARTIALITY INTEREST in item 11.2
- Cr Young - declared an IMPARTIALITY INTEREST in item 10.1.4
- Cr Young - declared an IMPARTIALITY INTEREST in item 11.2
- Cr Young - declared an IMPARTIALITY INTEREST in item 10.1.2
- Cr Sadler - declared an IMPARTIALITY INTEREST in item 10.1.4
- Cr Boulter - declared an IMPARTIALITY INTEREST in item 10.1.4
- Cr Tucak - declared an IMPARTIALITY INTEREST in item 10.1.3
- Cr Tucak - declared an IMPARTIALITY INTEREST in item 10.1.9
- Cr Pyvis - declared an IMPARTIALITY INTEREST in item 10.1.4
- Cr Rodda – declared an IMPARTIALITY INTEREST in item 10.1.4

**8 CONFIRMATION OF MINUTES**

**That the Minutes of the Ordinary Meeting of Council held on Tuesday 27 November 2018 be confirmed as a true and accurate record.**

**COUNCILLOR MOTION**

**Moved Cr Boulter**

**Seconded Cr Rodda**

**That Council defer consideration of the minutes.**

**Carried 8/0**

**For: Crs Rodda, Tucak, Boulter, Sadler, Young, Thomas, Pyvis and Harkins  
Against: Nil**

**9 PRESENTATIONS**

**9.1 PETITIONS**

Nil

**9.2 PRESENTATIONS**

Nil

**9.3 DEPUTATIONS**

Nil

For the benefit of the members of the public present the Deputy Mayor announced that items 11.2, 10.1.3 and 10.1.2 would be considered first and then return to the order of the agenda.

**10 REPORTS****10.1 REPORTS OF OFFICERS****PLANNING****10.1.1 PLANNING APPLICATIONS DETERMINED UNDER DELEGATION**

**File Ref:** SUB/2594  
**Applicant(s) Proponents:** Nil  
**Attachments:** Nil  
**Responsible Officer:** Mat Humfrey, Chief Executive Officer  
**Author:** Ed Drewett, Coordinator Statutory Planning  
**Author Disclosure of Interest:** Nil

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**SUMMARY**

This report provides details of the planning applications determined by officers acting under delegation, for the month of November 2018.

**BACKGROUND**

Pursuant to Local Planning Scheme No.3, Council has delegated its power to determine certain planning applications to the Chief Executive Officer and the Coordinator, Statutory Planning. This provides efficiency in processing applications, which occurs on a continual basis.

Following interest expressed from within Council, this report serves as a running record of those applications determined during each month.

**STRATEGIC IMPLICATIONS**

There are no perceived strategic implications arising from the officer's recommendation.

**POLICY IMPLICATIONS**

There are no perceived policy implications arising from the officer's recommendation.

**FINANCIAL IMPLICATIONS**

There are no perceived financial implications arising from the officer's recommendation.

**STAFFING IMPLICATIONS**

There are no perceived staffing implications arising from the officer's recommendation.

**CONSULTATION**

Nil

**OFFICER COMMENT**

During November 2018 the following planning applications were determined under delegation:

| Address            | Owner                     | Applicant                 | Description  | Delegation Notice | Date Determined |
|--------------------|---------------------------|---------------------------|--|-------------------|-----------------|
| 249 Marmion Street | J E Marinko               | N/A                       | First floor extension  | 30/10/18          | 7/11/18         |
| 57 Margaret Street | Halebury Holdings Pty Ltd | Dale Alcock Homes Pty Ltd | Alterations & additions, including conversion of the rear first-floor bedroom to a dining room | 30/10/18          | 19/11/18        |
| 6 Rosser Street    | V Yates                   | A Peverett                | Garage extension and site works  | 7/11/18           | 20/11/18        |
| 100 Broome Street  | C S Fini                  | N/A                       | Alterations and additions, including a mezzanine floor   | 7/11/18           | 21/11/18        |
| 17 Lillian Street  | J A Mcdowell              | N/A                       | Single carport   | 30/10/18          | 15/11/18        |
| 3 Salisbury Street | M A Thomas                | Prodesign Construction    | Patio  | 30/10/18          | 15/11/18        |

**VOTING REQUIREMENT**

Simple Majority

**COUNCILLOR QUESTIONS****Submitted by Cr Boulter – Emailed 2 December 2018**

Q1. Does the entry N/A in the approval table mean that the owner and applicant were one in the same?

A1. Yes.

**OFFICER RECOMMENDATION**

Moved Cr Sadler

Seconded Cr Harkins

THAT Council receive this report on the planning applications determined under delegation for the month of November 2018.

**COUNCILLOR AMENDMENT**

Moved Cr Boulter

Seconded Cr Pyvis

That number 2 be added as follows to the officer recommendation:

2. That in this report officers also keep a running table of development applications not decided including information as to the date of the application, nature of application, date advertised and any objections.

Carried 5/3

For: Crs Tucak, Boulter, Thomas, Pyvis and Harkins

Against: Crs Rodda, Sadler and Young

**SUBSTANTIVE MOTION AND COUNCIL RESOLUTION**

1. THAT Council receive this report on the planning applications determined under delegation for the month of November 2018.
2. That in this report officers also keep a running table of development applications not decided including information as to the date of the application, nature of application, date advertised and any objections.

Carried 8/0

For: Crs Rodda, Tucak, Boulter, Sadler, Young, Thomas, Pyvis and Harkins

Against: Nil



**10.1.2 PROPOSED SCHEME AMENDMENT 9 TO LOCAL PLANNING SCHEME NO. 3 (SEAPINES)**

**File Ref:** SUB/2594  
**Attachments:** 10.1.2(a) Proposed Amendment to Local Planning Scheme No.3 - Concept design proposal  
10.1.2(b) Form 2A Scheme Amendment 9  
**Responsible Officer:** Mat Humfrey, Chief Executive Officer  
**Author:** Jana Joubert, Coordinator Strategic Planning  
**Author Disclosure of Interest:** Nil

Cr Young - declared an IMPARTIALITY INTEREST in item 10.1.2 by virtue "I am on the record as having made submissions to the Parliamentary Committee opposing the strata matters"

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**SUMMARY**

An application has been received from Planning Solutions on behalf of Seapines Property Group Pty to request an amendment to Local Planning Scheme No. 3 (LPS3) by bringing about a minor modification to the existing design requirements of the Seapines Site, Lot 92 (#94) Marine Parade, Cottesloe. The purpose of the proposed amendment is to allow for a 6 storey development (instead of the currently permissible 5 storeys as per Schedule 15 of LPS3), while still maintaining the permissible building height of 21 meters under LPS3.

In accordance with Council's decision on 24 July 2018, the Scheme Amendment proposal has undergone further consultation with the Elected Members, and has been referred to the relevant Committees for their input and consideration. These include the Foreshore Planning Implementation Committee (FPIC) and the Design Advisory Panel (DAP).

Officers have also sought additional comments and advice on a way forward from the Western Australian Planning Commission (WAPC) in a meeting during which time they expressed their support for the proposal.

The Scheme Amendment No. 9 report (**attached at Appendix (a)**), which includes details of and the justification for the proposal, is now being returned to Council for initiation and permission to advertise in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015*.

**BACKGROUND**

In January 2018 a preliminary meeting was held between the proponents of Scheme Amendment No. 9 and the Town's officers regarding the Seapines Site, Lot 92 (#94) Marine Parade, Cottesloe. The purpose of the meeting was the process of Council considering an amendment to Schedule 15 of LPS3, in order to facilitate the redevelopment of the Seapines Site.

As the first step in this process, the proponents presented the Agenda Forum in March 2018. The proposal involved the development of a 6 storey mixed use building, a total number of floors which could still be accommodated within the 21 metre building height requirement as per LPS3.

The proponents were advised by officers that an amendment to LPS3 would require the approval of Council and the proposal was thus presented to Council at the March Agenda

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Forum, after which a scheme amendment application was formally submitted by the proponent.

At its Ordinary Council Meeting of 24 July 2018, Council elected to defer the consideration of the proposed Scheme Amendment No. 7 until such time as a workshop with Elected Members and relevant Committees have been undertaken to ascertain its planning-based merits and any possible implications as per the resolution below:

*That Council DEFER consideration of the 94 Marine Pde scheme amendment application until a workshop with Elected Members has been undertaken by end September 2018, which includes consideration of all the points in the Councillor rationale below:*

*Rationale*

- 1. Council should consider about what advantages for the community can be obtained through this process*
- 2. The scheme amendment should include a Local Development Plan (LDP) and/or additions to the currently proposed scheme amendment for the following reasons:*
  - a. There are insufficient binding development controls to protect the amenity of the streetscape and ensure effective street activation on this corner.*
  - b. The proposed amendment will generate around 20% more floor space, occupants, cars and impact on the local amenity.*
  - c. Noting that the proposed amendment if successful will significantly increase the value of this land, the Town of Cottesloe can require a Local Development Plan or other scheme amendments within this proposed amendment for the community in return for considering this property developer's amendment proposal as a binding part of the scheme amendment. For example, an LDP or other scheme amendments within this proposed amend could show how the streetscape will be activated, and not all hotel lobby; and an LDP or other scheme amendments within this proposed amend could show where and how the two storey basement car park will empty its cars into and out of the development.*
  - d. The graphics accompanying the scheme amendment application do not necessarily reveal a building design that will be anything like the development that is eventually submitted and approved. The graphics have no authority or influence if they are not part of the scheme amendment. The building could be something entirely different.*
  - e. The Development Assessment Panel (DAP) – NOT the Town of Cottesloe - will decide the development application and the ONLY thing that will bind the DAP is what is in the current scheme including whatever is in the scheme amendment if adopted. The DAP regularly ignores local policy positions with impunity.*
  - f. The special place this space holds in the community's heart demands some additional protection by the presence of an LDP or other scheme amendments within this amendment that is binding on this property*

*developer as part of the scheme amendment, which is a reasonable response to a request for an extra floor.*

- g. The ROW to the east has not been recently surveyed by the TOC and this may be able to be asked of the proponent.*
- 3. Clarity around the process is needed for the following reasons:*
  - a. The proponent stated at the Agenda Forum that this is a “simple” amendment but states in the scheme amendment documentation at page 25 (not circulated to EMs until the Friday before Council meeting) that it is a “standard” amendment. These are technical terms under the Regulations. On the face of it, it might be a “complex” amendment because of the potential significant social impact on the local amenity of this very special corner. The TOC administration have not advised EMs of their opinion as to the type of amendment this is and it is important that Elected members and the community understand what this actually means and what the TOC administration believes it should be characterised as.*
  - b. The application is not signed by a property owner nor is there an authority from a property owner included in the amendment documents, as appears to be the requirement of s75 of the Planning and Development Act*
- 4. The reasons for the workshop would include to identify clearly the current discretions in LPS 3 to help Council decide if any of these should be changed and identify any opportunities to improve the public domain through this process.*

A subsequent workshop took place on 11 October 2018, the outcome of which was to engage the WAPC and seek their advice on a possible way forward.

At a meeting on 31 October 2018, the WAPC expressed their support for the proposed scheme amendment.

### **STRATEGIC IMPLICATIONS**

This report is consistent with the Town’s *Strategic Community Plan 2013 – 2023*.

Priority Area 3: Enhancing beach access and the foreshore

### **POLICY IMPLICATIONS**

There are no perceived policy implications arising from the officer’s recommendation.

### **STATUTORY ENVIRONMENT**

*Local Government Act 1995*

*Planning and development Act 2005*

*Planning and Development (Local Planning Schemes) Regulations 2015*

State Planning Policy 7 Design of the Built Environment

### **FINANCIAL IMPLICATIONS**

There are no perceived financial implications arising from the officer’s recommendation, other than the costs associated with the statutory advertising of the proposal.

**STAFFING IMPLICATIONS**

There are no perceived staffing implications arising from the officer's recommendation.

**ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS**

There are no perceived sustainability implications arising from the officer's recommendation.

**CONSULTATION**

Consultation measures have included:

- )] Preliminary meeting between Planning Solutions and administration officers in January 2018;
- )] Proposal considered by the Foreshore Planning Implementation Committee (FPIC) on 31 July 2018, who resolved:  
*To provide:*
  - )] *Specific recommendations on the Scheme amendment for Seapines; and*
  - )] *Design excellence criteria for a local planning policy for the foreshore precinct redevelopment area;'*
- )] Workshop held on 11 October 2018 (elected members (EMs), administration officers and DAP members in attendance); and
- )] EMs, administration officers and FPIC members met with WAPC on 31 October (David Caddy).

**OFFICER COMMENT**

The proposed scheme amendment is classified as a standard amendment under the *Planning and development (Local Planning Schemes) Regulations 2015* for the following reasons:

- a. The amendment is consistent with the objectives of the Foreshore Centre Zone to which it relates;
- b. The amendment would not result in any significant impact on land in the scheme area that is not the subject of the amendment;
- c. The amendment would not result in any significant environmental, social, economic or governance impacts on land in the scheme area, and
- d. The amendment is not a basic or complex amendment.

The subject site is located on Marine Parade, located directly opposite Cottesloe Beach to the west, Cottesloe Beach Hotel to the north, restaurant uses to the south, and a right-of-way to the east. The site is commonly known as 'Seapines' and currently contains 29 strata units, including single and two storey villas.

The zoning for the site is 'Foreshore Centre' and it is situated within 'Special Control Area No. 2'. There are a number of strict requirements for this location under LPS 3 relating to building height and setbacks. Officers at the Town have previously advised that some of these requirements (namely building height) are not capable of being varied.

Clause 6.4 of LPS 3 provides the requirements for 'Special Control Area 2' and the 'Foreshore Centre Zone'. Schedule 15 of LPS 3 provides the building height and storey limits, with Diagram 7 pertaining to the Seapines site, as well as to the Cottesloe Beach Hotel and Lido sites, and Diagram 4 pertaining to the Foreshore Centre Zone.

Specifically, the amendment seeks to modify the requirements of Schedule 15 (Building Design Controls for Special Area 2) of LPS No. 3 by:

) Adding a new subclause 3(b) under Schedule 15 to read:

*3b) Seapines Site (Lot 92 Marine Parade, Cottesloe):*

*Notwithstanding Diagram 4 and Diagram 7, there is no maximum number of storeys applicable to the site, providing-*

*a) the development achieves design excellence, as determined by the Town on the advice of the Town's Design Advisory Panel, having due regard to State Planning Policy 7 Design of the Built Environment (as amended); and*

*b) the maximum building height shall not exceed 21 metres.*

and renumbering subsequent clauses.

### **Concept plans for proposed development**

To demonstrate the potential built form outcomes which could be achieved by the amendment, the proponents have prepared concept plans to depict a 6 storey development within a 21 metre building height limit. They illustrate ample ceiling heights for each storey, the provision of hotel and retail uses at ground level (in accordance with LPS 3), and a streetscape that would be considered to be in keeping with what can be achieved on adjoining sites under LPS 3. The proposal would include 38 apartments, 42 hotel rooms, 7 commercial tenancies, and 2 levels of basement parking.

Clause 6.4.3.4 (a) states: *"Any redevelopment of the Seapines site or Lot 51, on the corner of Eileen Street and Marine Parade, shall incorporate a minimum total of 30 Hotel, Motel and/or Short-stay Accommodation rooms/units...."*

Clause 6.4.3.5 (a) relates to the Foreshore Centre Zone and states: *"Consistent with clause 5.12, the first storey (ground floor) of any development in the Foreshore Centre zone (except for Lots 101-103 Eileen Street) shall be used for uses of a commercial nature including, but not limited to, Restaurant, Shop, Small Bar and Hotel uses, but shall not be used for residential purposes. On-site vehicle parking shall be provided in a basement or otherwise shall occupy a limited area of the first storey portion of the site..."*

The Concept Proposal complies with Clauses 6.4.3.4 (a) and 6.4.3.5 (a), with the number of hotel rooms exceeding the required minimum of 30, and the proposed first storey (ground floor) containing only retail uses and hotel rooms.

### **Ceiling heights**

The applicants have advised that their project team has carefully examined the impacts on ceiling heights as part of the preparation of the concept plans, and that these plans

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demonstrate that even at 6 storeys, the resulting development would have generous floor-to-floor heights, including:

- ) 4.0m for the ground floor (commercial)
- ) 3.2m for the upper floors (hotel and residential)

By way of comparison, a 'standard' floor-to-floor height of a residential apartment is 2.7 to 3.0 metres (depending on slab thickness).

### **Streetscape, views, overshadowing**

The 'Il Lido' site to the south has an allowable building height of 6 storeys and 24 metres. As the land slopes downward from John Street to Forrest Street, this allows the il Lido site a greater building height than the Seapines site. The proposed amendment for the Seapines development will not alter the intended streetscape as the overall height will be in accordance with LPS 3. Further, there will be no additional impacts on views, overshadowing, or amenity than the building height which is already permitted under LPS 3.

### **Conclusion**

The proposed amendment will not alter the maximum building height stipulated in LPS No. 3 and the proposal will have no additional impact on views, overshadowing, or amenity. Each storey will have ample ceiling heights for the intended uses, and the concept plans illustrate that the required number of hotel rooms can easily be accommodated. The proposed streetscape would be in keeping with what can be achieved on adjoining sites under LPS 3.

### **VOTING REQUIREMENT**

Simple Majority

### **COUNCILLOR QUESTIONS**

#### **Submitted by Cr Boulter – Emailed 2 December 2018**

- Q1. Who is the applicant for this scheme amendment?
- A1.** Planning Solutions on behalf of Seapines Property Group.
- Q2. Who is required to sign the application for the scheme amendment?
- A2.** No signature is required for the scheme amendment application being submitted. Signatures by the CEO and the Mayor are required upon initiation and adoption.
- Q3. What were the fees for this scheme amendment application?
- A3.** \$3166.21 (estimated total) – subject to review by the local government.
- Q4. Can the actual complete scheme amendment application including signed forms please be included in the Council agenda? If not, why not?
- A4.** The Scheme Amendment No. 9 Report (which constitutes the submission) is attached at 10.1.2(a).
- Q5. Who is the owner of the Seapines site?
- A5.** A list of strata owners will be provided under a separate cover (there are 29 units)

- Q6. Given Reg. 34 of the *Planning and Development (Local Planning Schemes) Regulations 2015* defines **complex amendment** to mean any of the following amendments to a local planning scheme — .. (b) *an amendment that is not addressed by any local planning strategy*; OR (c) *an amendment relating to development that is of a scale, or will have an impact, that is significant relative to development in the locality*, and having regard to the high significance of this site in terms of foreshore amenity noting the importance of the amenity of this site under LPS3 clause 1.6 (f),(j),(k),(m),(n) and (q), why have officers decided that the amendment is a standard scheme amendment and why has it not been classified a complex scheme amendment?
- A6.** The scheme amendment does not propose to increase the building height limit permissible under Schedule 15 of LPS3, and therefore will not have any additional impacts on amenity than what is already provided for under LPS3 (constitutes a standard amendment in accordance with cl 34 of Part 4 of the Regs) . Additionally, the proposal is compatible with the Foreshore Centre Zone to which it relates (constitutes a standard amendment in accordance with cl 34 of Part 4 of the Regs).
- Q7. Can the notes/minutes of the preliminary meeting with Planning Solutions January 2018 be included in the Council agenda? And if not, circulated to Elected Members? If not, why not?
- A7.** No formal notes were taken – this meeting has been the subject of previous Council reports and briefings.
- Q8. Can the notes/minutes of the FIPC meeting that considered this amendment be included in the Council agenda? And if not, circulated to Elected Members? If not, why not?
- A8.** Yes the resolution has been added to the report.
- Q9. Was the EM workshop held 11 October 2018 recorded?
- A9.** No – the workshop was not recorded.
- Q10. What were the outcomes of this workshop held 11 October 2018?
- A10.** To engage with the WAPC for advice and a recommended way forward.
- Q11. Can the notes/minutes/transcript of the EM workshop held 11 October 2018 that considered this scheme amendment be included in the council agenda? And if not, circulated to Elected Members? If not, why not?
- A11.** The outcome of the meeting was presented to Council at the Briefing Forum of 6 November 2018.
- Q12. Which EMs attended the WAPC meeting 31 October 2018?
- A12.** The Mayor and Deputy Mayor.
- Q13. Which administration officers attended the WAPC meeting 31 October 2018?
- A13.** CEO Mat Humfrey and Coordinator Statutory Planning Ed Drewett.
- Q14. Who decided who would represent Elected Members at the WAPC meeting 31 October 2018?
- A14.** The Mayor.
-

Q15. Were all Elected Members invited to the WAPC meeting 31 October 2018? If not, why not?

**A15.** No. The CEO and Mr Drewett presented to Council the outcomes of the meeting at the Briefing Forum of 6 November.

Q16. Were all members of the TOC Design Advisory Panel invited to the WAPC meeting 31 October 2018?

**A16.** No.

Q17. Can the notes/minutes/transcript of the meeting with the WAPC 31 October 2018 that discussed this amendment be included in the Council agenda? And if not, circulated to Elected Members? If not, why not?

**A17.** No official minutes were taken – the CEO and Mr Drewett presented to Council the outcomes of the meeting at the Briefing Forum of 6 November.

Q18. Noting that the Concept Proposal is not binding on the developer applicant will not necessarily have any weight with the JDAP, does LPS3 with or without the proposed scheme amendment **require** a first (ground) floor ceiling height of 4.0 metres to the underside of the first floor structure that would be binding on the developer?

**A18.** No.

Q19. What do the WAPC Apartment Design Policy Draft have to say about Apartment Ceiling Heights?

**A19.** 'Objective 4.3.1 – Ceiling heights provide for well-proportioned spaces and facilitate natural ventilation and daylight access.

Design Criterion DC1 – Measured from finished floor level to finished ceiling level, minimum ceiling heights are:

) Habitable rooms – 2.7m

) Non-habitable rooms – 2.4m

) For two storey apartments – 2.7m for main living area floor and 2.4m for second floor.

) If located in mixed use areas – 3.3m for ground and first floor to promote future flexibility of use. This may be varied to meet site specific level constraints or if a strong local precedent of a different height can be demonstrated.'

Q20. Can the scheme amendment include a reference to the design being required to comply with the WAPC *Apartment Design Volume Two of State Planning Policy No. 7.3 Residential Design Codes Guidance for multiple-dwelling and mixed-use developments* having regard to s77(1)(b) of the *Planning and Development Act 2005*?

**A20.** (See pages 14 and 15 of the agenda). The recommendation already imposes a requirement that any development is to have due regard to SPP 7 Design of the Built Environment pursuant to both cl 77(1)(a) and cl 77(1)(b) of the *Planning and Development Act 2005*.

Q21. Noting that the Concept Proposal is not binding on the developer applicant and will not necessarily have any weight with the JDAP, what percentage of the first storey



(ground floor) could be hotel rooms under LPS3 with or without the proposed scheme amendment?

**A21.** Under LPS3 the applicant is required to provide a minimum of 30 hotel, motel and/or short stay accommodation rooms/units. 100% of the first floor may be dedicated to these uses in accordance with LPS3.

Q22. Noting that the Concept Proposal is not binding on the developer applicant and will not necessarily have any weight with the JDAP, could the first storey (ground floor) possibly have no retail space under LPS3 with or without the proposed scheme amendment?

**A22.** Yes.

Q23. Noting that the Concept Proposal is not binding on the developer applicant and will not necessarily have any weight with the JDAP, what is the minimum amount of retail space required on the first story (ground) floor under LPS3 with or without the proposed scheme amendment?

**A23.** Nil.

Q24. Can the name of the TOC Design Advisory Panel referenced on page 15 be corrected in the officer report so as to be accurate?

**A24.** Yes.

Q25. Can the typo on page 14 be changed from are to area on page 14 of the officer report?

**A25.** Yes.

### OFFICER RECOMMENDATION

THAT Council:

1. In accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015*, resolve to initiate standard Scheme Amendment No. 9 to LPS3 by:

)) Adding a new subclause 3(b) under Schedule 15 to read:

*3b) Seapines Site (Lot 92 Marine Parade, Cottesloe):*

*Notwithstanding Diagram 4 and Diagram 7, there is no maximum number of storeys applicable to the site, providing-*

*a) the development achieves design excellence, as determined by the Town on the advice of the Town's Design Advisory Panel, having due regard to State Planning Policy 7 Design of the Built Environment (as amended); and*

*b) the maximum building height shall not exceed 21 metres.*

and renumbering subsequent clauses.

2. Notify the Western Australian Planning Commission of Council's decision to initiate proposed standard Scheme Amendment 9 to LPS3, and provide the Commission with a copy of the scheme amending documentation prior to proceeding to public advertising.

3. Refer a copy of the proposed Scheme Amendment 9 documentation to the Environmental Protection Authority, and any other relevant public authority, for consideration and comment.
4. Subject to formal assessment not being required by the Environmental Protection Authority and no objection received from the Western Australian Planning Commission, proceed to advertise proposed Scheme Amendment 9 for public comment with a submission period of not less than 42 days in accordance with the *Planning and Development Act 2005* and *Planning and Development (Local Planning Schemes) Regulations 2015*.
5. Further consider the proposal together with any public submissions lodged with the Town of Cottesloe following the conclusion of the statutory public advertising period.

### COUNCILLOR MOTION

Moved Cr Young

Seconded Cr Thomas

#### THAT Council:

1. In accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015*, resolve to initiate standard Scheme Amendment No. 9 to LPS3 by:  
**Adding a new subclause 3(b) under Schedule 15 to read:**  
**3(b) Seapines Site (Lot 92 Marine Parade, Cottesloe):**  
**Notwithstanding Diagram 4 and Diagram 7, the permitted number of storeys may be increased from 5 to 6 providing-**
    - i) the development achieves design excellence, as determined by the Town on the advice of the Town's Design Review Panel, having due regard to State Planning Policy 7 Design of the Built Environment (as amended) as well as the contents of Draft Apartment Design, volume 2 of State Planning Policy 7.3 Residential Design Codes Guidance for multiple-dwelling and mixed-use developments, as put out for public consultation October 2016;
    - ii) the maximum building height shall not exceed 21 metres; and
    - iii) not less than 50% of the 1<sup>st</sup> storey (ground floor) street frontage of any development on the site (to a minimum depth of 9m pursuant to clause 6.4.3.5 of this Scheme) shall be used for restaurants, shops, small bars and/or convenience stores and not for any other uses.**and renumbering subsequent clauses.**
  2. Notify the Western Australian Planning Commission of Council's decision to initiate proposed standard Scheme Amendment 9 to LPS3, and provide the Commission with a copy of the scheme amending documentation prior to proceeding to public advertising.
  3. Refer a copy of the proposed Scheme Amendment 9 documentation to the Environmental Protection Authority, and any other relevant public authority, for consideration and comment.
  4. Subject to formal assessment not being required by the Environmental Protection Authority and no objection received from the Western Australian Planning
-

Commission, proceed to advertise proposed Scheme Amendment 9 for public comment with a submission period of not less than 42 days in accordance with the Planning and Development Act 2005 and Planning and Development (Local Planning Schemes) Regulations 2015.

5. Further consider the proposal together with any public submissions lodged with the Town of Cottesloe following the conclusion of the statutory public advertising period.
6. Request the Administration to advise the applicant that the resolution to initiate this Scheme Amendment should not be construed as Council's acceptance of the Design Concept as submitted by the applicant and included on page 17 of the Agenda Papers for the Agenda Forum held on 4th December 2018 and that the Applicant is encouraged to engage early with the Town on design for the site.
7. Request the Administration to report to Council at the February OCM:
  - i) on what changes, if any, are required to the composition, process and procedures of the Town's Design Advisory Panel to comply with the Design Review Guide Guidance for Local Governments to set up and operate design review processes (draft put out for public comment October 2016); and
  - ii) on the process to prepare a Local Planning Policy for the Foreshore Centre to include provisions necessary to ensure the activation of the street frontage of all buildings along the foreshore consistent with the community's expectations relating to public benefit, design quality and preferred use of beachfront buildings.

#### **COUNCILLOR AMENDMENT**

**Moved Cr Boulter**

**Seconded Cr Pyvis**

In point 1 replace the words 'In accordance with the Planning and Development (Local Planning Schemes) Regulations 2015, resolve to initiate standard Scheme Amendment No. 9 to LPS3 by:' with 'That Council advertises the proposed draft scheme amendment 9 to LPS 3 to the residents and ratepayers of Cottesloe only before initiating the scheme amendment.'

**Lost 2/6**

**For: Crs Boulter and Pyvis**

**Against: Crs Rodda, Tucak, Sadler, Young, Harkins and Thomas**

#### **COUNCILLOR AMENDMENT**

**Moved Cr Tucak**

**Seconded Cr Boulter**

In point 1) of Cr Young's motion, after the words 'the development achieves design excellence' add the words 'inside and outside the building and site, including the interface of the building with the foreshore and road reserves'.

**Lost 3/5**

**For: Crs Tucak, Boulter and Pyvis**

**Against: Crs Rodda, Sadler, Young, Harkins and Thomas**

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**SUBSTANTIVE MOTION AND COUNCIL RESOLUTION****THAT Council:**

1. In accordance with the Planning and Development (Local Planning Schemes) Regulations 2015, resolve to initiate standard Scheme Amendment No. 9 to LPS3 by:

Adding a new subclause 3(b) under Schedule 15 to read:

**3(b) Seapines Site (Lot 92 Marine Parade, Cottesloe):**

Notwithstanding Diagram 4 and Diagram 7, the permitted number of storeys may be increased from 5 to 6 providing-

- i) the development achieves design excellence, as determined by the Town on the advice of the Town's Design Review Panel, having due regard to State Planning Policy 7 Design of the Built Environment (as amended) as well as the contents of Draft Apartment Design, volume 2 of State Planning Policy 7.3 Residential Design Codes Guidance for multiple-dwelling and mixed-use developments, as put out for public consultation October 2016; and
- ii) the maximum building height shall not exceed 21 metres; and
- iii) not less than 50% of the 1<sup>st</sup> storey (ground floor) street frontage of any development on the site (to a minimum depth of 9m pursuant to clause 6.4.3.5 of this Scheme) shall be used for restaurants, shops, small bars and/or convenience stores and not for any other uses.

and renumbering subsequent clauses.

2. Notify the Western Australian Planning Commission of Council's decision to initiate proposed standard Scheme Amendment 9 to LPS3, and provide the Commission with a copy of the scheme amending documentation prior to proceeding to public advertising.
3. Refer a copy of the proposed Scheme Amendment 9 documentation to the Environmental Protection Authority, and any other relevant public authority, for consideration and comment.
4. Subject to formal assessment not being required by the Environmental Protection Authority and no objection received from the Western Australian Planning Commission, proceed to advertise proposed Scheme Amendment 9 for public comment with a submission period of not less than 42 days in accordance with the Planning and Development Act 2005 and Planning and Development (Local Planning Schemes) Regulations 2015.
5. Further consider the proposal together with any public submissions lodged with the Town of Cottesloe following the conclusion of the statutory public advertising period.
6. Request the Administration to advise the applicant that the resolution to initiate this Scheme Amendment should not be construed as Council's acceptance of the Design Concept as submitted by the applicant and included on page 17 of the Agenda Papers for the Agenda Forum held on 4th December 2018 and that the Applicant is encouraged to engage early with the Town on design for the site.

7. Request the Administration to report to Council at the February OCM:
- ii) on what changes, if any, are required to the composition, process and procedures of the Town's Design Advisory Panel to comply with the Design Review Guide Guidance for Local Governments to set up and operate design review processes (draft put out for public comment October 2016); and
  - iii) on the process to prepare a Local Planning Policy for the Foreshore Centre to include provisions necessary to ensure the activation of the street frontage of all buildings along the foreshore consistent with the community's expectations relating to public benefit, design quality and preferred use of beachfront buildings.

**Carried 6/2**

**For: Crs Rodda, Tucak, Sadler, Young, Harkins and Thomas**

**Against: Crs Boulter and Pyvis**

At 8:29pm, the Presiding Member adjourned the meeting for 5 minutes.

At 8:36pm, the Presiding Member reconvened the meeting and advised Council would return to the agenda items as listed.

**10.1.3 LOCAL PLANNING POLICY NO. 2 - WEARNE REDEVELOPMENT, LOT 87 (8) WARTON STREET, COTTESLOE**

**File Ref:** SUB/2594  
**Applicant(s) Proponents:** Nil  
**Attachments:** 10.1.3(a) Draft Local Planning Policy  
**Responsible Officer:** Mat Humfrey, Chief Executive Officer  
**Author:** Mat Humfrey, Chief Executive Officer  
**Author Disclosure of Interest:** Nil

Cr Tucak - declared an IMPARTIALITY INTEREST in item 10.1.3 by virtue "members of the executive are known to me"

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**SUMMARY**

Council is being asked to consider the submissions received on Local Planning Policy No. 2 during the advertising of the Policy. Further, Council is being asked to consider authorising the Chief Executive Officer to sign a Development Application for the site.

**BACKGROUND**

At its meeting of 23 October 2018, Council resolved;

*Moved Cr Sadler Seconded Cr Tucak*

*That Council AUTHORISE the advertising of the draft Local Planning Policy (WEARNE Site), as attached, in accordance with Regulation 4 of the Planning and Development (Local Planning Schemes) Regulations 2015.*

*Carried 8/0*

The advertising of the Policy for comment followed Council's consideration of two other significant documents for this site, being the Agreement for Lease and the Masterplan.

The Agreement for Lease sets out the process the lessee has to follow for the redevelopment of this site. Council agreed to the AfL following advertising of the document in April 2016.

The Master Plan was then developed by the lessee and provided to the four owner local governments in early 2018. Council resolved to advertise the Master Plan for submission in March 2018. In July 2018, having considered the submissions received, Council endorsed the Master Plan and authorised the creation of Local Planning Policy No. 2.

The policy was then developed and advertised as per resolution above.

**STRATEGIC IMPLICATIONS**

This report is consistent with the Town's Strategic Community Plan 2013 – 2023.

Priority Area 4: Managing Development Major Strategy

4.2: Consider undeveloped Government owned land for higher density development provided there is both public support and benefit for the Cottesloe community.

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The Wearne Site is currently owned by four local government authorities and the proposed development would provide a higher density. It could also be argued that the provision of aged care and housing options also provides a benefit to the Cottesloe community.

### **POLICY IMPLICATIONS**

Aside the creation of this specific policy, there are no other perceived policy implications arising from the officer's recommendation.

### **STATUTORY ENVIRONMENT**

#### **Planning and Development (Local Planning Schemes) Regulations 2015**

#### ***Regulation 4 - Procedure for making local planning policy***

- (1) If the local government resolves to prepare a local planning policy the local government must, unless the Commission otherwise agrees, advertise the proposed policy as follows –*
  - (a) publish a notice of the proposed policy in a newspaper circulating in the Scheme area, giving details of –*
    - (i) the subject and nature of the proposed policy; and*
    - (ii) the objectives of the proposed policy; and*
    - (iii) where the proposed policy may be inspected; and*
    - (iv) to whom, in what form and during what period submissions in relation to the proposed policy may be made;*
  - (b) if, in the opinion of the local government, the policy is inconsistent with any State planning policy, give notice of the proposed policy to the Commission;*
  - (c) give notice of the proposed policy in any other way and carry out any other consultation the local government considers appropriate.*
- (2) The period for making submissions in relation to a local planning policy must not be less than a period of 21 days commencing on the day on which the notice of the policy is published under subclause (1)(a).*
- (3) After the expiry of the period within which submissions may be made, the local government must –*
  - (a) review the proposed policy in the light of any submissions made; and*
  - (b) resolve to –*
    - (i) proceed with the policy without modification; or*
    - (ii) proceed with the policy with modification; or*

(iii) *not to proceed with the policy.*

(4) *If the local government resolves to proceed with the policy, the local government must publish notice of the policy in a newspaper circulating in the Scheme area.*

(5) *A policy has effect on publication of a notice under subclause (4).*

(6) *The local government –*

*(a) must ensure that an up-to-date copy of each local planning policy made under this Scheme is kept and made available for public inspection during business hours at the offices of the local government; and*

*(b) may publish a copy of each of those local planning policies on the website of the local government.*

### **FINANCIAL IMPLICATIONS**

There are no perceived financial implications arising from the officer's recommendation.

### **STAFFING IMPLICATIONS**

There are no perceived staffing implications arising from the officer's recommendation.

### **ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS**

There are no perceived sustainability implications arising from the officer's recommendation.

### **CONSULTATION**

Consultation was undertaken in accordance with the Regulations and Council's resolution.

The Town received 8 submissions during the advertising period and the responses have been summarised in the table attached. The submissions attached have had some of the identifying information removed (for privacy of the submitters) – should Councillors require full version, it can be supplied under a separate cover.

### **OFFICER COMMENT**

The overall level of submissions received, given the profile of the project and the direct notifications sent, it is quite low. Only 8 submissions were received during the advertising period with one further received 3 days after. Two submissions supported the proposed Local Planning Policy, one raised concerns (access) that can be addressed during the building permit stage, with the rest raising concerns over elements of the proposed development.

Concerns related to setbacks, the size and scale of the development and perceived impacts on the amenity of the area. The details of these concerns can be found in the attached summary table, along with the response officers have provided.

As the Master Plan itself has also been advertised and attracted a similarly low level of response, it is open to Council to conclude that the project does have the support of the community. The concerns raised by individual submitters will be addressed where possible



and the administration will work with the lessee where we can to ensure the amenity of the area is preserved.

One area that has received comments in several of the submissions is the rear building, which houses the high care aged care facility. Comments were received on the scale of this building and the impact it could have on Warton Street. This part of the facility is large and is an integral part of the development proposed. It is set back from the street (there appeared to be some confusion where people thought set back meant setback from lower levels) and occupies a relatively small part of the land itself. It is acknowledged that a building of this size might not ordinarily be expected in a residential area, however, given the strategic nature of the site, the 50% open space commitment and the purpose (residential aged care) it is opinion of officers that the proposal represents an overall benefit to the community.

Overall, only minor amendments have been made to the Policy document itself. A marked up version is available to elected members upon request and the attached document has all of the changes included.

As only minor changes have been recommended, the officer's recommendation is to adopt the Policy and allow the project to proceed to the development application stage. In order for a development application to be submitted, the Chief Executive Officer of each of the four local government owners will be required to sign the Development Application documentation. That being the case, the recommendation below also authorises the Chief Executive Officer to sign the required Development Application forms, subject to the application complying with the Master Plan previously adopted by Council.

## **VOTING REQUIREMENT**

Simple Majority

## **COUNCILLOR QUESTIONS**

### **Submitted by Cr Boulter – Emailed 2 December 2018**

Q1. What was the exact substance of each of the objections to the draft LPP?

**A1.** All submissions have been provided to Council and are available on the webpage.

Q2. What is the statutory and strategic response to each of these objections?

**A2.** Please refer to the attached table.

Q3. What would LPS3 say to each of these objections, if LPS3 was binding on the developer?

**A3.** It should be noted that LPS3 is binding, however it does not have all of the normally expected controls for this site.

This is a difficult question to answer as LPS3 is not uniform in its restrictions for landowners. For example the Eric Street Shops (and neighbouring apartments) have different planning controls than the properties that neighbour them. This type of mixed development is acceptable if appropriately managed.

In this particular case, the impact on neighbouring properties is reduced by the wide road reserves between the subject site and its immediate neighbours. The shadowing diagrams show that there will be no overshadowing of neighbouring properties and

view corridors are preserved. There is a taller building on Warton Street, but this is to be considered against the large area of open space that is also on Warton Street.

It is the opinion of officers that the Local Planning Policy is constructed in a way that will preserve the amenity of the area, while allowing the development of a strategically important aged care facility.

Q4. As there is no submission table attached to or inserted in the AF agenda - as asserted in the officer report - can the table be inserted into the Council agenda?

A4. Please refer to the submission table previously circulated.

Q5. Given the importance of the Master Plan to understanding the content of the officer report, and the fact that it is stated to be attached to the draft Local Planning Policy, can the Masterplan be inserted into the Council agenda? If not, why not?

A5. No – it is too large. The Master Plan is available upon request and has been previously considered and adopted by Council.

Q6. What are the number of apartment/apartment like dwellings included in the Master Plan?

A6. 76 Independent Living Units (p5 of the Master Plan).

Q7. Could the draft Local Planning Policy include a reference to the design being required to comply with the *WAPC Apartment Design Volume Two of State Planning Policy No. 7.3 Residential Design Codes Guidance for multiple-dwelling and mixed-use developments having regard to s77(1)(b) of the Planning and Development Act 2005*? If not, why not?

A7. It could, but at this stage it hasn't been recommended as the final document has not been released.

Q8. Given the LPS 3 development controls are not applicable to the Wearne site, can part of the 50% public open space be made up from roof gardens or the like? If no, why not? If yes, what can be done about this?

A8. LPS3 does apply to the site and all open space can contributed. As the Town is one of the owners of the site, if Council believes that the development is inappropriate in this respect it can opt not to sign the Development Application or the Building License applications.

Q9. Given the Wearne redevelopment will be decided by the JDAP and the Local Planning Policy will not be binding on the JDAP or the developer what binding scheme amendments to LPS3 will the Town of Cottesloe be recommending to Council to protect the foreshore amenity and neighbours from adverse outcomes from the redevelopment on this site, before the development application is considered by Council?

A9. For this current process, nil, as no application can be considered without the written consent of the Town as an owner. As previously resolved by Council, scheme amendments for this site will be considered at a later date.

Q10. Given Reg 3(2) of the *Planning and Development (Local Planning Schemes) Regulations 2015* that requires the Local Planning Policy to be based on *sound planning principles*,

what are the specific sound planning principles - applicable to the protection of the amenity of the Town of Cottesloe foreshore articulated in clause 1.6 of LPS3 - on which the draft Local Planning Policy has been based?

**A10.** All of the provision of 1.6 of LPS3 have been applied.

Q11. Is the content of the draft Local Planning Policy binding on JDAP or the developer?

**A11.** JDAP – no. Assuming “developer” refers to the lessee, as stated above, no application can proceed without the Town’s approval.

Q12. Is the draft Local Planning Policy inconsistent in any way with any WA State Planning Policies, especially the *Apartment Design Volume Two of State Planning Policy No. 7.3 Residential Design Codes Guidance for multiple-dwelling and mixed-use developments*: see reg 4(1)(b) of the *Planning and Development (Local Planning Schemes) Regulations 2015*?

**A12.** The final draft of this document has not been released (Gazetted) but the LPP, to the extend possible, accords with this policy. In the event the Policy is Gazetted prior to the DA being assessed, the JDAP will have due regard to the Policy during the assessment of the DA.

Q14. The table references in Item 10.1.3 is not in the officer report or that attachments. Can you please circulate it before the cut off time for questions to go into the agenda on this item?

**A13.** It was updated on Friday afternoon and Elected Members advised of this by memo.

#### **OFFICER RECOMMENDATION**

**Moved Cr Young**

**Seconded Cr Harkins**

THAT Council

1. THANK all those that provided a submission;
2. ADOPT Local Planning Policy No.2 – Wearne Redevelopment as attached; and
3. AUTHORISE the Chief Executive Officer to place all required notices and advertisements required for the Local Planning Policy’s adoption; and
4. AUTHORISE the Chief Executive Officer to sign any documents or forms required to submit a Development Application that accords with the Master Plan previously approved by Council.

#### **COUNCILLOR AMENDMENT**

**Moved Cr Boulter**

**Seconded Cr Sadler**

5. **On signing the Development Application, the Development Application will be circulated to Councillors in hard copy and the Development Application will be put on the Town’s website.**

**Carried 8/0**

**For: Crs Rodda, Tucak, Boulter, Sadler, Young, Thomas, Pyvis and Harkins**

**Against: Nil**

**COUNCILLOR AMENDMENT****Moved Cr Boulter****Seconded Cr Pyvis****Add the following words to the officer recommendation 2:****subject to adding the words to the policy ‘that the design of the apartments be consistent with State Planning Policy 7.3 Apartment Design Volume 2’.****Carried 7/1****For: Crs Tucak, Boulter, Sadler, Young, Thomas, Pyvis and Harkins****Against: Cr Rodda****COUNCILLOR AMENDMENT****Cr Boulter****Seconded Cr Pyvis****Add to number 2:****Subject also to including the following words the developer will achieve design excellence inside and out the building and site through:**

- a) giving high regard to the objectives of clause 1.6 (f), (h), (j), (k), (l), (m), (n) & (q) of LPS3 and
- b) giving high regard generally to State Planning Policy 7 in terms of the design principles for the Built Environment.

**Lost 4/4(5)****For: Crs Tucak, Boulter, Pyvis and Harkins****Against: Crs Rodda, Sadler, Young and Thomas**

In accordance with section 5.21 (3) of the Local Government Act 1995, as the votes were equally divided, the Presiding Member (Chairperson), Deputy Mayor Rodda, cast a second vote.

**SUBSTANTIVE MOTION AND COUNCIL RESOLUTION****THAT Council;**

1. **THANK** all those that provided a submission;
2. **ADOPT** Local Planning Policy No.2 – Wearne Redevelopment as attached subject to adding the words to the policy ‘that the design of the apartments be consistent with State Planning Policy 7.3 Apartment Design Volume 2’; and
3. **AUTHORISE** the Chief Executive Officer to place all required notices and advertisements required for the Local Planning Policy’s adoption; and
4. **AUTHORISE** the Chief Executive Officer to sign any documents or forms required to submit a Development Application that accords with the Master Plan previously approved by Council.
5. **On signing the Development Application, the Development Application will be circulated to Councillors in hard copy and the Development Application will be put on the Town’s website.**

**Carried 6/2****For: Crs Rodda, Young, Harkins, Sadler, Thomas and Tucak****Against: Crs Boulter and Pyvis**

**ADMINISTRATION****10.1.4 REVIEW OF COUNCIL WARD BOUNDARIES AND NUMBER OF ELECTED MEMBERS -  
OUTCOME OF COMMUNITY CONSULTATION**

**File Ref:** SUB/2594  
**Attachments:** 10.1.4(a) Ward Review 2018 - Feedback Table  
**Responsible Officer:** Garry Bird, Deputy Chief Executive Officer  
**Author:** Elizabeth Nicholls, Senior Administration Officer  
**Author Disclosure of Interest:** Nil

Cr Thomas - declared an IMPARTIALITY INTEREST in item 10.1.4 by virtue "I think we're all involved in this"

Cr Harkins - declared an IMPARTIALITY INTEREST in item 10.1.4 by virtue "I am an elected member"

Cr Young - declared an IMPARTIALITY INTEREST in item 10.1.4 by virtue "it effects Elected Members"

Cr Sadler - declared an IMPARTIALITY INTEREST in item 10.1.4

Cr Boulter - declared an IMPARTIALITY INTEREST in item 10.1.4

Cr Pyvis - declared an IMPARTIALITY INTEREST in item 10.1.4

Cr Rodda – declared an IMPARTIALITY INTEREST in item 10.1.4

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**SUMMARY**

It is proposed that Council consider the public submissions received in regards to the 2018 Ward Review and submit a Report to the Local Government Advisory Board (LGAB) recommending no change to the existing ward structure and number of Elected Members.

**BACKGROUND**

Schedule 2.2 of the Act requires local governments with wards to carry out reviews of ward boundaries and the number of Councillors for each ward from time to time, so that no more than eight years elapses between successive reviews.

The Town of Cottesloe last undertook a formal review of its ward boundaries and representation in December 2010 (gazetted in 2011). The Town is required to undertake another ward review in advance of the 2019 local government elections.

The review process involves a number of steps:

- )] The Council resolves to undertake the review (completed)
  - )] Public submission period opens (completed)
  - )] Information provided to the community for discussion (completed)
  - )] Public submission period closes (completed)
  - )] The Council considers all submissions and relevant factors and makes a decision
  - )] The Council submits a report to the LGAB for its consideration
-

) (If a change is proposed) the LGAB submits a recommendation to the Minister for Local Government (the Minister).

At the September Ordinary Meeting of Council it was resolved as follows:

*THAT Council:*

1. *RESOLVE to undertake a review of the Town of Cottesloe’s ward system to comply with the requirements of the Local Government Act 1995.*
2. *ENDORSE the attached Review of Council Ward Boundaries and Number of Elected Members Information and Discussion Paper for the purposes of inviting public comment in regards to the review.*

The Information and Discussion Paper endorsed by Council at the September 2018 Ordinary Council Meeting provided an overview of the ward review process and options to be considered.

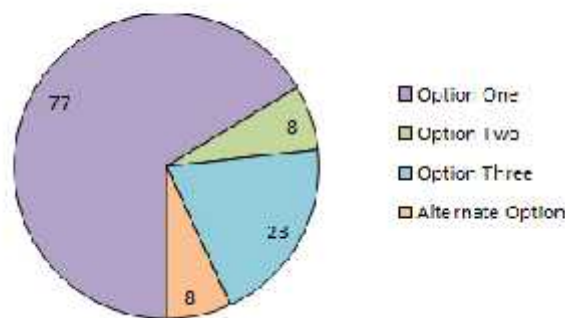
The following options were listed in the Information and Discussion Paper:

- Option 1: Maintain the current four ward system with eight elected members and a directly elected Mayor.
- Option 2: Implement a no ward system with eight elected members and a directly elected Mayor.
- Option 3: Implement a no ward system with six elected members and a directly elected Mayor.

Alternate options could also be proposed by members of the public.

The below chart provides an overview of the submissions attached for Elected Members consideration.

**Submissions Received**



**STRATEGIC IMPLICATIONS**

This report is consistent with the Town’s *Strategic Community Plan 2013 – 2023*.

Priority Area 6: Providing open and accountable local governance

**POLICY IMPLICATIONS**

There are no perceived policy implications arising from the officer’s recommendation.

**STATUTORY ENVIRONMENT**

*Local Government Act 1995*

**FINANCIAL IMPLICATIONS**

There are no perceived financial implications arising from the officer's recommendation.

**STAFFING IMPLICATIONS**

There are no perceived staffing implications arising from the officer's recommendation.

**ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS**

There are no perceived environmental sustainability implications arising from the officer's recommendation.

**CONSULTATION**

Elected Members

In accordance with the Council Resolution of 25 September 2018, public submissions were invited for a six week period as per the requirements of the *Local Government Act 1995*.

The closing date for submissions was 21 November 2018. A total of 116 submissions were received, which is considered an excellent response.

A summary of the submissions received is attached.

A copy of all the submissions received has been provided to Elected Members separate to the agenda to protect privacy details of the respondents.

**OFFICER COMMENT**

The Town of Cottesloe's current situation is that a Mayor is directly elected with a further eight Councillors elected from four wards.

From the public submissions received, it is evident there is significant support for the current situation to be retained with 66 percent of respondents advising their preference for option one; maintain the current four ward system with eight elected members and a directly elected Mayor.

Seven percent of respondents nominated their preference for option two; implement a no ward system with eight elected members and a directly elected Mayor.

20 percent of respondents nominated a preference for option three; implement a no ward system with six elected members and a directly elected Mayor.

Five submissions have been received nominating option four. This was not included in the Information and Discussion Paper and some of the submissions do not provide specifics or supporting information. Officers believe that the Cottesloe Residents and Ratepayers Association sent an email encouraging people to respond which provided a fourth option. These submissions have therefore been interpreted as a preference for the alternate option to '*implement a Ward system with six elected members and an elected Mayor*' and have been included in the feedback table as 'alternate option'.

Submissions that provide more than one preference have also been considered as 'alternate option' with the two preferences listed in the feedback table.

Suggestions and queries have been addressed in the feedback table.

The report to be submitted to the Local Government Advisory Board will include:

- )] A copy of the minutes from the council meeting containing the resolution to review the ward boundaries or representation (Ordinary Council Meeting held 25 September 2018).
- )] A map of the current ward boundaries. If Council chose to amend the ward boundaries, a map of the proposed ward boundaries would also be included.
- )] Details of the background for review (Information and Discussion Paper endorsed by Council at the Ordinary Council Meeting held 25 September 2018).
- )] Details of the review and consultation process including copies of the advertisement for review and any promotional activities, for example, social media posts and email sent to the Residents and Ratepayers email database.
- )] Current elector ratios (included in the Information and Discussion Paper and the September 2018 Ordinary Council Meeting minutes).
- )] Comprehensive analysis, rationale and conclusion including assessment of the proposal against the prescribed matter.
- )] The Council's decision and subsequent recommendation to the Board (if Council chose to resolve the officer's recommendation, the minutes of the December 2018 Ordinary Council Meeting)

#### **VOTING REQUIREMENT**

Absolute Majority

#### **OFFICER RECOMMENDATION AND COUNCIL RESOLUTION**

Moved Cr Sadler

Seconded Cr Thomas

**THAT Council:**

- 1. NOTE that 116 submissions were received in relation to the 2019 Ward Review.**
- 2. THANK those who provided a submission.**
- 3. MAINTAIN the current four ward system with eight elected members and a directly elected Mayor and advise the Local Government Advisory Board accordingly.**

**Carried 6/2**

**For: Crs Rodda, Tucak, Sadler, Young, Thomas, and Harkins**

**Against: Crs Boulter and Pyvis**



**10.1.5 REVIEW OF PURCHASE ORDERS POLICY**

**File Ref:** SUB/2594  
**Attachments:** 10.1.5(a) Draft Purchasing Authority Limits Policy  
**Responsible Officer:** Mat Humfrey, Chief Executive Officer  
**Author:** Garry Bird, Deputy Chief Executive Officer  
**Author Disclosure of Interest:** Nil

**SUMMARY**

The Town of Cottesloe policy 'Purchase Orders' was adopted by Council in March 2014 and is scheduled for review in 2024.

As a result of the organisational restructure undertaken in January 2018, some of the purchasing limits imposed by the Policy are no longer relevant due to changes in job titles and new positions being created.

As such, the retitled Policy 'Purchasing Authority Limits' has been reviewed by Staff and is presented for the consideration of Elected Members.

**BACKGROUND**

The Policy prescribes the monetary limits that an officer can issue purchase orders for.

It was intended to review this policy after the ongoing review of the policy 'Purchasing' was finished. As the Purchasing Policy is still at least several months away from being presented to Council, it was considered appropriate to update the Purchase Orders Policy to avoid ongoing confusion and clarify for staff what their limits are.

Depending on the outcome of the Purchasing Policy review, the Purchase Orders (Purchasing Authority Limits) Policy may need to be further reviewed in 2019.

Minor amendments to the limits prescribed for some positions have been made as per the following table:

| Position  | Existing Policy | Draft Policy |
|---|-----------------|--------------|
| Chief Executive Officer   | No limit        | No limit     |
| Manager Corporate and Community Services (Deputy Chief Executive Officer) | \$50,000        | \$50,000     |
| Manager Engineering Services  | \$50,000        | \$50,000     |
| Manager Development Services (Manager Compliance and Regulatory Services) | \$50,000        | \$50,000     |
| Project Manager   | New position    | \$20,000     |
| Works Supervisor  | \$5,000         | \$5,000      |
| Principal Environment Health Officer                                      | \$5,000         | Now MCRS     |
| Finance Manager   | \$5,000         | \$5,000      |

|   |                       |         |
|---|-----------------------|---------|
| Executive Officer (Governance Coordinator)            | \$2,000               | \$2,000 |
| Engineering Assistant (Engineering Technical Officer) | \$500                 | \$500   |
| Assistant Works Supervisor                            | \$500                 | \$500   |
| Events Coordinator                                    | \$250 (was CD and EO) | \$500   |
| Senior Ranger   | \$250                 | \$500   |
| Community Development Officer                         | \$250 (was CD and EO) | \$500   |
| Building Maintenance Officer                          | \$250                 | \$500   |
| Senior Administration Officer/s                       | No previous authority | \$500   |
| Governance Officer                                    | New Position          | \$500   |
| Sustainability Officer                                | New Position          | \$500   |

An additional section has been included to clarify that the limits would apply for an acting position being filled for a period of longer than one week by a permanent employee.

### **STRATEGIC IMPLICATIONS**

This report is consistent with the Town's *Strategic Community Plan 2013 – 2023*.

Priority Area 6: Providing open and accountable local governance

Major Strategy 6.2: Continue to deliver high quality governance, administration, resource management and professional development.

### **POLICY IMPLICATIONS**

The existing Purchase Orders Policy will be replaced by the attached Draft Purchasing Authority Limits Policy if adopted by Council.

### **STATUTORY ENVIRONMENT**

*Local Government Act 1995*

### **FINANCIAL IMPLICATIONS**

There are no perceived financial implications arising from the officer's recommendation.

### **STAFFING IMPLICATIONS**

There are no perceived staffing implications arising from the officer's recommendation.

### **ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS**

There are no perceived sustainability implications arising from the officer's recommendation.

**CONSULTATION**

Town of Cottesloe Elected Members

Due to the administrative nature of the Policy, it is not recommended to be advertised for public comment.

**OFFICER COMMENT**

Nil

**VOTING REQUIREMENT**

Simple Majority

**COUNCILLOR QUESTIONS****Submitted by Cr Boulter – Emailed 2 December 2018**

Q1. Can the blanks in the table in the officer report/recommendation be filled in (as it is not clear what their absence means)?

A1. Yes, see above.

Q2. Is the table in the officer report consistent with and in line with the TOC Delegated Authority Register?

A2. Yes

Q3. Is the table outlining the Purchasing Authority Limits consistent in every way with all the general procurement recommendations from the State Auditor General, including those contained in their recent report on Local Government Procurement 11 October 2018?

A3. Yes. The issues raised in the report relate more to the 'Purchasing Policy'.

Q4. What is the TOC internal procedure if a purchase over the limit is needed and is this clearly documented? Where? What is the procedure?

A4. The Officer takes to their supervisor/manager or a more senior position who has the authority.

Q5. What are the other controls relating to the CEO making a purchase given the table states "No Limit"?

A5. Local Government Act tender requirements, Town of Cottesloe Budget. Draft policy 'Purchasing authority Limits' part 3.

Q6. Has the TOC auditor confirmed agreement with the officer proposal for a Purchase Orders Policy?

A6. Has not been discussed with the Auditor.

Q7. Is the officer proposing to abandon the existing TOC Purchasing Policy in favour of the Purchase Order Policy?

A7. No.

Q8. What are the current outstanding Audit Committee recommendations relating to the TOC Purchasing Policy?

- A8.** *“That Council defer consideration of this item pending further investigation by Officers to provide an analysis of transactions within the prescribed ranges in the Policy and give further consideration to these ranges and the requirement for verbal quotations above \$3,000.”*

**OFFICER RECOMMENDATION****Moved Cr Harkins****Seconded Cr Young****That Council ADOPT the Purchasing Authority Limits Policy as attached.****PROCEDURAL MOTION****Moved Cr Thomas****Seconded Cr Young**

That the item be put to the vote.

**Lost 4(5)/4****For: Crs Rodda, Young, Thomas and Harkin****Against: Boulter, Sadler, Pyvis and Tucak**

In accordance with section 5.21 (3) of the Local Government Act 1995, as the votes were equally divided, the Presiding Member (Chairperson), Deputy Mayor Rodda, cast a second vote.

**COUNCILLOR AMENDMENT****Moved Cr Boulter****Seconded Cr Pyvis**

Amend the officer recommendation to insert a purchase order conditions for all staff including the CEO and Acting CEO as follows:

- ) Any limitations provided by s5.43 of the Local Government Act.
- ) Any limitations provided in Town of Cottesloe Council policy or resolutions from time to time.
- ) No figure over \$100,000 unless it is expressly and specifically provided for in the Town of Cottesloe budget by a specific line item.
- ) Two Senior Managers must sign for any payment over \$20,000.
- ) The CEO or Acting CEO must be one of the co-signatories for payments over \$30,000.
- ) A purchase order cannot be signed by a person who endorsed the invoice.
- ) A purchase order cannot be signed unless the requirements of the Town of Cottesloe Purchasing Policy have been demonstrably complied with and recorded in compliance with the Town of Cottesloe Record Keeping Plan.

**Lost 3/5****For: Crs Tucak, Boulter and Pyvis****Against: Crs Rodda, Sadler, Young, Thomas and Harkins**

**SUBSTANTIVE MOTION AND COUNCIL RESOLUTION**

**That Council ADOPT the Purchasing Authority Limits Policy as attached.**

**Carried 6/2**

**For: Crs Rodda, Tucak, Sadler, Young, Harkins and Thomas**

**Against: Crs Boulter and Pyvis**

**ENGINEERING****10.1.6 INDIANA TEA HOUSE TOILET CLEANING SHORT AND LONG TERM ARRANGEMENTS**

**File Ref:** SUB/2594  
**Attachments:** Nil  
**Responsible Officer:** Mat Humfrey, Chief Executive Officer  
**Author:** Shaun Kan, Manager, Engineering Services  
**Author Disclosure of Interest:** Nil

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**SUMMARY**

That Council considers continuing with the Indiana Maintenance Contract with Charles Cleaning Services until 30 June 2019.

**BACKGROUND**

At the 7 September 2018 Special Council Meeting, Council authorised the Mayor and Chief Executive Officer to execute a sub lease that transferred the control and responsibility for the public toilets at Indiana Tea House to the Town of Cottesloe for the remainder of the lease term.

At the 23 October 2018 Ordinary Council Meeting, Council approved the budget amendment required for major maintenance toilets to 30 June 2019, subjected to a benefit to cost analysis for the two options being undertaken and findings reported back to Council.

**STRATEGIC IMPLICATIONS**

This report is consistent with the Town's *Strategic Community Plan 2013 – 2023*.

Priority Area 5: Providing sustainable infrastructure and community amenities

**POLICY IMPLICATIONS**

There are no perceived policy implications arising from the officer's recommendation.

**STATUTORY ENVIRONMENT**

*Local Government Act 1995*

**FINANCIAL IMPLICATIONS**

A budget amendment of \$103,369.90 was approved.

**STAFFING IMPLICATIONS**

There are no perceived staffing implications arising from the officer's recommendation.

**ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS**

There are no perceived sustainability implications arising from the officer's recommendation.

**CONSULTATION**

Town of Cottesloe Staff

**OFFICER COMMENT**

An external cleaning contract would cost approximately \$90,000 per annum.

A minimum of two additional Town staff costing \$110,000 would be required for these works be carried out internally. This excludes overtime and allowances. This arrangement would also expose the Town to workplace health and safety related issues such as working with hazardous chemicals and workers compensation.

Officers support the notion of employing staff to clean and maintain facilities, however it is only cost effective if there are sufficient facilities under the Town's control. With only one set of public toilets being cleaned at the beach, only two staff would be able to be employed which creates risks in the event one of the staff members is suddenly unwell. Further it will prove difficult to employ and train staff, given the seasonal changes in cleaning requirements.

Lastly, given the approach of summer 2018, there is insufficient time to engage and train internal staff. Officers will continue to monitor this issue and in the event it becomes cost effective to directly employ cleaning staff, a further report will be prepared for Council's consideration.

**VOTING REQUIREMENT**

Simple Majority

**OFFICER RECOMMENDATION**

Moved Cr Sadler

Seconded Cr Young

**That Council NOTES the information provided in the report.**

**COUNCILLOR AMENDMENT**

Moved Cr Boulter

Seconded Cr Pyvis

Amendment to add:

2. That a fully informed proposal as to TOC employees carrying out this work be brought by the TOC administration to Councillors by way of the 2019/2020 budget deliberations, including LGIS Information about any risks that Council should be aware of in respect of TOC employees undertaking this work.

**Lost 3/5**

**For: Crs Boulter, Pyvis and Tucak**

**Against: Crs Rodda, Sadler, Young, Harkins and Thomas**

**SUBSTANTIVE MOTION AND COUNCIL RESOLUTION**

**That Council NOTES the information provided in the report.**

**Carried 8/0**

**For: Crs Rodda, Tucak, Boulter, Sadler, Young, Thomas, Pyvis and Harkins**

**Against: Nil**

**10.1.7 1 VERA STREET REMOVAL OF STREET TREES**

**File Ref:** SUB/2594  
**Attachments:** Nil  
**Responsible Officer:** Mat Humfrey, Chief Executive Officer  
**Author:** Shaun Kan, Manager, Engineering Services  
**Author Disclosure of Interest:** Nil

Cr Pyvis Cr Pyvis – declared an IMPARTIALITY INTEREST in item 10.1.7 by virtue “I am a Committee member of West Tree Canopy”

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**SUMMARY**

Council is asked to consider the removal of the Tipuana Tree, a declared weed, located adjacent to the driveway to 1 Vera Street, Cottesloe with a Chinese Elm being planted as a replacement tree.

**BACKGROUND**

On 5 June 2018, Don Russell Homes, the manager of 1 Vera Street, Cottesloe informed the Town that the Tipuana Tree’s root growth was causing damage to the property’s bin store room walls. A request was made for the tree to be removed.

This item was deferred in the August 2018 Ordinary Council Meeting for the Administration to investigate the cost of alternative option of repairing the boundary wall and relocating the bin storage.

**STRATEGIC IMPLICATIONS**

This report is consistent with the Town’s *Strategic Community Plan 2013 – 2023*.

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Priority Area 1: Protecting and enhancing the wellbeing of residents and visitors

This report is consistent with the Town's *Corporate Business Plan 2017 – 2021*.

Priority Area 6: Providing open and accountable local governance.

### **POLICY IMPLICATIONS**

The officer's recommendation is consistent with the Town's Street Tree Policy.

### **STATUTORY ENVIRONMENT**

*Local Government Act 1995*

*Local Government Regulations 1996*

### **FINANCIAL IMPLICATIONS**

There are no perceived financial implications arising from the officer's recommendation. The removal cost can be accommodated within the allocated maintenance budget.

### **STAFFING IMPLICATIONS**

There are no perceived staffing implications arising from the officer's recommendation.

### **ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS**

There are no perceived environmental sustainability implications with the removal being replaced by a tree species consistent with the Street Tree Master Plan.

### **CONSULTATION**

Town of Cottesloe Staff

Elected Members

### **OFFICER COMMENT**

Information provided by the property manager indicates that the Tipuana Tree has been declared as an environmental weed by the Federal Government. The Water Corporation has also deemed this tree only being suitable in large open spaces.

It would cost approximately \$10,000 to demolish and \$40,000 to rebuild the exact same facility at a different location within the boundary of the property. The Administration is not supportive of this approach as it sets a precedent of Council undertaking works within private property.

As the Town is now aware of the issue the tree is causing, it should take positive action to prevent any further loss. The options open to the Town include;

1. Removing the tree and planting another tree close by;
2. Installing root barriers or other devices to prevent roots causing further damage; and
3. Relocating the current structure with the consent of the owner.

Officers have investigated options 2 and 3 – concluding that these two options are not viable in this case. The cost of replacing the bin store exceeds the cost of removing and replanting

(with a more suitable species) and may not ultimately resolve the issue. As the tree is so large and so close the structure in question, removing the roots at this location will likely result in the loss of the tree in any case.

As such, the only option that appears that remains is to remove the tree and replace with a more appropriate species nearby. On that basis the Officers have made the recommendation below.

### **VOTING REQUIREMENT**

Simple Majority

### **COUNCILLOR QUESTIONS**

#### **Submitted by Cr Boulter – Emailed 2 December 2018**

Q1. What is the value of the tree proposed to be removed using a recognised valuation technique?

A1. A valuation has not been obtained.

### **OFFICER RECOMMENDATION**

Moved Cr Young

Seconded Cr Rodda

That Council:

1. **APPROVE** the removal of the Tipuana tree at 1 Vera Street, Cottesloe.
2. **REPLACE** the Tipuana tree with a Chinese Elm (400L), consistent with the Town's Street Tree Master Plan.

### **COUNCILLOR AMENDMENT**

Moved Cr Pyvis

Seconded Cr Boulter

Add a third point to the OFFICER RECOMMENDATION (p69)

3. **REQUEST** the administration provide a report to Council by March 2019 about how the Tipuana tree at 1 Vera Street, Cottesloe could have been valued to enable an informed decision to be made between the asset value of the tree and the cost of replacing the wall.

**Lost 4(5)/4**

**For: Crs Boulter, Pyvis, Thomas and Tucak**

**Against: Crs Rodda, Sadler, Young and Harkins**

In accordance with section 5.21 (3) of the Local Government Act 1995, as the votes were equally divided, the Presiding Member (Chairperson), Deputy Mayor Rodda, cast a second vote.

**SUBSTANTIVE MOTION AND COUNCIL RESOLUTION**

**That Council:**

- 1. APPROVE the removal of the Tipuana tree at 1 Vera Street, Cottesloe.**
- 2. REPLACE the Tipuana tree with a Chinese Elm (400L), consistent with the Town's Street Tree Master Plan.**

**Carried 4/4(5)**

**For: Crs Sadler, Young, Harkins and Rodda**

**Against: Crs Boulter, Tucak, Pyvis and Thomas**

In accordance with section 5.21 (3) of the Local Government Act 1995, as the votes were equally divided, the Presiding Member (Chairperson), Deputy Mayor Rodda, cast a second vote.

**10.1.8 NAPIER STREET NO STOPPING YELLOW LINE INSTALLATION**

|                                       |   |
|---------------------------------------|---|
| <b>File Ref:</b>                      | <b>SUB/2594</b>   |
| <b>Attachments:</b>                   | <b>10.1.8(a) Napier Street Proposed Parking Restrictions Feedback Table</b> |
| <b>Responsible Officer:</b>           | <b>Mat Humfrey, Chief Executive Officer</b>                                 |
| <b>Author:</b>                        | <b>Shaun Kan, Manager, Engineering Services</b>                             |
| <b>Author Disclosure of Interest:</b> | <b>Nil</b>  |

**SUMMARY**

That Council considers approving the installation of 67 metres of No Stopping yellow lines on either side of a crest along Napier Street between Nailsworth Street and Marmion Street.

**BACKGROUND**

The Town has received complaints of poor sight distance at a crest along Napier Street between Nailsworth Street and Marmion Street. Three of the five submissions received from a resident survey indicates support for the installation of this No Stopping zone either side of the crest.

**STRATEGIC IMPLICATIONS**

This report is consistent with the Town's *Strategic Community Plan 2013 – 2023*.

Priority Area 1: Protecting and enhancing the wellbeing of residents and visitors

Major Strategy 1.1: Develop an 'integrated transport strategy' that includes cycling, park and ride, Cott Cat, public transport and parking management strategies to meet the needs of pedestrians, cyclists and other non-vehicular traffic.

**POLICY IMPLICATIONS**

There are no perceived policy implications arising from the officer's recommendation.

**STATUTORY ENVIRONMENT**

*Local Government Act 1995*

*Parking and Parking Facilities Local Law 2009*

**FINANCIAL IMPLICATIONS**

There are no perceived financial implications arising from the officer’s recommendation.

**STAFFING IMPLICATIONS**

There are no perceived staffing implications arising from the officer’s recommendation.

**ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS**

There are no perceived sustainability implications arising from the officer’s recommendation.

**CONSULTATION**

Town of Cottesloe Staff

Elected Members

Napier Street Residents

The closing date for submissions was 26 October 2018. A total of six submissions were received. One supplementary submission and one additional submission were received after the closing date. A summary of the submissions received is attached.

A copy of all the submissions received has been provided to Elected Members separate to the agenda to protect privacy details of the respondents.

**OFFICER COMMENT**

A safety assessment onsite has determined the existing sight distance required for overtaking parked vehicles within the vicinity of the crest does not comply with standards. There is sufficient space along the northern and southern verges for additional resident parking should the No Stopping restrictions be implemented that would significantly improve the safety standards at this Napier Street location.



*Photo 1: Westward Facing Broome Street      Photo 2: Eastward Facing toward Curtin Avenue*

Of the submissions received, four support the proposal and three oppose the proposal. Additional information and suggestions have been provided in response to the letter sent to Napier Street residents.

**VOTING REQUIREMENT**

Simple Majority

**COUNCILLOR QUESTIONS****Submitted by Cr Boulter – Emailed 2 December 2018**

- Q1. How many complaints has the TOC received about the poor sight distance?  
**A1.** One.
- Q2. To which properties did the TOC write about this proposal inviting submissions?  
**A2.** All properties between Nailsworth Street and Marmion Street.
- Q3. What was the substance of each of the responses? Can a table be prepared?  
**A3.** Yes a table summarising the 3 supportive and 2 unsupportive responses will be included in the Council Report.
- Q4. What is the applicable standard relating to this issue as referenced in the officer report on page 65?  
**A4.** AS 2890 – Parking Facilities.

**COUNCILLOR QUESTIONS****Submitted by Cr Tucak – Emailed 4 December 2018**

- Q1. How many complaints were received about poor sight distances?  
**A1.** One.
- Q2. Where the complaints received from immediate residents, or not?  
**A2.** Immediate.
- Q3. Has the Town received any complaints on this issue in the past?  
**A3.** We are not aware of any concerns raised in the past.
- Q4. How many residents were sent the letter seeking their feedback?  
**A4.** 22.

**OFFICER RECOMMENDATION****Moved Cr Thomas****Seconded Cr Pyvis**

That Council APPROVE the installation of 67 metres of No Stopping yellow lines through the crest on both sides of Napier Street between Nailsworth Street and Marmion Street.

**COUNCILLOR AMENDMENT****Moved Cr Pyvis****Seconded Cr Tucak**

Add to the OFFICER RECOMMENDATION (p72)

(Remove the full stop after) " .... Marmion Street" (and add)

"for a trial period of 12 months, with a report back to Council at the end of the trial period on the effectiveness of this change."

**Lost 3/5****For: Crs Boulter, Tucak and Pyvis****Against: Crs Rodda, Sadler, Young, Harkins and Thomas**

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**SUBSTANTIVE MOTION**

That Council APPROVE the installation of 67 metres of No Stopping yellow lines through the crest on both sides of Napier Street between Nailsworth Street and Marmion Street.

**Lost 1/7**

**For: Cr Pyvis**

**Against: Crs Rodda, Boulter, Tucak, Sadler, Young, Harkins and Thomas**

**FINANCE****10.1.9 SEA VIEW GOLF CLUB INC. - REQUEST FOR VARIATION TO FUNDING CONTRIBUTION**

**File Ref:** SUB/2594  
**Attachments:** 10.1.9(a) Letter from Sea View Golf Club  
**Responsible Officer:** Mat Humfrey, Chief Executive Officer  
**Author:** Garry Bird, Deputy Chief Executive Officer  
**Author Disclosure of Interest:** Nil

Cr Tucak - declared an IMPARTIALITY INTEREST in item 10.1.9 by virtue "members of the executive are known to me"

**SUMMARY**

The Sea View Golf Club Inc. (The Club) have written to Council seeking approval to vary the funding agreement where the Town contributed \$48,000 towards building renovation works on the Clubhouse and associated facilities.

The Club are seeking to vary the scope of works by deleting several of the projects contained in the upgrades and replace the deleted works with others with other projects.

The correspondence from the Club is attached for the consideration of Elected Members.

**BACKGROUND**

At the April 2016 Ordinary Meeting of Council a funding request from the Club was considered and the following Resolution adopted;

*COUNCIL RESOLUTION*

1. *THAT Council approve the request for the amount of \$48,000 from Sea View Golf Club Inc to contribute to the cost of improving the Clubhouse facilities for the following reasons:*
  - a) *The Clubhouse will revert to Council ownership in nine years time.*
  - b) *The improvements will assist the Golf Club in attracting outside functions and increased membership.*
2. *THAT the Town of Cottesloe Administration make a preliminary report to the May 2017 Council meeting about the feasibility of and sustainability implications of having the whole Town of Cottesloe Works Depot on the Sea View Golf Club Inc. site defer consideration of the request from the Sea View Golf Club Inc.*

The \$48,000 contribution was for the following specified works;

| <b>Project</b>                    | <b>Cost</b> | <b>Funded By</b>   |
|-----------------------------------|-------------|--------------------|
| Upgrade Ladies Changeroom         | \$13,000    | Sea View Golf Club |
| Disabled access – Upstairs Toilet | \$12,000    | Town of Cottesloe  |
| Kitchen Upgrade                   | \$10,000    | Town of Cottesloe  |
| Men's Changeroom and              | \$10,000    | Sea View Golf Club |



|                                 |                 |                    |
|---------------------------------|-----------------|--------------------|
| Shower Upgrade                  |                 |                    |
| Disability Ramp – Main Entrance | \$18,000        | Town of Cottesloe  |
| Lounge Area - Heating           | \$10,000        | Town of Cottesloe  |
| Refurbish BBQ Area              | \$18,000        | Sea View Golf Club |
| Children’s Activity Area        | \$5,000         | Sea View Golf Club |
| <b>Total</b>                    | <b>\$96,000</b> |                    |

The Club has requested to vary the projects for which funding was provided, principally due to the cost of the two universal access improvements (access ramp and provision of upstairs toilets) exceeding the budget. The Club has provided the quotes they obtained for these two components of the work, which were as follows:

⌋ Disabled access – upstairs toilet \$183,600 (Budget \$12,000)

⌋ Disability ramp – main entrance \$30,580 (Budget 18,000)

Both of these projects were to be funded from the Town’s contribution and although not stated in the Resolution, the provision of universal access facilities to the clubhouse was a significant factor in the Town approving the initial funding request.

In their request to vary the funding, the Club stated they would like to revisit both of these projects in the future.

The following table has been prepared to show the original approved projects, who was responsible for funding certain components (where specified) and what the actual expenditure has been incurred on:

| <b>Project</b>                      | <b>Budget</b> | <b>Actual</b> | <b>Funded By</b>   |
|-------------------------------------|---------------|---------------|--------------------|
| Upgrade Ladies Changeroom           | \$13,000      | \$17,645      | Sea View Golf Club |
| Disabled access – Upstairs Toilet   | \$12,000      | \$0           | Town of Cottesloe  |
| Kitchen Upgrade                     | \$10,000      | \$7,102       | Town of Cottesloe  |
| Men’s Changeroom and Shower Upgrade | \$10,000      | \$0           | Sea View Golf Club |
| Disability Ramp – Main Entrance     | \$18,000      | \$0           | Town of Cottesloe  |
| Lounge Area - Heating               | \$10,000      | \$0           | Town of Cottesloe  |
| Refurbish BBQ Area                  | \$18,000      | \$20,420      | Sea View Golf Club |
| Children’s Activity Area            | \$5,000       | \$0           | Sea View Golf Club |
| Replace bar and kitchen flooring    | \$0           | \$11,051      |                    |
| New air-condition unit in cool room | \$0           | \$3,369       |                    |
| Replace BBQ area structure          | \$0           | \$10,200      |                    |
| Patch clubhouse roof                | \$0           | \$5,860       |                    |
| Mains Power Switchboard             | \$0           | \$7,796       |                    |

|                                      |                 |                 |  |
|--------------------------------------|-----------------|-----------------|--|
| Repair to Irrigation Pump            | \$0             | \$5,818         |  |
| Defibrillator                        | \$0             | \$2,600         |  |
| Marine Parade Boundary fence repairs | \$0             | \$2,928.50      |  |
| Pro Shop door and locks              | \$0             | \$2,425.85      |  |
| New lamps for car park               | \$0             | \$474.65        |  |
| <b>Total</b>                         | <b>\$96,000</b> | <b>\$97,690</b> |  |

The above table shows that the funds provided by the Town were not spent on any of the projects originally specified.

### STRATEGIC IMPLICATIONS

This report is consistent with the Town's *Strategic Community Plan 2013 – 2023*.

Priority Area 6: Providing open and accountable local governance

Major Strategy 6.2: Continue to deliver high quality governance, administration, resource management and professional development.

The funding provided to the Sea View Golf Club Inc. was for specified purposes. Consideration of the Club's request in a public forum is in keeping with this strategy.

### POLICY IMPLICATIONS

The Donations Policy is not applicable in this instance as the funding provided was outside of the requirements prescribed in the Policy and the annual donations program.

### STATUTORY ENVIRONMENT

*Local Government Act 1995*

### FINANCIAL IMPLICATIONS

As the funding has already been provided, there are no financial implications arising from the request to vary the projects to be funded. If Council was to refuse the request, the funding not spent on approved projects should be returned by the Club which would result in a small financial benefit to the 2018/18 Budget.

### STAFFING IMPLICATIONS

There are no perceived staffing implications arising from the officer's recommendation.

### ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS

There are no perceived sustainability implications arising from the officer's recommendation.

### CONSULTATION

Sea View Golf Club Inc.

**OFFICER COMMENT**

In regards to the request from the Club to vary the projects, Council has several options, summarised below:

1. Approve the request.
2. Refuse the request and require the Club to complete the projects as specified or return the \$48,000 contribution in full.
3. Refuse the request and require the Club to complete the projects as specified or return the \$48,000 contribution in full, with the funds to be held in a Reserve Fund for undertaking the universal access works not undertaken, when the Club has the balance of funding required.
4. Refuse the request and require the Club to return the funds for projects completed which are not supported by Council.

Although not doubting in any way the Club has acted with the best of intentions, public funds have to be managed with the utmost of integrity and accountability. To receive public funding for specified projects and then spend these on different projects without first seeking the approval of the funding body is a difficult proposition to support.

Certainly if Council did similar with State Government funding, we would most likely be asked to repay the full sum, for being in breach of the funding agreement.

The Club could argue that they did not believe this was an issue, being unfamiliar with grant funding arrangements. However, it is not unreasonable to suggest that the Club should have known to seek a variation from the body that had provided the funds to them, before committing to any projects not included in the application.

Staff are of the view that a strong stance needs to be taken in regards to this request, to preserve electors confidence that the Town's funds are being expended in a prudent and accountable manner.

Funding provided to the Club for other projects in recent years is summarised below:

|   |         |          |  |
|---|---------|----------|--|
| ) | 2013/14 | \$49,797 | 50 percent contribution to Clubhouse concrete cancer repairs |
| ) | 2013/14 | \$51,358 | Carpark upgrade  |
| ) | 2013/14 | \$3,875  | Jarrad Street fencing  |
| ) | 2009/10 | \$2,000  | Club Community Day   |

In addition to these contributions, the Town recently gifted the following assets constructed on the Club's premises for the mini Town depot, which was recently removed on request from the club:

|   |          |                       |
|---|----------|-----------------------|
| ) | \$21,327 | Shed                  |
| ) | \$12,742 | Concrete storage bays |
| ) | \$38,904 | Carpark               |

If Council was to determine that the \$48,000 in funding should be repaid in full or part, it is unlikely the Club would be able to repay the full amount in the short term and a repayment plan or loan extension may need to be negotiated.

### VOTING REQUIREMENT

Simple Majority

### COUNCILLOR QUESTIONS

#### **Submitted by Cr Boulter – Emailed 2 December 2018**

- Q1. Can the blanks in the table on page 67 and 68 of the officer report be filled in?
- A1.** The blanks are there intentionally to note that those specific projects were not part of the original funding application and as such no funding provider specified.
- Q2. What other projects have been undertaken by the Town of Cottesloe with or without shared funding from the SVGC since this donation was made? If so, what was the cost and what was the division between TOC and SVGC of the shared costs?
- A2.** Nil
- Q3. Were development applications for any of the works listed in the table on page 67 submitted to TOC? If so, were they required for any of the works and were they approved?
- A3.** No. It does not appear a DA would have been necessary for these works.
- Q4. Were building licence applications applied for any of the works listed in the table on page 67? If so, were they required for any of the works and were they approved?
- A4.** No.
- Q5. What are the arrangements/requirements for health officer approvals/inspections of the SVGC kitchen and toilet facilities? When were the last inspections and what was the outcome of the last inspections?
- A5.** **Kitchen** – Inspections are carried out as per the requirements of the *Food Safety Standards Code* and *Food Act 2008*.
- Toilets** – The toilets are inspected as part of the public building risk assessments as per the requirements of the *Health (Public Buildings) Regulations 1992*
- Q6. What are the Town of Cottesloe legal obligations to provide disability access to buildings it leases to third parties?
- A6.** **Buildings shall comply with the requirements of the BCA and Health (Public Buildings) Regulations 1992.**
- Q7. What are the Town of Cottesloe Disability and Inclusion Plan 2018 guidelines for providing disability access to buildings it leases to third parties having regard to the Town of Cottesloe Disability and Inclusion Plan 2018?
- A7.** **Buildings shall comply with the requirements of the BCA and Health (Public Buildings) Regulations 1992.**
- Q8. What are the Town of Cottesloe Disability and Inclusion Policy guidelines in relation to providing disability access to public buildings it leases to third parties having regard to
-

the Town of Cottesloe Disability and Inclusion Plan 2018, and disability access generally to TOC buildings?

**A8. Buildings shall comply with the requirements of the BCA and *Health (Public Buildings) Regulations 1992*.**

Q9. When was the TOC Town of Cottesloe Disability and Inclusion Policy adopted by Council?

**A9.** April 2018.

Q10. When was/is the TOC Town of Cottesloe Disability and Inclusion Policy due for review by Council?

**A10.** 2023.

Q11. Has the Disability Services Advisory Committee reviewed the Town of Cottesloe Disability and Inclusion Policy having regard to the recently adopted Town of Cottesloe Disability and Inclusion Plan 2018? If yes, what was the outcome of the review? If not, will it be reviewing the policy?

**A11.** This will be undertaken in 2019.

Q12. Has the matter of disability access to the SVGC clubhouse been reviewed by the DSAC?

**A12.** This matter has been discussed at a committee level but no formal recommendation or position made.

Q13. Is the SVGC required to maintain all the open space grounds it leases from the TOC?

**A13.** Yes.

Q14. Does the community have a right of public access to the open space grounds/public space that the SVGC leases?

**A14.** The lease provides for public access to the Reserve.

Q15. How much does the SVGC spend on maintaining the grounds/public space per annum?

**A15.** Unknown.

Q16. How much would it cost the Town of Cottesloe residents and ratepayers to maintain the grounds/public space per annum if the SVGC lease reverted to the Town of Cottesloe?

**A16.** Unknown. No research has been undertaken on this and it would depend on the standard of maintenance required.

Q17. What is the current debt that the SVGC owes to the Town of Cottesloe and what was it for? What is the repayment plan for this debt?

**A17.** \$246,995.99 as at 4 December. Repayments as per the Loan Schedule with debt to be repaid by June 2026.

Q18. In relation to the officer comment on page 69 starting "*In addition to these contributions...*" aren't these assets constructed on Crown land leased to the SVGC by TOC, which will revert to the Town of Cottesloe on expiration of the lease? Weren't these assets constructed on the SVGC without a contractual arrangement between the SVGC and the Town of Cottesloe for the purpose of establishing a Town of Cottesloe works depot at the SVGC?

**A18.** No. The lease was in place and permission (and endorsement) was obtained under the lease.

Q19. In relation to the officer comment on page 69 what options did the SVGC provide in relation to the TOC works depot other than Town of Cottesloe vacating it?

**A19.** Enter into a commercial lease arrangement.

#### **OFFICER RECOMMENDATION**

That Council advise the Sea View Golf Club Inc. that the request to vary the projects funded by a \$48,000 contribution from Council is REFUSED and that the projects need to be completed as specified or the funds returned in full to the Town.

#### **COUNCILLOR MOTION**

**Moved Cr Boulter**

**Seconded Cr Pyvis**

1. That Council advise the SVGC Inc that it approves the request to vary the projects funded by the \$48,000 contribution from Council, subject to receipt of a report by the SVGC of the projects completed with the funds signed by a representative of the SVGC Board along with invoices where applicable, and an inspection of the works completed by the SVGC, by the TOC Administration.
2. That a further report be made to Council if the matter cannot be resolved to the satisfaction of the TOC administration having regard to Council's resolution 1 above, or once the matter is settled.

**Lost 3/5**

**For: Crs Boulter, Pyvis and Tucak**

**Against: Crs Rodda, Young, Sadler, Thomas and Harkins**

#### **FORESHADOWED MOTION AND COUNCIL RESOLUTION**

**Moved Cr Young**

**Seconded Cr Sadler**

**That Council:**

1. **DEFERS consideration of this item until it has had the opportunity to consider the Masterplan for the Recreation Precinct of which the SVGC site forms part, and to consider community feedback on the Masterplan;**
2. **REQUESTS the Administration to advise SVGC that this deferral is without prejudice to the Town's position in the matter;**
3. **REQUESTS the Administration to bring to the March Briefing Forum a report for Council's consideration on the matter to include timeline and a chronological account of communication (written and non-written) between the Town and the SVGC including copies of all written correspondence and notes relating to the matter.**

**Carried 6/2**

**For: Crs Rodda, Tucak, Sadler, Young, Harkins and Thomas**

**Against: Crs Boulter and Pyvis**

**10.1.10 FINANCIAL STATEMENTS FOR THE PERIOD 1 JULY 2018 TO 30 NOVEMBER 2018**

**File Ref:** SUB/2594  
**Attachments:** 10.1.10(a) Financial Statements for the period 1 July 2018 to 31 October 2018 [under separate cover]  
**Responsible Officer:** Garry Bird, Deputy Chief Executive Officer  
**Author:** Wayne Richards, Finance Manager  
**Author Disclosure of Interest:** Nil

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**SUMMARY**

It is a requirement of the *Local Government Act 1995* that monthly and quarterly financial statements are presented to Council, in order to allow for proper control of the Town's finances and ensure that income and expenditure are compared to budget forecasts.

The attached financial statements and supporting information are presented for the consideration of Elected Members. Council staff welcomes enquiries in regard to the information contained within these reports.

**BACKGROUND**

In order to prepare the attached financial statements, the following reconciliations and financial procedures have been completed and verified:

- )] Reconciliation of all bank accounts.
- )] Reconciliation of rates and source valuations.
- )] Reconciliation of assets and liabilities.
- )] Reconciliation of payroll and taxation.
- )] Reconciliation of accounts payable and accounts receivable ledgers.
- )] Allocations of costs from administration, public works overheads and plant operations.
- )] Reconciliation of loans and investments.

**STRATEGIC IMPLICATIONS**

This report is consistent with the Town's *Strategic Community Plan 2013 – 2023*.

Major Strategy 6.2: Continue to deliver high quality governance, administration, resource management and professional development.

Priority Area 6: Providing open and accountable local governance

**POLICY IMPLICATIONS**

Management of Investments Policy

**STATUTORY ENVIRONMENT**

*Local Government Act 1995*

*Local Government (Financial Management) Regulations 1996*

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**FINANCIAL IMPLICATIONS**

Resource requirements are in accordance with the existing budgetary allocation.

There are no perceived financial implications arising from the officer's recommendation.

**STAFFING IMPLICATIONS**

There are no perceived staffing implications arising from the officer's recommendation.

**ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS**

There are no perceived sustainability implications arising from the officer's recommendation.

**CONSULTATION**

Senior staff

**OFFICER COMMENT**

The following comments and/or statements provide a brief summary of major financial/budget indicators and are included to assist in the interpretation and understanding of the attached Financial Statements.

- )] The net current funding position as at 30 November 2018 was \$7,733,316 and is in line with previous financial years as shown on pages 2 and 22 of the attached Financial Statements.
- )] Rates and emergency services levies receivables at 30 November 2018 stood at \$2,464,966 as shown on pages 2 and 25 of the attached Financial Statements.
- )] Operating revenue is more than year to date budget by \$334,271 with a more detailed explanation of material variances provided on page 21 of the attached Financial Statements. Operating expenditure is \$1,203,498 less than year to date budget with a more detailed analysis of material variances provided on page 21.
- )] The Capital Works Program is approximately 14% complete as at 30 November 2018 and a full capital works program listing is shown on pages 33 to 35.
- )] Whilst Salaries and Wages are not reported specifically, they do represent the majority proportion of Employee Costs which are listed on the Statement of Financial Activity (By Nature and Type) on page 7 of the attached Statements. As at 30 November 2018 Employee Costs were \$96,604 less than the budgeted year to date amount.
- )] The balance of cash backed reserves was \$11,600,625 as at 30 November 2018 as shown in note 7 on page 27 of the monthly financial statements.

**List of Accounts for November 2018**

The list of accounts paid during November 2018 is shown on pages 36 to 44 of the attached Financial Statements. The following significant payments are brought to Council's attention;-

- )] \$38,808.00 to Smart Parking Ltd to upgrade the smart parking zone controllers.
- )] \$32,944.76 to Surf Life Saving Western Australia for the provision of life guard services.



- ⌋ \$48,785.55 & \$82,385.81 to Environmental Industries Pty Ltd for works to upgrade the beach access paths and foreshore works.
- ⌋ \$26,642.00 to Publik to supply and install beach access signage.
- ⌋ \$35,375.05 to Shacks and Kerr Motors Pty Ltd to purchase a new vehicle.
- ⌋ \$48,623.82 to Solo Resource Recovery t/as Solo Waste for waste collection and disposal services.
- ⌋ \$65,713.00 to Falconet Pty Ltd atf Truck Unit Trust for a new truck.
- ⌋ \$68,365.00 to Western Metropolitan Regional Council for transfer waste station costs.
- ⌋ \$25,308.01 to SuperChoice Services Pty Ltd for staff superannuation contributions.
- ⌋ \$107,496.73 & \$114,189.38 to the Town of Cottesloe staff for fortnightly payroll.
- ⌋ \$300,000.00 & \$200,000.00 to the Town of Cottesloe Investment account held with National Australia Bank.

### **Investments and Loans**

Cash and investments are shown in note 4 on page 23 of the attached Financial Statements. Council has approximately 34% of funds invested with National Australia Bank, 28% with Bankwest, 29% with Commonwealth Bank of Australia and 9% with Westpac Banking Corporation. Council had a balance of \$11,600,625 in reserve funds as at 30 November 2018.

Information on borrowings is shown in note 10 on page 30 of the attached Financial Statements and shows Council had total principal outstanding of \$3,985,060 as at 30 November 2018.

### **Rates, Sundry Debtors and Other Receivables**

Rates revenue information is shown in note 9 on page 29 of the attached Financial Statements. Rates outstanding are shown on note 6 on page 25 and show a balance of \$2,464,966 as compared to \$2,855,384 this time last year.

Sundry debtors are shown on note 6, pages 25 and 26 of the attached Financial Statements. The sundry debtors show that 34% or \$25,449 is older than 90 days. Infringement debtors are shown on note 6(a) and stood at \$440,748 as at 30 November 2018.

### **Budget Amendments**

The budget amendments are listed on pages 12, 13 and 24 of the Financial Statements

### **VOTING REQUIREMENT**

Simple Majority

### **OFFICER RECOMMENDATION**

**THAT Council RECEIVE the Financial Statements for the period ending 30 November 2018 as submitted to the 11 December 2018 meeting of Council.**

**PROCEDURAL MOTION**

**Cr Boulter**

**Seconded Cr Pyvis**

Defer consideration of the Financial Statements.

**Lost 3/5**

**For: Crs Boulter, Tucak and Pyvis**

**Against: Crs Rodda, Sadler, Young, Harkins and Thomas**

**FORESHADOWED MOTION AND COUNCIL RESOLUTION**

**Moved Cr Rodda**

**Seconded Cr Harkins**

**THAT Council RECEIVE the Financial Statements for the period ending 30 November 2018 as submitted to the 11 December 2018 meeting of Council.**

**Carried 6/2**

**For: Crs Rodda, Tucak, Sadler, Young, Harkins and Thomas**

**Against: Crs Boulter and Pyvis**

**EXECUTIVE SERVICES****10.1.11 AGREEMENT DEFERRING AMALGAMATION OF LOTS 7 AND 8 (UNITS 7 AND 8, FLOOR 1) OF 22 AVONMORE TERRACE, COTTESLOE**

**File Ref:** SUB/2594  
**Attachments:** 10.1.11(a) Agreement Deferring Amalgamation of Lots 7 and 8, 22 Avonmore Tce, Cottesloe [under separate cover]  
**Responsible Officer:** Mat Humfrey, Chief Executive Officer  
**Author:** Freya Ayliffe, Manager Compliance and Regulatory Services  
**Author Disclosure of Interest:** Nil

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**SUMMARY**

The purpose of this report is to allow Council to consider an agreement that relates to the deferral of amalgamation of units seven and eight, located at 22 Avonmore Terrace, Cottesloe into a single parcel of land on one Certificate of Title to accommodate the development by the owners.

The amalgamation of the lots is necessary to satisfy the requirements relevant to the building standards in relation to technical aspects of fire separation of the proposed dwelling. The applicable building standards are set out in the *Building Code of Australia 2016*.

**BACKGROUND**

The *Local Government Act 1995* requires a Common Seal to be approved by Council or its delegate. As Cottesloe Council has not delegated that authority, each time the Common Seal is required, it necessitates obtaining Council resolution.

**STRATEGIC IMPLICATIONS**

This report is consistent with the Town's *Strategic Community Plan 2013 – 2023*.

Priority Area 4: Managing Development

Major Strategy 6.2: Continue to deliver high quality governance, administration, resource management and professional development.

This report is consistent with the Town's *Corporate Business Plan 2017 – 2021*.

Priority Area 4: Managing Development.

Major Strategy 6.2: Continue to deliver high quality governance, administration, resource management and professional development.

**POLICY IMPLICATIONS**

There are no perceived policy implications arising from the officer's recommendation.

**STATUTORY ENVIRONMENT**

*Local Government Act 1995*

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*Building Act 2011*

*Building Regulations 2012*

### **FINANCIAL IMPLICATIONS**

The deed of agreement and associated caveat are at full cost of the landowners, with no direct cost to the Town.

### **STAFFING IMPLICATIONS**

There are no perceived staffing implications arising from the officer's recommendation.

### **ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS**

There are no perceived sustainability implications arising from the officer's recommendation.

### **CONSULTATION**

McLeods Barristers and Solicitors

### **OFFICER COMMENT**

The attached agreement deferring amalgamation in relation to Lots seven and eight (Units seven and eight, Floor one) of 22 Avonmore Terrace, Cottesloe is between the landowners who have requested and executed the deed, and the Town. It has been prepared by McLeods under instruction from the Town at full cost to the landowner.

The agreement includes a range of standard legal measures to ensure that amalgamation is ultimately fulfilled. It protects the Town's interests by committing the owners to complete the amalgamation, empowering the Town to do so if necessary, and involves a caveat on title accordingly.

### **VOTING REQUIREMENT**

Simple Majority

### **COUNCILLOR QUESTIONS**

#### **Submitted by Cr Boulter – Emailed 2 December 2018**

Q1. Has the application for amalgamation been submitted and this officer recommendation is to cover administrative delays from the WA State government?

A1. Yes.

### **OFFICER RECOMMENDATION AND COUNCIL RESOLUTION**

Moved Cr Rodda

Seconded Cr Thomas

**THAT Council AUTHORISE the Mayor and Chief Executive Officer to apply the Town's Common Seal to the Agreement Deferring Amalgamation of Lots seven and eight (Units seven and eight, Floor 1) 22 Avonmore Terrace, Cottesloe as attached.**

**Carried 8/0**

**For: Crs Rodda, Tucak, Boulter, Sadler, Young, Thomas, Pyvis and Harkins**

**Against: Nil**

**10.2 RECEIPT OF COMMITTEE MINUTES**

Nil

**10.3 REPORTS OF COMMITTEES**

**11 ELECTED MEMBERS MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN****11.1 COUNCILLOR MOTION - GIDGUP FAMILY AND LAND & CULTURE PROTECTOR, IVA HAYWARD-JACKSON DEPUTATION NOTICE OF MOTION CR BOULTER**

The following motion has been proposed by Cr Boulter.

**COUNCILLOR MOTION**

That minutes of the deputation by the Gidgup family and Land & Culture Protector, Iva Hayward-Jackson to the December 2018 Agenda Forum be included in the minutes of the 11 December 2018 Ordinary Council Meeting.

**COUNCILLOR MOTION****Moved Cr Boulter****Seconded Cr Pyvis**

That minutes of the deputation by the Gidgup family and Land & Culture Protector, Iva Hayward-Jackson to the December 2018 Agenda Forum be included in the minutes of the 11 December 2018 Ordinary Council Meeting, in consultation with the deputees as to content of the minutes.

**Lost 3/5****For: Crs Boulter, Tucak and Pyvis****Against: Crs Rodda, Sadler, Young, Harkins and Thomas****COUNCILLOR RATIONALE**

1. There is no procedural reason for not resolving that a synopsis of the deputation be included in the December OCM minutes as proposed.
2. Given the concerns expressed and lack of recognition of Traditional Owners in Council's communication and consultation policies, a formal record of the deputation would be a respectful beginning to the deputation.
3. The Noongar representatives' deputation presenters attended Council premises for the purpose of making a deputation to the adjourned Council meeting.
4. Council could have resolved to hear the deputation, as requested, before proceeding into a confidential session.
5. The deputation presenters were not aware that the minutes of a deputation to an Agenda Forum would not be recorded in the Council minutes, as a matter of procedure.
6. The Noongar representatives' deputation was recorded by the TOC administration and so the minutes of the deputation can be made.
7. The Agenda Forum principle 12 includes that deputations will not generally be heard at Agenda Forums unless an exception is made by the Presiding Member.

**OFFICER COMMENT**

Nil

**11.2 COUNCILLOR MOTION - NOTICE OF MOTION OBJECTING TO GRANT OF CLUB RESTRICTED LIQUOR LICENCE TO THE NORTH COTTESLOE SURF LIFE SAVING CLUB**

Cr Pyvis – declared an IMPARTIALITY INTEREST in item 11.2 by virtue “my daughter is a member of North Cottesloe Surf Life Saving Club”

Cr Harkins - declared an IMPARTIALITY INTEREST in item 11.2 by virtue “my son is a member of the North Cottesloe Surf Life Saving Club”

Cr Young - declared an IMPARTIALITY INTEREST in item 11.2 by virtue “I sponsored an event that is coming up this summer”

The following motion has been proposed by Cr Boulter.

**COUNCILLOR MOTION**

1. That Council objects to the grant of the Club Restricted Liquor Licence to the North Cottesloe Surf Life Saving Club (NCSLSC) for reasons included in the Rationale below.
2. That Council resolves that the Town of Cottesloe administration:
  - a. lodges a Form17 objection to granting a Club Restricted Liquor Licence (the Objection) to the NCSLSC.
  - b. lodges the Objection before the closing time and date for submissions, being 13 December 2018.
  - c. includes this Notice of Motion and Rationale in the Objection.

**COUNCILLOR MOTION****Moved Cr Sadler****Seconded Cr Thomas**

1. Not support the application on public health grounds;
2. Request the administration to lodge a Form 17 to the Director of Liquor Licensing objecting to granting NCSLC a restricted liquor license, prior to the 13 December 2018; and
3. Request that the Form 17 lodgement fully reflects the attached rationale.
4. In the event the Director of Liquor licensing approves the application, recommend that it be subject to the following conditions;
  - i) That the operating hours of the license be restricted to the Friday, Saturday, Sunday from 4 until 10pm.
  - ii) That the maximum number of occupants of the licensed area, during times when the liquor license is being used, shall be 150.
  - iii) The Club shall install Closed Circuit television cameras to cover the entire external areas adjacent to the licensed area.
  - iv) The licensed area shall comprise the upper ground floor only including the courtyard.

**COUNCILLOR AMENDMENT**

Moved Cr Tucak

Seconded Cr Sadler

- ) In the first point (point 1) at the end of the current sentence to include the words 'and the effect on local residential amenity.'
- ) To include the same words in point 3 at the end of the current point 3, add the words 'and noting the effect on local residential amenity'; and
- ) in points 1 and point 2 to add the words 'in its current form.'

Carried 6/2

For: Crs Boulter, Tucak, Sadler, Young, Thomas and Pyvis

Against: Crs Rodda and Harkins

**COUNCILLOR AMENDMENT**

Moved Cr Boulter

Seconded Cr Pyvis

1. That Council objects to the grant of the club restricted liquor licence to the North Cottesloe Surf Life Saving Club in its current form, on the grounds that it is not in the public interest, it will cause undue harm or ill health to people, especially young people and local residents, and that will adversely impact on the amenity, quiet and good order of the locality.

Carried 5/3

For: Crs Boulter, Tucak, Sadler, Thomas and Pyvis

Against: Crs Rodda, Young and Harkins

**SUBSTANTIVE MOTION AND COUNCIL RESOLUTION**

1. That Council objects to the grant of the club restricted liquor licence to the North Cottesloe Surf Life Saving Club in its current form, on the grounds that it is not in the public interest, it will cause undue harm or ill health to people, especially young people and local residents, and that will adversely impact on the amenity, quiet and good order of the locality.
2. Request the administration to lodge a Form 17 to the Director of Liquor Licensing objecting to granting NCSLC a restricted liquor license, prior to the 13 December 2018; deadline in its current form; and
3. Request that the Form 17 lodgement fully reflects the attached rationale and noting the effect on local residential amenity.
4. In the event the Director of Liquor licensing approves the application, recommend that it be subject to the following conditions;
  - i) That the operating hours of the license be restricted to the Friday, Saturday, Sunday from 4 until 10pm.
  - ii) That the maximum number of occupants of the licensed area, during times



when the liquor license is being used, shall be 150.

- iii) The Club shall install Closed Circuit television cameras to cover the entire external areas adjacent to the licensed area.
- iv) The licensed area shall comprise the upper ground floor only including the courtyard.

Carried 5/3

For: Crs Boulter, Tucak, Sadler, Thomas and Pyvis

Against: Crs Rodda, Young and Harkins

#### Rationale

- ) There is more alcohol related harm in Australia from alcohol than from all other recreational drugs combined.
- ) Frequent exposure to alcohol in sporting clubs normalizes and misconstrues the relationship between alcohol consumption, sport and health.
- ) This relationship needs to be uncoupled in the same way that the relationship between cigarettes and sport was uncoupled last century.
- ) Using the precedence of other clubs having access to similar licenses is not relevant in the case of public health/harm minimization.
- ) Governments have an important leadership role, this is an example where leadership is required.
- ) Public benefit has not been demonstrated and public concern and harm has.
- ) There are already ample venues in the immediate vicinity of the North Cottesloe Surf Life Saving Club for members to drink alcohol if they so choose.
- ) Should a license be granted it is appropriate to limit the terms of operation to provide confidence to the community regarding their amenity.

#### COUNCILLOR RATIONALE

Town of Cottesloe has not changed its position of not supporting the liquor licence

1. A previous Cottesloe Council authorised the TOC administration to issue the section 39, section 40 certificates (CARRIED 5/3 For: Mayor Dawkins, Crs Rodda, Angers, Against Downes and Burke: Against Crs Pyvis, Boulter and Thomas; and advised the NCSLC as follows:
  1. *Council is not in a position to support the proposal for a Club Restricted Liquor Licence ahead of a formal liquor licence application being referred to the Town for consideration; and*
  2. *to reconsider Council's previous objection, Council would require more information regarding the proposed Club Restricted Liquor Licence and how the Surf Club intends to operate it, including addressing community concerns raised in relation to the previously- proposed Club Liquor Licence and having regard to Council's Liquor (Licenced Premises) Policy.*

2. A part history of Council decisions is at Attachment One.

Background

3. Currently, the NCSLSC serve liquor on *ad hoc* basis – each service requiring a licence - up to a maximum of 12 licences in a 12 month period.
4. The NCSLSC seeks approval of a *Restricted Liquor Service for members and guests and people attending functions and special events* with no limit on days of liquor service, for 12 hrs daily - 12md to midnight and until 2am on New Year's day (7 days/week including Sundays) (the Application).
5. The Shire of Exmouth and the Shire of Chittering are examples of Local Governments in WA that have adopted a policy to prevent the consumption of alcohol on Council property.
6. **WALGA** (developed in partnership with the Mental Health Commission (MHC), the Public Health Advocacy Institute of Western Australia (PHAIWA) ) supports the development and implementation of policies that reduce or prevent alcohol-related harm , and encourage, create and support low-risk drinking settings, particularly where children and young people are present. They have produced the **Managing Alcohol In Our Communities (MAIOC) Guide**, which includes key facts as follows:

Key Facts:

- In 2016, 6.4% of Western Australians aged 14 years and over were daily drinkers, 36.8% drank weekly and 31.8% drank less than weekly.
- In 2016, nearly one-fifth of Western Australians aged 14 years and over drank at a level placing them at risk of lifetime harm (18.4%).
- In 2016, more than one-third of Western Australians aged 14 years and over drank (at least once in the previous 12 months) at a level placing them at risk of harm from a single occasion of drinking (37.3%).
- The direct cost of alcohol-related problems to Australian society in 2010 was conservatively estimated at \$14.352 billion (not including the cost of harms to others) – double the tax revenue generated from alcohol sales (\$7.075 billion)
- The costs of alcohol misuse are substantially greater when harms caused by others' drinking are accounted for, and have been estimated to be as high as \$36 billion.
- The per capita consumption (PCC) of alcohol in WA is higher than the national average.
- In 20011/12, PCC of alcohol in WA (for people aged 15 years and older) was 11.94 litres, compared to 10.04 litres for Australia.
- Risky drinkers (lifetime and single occasion risk) aged 14 years and over in Australia were more likely, compared to both low-risk drinkers and abstainers to have experienced verbal or physical abuse by someone under the influence of alcohol.
- Harmful alcohol use is associated with a range of chronic diseases including cardiovascular disease, some cancers, liver diseases and cognitive impairment.

Public Interest

7. The Application is constitutes a use that is not consistent with the Crown reserve zoned Parks and Recreation under the Metropolitan Regions Scheme and the Local Planning Scheme No 3 on which the NCSLSC is sited. This Crown land must be utilised for public parks and recreation purposes. The establishment of bars and accommodation on this Crown reserve is not be in keeping with the reserve's zoning and not in the *public interest*.
8. There are possibly 1,500 NCSLSC members of drinking age. Under the Application each member can invite up to 5 guests into the licensed area with a total number of guests applied for in the licensed area being 327 people.
9. There is growing concern about the drinking culture in Australia, and particularly about the drinking patterns of young people. Granting the Application in a surf sporting club environment frequented by young people would compromise the work being done by many organisations working to reduce alcohol-related harm amongst young people and the wider community, and accordingly the grant of the Application is not in the *public interest*.

Cause undue harm or ill-health to people, especially young people and local residents

10. The Application licensed area is in close proximity to children/juveniles participating in the NCSLSC activities, which will have the risk of causing them undue harm.
11. NCSLSC membership has a significant focus on children and young people, who are identified as an "at risk" group in the Western Australian Drug and Alcohol Strategy and in the policy guidelines of the Director of Liquor Licensing.
12. Young people do not need to consume alcohol to be at risk of harm. Increasing the availability of alcohol at a surf club at the beach sends conflicting messages to young people about the risks of consuming alcohol, especially around water.
13. There is also the potential for further normalisation of alcohol among young people and further normalisation of drinking environments where young people are present.
14. There may also be harmful impacts on children's perception of their club and the association of alcohol consumption with sport.
15. Granting the Application will result in significant changes to the way NCSLSC has historically operated and has the potential to transform the club and premises from a healthy water sport focussed venue to an alcohol focuses social venue that causes undue harm.
16. The sale and supply and consumption of alcohol should be prohibited in all times when NCSLSC is being us for child focussed (0-17 years) activity (eg Nippers, training, education, general water/beach activities).
17. The NCSLSC has more than 2,000 members (many social members and only 537 active senior members who carry out the objectives of the NCSLSC). The 2017 Annual Report shows that the NCSLSC membership is comprised of 41.5% female and 58.5 % male; 94 family memberships, 194 active junior members and 484 Nipper Members.

18. The Application is inappropriate opposite a residential area immediately over the road and could add to the harm already experienced by residents from three nearby licensed premises and the addition of a NCSLSC Liquor Licence could tip the harm – if not already undue harm - into undue harm to the residents mental and physical health by the accumulated impact of another licensed premises in their locality.

Adversely impact on the amenity, quiet and good order of the locality

19. The proposed licensed area where members and guests could be drinking appears to be more outside on a balcony or than a covered outside area (noting the licensed areas where guests will not be drinking such as in the kitchen) which will tend to mean higher noise levels to the community than if the licensed area was all contained inside. The Town of Cottesloe Liquor (Licensed Premises) Policy recognises at clause 5(a) (viii) that the *location of premises generally and the location of outdoor areas... will not be favoured in proximity to residential areas.*
20. The total area of the proposed licensed area is not disclosed in the application other than by red lines on a floor plan, so the potential crowding cannot be ascertained nor can compliance with Town of Cottesloe occupation permits be ascertained.
21. The Lavan Report at 3.15 states that *The conference/function area and outdoor area combined is approved to accommodate up to 283 people. A copy of the accommodation certificate issued by the Town of Cottesloe has been included in the Applicant's Case (DOC 19).* The application is for 327 people in the licensed area.
22. 65 NCSLSC members with 5 guests (to a total of 327) each seems a large number for the area requested to be licenced, which could generate a lot of noise outside the NCSLSC premises after closing, which is inappropriate opposite a residential area and will have an adverse impact on the residential amenity and quiet enjoyment by residents of their homes.
23. 65 NCSLSC members with 5 guests (327) each seems a large number for the area requested to be licenced, which could generate a lot of noise outside the NCSLSC premises after closing, which is inappropriate opposite on a Reserve zoned for parks and recreation and which includes a well-loved public beach and will tend to have an adverse impact on the recreational amenity and quiet enjoyment of the beach by beach users.
24. Residents report noise, anti-social behaviour, traffic and parking issues already within their residential neighbourhood as a result of club activities at NCSLSC. An extension of licensed hours to daily will make this situation worse.
25. The Town of Cottesloe Liquor (Licensed Premises) Policy recognises at clause 5(a)(ix) that *hours of operation for premises may be based on the availability of parking and the likely impact on the surrounding residential area.* There could be an estimated 50 to 100 cars looking for parking around the area, which will add to the already heavy parking and traffic congestion opposite a residential area, on a busy intersection (Eric St and Marine Parade) and near a popular beach.
26. There is no dedicated car parking associated with NCSLSC and demand for car parking brought about by the activities of NCSLSC already has had an adverse impact on local residents and beach users.
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27. Limited surrounding street parking needed by beach visitors is already used by patrons of NCSLCS, OBH, Blue Duck, Barchetta and Grant Marine Park. Drop off and pick up activity associated with NCSLSC at busy times (as functions and events in the licenced premises will all be busy times) already present traffic safety issues and will be exacerbated by the liquor licence
28. The liquor licence is likely to lead to an increase in anti-social behaviour on or around a very popular swimming beach, which is used by many people including families on late hot summer evenings.
29. The Town of Cottesloe Liquor (Licensed Premises) Policy recognises at clause 5(a)(i) that the *concentration of licensed premises has the potential to prejudice the amenity of a locality*.
30. There are three licenced premises within 50 metres – Ocean Beach Hotel (OBH), Barchetta Café and Blue Duck café and a liquor outlet at the OBH.
31. The Cottesloe Cat operates only on a limited number of days over the summer season.
32. The nearest public toilets are under Barchetta Café, and they close at 7.30pm. The next foreshore public toilets are at the Indiana Tea House.
33. Possible amenity impacts from the liquor licence include noise, anti-social behaviour, parking, traffic, street drinking, and street urination.
34. Residents who live nearby licensed premises must expect a certain amount of necessary or unusual noise, however this does not mean NCSLSC should increase its operational impacts from licensed premises with disregard of the cumulative impact on the locality that another liquor licence would bring. Section 37(3) of the Act provides that an application shall not be granted where the licensing authority is satisfied that an undue degree of offence, annoyance, disturbance or inconvenience will be caused to persons who reside in the vicinity of the licensed premises. The Town of Cottesloe Liquor (Licensed Premises) Policy recognises at clause 5(ii) that *late operating hours may contribute to irresponsible consumption of alcohol....Council is unlikely to recommend support for those premises which cause disturbance and inconvenience to residents or businesses located in the vicinity of licensed premises*.
35. **WALGA** (developed in partnership with the Mental Health Commission (MHC), the Public Health Advocacy Institute of Western Australia (PHAIWA)) supports the development and implementation of policies that reduce or prevent alcohol-related harm, and encourage, create and support low-risk drinking settings, particularly where children and young people are present. They have produced the **Managing Alcohol In Our Communities (MAIOC) Guide** which includes support/notes as follows:
  - 1) Notes that having alcohol at sporting clubs where there is junior participation can give young people a mixed message supporting attitudes and beliefs that alcohol and sport are a good mix. Alcohol consumption and sport: a cross-sectional study of alcohol management practices associated with at-risk alcohol consumption at community football clubs. BMC Public Health. 2013;13:762. doi:10.1186/1471-2458-13-762. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3751764/> Studies have shown that sport as a leisure activity, has clear links with risky drinking behaviours (both among players and spectators) and alcohol in sporting environments has a strong

influence on how young people view alcohol and the development of risky drinking behaviours.

- ⌋ Supports the development of settings that discourage harmful alcohol use and promote a lower risk drinking culture.
  - ⌋ Notes issues may include... Cumulative impact of having multiple liquor outlets located nearby each other and impact on infrastructure, amenity and antisocial behaviour.
  - ⌋ Supports that where new applications for sporting or community recreation venues are proposed, encouraging and sharing examples of other clubs that have committed not to sell, promote or supply alcohol during dedicated junior sport or leisure activity.
  - ⌋ Notes that it is important to acknowledge that equity of access to public places by all is paramount. People drinking in public places (e.g. on the streets in night-time entertainment precincts or parks, reserves, beaches) can cause problems such as noise and antisocial behaviour. Harmful effects of alcohol-related litter can include glass alcohol containers being used as weapons or injury to the public caused by broken glass. For many Local Governments, alcohol-related waste in public places are the source of significant clean-up costs. Public drinking can sometimes escalate to alcohol-related violence, verbal abuse, property damage, and can lead to community fears and influence public perceptions of safety. The costs to manage the impact of alcohol-related harm can be expensive for Local Government, local businesses and the community, and can increase the demand on community resources such as police and hospital services.
36. For all the reasons articulated above the grant of the Application would not be in the *public interest*.
37. For all the reasons articulated above the grant of the Application would *cause undue harm or ill-health to people*, including users of the beach, local residents in a 10 metre proximity, and underage children using the club premises and/or undertaking NCSLSC activities.
38. For all the reasons articulated above the grant of the Application would significantly *adversely impact on the amenity, quiet and good order of the locality* in which the NCSLSC is situated.
39. Two (2) months before the last Local Government election the previous Cottesloe Council authorised the TOC officers to issue the requested *Liquor Control Act* sections 39 and 40 but noting that TOC did not support the licence application: see history **Attachment ONE**.

#### Conditions

40. In the event that the Application is granted:
1. It should be granted on the basis that the NCSLSC provides CCTV surveillance as proposed but also the immediate locality external to the premises, and that all CCTV is functioning during the hours of the liquor licence, and recorded and saved for later access, and that footage should be supplied to the Town of Cottesloe on request.

2. The liquor licence should not extend beyond 7pm on weekday and Sunday nights, and 9pm on Friday and Saturday nights only.
3. Condition prohibiting any form of alcohol advertising on the outside of licensed premises within 400m of venues (because the premises are frequented by young people under the age of 18 years).
4. Prior notice to the TOC of any events and functions.
5. Conditions requiring lighting, extra bins discretely concealed, safe road crossings, public transport and security.
6. Bar should not be open when juvenile club activities are on, or juvenile life savours on duty.
7. All conditions including the Noise Management Plan should be a public document a copy of which available on request.
8. Membership identification must be shown to the bartender to obtain a liquor service.

### Attachment ONE

#### MINUTES TOC ORDINARY COUNCIL MEETING 26 September 2017

##### 10.1.1 NORTH COTTESLOE SURF LIFE SAVING CLUB – LIQUOR LICENCE PROPOSAL – PRELIMINARY REQUEST FOR CERTIFICATES

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see p24 to p28

#### PREVIOUS OFFICER RECOMMENDATION

The recommendation in the report to the 15 August 2017 Agenda Forum agenda was as follows:

*THAT Council advise North Cottesloe Surf Life Saving Club that:*

1. *Council is not prepared to issue the requested Liquor Control Act sections 39 and 40 certificates at this time.*
2. *Council does not support an application for a Club Restricted Liquor Licence at this time.*
3. *To reconsider the matter, Council would require more information regarding the proposed Club Restricted Liquor Licence and how the Surf Club intends to operate it, including addressing community concerns raised in relation to the previously-proposed Club Liquor Licence and having regard to Council's Liquor (Licenced Premises) Policy.*

#### ADDITIONAL INFORMATION

The Surf Club has discussed this matter with the Town's executive officers, expressing concern regarding the previous recommendation and commenting as follows:

- 1) The liquor licensing authority has advised the Surf Club that a permanent liquor licence would be more appropriate than continually seeking occasional liquor licences.

- ⌋ The Surf Club considers that the Town should be prepared to issue the requested certificates as an administrative action separate from the future liquor licence application, as those certificates deal with compliance of the premises that are apart from liquor control aspects.
- ⌋ A local government is virtually compelled to issue such certificates and does not have the power to refuse them.
- ⌋ The Surf Club is relying on the formal liquor licence application process to carry-out the full advertising requirements, rather than undertaking any preliminary informal consultation. It is then that and the public and Town can submit any objections.

Subsequently the Club's solicitor, Lavan, on 22 August 2017 has written to the Town reinforcing the request that the certificates be issued, on the following grounds (summarised):

- ⌋ The certificates are a requirement of the Liquor Control Act.
- ⌋ The Town's report has noted that the premises appear to be in order.
- ⌋ The certificates relate to health, building and planning, etc requirements rather than directly to liquor considerations.
- ⌋ The Town's and community concerns about the previous liquor licence application are not relevant to the issue of the certificates.
- ⌋ Issuance of the certificates is an administrative exercise and where the premises are fit the Town is compelled to issue them.
- ⌋ The local government has a duty in this regard under section 3.21 of the Local Government Act 1995. [Officer note: that section actually reads in terms of avoiding physical obstruction or impacts rather than administrative obstruction as inferred.]
- ⌋ Issuing the certificates would not grant approval for the proposed liquor licence or represent support for the application; and the liquor licencing authority has discretion to determine an application with or without them.
- ⌋ The Town and public would still have the opportunity to raise concerns or objection to the liquor licence application.
- ⌋ The liquor licensing authority is the body empowered to determine liquor licence applications, which is outside the Town's mandate.
- ⌋ The Town's Liquor (Licensed Premises) Policy is seen as not covering this type of liquor licence application.
- ⌋ The Club reserves the right to take action against the Town in this regard, including seeking cost recovery. [Officer note: this matter does not need to come to that and the Town's position is defensible.]
- ⌋ There was no valid reason for the request for the certificates to be included in the Agenda and to potentially complicate the liquor licensing process.



The Surf Club's and Lavan's comments explaining their approach to and views on the matter re noted. In this respect, to be clear about the requirement for the certificates, the *Liquor Control Act 1998* in summary provides as follows:

Section 39 certificate

- ⌋ A liquor licence application is to be accompanied by this certificate, unless the licensing authority otherwise determines.
- ⌋ The licensing authority may condition a licence to be subject to submitting this certificate. Section 40 certificate. A liquor licence application is to be supported by this certificate, unless the licensing authority otherwise determines.
- ⌋ The certificate is not required to be provided with the application, but the liquor licence cannot be granted until it is, unless the licensing authority otherwise determines.
- ⌋ The licensing authority may condition a licence to be subject to submitting this certificate.

Therefore, whilst the Liquor Control Act requires the applicant to seek and submit the certificates, it provides discretion for the liquor licensing authority as described, and does not force local governments to issue the certificates. Although the liquor licensing authority's preference is to receive the certificates before determining a liquor licence application, the certificates are not an essential prerequisite to an application or an absolute barrier to the granting of a licence.

Further, the absence or waiving of a certificate for the purpose of liquor licensing does not exempt the applicant from having to comply with the subject local government requirements in themselves.

This report recognises the role of the certificates in the liquor licensing process, and it is appreciated that the Surf Club has sought them in order to make a liquor licence application. The Town has viewed the request for the certificates more holistically in the context of the previous liquor licence application and the community concern and Council consideration that arose then, hence the previous recommendation. Local governments are closely involved in liquor licence applications and monitoring licenced premises, whereby it is legitimate for the Town to have regard to this context.

The Town is not obligated to issue the certificates and ought not have to deal with the request under duress. However, Council could in this case agree to issue the certificates on the basis of being without prejudice to consideration of the intended liquor licence application, as set out in a revised recommendation below. Qualifying issuance of the certificates in this manner would avert interpretation that the Town has implied support for the intended liquor licence application.

Issuing the certificates would verify whether or not the local government requirements comply, and would facilitate the making of a liquor licence application, but the determination of an application is dependent upon the liquor-related public interest assessment and management controls of the Act rather than the certificates per se.

Upon a subsequent liquor licence application being referred to the Town by the liquor licensing authority and advertised for public comment by the applicant in accordance with the authority's requirements, Council would be able to consider the overall proposal for a submission or objection.

#### ADDITIONAL INFORMATION FOLLOWING AGENDA FORUM

As confirmed above, several other local sport clubs have Club Restricted liquor licences and the golf club has a Club liquor licence.

In planning terms, applying a liquor licence to a sport or other social club is not treated as a change of land use, whereby no further planning approval is required. In terms of the *Liquor Control Act 1998*, a section 40 certificate advises whether a property complies/would comply with relevant planning laws – that is a check for the liquor licensing authority, so as to grant a liquor licence to a property only if consistent with the approved land use and development.

The Surf Club has a Crown lease via the Minister for Lands – not from the Town – for its life-saving purpose (“Surf Club and Supporting Activities”); and any other use requires the approval of the lessor. In seeking a liquor licence the Surf Club is not proposing to change the purpose under the lease or the land use

The lease requires compliance with all relevant statutes, whereby a liquor licence can be applied for, and that does not require the lessor's consent. Like the other sport clubs, the Surf Club is at liberty to seek a liquor licence.

The lease refers to the avoidance and abatement of nuisance in relation to occupiers/owners of adjoining lands/properties. Were a liquor licence found to be a cause of nuisance, then in addition to liquor control remedies those lease requirements could be enforced by the lessor.

#### VOTING

Simple Majority

#### OFFICER RECOMMENDATION

Moved Cr Rodda, seconded Cr Angers

That Council:

1. Authorise officers to issue the requested Liquor Control Act sections 39 and 40 certificates for administrative purposes only and without prejudice to Council's consideration of the intended liquor licence application.
2. Advise North Cottesloe Surf Life Saving Club that:
  - a. Council is not in a position to support the proposal for a Club Restricted Liquor Licence ahead of a formal liquor licence application being referred to the Town for consideration; and
  - b. to reconsider Council's previous objection, Council would require more information regarding the proposed Club Restricted Liquor Licence and how the Surf Club intends to operate it, including addressing community concerns raised in relation to the previously-proposed Club Liquor Licence and having regard to Council's Liquor (Licenced Premises) Policy.

**PROCEDURAL MOTION**

Cr Boulter, seconded Cr Thomas

That Council defer consideration of this Item pending the upcoming election, so as not to bind future the Council to this decision.

LOST 3/5

For: Crs Pyvis, Boulter and Thomas

Against: Mayor Dawkins, Crs Rodda, Angers, Downes and Burke

**OFFICER RECOMMENDATION AND COUNCIL RESOLUTION**

Moved Cr Rodda, seconded Cr Angers

That Council:

1. Authorise officers to issue the requested Liquor Control Act sections 39 and 40 certificates for administrative purposes only and without prejudice to Council's consideration of the intended liquor licence application.
2. Advise North Cottesloe Surf Life Saving Club that:
  2. Council is not in a position to support the proposal for a Club Restricted Liquor Licence ahead of a formal liquor licence application being referred to the Town for consideration; and
  3. to reconsider Council's previous objection, Council would require more information regarding the proposed Club Restricted Liquor Licence and how the Surf Club intends to operate it, including addressing community concerns raised in relation to the previously- proposed Club Liquor Licence and having regard to Council's Liquor (Licenced Premises) Policy.

CARRIED 5/3

For: Mayor Dawkins, Crs Rodda, Angers,

Against Downes and Burke: Crs Pyvis, Boulter and Thomas

**OFFICER COMMENT**

Officers have not had the time to fully research all of the points made in the Councillor Rationale above, but there are several points that need to be highlighted before Council makes its decision.

First, at point 5, under "Background" the statement is made that the Shire of Chittering and the Shire of Exmouth have policies that prevent the consumption of alcohol on local government property - it is important to point out that the North Cottesloe Surf Club building is not on Council property. The North Cottesloe Surf Life Saving Club has a grant of title from the Crown, that in effect makes the area private property. The nature of title also causes point 7 and others, to require additional research before it could be categorically included in a submission to the Director of Liquor Licensing. At the very least, it would be recommended that any reference to Crown Land be removed for the time being.

Secondly, given the short time during which the Town has received notification to when submissions are due, we have not had any time to undertake any form of consultation with

residents. It would be difficult to provide any comment on the level of support from the community, acknowledging that there will be those that support the application and those that do not.

With regards to the complaints, a search of the Town's records has not revealed any complaints of the nature set out in the Rationale above. If elected members have received such complaints, then they should be forwarded to the Town so that they can be placed on file. Making a statement that complaints have been received could be problematic if the Town is then asked to substantiate this.

As the time frame for providing comments is so short and we have not been able to undertake any form of consultation, officers are recommending that the Town not make a statement indicating that it "does or does not support" this application. Rather, it would be recommended that suggest appropriate conditions, if the Director of Liquor Licensing is satisfied that the public interest component has been met.

Such conditions could include;

1. A restriction on operating hours to a level thought to be appropriate;
2. A requirement to maintain security and CCTV systems;
3. Any reduction in floor space thought appropriate; or
4. Any reduction in total numbers thought appropriate.

Even if the Club is granted a liquor license, they will still need to comply with all other laws and regulations, including the Noise Regulations and all local laws. Further, there are very strict requirements for the service of alcohol which are closely monitored and enforced where necessary.

**11.3 COUNCILLOR MOTION - COUNCIL THANKS AND RESPONSE TO THE REPRESENTATIVES OF THE GIDGUP FAMILY**

The following motion has been proposed by Crs Sadler and Tucak.

**COUNCILLOR MOTION**

**THAT Council;**

- 1. Thank the representatives of the Gidgup family for providing their insight into the stories of &\_significance that Mudurup Rocks, Cottesloe Beach and the marine environment have for the Traditional Owners;**
- 2. Formally acknowledge that the area known as Mudurup Rocks, Cottesloe Beach and the marine environment has great significance for traditional owners and will respect the cultural significance of this area;**
- 3. Ensure that early and meaningful engagement with Traditional Owners occurs as a part of the development of the Foreshore Master Plan or any other works affecting Mudurup Rocks; and**
- 4. Request the administration to work with Traditional Owners to understand the ways that Traditional Owners would like to see the significance of the area recognised, preserved and promoted to all; and**
- 5. Request the administration ensure that early and meaningful engagement with Traditional Owners occurs on future projects of significance in Cottesloe.**

**ALTERNATIVE MOTION**

**Moved Cr Boulter**

**Seconded Cr Pyvis**

To add the stakeholders being the "Traditional Owners and Local Indigenous Land and Culture Protectors for the Cottesloe Locality" to the Town of Cottesloe Communication Policy Stakeholder list at clause 4.1.

- 2. To add a new clause under 4.1 to the Town of Cottesloe Communication Policy named "Traditional Owners and Local Indigenous Land and Culture Protectors for the Cottesloe Locality" with a short paragraph as follows:**

*Communications with the Traditional Owners of the Cottesloe Locality will include senior representatives of the Gidgup, Bropho, Bodney and Colbung families, as nominated from time to time by each of these families, and Iva Hayward- Jackson (Local Land and Culture Protector). Communications with the Traditional Owners of the Cottesloe Locality will include senior representatives of the Gidgup, Bropho, Bodney and Colbung families, as nominated from time to time by each of these families, and Iva Hayward- Jackson (Local Land and Culture Protector). There may be other Noongar representatives with cultural knowledge of the indigenous history and cultural heritage of the Cottesloe area who may also need to be included.*

- 3. To amend clause 4.1 to have the "Traditional Owners and Local Indigenous Land and Culture Protectors of the Cottesloe Locality" first mentioned in the stakeholder list.**
- 4. To advertise to the community the amendments to the TOC Communication Policy to ensure that the community including all TOs are invited to comment on the introduction to and wording of the formal recognition of Traditional Owners and Local Indigenous Land and Culture Protectors of the Cottesloe Locality in the TOC**

Communication Policy.

5. To establish a Town of Cottesloe Indigenous Reference Group in consultation with the Traditional Owners and Local Indigenous Land and Culture Protectors for the Cottesloe Locality as to the terms of reference noting that it is Council's intention that, *The purpose of this Indigenous Reference Group will be to facilitate communication with Council on Indigenous Heritage matters especially the protection and management of Aboriginal sites at Cottesloe, to help formulate a protocol and policy to acknowledge, respect, protect, manage, educate and promote Aboriginal heritage within the Cottesloe area and to provide input into any indigenous naming matters. It is noted that at times, this will require culturally sensitive on-site consultations and discussion in a timely manner where the consultants are given all relevant information and maps prior to consultation. It is also recommended that Council members be required to read and be aware of the indigenous history and heritage of Cottesloe as a requirement to be a Councillor, and that all Councillors be included in any significant consultation or communication with the Traditional Owners.*

**Lost 3/5**

**For: Crs Boulter, Tucak and Pyvis**

**Against: Crs Rodda, Sadler, Young, Harkins and Thomas**

#### **FORESHADOWED MOTION AND COUNCIL RESOLUTION**

**Moved Cr Sadler**

**Seconded Cr Tucak**

**THAT Council;**

1. **Thank the representatives of the Gidgup family for providing their insight into the stories of &\_significance that Mudurup Rocks, Cottesloe Beach and the marine environment have for the Traditional Owners;**
2. **Formally acknowledge that the area known as Mudurup Rocks, Cottesloe Beach and the marine environment has great significance for Traditional Owners and will respect the cultural significance of this area;**
3. **Ensure that early and meaningful engagement with Traditional Owners occurs as a part of the development of the Foreshore Master Plan or any other works affecting Mudurup Rocks; and**
4. **Work with Traditional Owners to understand the ways that Traditional Owners would like to see the significance of the area recognised, preserved and promoted to all; and**
5. **Ensure that early and meaningful engagement with Traditional Owners occurs on future projects of significance in Cottesloe.**

**Carried 6/2**

**For: Crs Rodda, Tucak, Sadler, Young, Harkins and Thomas**

**Against: Crs Boulter and Pyvis**

At 10.48pm, Cr Pyvis left the Chambers and did not return.

#### **OFFICER COMMENT**

Officers are supportive of the Councillor Motion above.

**12 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING BY:****12.1 ELECTED MEMBERS****12.2 OFFICERS****13 MEETING CLOSED TO PUBLIC****13.1 MATTERS FOR WHICH THE MEETING MAY BE CLOSED****MOTION FOR BEHIND CLOSED DOORS****Moved Cr Thomas****Seconded Cr Young**

**That, in accordance with Standing Orders 15.10, Council discuss the confidential reports behind closed doors.**

**Carried 6/1****For: Crs Rodda, Tucak, Sadler, Young, Harkins and Thomas****Against: Cr Boulter**

*The public and members of the media were requested to leave the meeting at 10.50pm.*

**13.1.1 STREET TREE REMOVAL - 4 AND 6 TORRENS STREET, COTTESLOE**

This item is considered confidential in accordance with the *Local Government Act 1995* section 5.23(2) (d) as it contains information relating to legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting.

**File Ref: SUB/2597****Attachments: 13.1.1(a) Advice to Councils for Managing Encroaching Trees [under separate cover]****Responsible Officer: Mat Humfrey, Chief Executive Officer****Author: Mat Humfrey, Chief Executive Officer****Author Disclosure of Interest: Nil**

Cr Pyvis – declared an IMPARTIALITY INTEREST in item 13.1.1 by virtue “I am a Committee member of West Tree Canopy”

**OFFICER RECOMMENDATION****Moved Cr Harkins****Seconded Cr Young**

THAT Council by absolute majority:

1. Set aside resolution ‘10.1.3 December 2018 OCM’ (as shown in the Background of this report) based on the further information provided within this report;

2. Authorise the removal of the Japanese Pepper Tree located on the verge between 4 and 6 Torrens Street, Cottesloe;
3. Upon the successful removal of the tree and any “suckers” that may occur, plant a 200L *Agonis flexuosa* (Peppermint) as a replacement tree.

**COUNCILLOR AMENDMENT**

Moved Cr Sadler

Seconded Cr Young

**THAT Council by absolute majority:**

1. Set aside resolution '10.1.3 December 2018 OCM' ( as shown in the Background of this report) based on further information provided within this report;
2. Authorise the removal of the Japanese Pepper Tree located on the verge between 4 and 6 Torrens Street, Cottesloe;
3. Upon the successful removal of the tree and any “suckers” that may occur, plant a 200L *Agonis flexuosa* (Peppermint) as a replacement tree in this or an adjacent location as deemed appropriate by the administration.

Carried 7/0

For: Crs Rodda, Tucak, Boulter, Sadler, Young, Thomas, and Harkins

Against: Nil

**SUBSTANTIVE MOTION AND COUNCIL RESOLUTION****THAT Council by absolute majority:**

1. Set aside resolution '10.1.3 December 2018 OCM' ( as shown in the Background of this report) based on further information provided within this report;
2. Authorise the removal of the Japanese Pepper Tree located on the verge between 4 and 6 Torrens Street, Cottesloe;
3. Upon the successful removal of the tree and any “suckers” that may occur, plant a 200L *Agonis flexuosa* (Peppermint) as a replacement tree in this or an adjacent location as deemed appropriate by the administration.

Carried 6/1

For: Crs Rodda, Tucak, Sadler, Young, Thomas, and Harkins

Against: Cr Boulter

**MOTION FOR BEHIND CLOSED DOORS**

Moved Cr Rodda

Seconded Cr Thomas

**In accordance with Standing Orders 15.10 that the meeting be re-opened to members of the public and media.**

Carried 7/0

For: Crs Rodda, Tucak, Boulter, Sadler, Young, Thomas, and Harkins

Against: Nil

*One member of the media returned to the meeting at 11:00pm.*



**13.2 PUBLIC READING OF RECOMMENDATIONS THAT MAY BE MADE PUBLIC**

**13.1.1 STREET TREE REMOVAL - 4 AND 6 TORRENS STREET, COTTESLOE**

The CEO advised that a copy of the resolution for item 13.1.1 would be provided to Mr Cohen, who returned to the meeting.

**14 MEETING CLOSURE**

The Mayor announced the closure of the meeting at 11:00pm.