

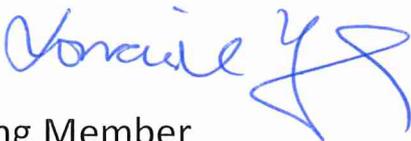


# Town of Cottesloe

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

**Tuesday, 22 March 2022**

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

Signed: 

Presiding Member

Date: 26/4/22

# TOWN OF COTTESLOE



## ORDINARY COUNCIL MEETING

# MINUTES

ORDINARY COUNCIL MEETING  
HELD IN THE  
War Memorial Hall, Cottesloe Civic Centre, 109 Broome Street, Cottesloe  
6:00pm Tuesday, 22 March 2022

**MATTHEW SCOTT**  
Chief Executive Officer

30 March 2022

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

The Presiding Member announced the meeting opened at 6:02pm.

I would like to begin by acknowledging the Whadjuk Nyoongar people, Traditional Custodians of the land on which we meet today, and pay my respects to their Elders past and present. I extend that respect to Aboriginal and Torres Strait Islander peoples here today.

**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.

**Update on the Indiana's Redevelopment Proposal**

In November last year the Town received a proposal from the company Fiveight for the redevelopment of the Indiana Site and Council considered that proposal at the December Meeting. At that meeting Council resolved that the lessee be asked to meet the Town's costs in obtaining legal, commercial, environmental and heritage advice on the proposal. Council needs to fully understand the implications of the proposal. It is a complex matter and Council asked that the costs of obtaining that advice be met by the Lessee. Before the Town could commence any work it needed the Lessee's agreement to meet those costs and I'm pleased to advise that the Lessee has now agreed and those costs will be met subject to them sighting quotes for the work.

Council's resolution also required the proposal to be considered by the Town's Design Review Panel, the expert members of its Foreshore Precinct Advisory Committee and the Cottesloe Surf Lifesaving Club. That input was to be made available to Fiveight for comments and the comments will be brought back to Council in due course. The Town is waiting for Fiveight's comments from the various internal bodies and the Surf Lifesaving Club. With regards the professional advice, the Town is currently going through the Request for Quote Process on all four elements. Most of the quotes will be available later this week. The commercial advice requires consideration of a more complex range of issues and the Town expects that quote to take a little longer. Once the quotes are available the Administration will select the successful consultants. The quotes will go to Fiveight and as soon as Fiveight provides the funds the consultants will be engaged. We are expecting a turn around on that of about four weeks. Once the advice from the consultants is obtained the Administration will consider that advice which will be brought back in a report to Council.

I would like to assure the community and the Lessee that the Town and Council places a very high priority on resolving the future of the Indiana site. It is hoped it will come back to the May Ordinary Council Meeting and at that meeting a way forward will be determined.

**SDAU Application for Ocean Beach Hotel on Marine Parade**

The application is open for public comment until 11 April 2011. I would encourage all residents to consider the application and to consider making a submission. I note that the outcome of the SDAU Application at 120 Marine Parade fell short of what the community, Council and the Town desired, however, as a result of submissions made in response to the application the plans were amended and the outcome, although it is not what we would have wanted, is better than would have been the case if the public had not made those submissions. That is my opinion. I think that the views of the community really do matter. Now that we have a pretty good engagement with 120 Marine Parade, it would be really regrettable if we do not have a good take-up by the community putting in submissions to the OBH site, which is considerably larger and potentially will have more impact. I would really encourage all people here and anyone reading about this in the press to encourage friends, family acquaintances, neighbours to go to the link on the WAPC website and make a submission so I really stress the importance of that. People reading it in the press go to link on WAPC website and make a submission.

**4 PUBLIC QUESTION TIME****4.1 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**Ms Yvonne Hart – 26 Mann Street, Cottesloe – Item 10.1.9

Q1: What third party licences need to be obtained and from whom?

A1: Clearing permit from the Department of Environment and possibly approval from the Department of Planning, Lands and Heritage.

Q2: Would next year's budget allocation, indicated to be \$750,00, include all additional facilities and revegetation?

A2: That is yet to be determined.

Q3: Would next year's budget include a sum for infrastructure costs plus on-going annual maintenance?

A3: That is yet to be determined.

Q4: Will the ToC assist ratepayers' understanding and prepare a costing and business plan before proceeding further?

A4: That will be a decision of Council.

Q5: How will the ToC seek maximum grant funding if it has no costings for detail design and construction?

A5: The concept plan includes a cost estimate, which can be used for grant funding applications.

Q6: If the concept plan for a skate park is approved tonight, i.e. in Feb 2022 what would be the purpose of funding to develop a master plan for John Black Dune Park?

- A6: The Skatepark is only a small component of John Black Dune Park, a masterplan is need to determine the future of the entire park.
- Q7: If John Black Dune Park ceases to exist because of the size of the proposed carpark what will be the relationship between the skate park and Car park 2?
- A7: The Foreshore Masterplan does not envision Carpark No.2 extending over John Black Dune Park.
- Q8: Which will be the priority – future master planning opportunities or environmental and revegetation of the site?
- A8: That will be a decision of Council.

Mr John Brooksby – 1B Elleen Street, Cottesloe – Item 10.1.9

- Q1. Does the Council agree that the community survey requested ratepayers to consider where to locate a skate park of between 600 and 800m<sup>2</sup>, as set out in the attached plan?
- A1: Yes.
- Q2. Does the Council agree that its mandate in the circumstances was confined to a skate park with a total footprint of 600 to 800 m<sup>2</sup>?
- A2: Yes.
- Q3. Does the Council agree with the cautionary injunction issued by the Director of Engineering Services in his Officer's Report, page 58 in the Agenda Item 10.1.9 that:
- 'Council needs to be mindful of the terms of reference that it had approved as part of previous community engagement that formed a large part of developing the preferred concept.'*
- A3: Yes.
- Q4. Does the Council agree that the proposed skate park:
- i. substantially exceeds its mandate from the ratepayers'
  - ii. occupies an area nearer 1,300 m<sup>2</sup>?
  - iii. would never have fitted on the Foreshore which was suggested as one of two locations.
- A4: No.
- Q5. Does the Council agree that in the light of the Director of Engineering's assertion in relation to the necessary earthworks, that 'removal of a similar area of vegetation' will need to take place, so that the total 'footprint' will be nearer 3,000m<sup>2</sup> (similar to the area hatched in green on the attached plan)?
- A5: No.

Q6. Given the CEO stated in his Press Briefing as quoted in 'Perth Now' that the park 'would occupy only about 781 sqm' and that 'we're really only using a fairly small percentage of the reserve', will he now concede that is incorrect, and will the Council ensure the CEO issues a correction setting out the true figures?

A6: No.

Q7. Noting that nowhere in the Convic plan (Application for Funding) is the size of the skate park even mentioned, will the Council revert to Convic and:

- i. Remind Convic of the Council's mandate?
- ii. Require the design to comply with those parameters?

A7: There is no need, the concept design is within the 600-800ms parameter.

Q8. Does the Council recall that the Enlocus Report, which recommended the Grant Street Marine Park, was rejected by Council on the grounds of mathematical error?

A8: Grant Marine Park was discounted by Council for numerous reasons.

Q9. Why were children who attended the Council's much publicised workshops asked to mark up and comment on a plan which the Council knew, or ought to have known, patently exceeded the Council's mandate?

A9: They were not.

Q10. Please confirm how many children actually attended those workshops? I ask because I was at both with Mr Stephen Mellor but we were barred from observing the actual proceedings. By our count only four children attended the first workshop, and 8 children the second?

A10: Refer to the Space Station report attached to item.

Q11. In any event, even on the Council's figures, how did the number become 27 children and how was 27 divided into 14 groups? It appears that only 'seven groups' preferred Option 1, even on the Council's figures that is between 13 and 14 children. Is this project going ahead on their 'say-so'?

A11: All final decisions on the Skate Park will be made by Council.

Mr Stephen Mellor – 8 Graham Court, Cottesloe – Item 10.1.9

Q1: Can the CEO confirm there has been no change in any aspects of the responses to my questions asked at the Agenda Forum held on 15 February 2022 and if any, what has changed?

A1: As at the time of Council Meeting, no change.

Q2: Has the Town really, by this evening, not had any written or verbal reply from the Surf Club or the Proponent?

- A2: The previous responses remain the same as at the time of the Council Meeting.
- Q3: Mayor, what are your comments on quotes attributed to the CEO in a recent Perth Now skate park article:
- Quote: We're really only using a fairly small percentage of the whole reserve.*
- Do you think 20%+ is a small percentage?
- Quote: This has been designed around local needs*
- A3: The Skate Park area does not equate to 20%+ of John Black Dune Park and is based on local needs.
- Q4: Do you agree as Convic state in their report that: *There is a great variety in (skate) facilities within close proximity to the site?*
- A4: This depends on the perspective of the reader. For an adult skater with ready access to transport then potentially yes. If young skater without ready access to transport, then potentially no.
- Q5: How can you still support this project when there is no real NEED for this skatepark?
- A5: As the project is within the Town's Corporate Business Plan, the need has already been established.
- Q6: Will such a kernel be in the brief for the future JBD Masterplan?
- A6: That has yet to be determined.
- Q7: With the first mention of a John Black Dune Park Masterplan, what is the status of the Carpark 2 re-development design?
- A7: As per the current foreshore masterplan
- Q8: What is the guideline time schedule for combining these two projects for practical joint consideration and masterplanning?
- A8: Until there is budget allocation, this cannot be determined.
- Q9: When will the Car Park 2 Feasibility Report be available?
- A9: Division 7, Access to Information, Local Government Act 1995, deals with public access to existing Council Information (including reports). Outside the provisions of Division 7, additional information may become publically available when it is required for Council to formally deliberate and make a decision on a matter it relates to (such as the future of Car Park No.2).
- Q10: With the time lag for funding reasons, will the Council please separate the design from the construction?
- A10: That will be a decision of Council, however the preference currently is a design construct tender.

Q11: Who will be responsible for the reports and approvals that will be required for the skatepark and John Black Dune project? e.g. DPLH, Environmental including noise, Sustainability, Carbon footprint, Heritage, Safety, Passive Surveillance, Accessibility – the successful tenderer or the Council?

A11: A combination of both the Town and the successful tenderer.

Q12: Will the skate facility be in use if it is completed before the JBD associated works and re-vegetation?

A12: That has yet to be determined.

Q13: Can Council please explain how we now have a 'preferred' budget and that Council by their decision tonight may commit unknown budget costs for all the required ancillary infrastructure and on-going annual maintenance whatever promises are made to bring things back before Council in future budget years.

A13: No commitment for future budget allocation has been included the Officer's recommendation.

Q14: Is it still the case that the skate project would not proceed without funds of over 50% being sourced?

A13: That will be decision of Council.

Q15: Would this figure include all ancillary facilities and re-vegetation?

A14: That will be decision of Council.

Q15: If not, then will these be another future budget decision? Surely a costing and business plan should be in place before the budget rounds?

A15: That will be decision of Council.

## 4.2 PUBLIC QUESTIONS

### Ms Columba Tierney – Apt 14, 11-17 Princes Street Princes Street, Cottesloe

The October 2021 CEO Quarterly Report under 'Continue to improve Community Engagement' item 1.2c action states '*Monitor, review and Improve the Town's webpage as deemed necessary.* The success indicator for this action is '*Webpage contains information no older than 12 months unless of historical interest or ongoing content*'.

Q1. Will the Council please instigate a web users advisory panel and set up clear guidelines for updating the web information and provide thorough long-term data archiving for public enquiry?

Q2. Can you please give examples of pages that might be removed for archiving?

Q3. Are all historical Council and Committee meetings that are in digital format to remain on the site?

Q4. Can all meeting attentions be actively linked?

- A1-4 These are matters for Council and Councillors have heard your comments so that can be considered in due course. It does sound like there would be cost implications so perhaps the budget review process would be the appropriate time to consider that.

Mr John Brooksby – 1b Eileen Street, Cottesloe - Skatepark

I refer to the questions I asked at the 22 February Ordinary Council Meeting and the responses provided in tonight's agenda.

- Q1. Council maintains that the skatepark will occupy only 781sq metres of the John Black Dune Park. Will Council identify how that figure is calculated?
- Q2. When the CEO uses the word 'occupy' in relation to the 781sq metres, was he referring to the overall footprint, i.e. the space occupied within the perimeter of the design? If not, what was he referring to?
- Q3. What does Council say is the total area within the perimeter of the design?
- Q4. Given that measurements show irrefutably that the area within the perimeter of the design, including the two access paths of 1,365 sq metres, what has Council excluded in arriving at the figure that the skatepark occupies only 781 sq metres?
- Q5. Has Council actually taken any steps to check the area covered by the skatepark as represented by the area within the perimeter design. If not, why not?
- Q6. Does Council agree that the only sensible way to calculate the area occupied by the skatepark is to look at the extent of the works or range over which something extends?
- Q7. What is the overall area over which the skatepark extends?
- Q8. What steps is Council taking to ensure that any proposed skatepark can comply with the Environmental Protection Noise Regulations?

The above questions were taken on notice.

Mr Stephen Mellor – 8 Graham Court, Cottesloe – Items 10.1.5

**Harvey Field Precinct item 10.1.5**

- Q1. Can the drawings of the Harvey Field Precinct have more specific clarifying identification of Options 1 and 2 of the Fencing showing all parts of the fencing elements identified by Option as well as height?
- Q2. Is it possible for the Heritage Council to be consulted on the high fencing before going out to public consultation?
- Q3. Will the permeable paving have car parking spaces marked out?
- Q4. Will you please allocate ACROD spaces from which drivers can view the sports?
- Q5. Can you please add issue dates to the drawings for the record?

- Q6. What % funding share from outside the Council's budget of the \$3 or \$4 million cost will be required for the project to proceed?

**McCall and Vlamingh**

I refer to my Motion 3 in relation to McCall and Vlamingh that was passed at the Annual General Meeting (AGM) on 9 March 2022 and I was informed yesterday that the minutes of the AGM will be presented to Council at the April 2022 OCM and that there would be enough time for proper consideration, officer report or action.

- Q7. Can the Mayor kindly explain the process and how three days between the OCM on 26 April and the closing date can be enough to consider and perhaps work with the Town of Mosman Park?
- Q8. Will Council please address this resolution tonight in some way and request Administration to prepare an Officer's Report?

**Foreshore Funding**

I refer to the Mayor's March 2022 'Update from the Town of Cottesloe' email titled MESSAGE FROM THE MAYOR LORRAINE YOUNG. I also refer to the 'Cottesloe News' full page in the *Post Newspaper*, 12 March edition, page 14.

- Q9. When and by whom was a decision made, for the Mayor to openly associate the Town of Cottesloe and its Council with a single identified political party in her encouragement of residents to sign a petition NOT originated by the Council?
- Q10. What if any was the decision made other than the December 2019 OCM resolution for Administration to begin negotiations to seek funding for the approved Foreshore Master Plan?
- Q11. Does the Mayor think that in encouraging residents to meet face to face with an identified election candidate it is consistent with her oath of office and adherence to expected protocols?
- Q12. Is the Mayor happy, by way of her 'encouragements', that she assists in building the contact database of a particular candidate, as the only way to sign the petition is to FIRST supply personal contact details?

The above questions were taken on notice.

Ms Yvonne Hart - 26 Mann Street, Cottesloe

- Q1: List of Accounts

November Accounts 18/11/2021 - IPN Medical Centres Pty Ltd, Pre-employment medicals \$231.00

- i. With the 's' on the end of medicals, how many people had medicals prior to appointment, what staff have been appointed to what positions, and why?
- ii. What is the increased budget/staffing costs to ToC? (Salary? Vehicle?)

- iii. What has been the increase in staff, full time and part-time, over the past five years? How will these costs be absorbed without Council rates going up?

The Jan accounts 17/01/22 - Landgate Certificate of Title \$27.20

- iv. To what does the Certificate of Title relate to? What land area?

Q2: Budget

Will the ToC employ a sound technician to test the sound system used for Council meetings in both the Memorial Hall and the Council Chambers, determine the sound equipment requirements and build and install a sound system that will meet the needs of the 21 Century? Could this request be included as a budget item for the 2022/2023 financial year?

Q3: Will the Town of Cottesloe please move to an electronic format as from April 2022 by implementing Zoom or similar for all Cottesloe Council meetings?

The above questions were taken on notice.

Mr Jeffery Irvine – 69 Napier Street, Cottesloe – Funding of the Research to be Conducted for Indiana

Q1: What will be happening with the funding, what are the conditions around that funding, how do we make sure we get transparency about what's happening through the quotation process and what Mr Haggard is saying Council is doing?

Q2: What areas will be covered in the funding, heritage, legal, will there be a full traffic study?

Q3. Will Tattarang be paying for the consultation?

Q4: What is the process proposed by the Town for consultation, the milestones and how you are going to consult?

The above questions were taken on notice.

Mr Kevin Morgan - 4/1 Pearse Street, Cottesloe – Item 4.1

Council was asked (in question 5 on page 8 of tonight's agenda) as to how the Council can support the skatepark project when there is no real need for the skatepark. The Council's answer is that *"as the project is within the Town's Corporate Business Plan, the need has already been established"*, which presumably is because *Regulation 19DA of the Local Government (Administration) Regulations* provides that a priority and strategy can only be included in the corporate plan if its first been included in the community plan, and will only have been able to be included in the community plan if it has first emanated from community input via a prescribed consultation process. However I have three questions arising from that answer:

Q1. How is it that without any change having first been made to Cottesloe's community plan, its community strategy to *'protect the dune*

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*environment*' is now deleted from Cottesloe's corporate plan, replaced in the corporate plan by the addition of a new strategy to '*consider putting a skatepark in public open space*', even though that new corporate strategy has not come from the community plan?

- Q2. Does the deletion of that community strategy of protecting the dune environment, if not the inclusion of the new corporate strategy to put a skatepark in public open space (even though it's not a strategy from the community plan), breach Regulation 19DA?
- Q3. If so, does this mean that Council's subsequent decision to 'put a skatepark in the dune park', is unlawful?

By what decision of Council, or by what provision of what law, was the Town through the CEO authorised to:

- Q4. Notify the Indiana proponent following its meeting with Council in July 2021 that Council required "a more detailed proposal"? (as per 3rd last line of third full paragraph on p 19 of December 2021 meeting minutes).
- Q5. Later advise the State that no proposal had by then been presented by the Indiana proponent? (as per A4 on p. 6 of the minutes of the 23/2/22 electors' meeting)
- Q6. By what particular regulation or other law was the CEO authorised to mark as "confidential" the documents provided to Councillors at those workshops? (as per A5 on p. 6 of the minutes of the 23/2/22 electors' meeting).
- Q7. By what provision of what law were those workshops not a 'Council Meeting' under Subdivision 1, Division 2 of Part 5 of the Local Government Act, and what attributes meant that a 'workshop' is within the scope of an exemption from being a Council meeting?
- Q8. Given that the Local Government Act section 5.33 essentially requires every practicable endeavour be made for "all decisions made at an electors' meeting to be considered at the next Ordinary Council Meeting", why is it that the minutes of the electors' meeting on 9 March are still not published nearly 2 weeks afterwards, even though they were ready within days after the meeting on 23 February, and why is that resolutions from nearly two weeks ago are not before the Council tonight, and will Council delay considering any matters the subject of those resolutions until council first considers the 9 March resolutions?

The above questions were taken on notice.

Ms Patricia Carmiachel – 14-116 Marine Parade, Cottesloe

- Q1. Does Council have a plan to sort out the finances for the Town of Cottesloe?
- Q2. How many parking bays does Mr Forrest need for his project?
- Q3. What is the Town's rate for a parking bay?

- A1-3 The Town has not even had the professional advice on the proposal, let alone done consultation on it so it cannot be answered as the Town is quite a way short of that point.

## 5 PUBLIC STATEMENT TIME

### Mr Geoff Rich – 92 Napier Street, Cottesloe – Item 10.1.4

Mr Rich spoke against the officer's recommendation as the applicant wants to exceed the 7m limit for the parapet wall.

### Mr John Brooksby – 1b Eileen Street, Cottesloe – Item 4.1

Mr Brooksby spoke against the responses give by the Town to his questions raised at the 22 February 2022 Ordinary Council Meeting.

### Mrs Ellie Brooksby – 1b Eileen Street, Cottesloe – Skatepark Petitions

Mrs Brooksby spoke about the petitions she presented at the last Ordinary Council Meeting and her objections to the petitions not being accepted as a valid petitions.

### Mr Stephen Mellor – 8 Graham Court, Cottesloe – 10.1.5

Mr Mellor against the 'last resort' option for golf ball fencing at Harvey Field.

### Mr Kevin Morgan - 4/1 Pearse Street, Cottesloe –Items 10.1.1 and 10.1.5

Mr Morgan referred to Council's beach policy that essentially says the proposed hotel component would have to be located east of Marine Parade and the costs of rebuilding the Anderson Pavilion.

## 6 ATTENDANCE

### Elected Members

Mayor Lorraine Young  
Cr Helen Sadler  
Cr Craig Masarei  
Cr Melissa Harkins  
Cr Kirsty Barrett  
Cr Paul MacFarlane  
Cr Chilla Bulbeck

### Officers

Mr Matthew Scott	Chief Executive Officer
Mr Shane Collie	Director Corporate and Community Services
Mr Shaun Kan	Director Engineering Services
Mr Wayne Zimmerman	Manager of Planning
Mr Ed Drewett	Coordinator Statutory Planning
Ms Mary-Ann Winnett	Governance Coordinator

The Presiding Member advised item 6.3 Applications for Leave of Absence would be considered next.

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

#### **COUNCIL RESOLUTION**

Moved Mayor Young                      Cr Sadler

That Cr Wylynko be granted leave of absence from 22 March 2022 to 22 March 2022.

Carried 7/0

#### **COUNCIL RESOLUTION**

Moved Mayor Young                      Cr Barrett

That Cr Harben be granted leave of absence from 22 March 2022 to 27 April 2022.

Carried 7/0

### **6.1 APOLOGIES**

#### **Officers Apologies**

Ms Freya Ayliffe                      Director Development and Regulatory Services

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

Cr Caroline Harben  
Cr Brad Wylynko

## **7 DECLARATION OF INTERESTS**

Cr MacFarlane declared an IMPARTIALITY INTEREST in item 10.1.4 by virtue "I know one of the neighbours of that development."

## **8 CONFIRMATION OF MINUTES**

### **OCM026/2022**

Moved Mayor Young                      Seconded Cr Masarei

That the Minutes of the Ordinary Meeting of Council held on Tuesday 22 February 2022 be confirmed as a true and accurate record.

Carried 7/0

## **9 PRESENTATIONS**

### **9.1 PETITIONS**

#### ***Section 9.4 - Procedure of Petitions***

*The only question which shall be considered by the council on the presentation of any petition shall be -*

- a) *that the petition shall be accepted; or*
- b) *that the petition not be accepted; or*
- c) *that the petition be accepted and referred to a committee for consideration and report; or*
- d) *that the petition be accepted and dealt with by the full council.*

**9.2 PRESENTATIONS**

**9.3 DEPUTATIONS**



**CORPORATE AND COMMUNITY SERVICES****10.1.1 RECEIVAL OF SPECIAL MEETING OF ELECTORS MEETING MINUTES**

**Directorate:** Corporate and Community Services  
**Author(s):** Shane Collie, Director Corporate and Community Services  
**Authoriser(s):** Matthew Scott, Chief Executive Officer  
**File Reference:** D22/10791  
**Applicant(s):** Internal  
**Author Disclosure of Interest:** Nil

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**SUMMARY**

A Special Meeting of Electors was called and held on Wednesday 23 February 2022. Council is required to consider all decisions made at an Electors meeting at the first Ordinary Council meeting after the Electors meeting is held. This report lists those decisions made for Council's consideration.

**OFFICER RECOMMENDATION IN BRIEF**

Following the Special Meeting of Electors held on Wednesday 23 February 2022, it is recommended that Council receive the unconfirmed minutes of the meeting and note motions 1-4 and reject motions 5 and 6 of the motions contained within the minutes.

**BACKGROUND**

A special meeting of Electors of the district was held following the receipt of a valid request containing 127 Electors signatures. The request is to specify the matters to be discussed at the meeting and the form or content of the request is to be in accordance with regulations. A Special Meeting of Electors is to be held on a day selected by the Mayor but not more than 35 days after the day on which he or she received the request.

The request contained the following matters to be discussed:

- a) The Town of Cottesloe has a Local Planning Scheme (LPS3) which was introduced after considerable public consultation and an Enquiry by Design which provides for the orderly planning throughout the Town of Cottesloe, including the beachfront.
- b) LPS 3 is being undermined and ignored by many proposals for projects along the Cottesloe beachfront.
- c) One proposal at 120 Marine Parade has already been approved by the WA Planning Commission, and the Town of Cottesloe did not challenge that approval in the Supreme Court.
- d) The Cottesloe Community expects that the Cottesloe Council will do all within its power to uphold and protect LPS 3 and orderly planning.
- e) The Cottesloe Community expects that the Cottesloe Council will seek to end the emergency COVID planning legislation that attempts to override local planning schemes.

- f) The Cottesloe community expects that the Cottesloe Council will uphold its own policy that protects the Cottesloe beachfront from any commercial development west of Marine Parade outside the footprint of existing structures.

### **OFFICER COMMENT**

There were 78 people in attendance at the Special Meeting of Electors, of which 58 were Electors. Reduced capacity in the War Memorial Hall due to Covid 19 restrictions stipulated that a maximum of 78 people could be in the hall at any one time. There were 15 non electors present, 3 Council staff and 2 members from the media.

Section 5.33 *Local Government Act 1995* (LGA) provides for what occurs with decisions made at an Electors' meeting. Section 5.33(1) deals with when Council is required to consider decisions from the Special Meeting of Electors, while Section 5.33(2) deals with what Council must do, should it make a response to a decision (or motion) at a Special Meeting of Electors. Under this section, the Local Government Act provides no power to an electors' meeting to direct the Council or the Town to take any action or not to take any action on any specific or general issue. Council is simply required to consider the motions passed, and if it chooses to make a decision (or resolution) in response to these motions, then the reason for these decisions are to be recorded in the minutes. Council has a variety of options available being:

1. Reject the motion(s)
2. Support the motion(s)
3. Amend the motion(s)
4. Note the motion(s)
5. Or a combination of the above

Council, however, is also required to ensure all actual Council decisions are lawful, in accordance with the relevant provisions of the Local Government Act and related regulations, other legislation and law (such as contract and industrial), with reference to Council policies, local laws and currently uncompleted Council resolutions. This can create conflict between motions moved and passed at electors' meetings, as there is no expectation for electors to have regard to these obligations (as they are not elected members nor may have access to all information regarding a specific matter). Council's role is to balance the views that are expressed at the electors meeting with those of the greater community and Council's statutory obligations. This may result in motions at electors meeting being significantly modified or unable to be implemented, due to them being considered "ultra vires" (beyond the authority of Council).

Councillors have the ability to move their own motions, which may or may not be representative of the Officer's recommendation. Council also has the option to deal with each recommendation separately or collectively.

There were 6 motions passed at the Special Electors Meeting and brief comment is provided following each one below.

**ELECTOR MOTION 1**

Moved Mr Walsh

Seconded Mr Mellor

That the Town of Cottesloe (ToC) apply the provisions of the Local Planning Scheme 3 (LPS 3) without departure to all applications which it assesses, and upon which it is asked to provide input, and in particular, strictly apply the height provisions of LPS 3.

**Carried Unanimously****Administration Comment**

*The Town has an obligation pursuant to the Planning and Development Act 2005 to apply its Town Planning Scheme and it continues to do so. The State Development Assessment Unit (SDAU) only has to have regard to the Local Planning Scheme. The Town has always advocated that local planning decisions should be made within the provisions of the Local Planning Scheme.*

**ELECTOR MOTION 2**

Moved Mr Irvine

Seconded Mr Boland

That the ToC will seek to apply the requirement for developments at 120 and 122 Marine Parade to provide vehicle access from Napier Street and not across the Marine Parade footpath.

**Carried Unanimously****Administration Comment**

*The Development Approval issued for Lot 120 Marine Parade requires access to be obtained from Napier Street should a neighbouring property (such as 122 Marine Parade) be redeveloped.*

**ELECTOR MOTION 3**

Moved Mr Boland

Seconded Mr Brooksby

That the ToC will do all within its power to oppose developments which do not conform to LPS 3, including resort to legal proceedings in appropriate cases.

**Carried  
1 Against****Administration Comment**

*Please refer to response to Elector Motion 1.*

**ELECTOR MOTION 4**

Moved Mr Irvine

Seconded Ms Tierney

That the ToC will do all within its power to have the State Government end the revised Special Matters Development Assessment Panel process that replaces the emergency

COVID State Development Assessment Unit planning legislation which still can override local planning schemes. This will include that the ToC formally advises the State Government that it opposes such legislation, and that the ToC will work with other local government authorities to achieve this outcome.

Carried  
1 Against

**Administration Comment**

***Noting that this is State Legislation, as per resolution OCM193/2021, from the September 2021 Ordinary Council Meeting, the Mayor and Chief Executive Officer have advocated for removal of Part 17 of the Planning and Development Act 2005, with Members of Parliament, State Agencies, WALGA and other Local Governments. Applications under Part 17 have now closed, and the Town is awaiting details of the new process that will replace the State Development Assessment Unit (SDAU) prior to making further comment.***

**ELECTOR MOTION 5**

Moved Mr Morgan

Seconded Mr Boland

**Indiana**

- 1) That the ToC will apply its own Beach policy for no new commercial development west of Marine Parade outside the footprint of existing structures, and this Policy particularly be applied currently to the Indiana site.
- 2) In relation to the current proposal for the Indiana site, the ToC by virtue of its position as the Lessor of the site, refuse any lease changes which do not conform to the Beach Policy, and thus refuse the new hotel part of the proposal.
- 3) In relation to the current proposal for the Indiana site, the ToC by virtue of its position as the Lessor of the site, refuse any lease changes which would make any part of the premises a private exclusive area.

Carried  
3 Against

**Administration Comment**

***Council has currently an outstanding resolution regarding the current Indiana proposal (Resolution OCM245/2021). Council has the discretion to determine the interpretation of its policies, whether policies need to be modified, amended or replaced, and how policies are applied in the best interest of the community (as a whole). It would be premature to refuse the current proposal, purely on a policy position, which has not be amended by Council since its adoption in 2004, without having a better understanding on whether the proposal provides a net benefit (or not) to the Cottesloe Community. The Motion should be rejected so to avoid confusion as to Council's current position on the matter.***

**ELECTOR MOTION 6**

Moved Mr Morgan

Seconded Mr Simenson

The meeting condemns this Council's excessive confidentiality and use of informal meetings behind closed doors by which the Indiana proposal has progressed to date, without any early disclosure to, or opportunity for input from, local residents, despite proposing to privatise public open space for use as a hotel and privatise the top floor of the replacement of Indiana in breach of the Council's Beach Policy.

**Carried  
2 Against**

**Administration Comment**

***Council's decision making process is in accordance with the prescriptive requirements of the Local Government Act 1995 and Council operates within these parameters. The Motion suggests Council has operated outside these parameters and therefore the motion should be rejected.***

**ATTACHMENTS**

**10.1.1(a) Unconfirmed Minutes - Special Meeting of Electors - 23 February 2022  
[under separate cover]**

**CONSULTATION**

Electors, media and Council representatives.

**STATUTORY IMPLICATIONS**

*Local Government Act 1995*

**5.33. Decisions made at electors' meetings**

- (1) *All decisions made at an electors' meeting are to be considered at the next ordinary council meeting or, if that is not practicable –
  - (a) at the first ordinary council meeting after that meeting; or
  - (b) at a special meeting called for that purpose,whichever happens first.*
- (2) *If at a meeting of the council a local government makes a decision in response to a decision made at an electors' meeting, the reasons for the decision are to be recorded in the minutes of the council meeting.*

**POLICY IMPLICATIONS**

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

**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.

**RESOURCE IMPLICATIONS**

Resource requirements are in accordance with the existing budgetary allocation.

**ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS**

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

**VOTING REQUIREMENT**

Simple Majority

**OFFICER RECOMMENDATION**

**Moved Cr Masarei**

**Seconded Mayor Young**

THAT Council:

1. RECEIVES the Unconfirmed Minutes of the Special Meeting of Electors held on Wednesday 23 February 2022;
2. NOTES Motions 1 to 4 contained therein and the associated Administration Comments contained within this report.
3. Rejects Motions 5 and 6, given the associated Administration Comments contained within this report;
4. REQUESTS the Chief Executive Officer to advise each Mover and Seconder of Motions from the Special Meeting Electors of the Council's resolution in relation to their specific motion(s).

Cr Bulbeck proposed the following amendment:

Add a new point 1, renumber the following points and amend points 3 and 5 as shown below:

1. THANKS the electors for bringing their concerns to Council attention.
  2. RECEIVES the Unconfirmed Minutes of the Special Meeting of Electors held on Wednesday 23 February 2022;
  3. NOTES Motions 1 to 5 contained therein and the associated Administration comments contained within this report.
  4. REJECTS Motion 6, given the associated Administration Comments contained within this report;
  5. REQUESTS the Chief Executive Officer to advise each Mover and Seconder of Motions from the Special Meeting Electors of the Council's resolution in relation to their specific motion(s).
-

Following discussion the Mover and Seconder of the original motion agreed to incorporate point 1 of Cr Bulbeck's proposed amendment into the motion.

**OCM028/2022****COUNCILLOR AMENDMENT****Moved Cr Bulbeck****Seconded Cr Sadler**

THAT Council:

Amend points 3 and 4 as shown below:

3. NOTES Motions 1 to 5 contained therein and the associated Administration comments contained within this report.
4. REJECTS Motion 6, given the associated Administration Comments contained within this report.

**Lost 2/5****For: Crs Sadler and Bulbeck****Against: Mayor Young, Crs Masarei, Harkins, Barrett and MacFarlane****OCM029/2022****SUBSTANTIVE MOTION AND COUNCIL RESOLUTION**

THAT Council:

1. THANKS the electors for bringing their concerns to Council attention.
2. RECEIVES the Unconfirmed Minutes of the Special Meeting of Electors held on Wednesday 23 February 2022;
3. NOTES Motions 1 to 4 contained therein and the associated Administration Comments contained within this report.
4. Rejects Motions 5 and 6, given the associated Administration Comments contained within this report;
5. REQUESTS the Chief Executive Officer to advise each Mover and Seconder of Motions from the Special Meeting Electors of the Council's resolution in relation to their specific motion(s).

**Carried 7/0**

## COUNCILLOR RATIONALE:

An additional point was added to the motion to thank the electors for bringing their concerns to Council's attention.

**10.1.2 MONTHLY FINANCIAL STATEMENTS FOR THE PERIOD 1 JULY TO 31 JANUARY 2022**

**Directorate:** Corporate and Community Services  
**Author(s):** Lauren Davies, Finance Manager  
**Authoriser(s):** Shane Collie, Director Corporate and Community Services  
**File Reference:** D22/11674  
**Applicant(s):** Internal  
**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 to ensure that income and expenditure are compared to budget forecasts.

**OFFICER RECOMMENDATION IN BRIEF**

That Council receives the Monthly Financial Statements for the period 1 July 2021 to 31 January 2022.

**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.
- Allocation of costs from administration, public works overheads and plant operations.
- Reconciliation of loans and investments.

**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 31 January 2022 was \$7,691,261 as compared to \$3,861,041 this time last year. This is due to a combination of higher revenue from infringements, and less payments YTD (which is a timing difference only).
- Rates receivables as at 31 January 2022 was \$1,784,511 as compared to \$1,172,270 this time last year as shown on page 23 of the attached financial statements. This is in part due to the timing of the raising of rates, and the dates due of interims being later in 2021-2022.

- Operating revenue is more than year to date budget by \$887,678 with a more detailed explanation of material variances provided on page 19 of the attached financial statements. Operating expenditure is \$567,326 less than year to date with a more detailed analysis of material variances provided on page 19.
- The capital works program is shown in detail on pages 33 to 34 of the attached financial statements.
- The balance of cash backed reserves was \$8,605,104 as at 31 January 2022 as shown in note 4 on page 21 of the attached financial statements.

#### **List of Accounts Paid for January 2022**

The list of accounts paid during January 2022 is shown on pages 35 to 41 of the attached financial statements. The following material payments are brought to Council's attention:

- \$202,552.19 to WMRC for the second 50% of Member Council Contributions, plus bulk verge collection for a month, and \$60,833 for November & December Waste Collection.
- \$31,236.49 & \$34,580.36 to SuperChoice Services Pty Ltd for staff superannuation contributions.
- \$40,490.05 to the ATO for payroll deductions.
- \$77,586.82 & \$77,846.19 to Solo Resources for Waste removal.
- \$147,625.50 to the Shire of Peppermint Grove for Q3 Library & Community Centre contribution.
- \$44,849.75 to Shine Community Services for the second 50% council contribution.
- \$35,609.32 to Surf Life Saving WA for surf life saving services.
- \$32,590.01 to Managed IT for provision of IT services for December & January.

#### **Investments and Loans**

Cash and investments are shown in note 4 on page 21 of the attached financial statements. The Town has approximately 47% of funds invested with the National Australia Bank, 31% with the Commonwealth Bank of Australia and 22% with Westpac Banking Corporation. A balance of \$8,596,656 was held in reserve funds as at 31 January 2022.

Information on borrowings is shown in note 10 on page 30 of the attached financial statements. The Town had total principal outstanding of \$2,978,324 as at 31 January 2022.

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

Rates outstanding are shown on note 6 on page 23 and show a balance of \$1,784,511 outstanding as compared to \$1,172,270 this time last year.

Sundry debtors are shown on note 6 on page 23 of the attached financial statements. The sundry debtors report shows that 23% or \$27,765 is older than 90 days. Infringement debtors are shown on note 6 on page 25 and were \$575,927 as at 31 January 2022.

#### **ATTACHMENTS**

**10.1.2(a) Monthly Financial Report 1 July to 31 January 2022 [under separate cover]**

**CONSULTATION**

Senior Staff.

**STATUTORY IMPLICATIONS**

*Local Government Act 1995*

*Local Government (Financial Management) Regulations 1996*

**POLICY IMPLICATIONS**

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

**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.

**RESOURCE IMPLICATIONS**

Resource requirements are in accordance with the existing budgetary allocation.

**ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS**

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

**VOTING REQUIREMENT**

Simple Majority

**OCM030/2022****OFFICER RECOMMENDATION AND COUNCIL RESOLUTION**

Moved Cr Barrett

Seconded Cr Harkins

**THAT Council RECEIVES the Monthly Financial Statements for the period 1 July 2021 to 31 January 2022 as submitted to the 22 March 2022 meeting of Council.**

**Carried 7/0**

**10.1.3 MID-YEAR BUDGET REVIEW 2021/22**

**Directorate:** Corporate and Community Services  
**Author(s):** Shane Collie, Director Corporate and Community Services  
**Authoriser(s):** Matthew Scott, Chief Executive Officer  
**File Reference:** D22/12701  
**Applicant(s):** Internal  
**Author Disclosure of Interest:** Nil

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**SUMMARY**

In accordance with statutory requirements, Council is presented with the mid-year budget review for the financial year ending 30 June 2022 for its consideration.

**OFFICER RECOMMENDATION IN BRIEF**

It is recommended that Council receive the Budget Review for the Financial Year 2021/22 and adopts the amendments contained therein, setting the material monthly reporting of significant variances of income and expenditure at \$25,000 in the Statement of Financial Activity, transfers an amount of \$250,000 to the Public Open Space Reserve, and notes the predicted closing surplus of \$40,509 to be carried forward to 2022/23.

**BACKGROUND**

Each year Council is presented with a mid-year budget review, prepared using seven months of actual financial results compared against the budget predictions for the year to date. This allows performance against the budget to be measured, and if required, amendments to be made.

The mid-year review process also allows for factors that were not known at the time of forming the budget to be incorporated into the budget. This may be a change in the operating environment of the Council, funding opportunities not previously known or projects that were not included in original 2021/22 budget considerations.

**OFFICER COMMENT**

In general, revenues of the Town are up across the board compared to the adopted Budget. Increased activity across most functional areas is noted including Health, Town Planning and Parking. Many of these areas are fee for service or compliance. Salaries are also up in general terms which is a direct result of increased activity and is more than offset by the income generated. Examples include (end of year estimates over Budget):

- Town Planning Income \$100,000
- Facility Hire Income \$15,000
- Parking Infringement Income \$350,000
- Interim Rate Income \$47,555
- Outdoor Eating Income \$14,650

The main material changes recommended in this Budget Review are contained in the attached Budget Review document and the following Table represents an overall summary.

Change in surplus	-\$	926,648
Change in Carry Forwards	\$	350,740
Major Variations (Over \$25,000)	\$	564,621
Minor Variations (Under \$25,000)	-\$	279,222
Internal allocations	\$	-
Total Change in cash surplus	-\$	290,509
Non cash items	\$	495,590

Additional points brought to Council's attention are:

- Strategic Community Plan. \$25,000 allocated for this is likely be carried forward to 2022/23. Informing Plans including the Asset Management Plan and Long Term Financial Plan will be completed in 2021/22 which will be fed into the new Strategic Community Plan. Additionally the Audit Regulation 17 Review and Financial Systems Review presently underway are best to be completed prior to Council embarking on the major review of its Strategic Community Plan. These informing Plans are due for completion in the coming months.
- Local Planning Scheme Review and Cottesloe Village Centre Precinct Plan will have substantial expenditure in the 2022/23 financial year though it is anticipated that the relevant Request for Quotations for Works will be undertaken prior to the end of this financial year.
- \$60,000 income relating to East Cottesloe parking to be received. This is offset by corresponding expenditure in that area.
- Administration photocopier was to be replaced at a cost of \$20,000. The changeover has been delayed as the current machine is still working well and there is no trade value in the replacement of these items of equipment.
- As per Council Resolution Anderson Pavilion Tender was accepted \$165,130 over the budgeted amount. This enables 4 instead of 2 change rooms to be built now instead of adding in future years at what would be a far greater cost.
- IT Equipment Covid related \$30,000. IT Equipment purchases required to enable staff to work from home as required under present (and likely future) Pandemic conditions.
- Rugby Club floor replacement contribution \$20,000.

## **ATTACHMENTS**

**10.1.3(a) 2022 Budget Review [under separate cover]**

## **CONSULTATION**

As a part of the preparation of the Budget Review senior staff have been consulted.

**STATUTORY IMPLICATIONS**

*Local Government Act 1995*

Local Government (Financial Management) Regulations 1996

**Regulation 33A. Review of Budget**

- (1) Between 1 January and 31 March in each financial year a local government is to carry out a review of its annual budget for that year.
- (2A) The review of an annual budget for a financial year must-
  - (a) Consider the local government's financial performance in the period beginning on 1 July and ending no earlier than 31 December in that financial year; and
  - (b) Consider the local government's financial position as at the date of the review; and
  - (c) Review the outcomes for the end of that financial year that are forecast in the budget.
- (2) Within 30 days after a review of the annual budget of a local government is carried out it is to be submitted to the Council.
- (3) A Council is to consider a review submitted to it and is to determine\* whether or not to adopt the review, any parts of the review or recommendations made in the review.

\*Absolute majority required
- (4) Within 30 days after a council has made a determination, a copy of the review and determination is to be provided to the Department of Local Government, Sport and Cultural Industries.

**POLICY IMPLICATIONS**

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

**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.

Council's budget sets out the operating and capital areas that will be focused on during the financial year. It allows priorities to be set and strategic projects to be achieved.

**RESOURCE IMPLICATIONS**

Predicted variances proposed to the 2020/21 Budget arising from this review are summarised in the attached Budget Review document. These variances are examined in more detail in the

supplementary information provided being the revenue and expenditure by program and capital expenditure program.

There is an amount recommended to be transferred to the Public Open Space Reserve of \$250,000 to top up that Reserve following the use of funds over recent years. The Reserve is set aside to fund future Public Open Space works.

In summary, if Council adopts the various amendments proposed, there will be a surplus of \$40,509 to carry forward into the 2022/23 financial year.

### **ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS**

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

### **VOTING REQUIREMENT**

Absolute Majority

### **OCM031/2022**

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

Moved Cr Barrett

Seconded Cr Harkins

THAT Council:

1. **RECEIVES** the Budget Review for the Financial Year 2021/22;
2. **ADOPTS** the amendments contained within the attached Budget Review document;
3. **SETS** the materiality levels of \$25,000 for the monthly reporting of significant variances of income and expenditure in the Statement of Financial Activity;
4. **TRANSFERS** an amount of \$250,000 to the Public Open Space Reserve.
5. **NOTES** the predicted closing surplus of \$40,509 to be carried forward to 2022/23.

**Carried by Absolute Majority 7/0**

**DEVELOPMENT AND REGULATORY SERVICES****10.1.4 LOTS 40, 41 & 42 (19) PERTH STREET - UPPER FLOOR ADDITION**

**Directorate:** Development and Regulatory Services  
**Author(s):** Ed Drewett, Coordinator Statutory Planning  
**Authoriser(s):** Freya Ayliffe, Director Development and Regulatory Services  
**File Reference:** D22/4039  
**Applicant(s):** Paramount Design  
**Author Disclosure of Interest:** Nil

**SUMMARY**

This report discusses the statutory provisions and assessment criteria relevant to a development application for an upper floor rear addition at 19 Perth Street. The application has been “called-in” by Councillors Wylynko and Barrett so is required to be determined by Council, rather than under Delegated Authority.

**OFFICER RECOMMENDATION IN BRIEF**

That Council conditionally approve the development application and plans received 8 February 2022.

**BACKGROUND**

Zoning:	MRS:	Urban
3:	LPS	Residential R35
Use class:		Single house
Lot size:		838m <sup>2</sup> (total)
Existing Land Use:		Residential
Value of development:		\$250,000
Owners:		K Eardley-Wilmot G Maidens



Site map

Since the application was included on the Delegation List on 7 January 2022, the Town has been negotiating with the applicant and owner to further address the height, bulk, scale and appearance of the development and improve its relationship to other development in the locality as well as assist in addressing neighbour concerns.

Amended plans received on 8 February 2022 included the following changes compared to the original advertised plans:

Provision	Original plans received 28 September 2021	Amended plans received 8 February 2022
<b>Height</b>	Up to 7.93m (west side) Up to 7.3m (east side)	Up to 7.63m (west side) Up to 7m (east side) <u>Height reduced by 0.3m</u>
<b>Major openings</b>	Master suite (south & west-facing) Sitting room (south-facing)	Master suite, south-facing window deleted. Master suite, west-facing window fixed and obscured to 1.6m above the finished floor level. Sitting room, south-facing window, external awning installed to provide privacy screening.

The amended plans were advertised to adjoining owners and occupiers for comment (see Consultation section below).

The site comprises 3 lots (lots 40, 41 & 42) with a single-storey, heritage-listed, dwelling which straddles over the lots. On 30 April 2020, development approval was granted for a contemporary two-storey addition on the eastern side of the dwelling which comprises a double carport, utility room and ancillary accommodation above. This replaced a double carport.

The existing dwelling has two-storey dwellings on its eastern and western sides and has a 4.3m wide sealed right-of-way on its southern side.



**Aerial photo of site**

### **OFFICER COMMENT**

The development application has been assessed against the Provisions of the Town's Local Planning Scheme No. 3, the Town's Heritage List, the Planning and Development (Local Planning Schemes) Regulations 2015 (as amended), and the Residential Design Codes.

#### **Local Planning Scheme No. 3 (LPS 3)**

The aims of the Scheme relevant to this development include:

- *provide opportunities for housing choice and variety in localities which have a strong sense of community identity and high levels of amenity;*
- *sustain the amenity, character and streetscape quality of the Scheme area;*
- *ensure that proper regard is given to the needs of the local community in the determination of land use and development proposals; and*
- *ensure that new development is compatible with the conservation significance and aesthetic value of heritage places and areas...*

The objectives of the Residential Zone are to:

- *encourage residential development only which is compatible with the scale and amenity of the locality;*

- *provide the opportunity for a variety and choice in housing in specified residential areas;*
- *allow for some non-residential uses where they are compatible with the amenity of residential localities; and*
- *encourage the retention of local facilities and services within specified residential areas for the convenience of the local community.*

### **Heritage**

The existing dwelling is included in the Town's Heritage List and Municipal Inventory and is afforded statutory protection under Local Planning Scheme No. 3. The description of the property in the Heritage List is as follows:

*An elegant presence in the street and of historic importance as a hospital and brothel. The original section of this house has historical significance for being constructed on part of the original subdivision prior to 1901.*

*A large timber-framed house built before 1901 with symmetrical front comprising a door and sidelights and flanking double-hung sash windows with flanking coupled sidelights. There is a major gable over the front door and surrounding bull-nosed verandah.*

*It commenced life as a smaller cottage and has been enlarged at some time during its life. In 1905 it was owned by Alfred Loveland, labourer. Nurse Loveland and her daughter Naomi had four rooms of this house as a hospital at some time. Reputed to also have been a boarding house and a brothel.*

To assist with the heritage assessment of the application, the applicant submitted a 'Heritage Impact Assessment' (HIA) prepared by Laura Grey, Heritage & Conservation Consultant trading as Heritage Intelligence (WA). A summary of the HIA describes the current proposal as (amongst other things):

*A contemporary structure that makes a response to the 2020s granny flat. It is partially set into the existing roof space minimising the north facing wall to the front elevation of the existing residence. The southwest corner of the second-storey addition, positioned above the existing ground floor structure is evident on the north and west elevations of the residence....It is above part of the residence that was an addition to the original Federation residence, and therefore has no physical impact on the original c.1900 fabric...The proposed second-storey addition respects the heritage value by way of contrast, accentuating the aesthetic significance, integrity and appreciation of the original Federation residence...It is a well-considered outcome with minimal physical or aesthetic impact that respects and highlights the heritage attributes of the Federation residence...retaining its significance as "an elegant presence in the street" and "contributing to the character and amenity of the street".*

A copy of the HIA is attached.

### **Assessment**

The table below is a summary of the relevant planning assessment of the proposal against the statutory planning provisions. Where the proposal requires the exercise of judgement the relevant planning element is discussed in the section of the report following this table.

Provision	Complies with Local Planning Scheme No. 3 and/or <i>deemed-to-comply</i> provisions of the Residential Design Codes	Requires exercise of judgement
Storeys	✓	
Building height		✓
Lot boundary setbacks	✓	
Privacy	✓	
Solar Access (overshadowing)	✓	
Utilities and Facilities	✓	
Matters to be considered by local government	✓	

Building height	
LPS 3: Permitted building height	Proposed building height
<p><b>7m</b> (to top of parapet)</p> <p><i>Clause 5.7.5: In the case of proposed alterations, additions or extensions to existing dwellings in the Residential, Residential Office, Town Centre, Local Centre, Foreshore Centre and Restricted Foreshore Centre zones, the local government may vary the maximum heights specified in Table 2 and clause 5.7.2, where, in its opinion, is warranted due the circumstances and merits of the proposal, having regard to -</i></p> <ul style="list-style-type: none"> <li><i>a. the existing heights of the dwelling;</i></li> <li><i>b. any relevant Local Planning Policy or Design Guidelines;</i></li> <li><i>c. any heritage considerations relating to the dwelling;</i></li> <li><i>d. relevant planning considerations identified in clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015;</i></li> <li><i>e. adequate direct sun into buildings and appurtenant open spaces;</i></li> <li><i>f. adequate daylight to major openings into habitable rooms;</i></li> <li><i>g. access to views of significance;</i></li> <li><i>h. building design to ameliorate the visual effects of height including consideration of setting-back the side walls of added storeys from the side walls of existing buildings; and</i></li> <li><i>i. the amenity of adjoining properties, including road and public open space reserves, and the character of the streetscape;</i></li> </ul>	<p>North-west corner of master suite – 7.63m.</p> <p>South-west corner of master suite – 7.53m.</p> <p><i>The remainder of the proposed second-storey addition is at or below the permitted 7m building height.</i></p>

*and subject to the development -*

- a) not exceeding the existing number of storeys or, where that is already exceeded, not exceeding the existing number of storeys; and*
- b) not exceeding the height of the existing dwelling, unless the Council is satisfied with the design and its implications having regard to the above criteria.*

In addition to the above, Council may vary any site or development requirement specified in the Scheme to facilitate the built heritage conservation of a place included on the Heritage List, subject to having regard to any views expressed during the advertising period.

#### **Summary of applicant's comments**

The proposed walls are over the allowable height due to the existing dwelling being on raised foundations and we are keeping the existing ceiling level to the ground floor to minimise the impact of the addition on the heritage aspect of the existing residence.

The current design has been done to minimise the visual impact of the addition with the concealed roof to virtually hide any appearance of the addition from the street.

Large glazing panels, cladding to contrast the existing ground floor, feature screening and the addition being largely concealed within the existing roof structure to the front all help to ameliorate any building bulk to the neighbouring properties and streetscape.

300mm has been taken out of the upper floor ceiling to reduce overall height. This has reduced the amount of overshadowing to the neighbours as well as building bulk that they were concerned with.

#### **Officer comment**

The rear 4.5m of the existing dwelling was constructed around 1990 and is not part of the original dwelling. The proposed upper floor addition will generally be constructed above this rear extension. However, because the ground floor was constructed with 3.4m high ceilings so as to integrate with the original dwelling it has made it difficult to construct the upper floor without a variation to the Town's building height provisions.

A height variation ranging from 0.53m to 0.63m is proposed, although only the western side is affected as the remainder of the proposed addition is at or below the permitted 7m building height, measured above the existing floor level, which is determined as the natural ground level.

The proposed master suite marginally extends beyond the existing ground floor western wall and due to the natural ground level being slightly lower at that point it requires consideration of a height variation.

Having regard to clause 5.7.5 in the Scheme, it appears that this is a relatively minor variation that can be supported under these provisions, especially as the proposal complies with the other statutory provisions under the Residential Design Codes (R-Codes).

In particular, the contemporary design of the addition appears preferable to faux-Federation architecture and is supported by a Heritage Impact Assessment; its location to the rear of the dwelling, partially in the existing roof space and partly above a more recent

addition results in it having little if any impact on the streetscape; it is respectful of the existing ceiling and ridge heights; and overshadowing to the south complies with the *deemed-to-comply* provisions of the R-Codes. Also, although it exceeds the existing number of storeys it is within the maximum number of storeys permitted on the site.

#### **Clause 67 – Matters to be considered by local government**

Under clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015, Council is to have regard to, amongst other things, the following relevant provisions:

- a) the aims and provisions of this Scheme;
- b) the requirements of orderly and proper planning;
- c) any approved state planning policy;
- d) the built heritage conservation of a place that is of cultural significance;
- e) the effect of the proposal on the cultural heritage significance of the area in which the development is located;
- f) the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development;
- g) the amenity of the locality including the following:
  - environmental impacts of the development;
  - the character of the locality;
  - social impacts of the development;
- h) the impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals; and
- i) any submissions received on the application.

#### **Officer comment**

The proposed development is supported based on the revisions made by the applicant on the plans received 8 February 2022, the comments made in this report, the Heritage Impact Assessment received with the application, its compliance with the Residential Design Codes, and having regard to the submissions made during advertising.

#### **ATTACHMENTS**

- 10.1.4(a) Amended Plans Received 8 February 2022 and Accompanying Photographs [under separate cover]**
- 10.1.4(b) Applicant's Heritage Impact Assessment [under separate cover]**

- 10.1.4(c) Neighbour's submissions to amended plans [under separate cover]  
 10.1.4(d) Neighbours' submissions to superseded plans received 28 September 2021 [under separate cover]

### CONSULTATION

The application was initially advertised from 28 October to 19 November 2021, in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015* and Local Planning Scheme No. 3. Advertising was undertaken by writing to owners and occupiers of properties adjoining the site, including across the right-of-way, and also making the plans and supporting information available on the Town's website and at the Council Offices. 3 submissions were received which were all from the owners to the south of the site.

Amended plans received 8 February 2022 were also advertised for 14 days to the submitters. Advertising closed on 15 February 2022 and a further 3 submissions from the same owners were received.

A summary of the key points raised are as follows:

- The proposed wall height still exceeds 7m;
- Overshadowing may affect future development on the rear lot which will be looking to make the best possible use of the north-facing aspect;
- The shadow, particularly in winter when the north facing back garden is to be enjoyed, will have an impact given the height of the structure and proximity to the garden;
- It will block light and sun;
- The back garden will be overwhelmed by a large box stuck on the back of a very pleasing roofline and profile;
- It will have an adverse impact on the neighbours across the laneway; and
- It will be an intrusion on privacy.

Issues raised	Officer comment
<b>Building height</b>	<p>The amended plans showed the building height reduced 0.3m compared to the original plans.</p> <p>Only the western side of the master suite will exceed 7m in height (up to 0.63m) above NGL, and this has been addressed in the 'Building Height' section above.</p> <p>The proposed building height will be approximately 1m higher than the ridge of the existing rear roof, and less than the permitted 8.5m building height.</p> <p>The proposed addition will be approximately 7.5m from the boundary of the adjoining southern properties due to the width of the right-of-way and the proposed 3.279m setback from the rear of the site.</p>
<b>Solar access (overshadowing)</b>	<p>The <i>deemed-to-comply</i> provisions of the R-Codes permit up to 35% of adjoining lots to be overshadowed at midday on 21 June.</p>

	<p>The amended plans show that overshadowing at midday on 21 June will be 8.14% on Lot 70 (92 Napier Street) &amp; 10.4% on Lot 71 (92A Napier Street) which meets the <i>deemed to comply</i> provisions.</p>  <p>Overshadowing at midday on 21 June</p>
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<p><b>Adverse Impact</b></p>	<p>Although the proposed addition will be higher than the existing single-storey addition, it will be cladded and coloured to match the existing residence.</p>  <p><b>Above: Perspective showing colour of proposed addition to match existing.</b></p> <p>Its setbacks from the side and rear boundaries exceed the <i>deemed-to-comply</i> provisions of the R-Codes and its height is considered justified, having regard to the existing ground floor ceiling height.</p>
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Visual Privacy	There are no major openings proposed to the southern or western elevations and the proposal complies with the <i>deemed-to-comply</i> provisions of the R-Codes.
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### **STATUTORY IMPLICATIONS**

- *Local Planning Scheme No. 2*
- *Planning and Development (Local Planning Schemes) Regulations 2015 (as amended)*
- *State Planning Policy 7.3 – Residential Design Codes Vol. 1*
- *Town of Cottesloe - Heritage List*

### **POLICY IMPLICATIONS**

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

### **STRATEGIC IMPLICATIONS**

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

### **RESOURCE IMPLICATIONS**

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

### **ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS**

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

### **VOTING REQUIREMENT**

Simple Majority

**OCM032/2022**

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

**Moved Cr Sadler**

**Seconded Mayor Young**

**THAT Council approves the development application for an upper floor addition on Lots 40, 41 & 42 (19) Perth Street, Cottesloe, as shown on the plans received 8 February 2022, subject to the following conditions:**

- 1. All water draining from roofs and other impermeable surfaces should be directed to garden areas, sumps or rainwater tanks within the development site where climatic and soil conditions allow for the effective retention of stormwater onsite.**
- 2. The west-facing window(s) to the master suite shall be fixed and obscured to a minimum height of 1.6m above the finished floor level where indicated as screened on the approved plans to restrict overlooking of the adjoining property. Details to be shown at the Building Permit stage to the satisfaction of the Town.**

3. Plant and equipment, including air-conditioning units, should be designed, positioned and screened so as to not be visible from the street; designed to integrate with the building; or located so as not to be visually obtrusive.
4. The external colour and finishes of the addition shall match the existing dwelling as indicated on the approved plans. Details to be shown at the Building Permit stage to the satisfaction of the Town.

**Advice Notes**

1. The owner/applicant is responsible for ensuring that all lot boundaries shown on the approved plans are correct and that the proposed development is constructed entirely within the owner's property.
2. The owner/applicant is responsible for applying to the Town for a Building Permit and obtaining approval prior to undertaking the works.
3. The owner/applicant is advised that the lots may be required to be amalgamated and a new Certificate of Title be issued prior to the granting of a Building Permit.
4. All construction work shall be carried out in accordance with the requirements of the Environmental Protection (Noise) Regulations 1997.
5. The owner/applicant is advised that this approval shall be deemed to be an approval under the Metropolitan Region Scheme.

Carried 7/0

**ENGINEERING SERVICES****10.1.5 HARVEY FIELD RECREATION PRECINCT - PUBLIC CONSULTATION**

<b>Directorate:</b>	<b>Engineering Services</b>
<b>Author(s):</b>	<b>Shaun Kan, Director Engineering Services</b>
<b>Authoriser(s):</b>	<b>Matthew Scott, Chief Executive Officer</b>
<b>File Reference:</b>	<b>D22/10701</b>
<b>Applicant(s):</b>	<b>Internal</b>
<b>Author Disclosure of Interest:</b>	<b>Nil</b>

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**SUMMARY**

For Council to consider advertising the attached Recreation Precinct Masterplan for public consultation.

**OFFICER RECOMMENDATION IN BRIEF**

That Council approves the attached Harvey Field Recreation Precinct Masterplan for public consultation. Feedback received will be provided to Council to formalise a concept for the improvement project to be incorporated within the Town's Long Term Financial Plan.

**BACKGROUND**

In 2018, users of the Harvey Field Recreation Precinct and surrounding residents were consulted on the original AECOM masterplan. Given the unaffordable \$27 million required for that proposal, Council has asked for the scope of works to be rationalised.

The AECOM plan was rationalised and a visual summary was presented to the February 2021 Ordinary Meeting where Council deferred accepting the proposed changes until the following had occurred:

- Recreation Precinct sporting users had been engaged;
- Installation of golf ball protection fencing including the retention of current playground facilities, ambulance and universal access;
- Re-incorporate tennis hit up, cricket practice and basketball type facilities; and
- Include both formal and informal parking that align with the AECOM plan (attached to the February 2021 Meeting Agenda) and feedback received from the 2018 consultation.

The item was re-tabled at the May 2021 Ordinary Meeting where Council adopted a set of rationalised principles. This has been used to develop the attached plan, furnished with public infrastructure such as footpaths, spectator seating, playground upgrades, parking and possible options to protect the playing fields from stray golf balls.

Further to these additions, the updated concept following the May 2021 Ordinary Council Meeting also takes into consideration the following feedback provided by the sporting clubs:

- Preference for the field to be widened but due consideration would need to be given to impacts on the Anderson Pavilion and cost associated with any earthworks required to the east and west.
-

- Consideration be given to changing the oval orientation to avoid any part of the Anderson Pavilion from being directly behind the football goal post.
- Request for fencing to be installed between the fields and the golf course to provide protection from stray golf balls.
- Incorporate the improvements to playing field lighting as part of the project.
- Leave the Broome Street carpark unsealed.

The above comments have been translated (via in house resources) onto the existing area to provide some visual context. It seems appropriate at this stage to seek public feedback on the various elements, using the attached diagrams as a guide, prior to further resources being expended in developing the masterplan.

Council is asked to note that the works associated with the new Anderson Pavilion is due to commence early April and completed before the end of 2022. The playing field rotation as shown on the plan has been completed.

### **OFFICER COMMENT**

Supporting infrastructure has been included in the attached diagrams to improve:

- Pedestrian connectivity;
- Spectator seating;
- Car parking;
- Open space activation within the Recreation Precinct; and
- Emergency Vehicle Access.

An indication of the potential fencing required (not preferred option) to mitigate the risks of neighbouring golf greens has been included only as a worst case scenario for comment after all engineering solutions have been exhausted. Other initial options to reduce this risk are discussed further in this report.

### **Pedestrian Connectivity**

Additional footpaths proposed on the western side of Broome Street to the north of the Precinct and along Pearse Street will connect missing links to the existing pedestrian network within the vicinity. The path through the Coastcare native garden will be a limestone type surface whilst the other connections will be built in concrete.

These new footpaths would encourage walking as a form of commute and at the same time caters for the anticipated increase in pedestrian volumes once the Precinct is fully developed. Other benefits include pedestrian safety by avoiding the need to cross Broome Street to access its eastern footpath and eliminating the need to walk on the road along Pearse Street.

It would be important to note that such connectivity improvements were within the Public Open Space and Playground Strategy, adopted by Council in November 2019.

### **Spectator Seating**

Spectator seating that can accommodate up to 200 people is proposed on the eastern embankment of the football oval. The design will be similar to the timber seating next to the

Cottesloe Surf Life Saving Club. Due consideration would need to be given to underlying services when designing this feature as this could impact the number of seats that can be provided.

### **Carparks**

The two main carparks are proposed as part of the final masterplan.

The one located next to the Anderson Pavilion (25 car spaces) will be asphalt to reduce the cost of maintenance.

The other facility next to the Rugby Club House has been expanded further to the north along Broome Street to provide approximately 113 bays and constructed in a reinforced grass type surface paving. An example of this is shown on the attached plan.

This design will minimise maintenance costs particularly during the wet season where saturation tends to cause damage when used and at the same time provide the turf surface being requested by surrounding residents and as shown in the AECOM 2018 plan.

### **Public Open Space Activation**

The following treatments and approaches are proposed for the remaining public open space areas following the proposed carpark arrangements:

- Current playground on Broome Street (neighbourhood level) – this will remain where it is and upgraded.
- Basketball, Cricket and Tennis Area – these existing facilities will remain in their current location on the eastern side of Harvey Field between the oval and rugby field. These facilities will be refurbished as part of the Recreation Precinct improvement works.

### **Emergency Vehicle Access**

This is on both Jarrad Street and Pearse Street as shown on the attached plan.

### **Stray Golf Ball Protection and Risk Mitigation**

A golf course specialist has indicated that the two forms of risk that need to be mitigated are predominantly lower height slices and higher level gradual fades (caused by a combination of technique and wind drift occurring up to 30 metres higher and further down the course).

The following solutions have been developed in consultation with the Seaview Golf Club:

Option one: Relocate the tee box further east, closer to the Harvey Field embankment and install fencing to enclose this starting area. This approach will provide protection against slices and make allowance for stray golf balls caused by higher drift with players having to aim left (north-west direction) when teeing towards the green.

Option two: Combine option one approach with a 20-35 metre high sectional fence at the top of the Harvey Field embankment.

The preference would be for option one to be deployed first and the 20-35 metre high fence mentioned in option two to be the last resort after all possible engineering solutions have been exhausted.

These options have been reflected on the attached diagrams.

It is proposed that the consultation occurs in early 2022 through an invitation for public submissions type process and for feedback using the attached diagrams as a guide and context. Feedback received will be provided to Council for consideration prior to further development of the Masterplan. It is envisioned that a preamble outlining the major proposed elements (similar to information within this report) will be included in the material provided to the public.

Council is asked to note that the Department of Planning, Lands and Heritage (DPLH) have been consulted. Their comments have been summarised in the consultation section of this report.

Subject to the adoption of the final masterplan, the project will be incorporated into the Long Term Financial Plan for progress onto implementation (detail design and construction).

### **ATTACHMENTS**

- 10.1.5(a) Harvey Field - Combined Letters from Department of Planning Land Heritage [under separate cover]**
- 10.1.5(b) Recreation Precinct Masterplan Rationalisation Option 1 - Relocation of tee box [under separate cover]**
- 10.1.5(c) Recreation Precinct Masterplan Rationalisation Option 2 - Harvey Field fencing [under separate cover]**
- 10.1.5(d) Recreation Precinct Masterplan Rationalisation - Details [under separate cover]**

### **CONSULTATION**

The following stakeholders were consulted prior to Council adopting the rationalised masterplan in May 2021:

- Cottesloe Rugby Union Football Club
- Cottesloe Football Club (Roosters)
- Cottesloe Magpies – Junior Football Club
- Council

Council is being asked to consider undertaking public consultation for the attached Concept Recreation Precinct Masterplan Diagram(s) that will be done through a structured survey. There will be the opportunity to provide comment on matters not covered within the online questionnaire. Any submissions provided prior to the formal consultation period will be considered.

Given that this is a Class A Reserve, DPLH have been consulted on the proposed improvements and their comments can be summarised as follows:

- They are supportive of the attached plan.
- This includes the Anderson Pavilion replacement that was previously approved in August 2021.

They have asked for the Masterplan and particularly the proposed 20 to 30 metre high fencing to be publicly advertised and referred to Heritage Council as part of the Town's formal review process.

### **STATUTORY IMPLICATIONS**

There are no known statutory implications and this will be confirmed after the public consultation process.

### **POLICY IMPLICATIONS**

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

### **STRATEGIC IMPLICATIONS**

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

Priority Area 5: Providing sustainable infrastructure and community amenities

Major Strategy 5.2: Manage assets that have a realisable value.

Major Strategy 2.2 - Implement renewal projects for public open space in Cottesloe.

### **RESOURCE IMPLICATIONS**

Resource requirements are in accordance with the existing budgetary allocation.

The design and construction will be undertaken by a contractor. Town staff will be involved with Project and Contract Management.

Only the costs of the Anderson Pavilion Building replacement works have been included in the 2021/2022 budget.

The remaining components as shown on the attached plan, costing approximately four million dollars has not been incorporated. This will be reduced to three million dollars with the implementation of option one to protect Harvey Fields from stray golf balls. The final project costing can only be confirmed after detail design has occurred.

### **ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS**

There are no perceived environmental sustainability implications at this stage with the exception of the 30 metre high fencing should this be an option. This will form part of the community consultation terms of reference and be referred to Heritage Council.

Whether or not the other components have any implications can only be confirmed at detail design.

### **VOTING REQUIREMENT**

Simple Majority

**OCM033/2022**

**OFFICER RECOMMENDATION AND COUNCIL RESOLUTION**

**Moved Cr Masarei**

**Seconded Mayor Young**

**THAT Council:**

- 1. APPROVES the attached Concept Recreational Precinct Masterplan Diagrams for the purpose of public consultation and referral to the Heritage Council of Western Australia;**
- 2. NOTES that the option one is the preferred solution and the fencing mentioned in option two will only be further considered after all other possible engineering approaches have been exhausted;**
- 3. NOTES that a copy of the Community Engagement Plan will be provided to Council for its information prior to the commencement of the formal consultation; and**
- 4. NOTES that after the public consultation an item summarising the feedback received including those provided prior to the formal survey starting will be brought to Council for consideration.**

**Carried 7/0**

**10.1.6 PROPOSED INSTALLATION OF SCULPTURE ON 9 HENRY ROAD VERGE**

**Directorate:** Engineering Services  
**Author(s):** David Lappan, Manager Projects and Assets  
**Authoriser(s):** Shaun Kan, Director Engineering Services  
**File Reference:** D22/11428  
**Applicant(s):** Internal  
**Author Disclosure of Interest:** Nil

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**SUMMARY**

Council is being asked to consider an application from the residents of 9 Henry Road to install three stone 'Pinnacle styled sculptures' within the verge adjacent to their property.

**OFFICER RECOMMENDATION IN BRIEF**

It is recommended that Council provides in principle support for the residents' request for the installation of the three stone 'Pinnacle styled sculptures' within the verge adjacent to their property subject to conditions.

**BACKGROUND**

In October 2021, the residents of 9 Henry Road submitted a written request to install 3 stone 'Pinnacle styled sculptures' within the verge adjacent to their 30 year old property.

The sculpture consists of three stones of various sizes with the largest being three metres in height, 400 millimetres (mm) wide and 800mm deep. The two smaller stones will be placed on the southern side of the large stone to provide a collective feel that would also complement and provide an extension to the existing stonework on the property.

An artist impression of the sculpture is shown in **Diagram A** below.



**Diagram A**

### **OFFICER COMMENT**

There is no set procedure for approving public art or sculptures on verges within the Residential Verge Policy. As a guide, the Town's residential verges policy requires an application for the installation of play equipment within verges and the same process has been adopted for sculptures. This has allowed the Administration to condition such structures accordingly should they be deemed appropriate for installation.

When making the assessment in this particular instance, streetscape aesthetics was considered to be subordinate to public safety.

Considering the evaluation criteria above, it would be difficult for the application to be supported in its current form as it does not meet the following residential verge policy requirements:

- Clause 4.5 (i) - Retaining walls, rocks and sleepers are permitted only in special circumstances where difficult site conditions prevail.
- 4.5 (l) - Materials that may cause a hazard to the public are not permitted. This includes loose gravel and pea gravel. Rocks and earth mounding are permitted in garden beds.

Furthermore, the current proposal would also impact safe sight distance for vehicles entering and leaving the driveway, due to the three metre height design.

Notwithstanding the shortfalls above, Council may wish to conditionally approve the application as follows should it be satisfied with the principles. The Town can then process the matter administratively based on the parameters agreed to by Council.

- Dimensions of the tallest stone is to be no more than 1800mm high and 400mm wide;
- Dimensions of the remaining two shorter stones are to be no more than 750mm high and 400mm wide;
- Sculptures are to be installed within a garden bed; and
- Property owners and residents immediately adjacent to the sculptures are to be consulted to ensure they do not object to the proposal.

These conditions will mitigate against the traffic safety risk, compliance with appropriate requirements with the residential verge policy and does not affect directly impacted properties.

Council is asked to note that further to the Agenda Forum, the above dimensions have been discussed with the applicant and they are agreeable to what is being proposed given that the sculpture is yet to be fabricated.

A plan indicating the final position of the sculptures and their final dimensions will need to be provided to the Town for a decision to be made.

Similarly, Council can decide it does not wish to have any further sculptures on verges and reject the proposal altogether.

Council may also wish to consider allowing such matters to be incorporated into the Residential Verge Policy for this to be dealt with by the Administration in the interest of improving operational efficiency.

Whilst not recommended given it falls outside the terms of reference of the Taskforce for Residential and Recreational Verges, Council can defer considering this matter until the work of this group is complete.

### **ATTACHMENTS**

Nil

### **CONSULTATION**

Town of Cottesloe Administration

9 Henry Road Residents

### **STATUTORY IMPLICATIONS**

*Local Government Act 1995*

### **POLICY IMPLICATIONS**

This approval is not covered under the Town's Residential Verges Policy and as such Council approval is required for this request. There are principles in this policy that relate to assessment of this application.

**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 1.4: Continue to improve community engagement.

**RESOURCE IMPLICATIONS**

Resource requirements are in accordance with the existing budgetary allocation.

**ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS**

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

**VOTING REQUIREMENT**

Simple Majority

**OFFICER RECOMMENDATION**

**Moved Cr Harkins**

**Seconded Mayor Young**

THAT Council APPROVES the application to install the stone sculptures on the verge adjacent to 9 Henry Road, subject to the following conditions:

1. The main sculpture (currently three metres tall) shall be no more than 1800mm high and no wider than 400mm in width;
2. The remaining two smaller sculptures shall not exceed 750mm in height and 400mm in width;
3. All three sculptures shall be contained within garden beds as per condition 4.5 l. of the Town's Residential Verges Policy – "Rocks and earth mounding are permitted in garden beds."
4. Subject to the acceptance of point one to three, consult with and gain the support of residents and owners to properties directly adjacent for the sculpture size and their location on the verge;
5. The location of the sculpture shall have regard to the location of underground services (the responsibility of the owner) or infrastructure and street tree roots, public safety, traffic safety, security, visual amenity and any other relevant considerations; and
6. Installation works shall be to the specification and satisfaction of the Town, with the owners being responsible for all costs, including ascertaining the location of underground services or infrastructure and any necessary alteration or protection of such;
7. The owners of the sculpture shall be responsible for all maintenance and repair of the sculpture, to the satisfaction of the Town;
8. The owners shall provide indemnity to the satisfaction of the Town to protect the Council from any form of liabilities as a result of the sculpture being placed on the mentioned verge; and

9. The Town reserves the right to at any time require the sculpture to be temporarily or permanently removed due to public works affecting the verge or negative impacts associated with the sculpture, with the verge and any affected infrastructure being made-good at the cost of the owners of the sculpture.

#### **COUNCILLOR AMENDMENT**

**Moved Cr Masarei**

**Seconded Mayor Young**

Insert a new point 9 as shown below, renumber current point 9 to point 10 and add the advice note shown below:

9. The owners shall obtain from an insurance company approved by the Town of Cottesloe an insurance policy, in the names of the Town of Cottesloe and the applicants, indemnifying the Town of Cottesloe against any claim for damages that may arise in, or out of, the construction, maintenance or use of the sculptures.

Advice Note:

The Town of Cottesloe has established a Task Force on Residential and Recreational Verge Uses.

1. The requirement for and the issues of indemnity and insurances are being explored with the Western Australia Local Government Association (WALGA), Local Government Insurance Scheme and the Department of Local Government.
2. Should the applicants at 9 Henry Street run into difficulties with indemnity and insurance they may need to defer their application until the issues are determined by the Task Force.

Cr Harkins suggested the amendment be incorporated into the original motion. Mayor Young, as seconder agreed to incorporate it.

#### **OCM034/2022**

#### **SUBSTANTIVE MOTION AND COUNCIL RESOLUTION**

**THAT Council APPROVES the application to install the stone sculptures on the verge adjacent to 9 Henry Road, subject to the following conditions:**

1. **The main sculpture (currently three metres tall) shall be no more than 1800mm high and no wider than 400mm in width;**
2. **The remaining two smaller sculptures shall not exceed 750mm in height and 400mm in width;**
3. **All three sculptures shall be contained within garden beds as per condition 4.5 l. of the Town's Residential Verges Policy – "Rocks and earth mounding are permitted in garden beds."**
4. **Subject to the acceptance of point one to three, consult with and gain the support of residents and owners to properties directly adjacent for the sculpture size and their location on the verge;**
5. **The location of the sculpture shall have regard to the location of underground services (the responsibility of the owner) or infrastructure and street tree roots, public safety, traffic safety, security, visual amenity and any other relevant considerations; and**

6. Installation works shall be to the specification and satisfaction of the Town, with the owners being responsible for all costs, including ascertaining the location of underground services or infrastructure and any necessary alteration or protection of such;
7. The owners of the sculpture shall be responsible for all maintenance and repair of the sculpture, to the satisfaction of the Town;
8. The owners shall provide indemnity to the satisfaction of the Town to protect the Council from any form of liabilities as a result of the sculpture being placed on the mentioned verge; and
9. The owners shall obtain from an insurance company approved by the Town of Cottesloe an insurance policy, in the names of the Town of Cottesloe and the applicants, indemnifying the Town of Cottesloe against any claim for damages that may arise in, or out of, the construction, maintenance or use of the sculptures.
10. The Town reserves the right to at any time require the sculpture to be temporarily or permanently removed due to public works affecting the verge or negative impacts associated with the sculpture, with the verge and any affected infrastructure being made-good at the cost of the owners of the sculpture.

**Advice Note:**

1. The Town of Cottesloe has established a Task Force on Residential and Recreational Verge Uses.
2. The requirement for and the issues of indemnity and insurances are being explored with the Western Australia Local Government Association (WALGA), Local Government Insurance Scheme and the Department of Local Government.
3. Should the applicants at 9 Henry Street run into difficulties with indemnity and insurance they may need to defer their application until the issues are determined by the Task Force.

**Carried 7/0**

**COUNCILLOR RATIONALE:**

1. The *Local Government (Uniform Local Provisions) Regulations 1996* regulate Private works on, over, or under public places.
2. Regulation 17 (8) specifically outlines the obligation to obtain insurance, and reads:  
*“17 (8) A person who constructs anything in accordance with permission granted under this regulation must —*  
*(a) maintain it; and*  
*(b) obtain from an insurance company approved by the local government an insurance policy, in the joint names of the local government and the person, indemnifying the local government against any claim for damages which may arise in, or out of, its construction, maintenance or use.*

*Penalty: a fine of \$5 000.*

The Town of Cottesloe has an obligation to enforce compliance with the regulations.

**EXECUTIVE SERVICES****10.1.7 PETITION - JOHN BLACK DUNE PARK**

**Directorate:** Executive Services  
**Author(s):** Matthew Scott, Chief Executive Officer  
**Authoriser(s):** Matthew Scott, Chief Executive Officer  
**File Reference:** D22/11799  
**Applicant(s):** Internal  
**Author Disclosure of Interest:** Nil

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**SUMMARY**

For Council to consider a report on the purported petition received at the February Ordinary Council Meeting (OCM) titled "Saved the John Black Dune Park from destruction prioritise nature conservation over a Skate Park".

**OFFICER RECOMMENDATION IN BRIEF**

That Council thank the Principal Petitioner for organising the petition, however advise the document cannot be considered a valid petition under the Town's Local Government (Meetings Procedure) Local Law 2021, but will be considered an expression of interest from the electors who have signed it.

**BACKGROUND**

At the February OCM a purported petition was presented containing 51 Cottesloe Residents (or Electors) and 161 signatories in total (attached). The purported petition has various requests to Council, which could be summarised requesting Council to revoke (rescind) the decision to locate the proposed skatepark at John Black Dune Park, find another location for the skatepark, and preserve the (natural) biodiversity of Cottesloe.

The purported petition was organised by Mrs Ellie Brooksby, of 1B Eileen Street, Cottesloe, who has been deemed the Principal Petitioner.

At the February OCM, Council resolved:

***OCM002/2022***

***THAT Council DEFERS consideration of the petition pending the Administration confirming the number of Cottesloe electors.***

The purpose of the report is for Council to consider the validity of the purported petition and determine how to deal with the request contained within.

**OFFICER COMMENT**

Petitions to Council are managed through the Town's Local Government (Meetings Procedure) Local Law 2021. Below is summary of the requirements for a valid petition:

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Requirement	Comment	Requirement Met
Be addressed to the Mayor	Addressed to the Town of Cottesloe	No
Be made by electors of the District	On a very brief review some 51 out of 161 (32%) signatories can be identified as Cottesloe Residents and therefore presumed to be Cottesloe Electors.	Yes (only 51 out of 161)
State the request on each page.	Statement/request differ however general theme maintained.	No
Contain the name, address and signature of each elector making the requests, and date each Elector signed	Some 110 non-electors included, date of signing not on every page. Email addresses used, not physical addresses.	No
Contain a summary of the reasons for the request.	Summary of reasons not provided on each page.	No
Be respectful and temperate in its language.	Language is respectful, however highly emotive with misleading and possibly inaccurate statements*	Questionable
State the name of the person to whom, and an address at which, notice to the petitioners can be given.	Mrs Ellie Brooksby, 1B Eileen Street, Cottesloe	Yes

\*Within the petition there are number of open-ended questions and misleading (and potentially inaccurate) statements, such as:

- 1) A strong suggestion the skatepark will cover the entire John Black Dune Park, which is misleading, with the proposed skatepark is proposed to occupy 5.5% (781m<sup>2</sup>) of the total Park area (14,000m<sup>2</sup>);
- 2) A suggestion that John Black Dune is mostly remnant vegetation. Remnant vegetation is defined as patches of native trees, shrubs and grasses still left. John Black Dune Park has been previously completely cleared and contains feral flora species such as Victorian Teatree (not native or remnant to Western Australia);
- 3) John Black Dune Park is “one of the last remaining habitats for the rare Purple-Back Fairy Wren...” This is misleading, as according to various online sources (ebird.org, avibase.bcs-ecoc.org, inaturalist.ala.org.au, fairywrenproject.org) the Purple-Backed Fairy Wren (*Malurus assimilis*) has a habitat range covering all of Australia, west of the Great Dividing Range, and an International Union for Conservation of Nature (IUCN) 3.1 status of “least concern” (not rare or threatened).

Given the significant noncompliance of the purported Petition it is hard to conclude that the document is a valid petition.

If the document received is not considered a valid petition, Council could consider it an expression of interest from the some 51 Electors that signed it. It should be noted that at the February OCM, Council also resolved to enter into a partnership with Cottesloe Coastcare and Perth Natural Resource Management (NRM) to develop a native revegetation plan for John Black Dune Park. It is expected that this native revegetation plan will reduce some concern raised within the document.

### **ATTACHMENTS**

**10.1.7(a) Petition - Save the John Black Dune Park From Destruction [under separate cover]**

### **CONSULTATION**

Nil

### **STATUTORY IMPLICATIONS**

Nil

### **POLICY IMPLICATIONS**

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

### **STRATEGIC IMPLICATIONS**

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

Priority Area 3: Enhancing beach access and the foreshore

Major Strategy 3.6: Develop and implement an asset management plan for coastal infrastructure which seeks to promote the enjoyment of the coastline while protecting the dune environment.

### **RESOURCE IMPLICATIONS**

Nil

### **ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS**

It is believed the involvement of Cottesloe Coastcare and Perth NRM in developing a Native Revegetation Plan will improve the general amenity of John Black Dune Park.

### **VOTING REQUIREMENT**

Simple Majority

OCM035/2022

**OFFICER RECOMMENDATION AND COUNCIL RESOLUTION**

Moved Mayor Young

Seconded Cr Barrett

THAT Council:

1. THANKS Mrs Ellie Brooksby (Principal Petitioner) for organising the document received on 22 February 2022;
2. ADVISES the Principal Petitioner that the Town of Cottesloe cannot accept said document as a valid petition, however will accept it as an expression of Interest from the electors who signed it.

Carried 7/0

**10.2 RECEIPT OF MINUTES AND RECOMMENDATIONS FROM COMMITTEES****11 ELECTED MEMBERS MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN****12 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING BY:****12.1 ELECTED MEMBERS**

The Presiding Member advised she had a motion to be considered as urgent business and read out the motion.

**OCM036/2022****COUNCILLOR MOTION**

Moved Mayor Young                      Seconded Cr Sadler

That Item 12.1.1 be dealt with as urgent business.

Carried 7/0

**12.1.1 COUNCILLOR MOTION – PUBLIC SUBMISSIONS – 140 MARINE PARADE, COTTESLOE****OCM037/2022****COUNCILLOR MOTION**

Moved Mayor Young                      Seconded Cr Masarei

THAT Council REQUESTS:

That the Administration urgently WRITES to WAPC and/or the Department of Planning Lands and Heritage and/or the State Development Assessment Unit, requesting that the closing date for public submission of comments in relation to the development at 140 Marine Parade Cottesloe (Ocean Beach Hotel) be extended from 11 April 2022 to at least 9 May 2022; and

That the Administration cause prominent advertisements to be published in local media each week during the period for public comment, advising the community that the application is now open for comment, how submissions can be made and encouraging community members to engage in the consultation process. These advertisements should reference the closing date of 11 April unless the closing date is extended pursuant to paragraph 1, above.

Carried 7/0

**COUNCILLOR RATIONALE**

- i. The documentation in support of this application comprises 16 separate documents and reports, totalling over 720 pages;
- ii. Although the documentation is complex, many community members have the expertise to consider these documents closely and prepare well-informed submissions;
- iii. Allowing just 4 weeks for community members to consider the documents and prepare detailed comments is inadequate for informed consultation. This is particularly so when community members have work commitments or family/carer commitments which leave them with limited time; Meaningful consultation must allow a fair and reasonable time for this process;
- iv. The time period for the Town to provide its own comments has already been extended in acknowledgement that four weeks is insufficient time for the Town's professional staff to prepare an informed report and for Councillors to consider it sufficiently closely to inform their decision in relation to the Officer's Report;
- v. The Applicants have asked for an extension of the period for practical commencement, from the one year generally contemplated by the SDAU process, to two years. This clearly indicates that the Applicants are not in a rush to commence the project and are unlikely to be prejudiced by an additional four weeks for meaningful consultation; It is therefore entirely reasonable and appropriate that the period for public submissions be extended to at least 9 May.
- vi. Prominent advertisement in the local press will assist in raising the community's awareness of the application and how they can be engaged in the consultation process.

**12.2 OFFICERS****13 MEETING CLOSED TO PUBLIC****13.1 MATTERS FOR WHICH THE MEETING MAY BE CLOSED****13.2 PUBLIC READING OF RESOLUTIONS THAT MAY BE MADE PUBLIC****14 MEETING CLOSURE**

The Presiding Member announced the closure of the meeting at 7:47pm.