

TOWN OF COTTESLOE



FULL COUNCIL MEETING

MINUTES

**ORDINARY MEETING OF COUNCIL
HELD IN THE
COUNCIL CHAMBER, COTTESLOE CIVIC CENTRE
109 BROOME STREET, COTTESLOE
7.00 PM, MONDAY, 22 MAY, 2006**

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1 DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS

The Mayor announced the meeting opened at 7.02 pm.

2 RECORD OF ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE (PREVIOUSLY APPROVED)**Elected Members In Attendance**

Mayor Kevin Morgan
Cr Patricia Carmichael
Cr Daniel Cunningham arrived 7.10pm
Cr Jo Dawkins
Cr Arthur Furlong
Cr Peter Jeanes
Cr Bryan Miller
Cr Victor Strzina
Cr John Utting
Cr Jack Walsh
Cr Ian Woodhill

Officers in Attendance

| | |
|--------------------|------------------------------|
| Mr Stephen Tindale | Chief Executive Officer |
| Mr Graham Patrick | Manager Corporate Services |
| Mr Geoff Trigg | Manager Engineering Services |
| Mr Andrew Jackson | Manager Development Services |
| Ms Jodie Peers | Executive Assistant |

Apologies

Nil

Leave of Absence (previously approved)

Nil

3 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

4 PUBLIC QUESTION TIME

Nil

5 APPLICATIONS FOR LEAVE OF ABSENCE

Nil

6 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

Moved Cr Miller, seconded Cr Strzina

The Minutes of the Ordinary Meeting of Council held on Monday, 24 April, 2006 be confirmed.

Carried 10/0

7 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

7.1 The Local Government Advisory Board has put out for public comment a report regarding amalgamation of the western suburbs councils. The Mayor urged residents to read the report, particularly appendix 6, and input their views in the form of public submissions.

8 PUBLIC STATEMENT TIME

Dr J Salmon, 7 Federal Street, Cottesloe - Legal Expenses for Dog Attack Prosecution

Dr Salmon made a plea to councillors to have his partner's, (Mary-Anne Cook) vehicle returned to her pending the Ombudsman's report. The Ombudsman has advised that this matter could and should be investigated by his department.

Cr Cunningham arrived at 7.10pm.

Ms Y Hart, 26 Mann Street - Item 10.1.3, No. 3 Clive Road – 14 Grouped Dwellings

Ms Hart spoke on behalf of herself and the other residents of Joinery Way access in relation to the traffic management surrounding the proposed 3 Clive Road development. She provided to each Councillor some notes and a plan. Ms Hart stated that she is pleased with the consultation that has been undertaken regarding the proposed development, however Council has overlooked addressing the traffic management in laneways.

Ms Hart requested that Council consider the following recommendation:

That Council,

1. Investigate forming a cul-de-sac at the junction of 28 McNamara Way where it narrows to 3m to meet Joinery Way.
2. Require the developer to fund any costs involved with the proposed cul-de-sac formation.

Ms Hart urged Council to consider the broader implications of this development and if necessary apply an amendment to the Committee Recommendation.

Mr S Yeo, 27 Margaret Street - Item 11.1.2, Northern Dog Beach - Review of Access Hours

Mr Yeo stated that he and his family are frequent users of this beach and would like the dog beach closed. He spoke in relation to vegetation damage, faeces left on the grass and beach and there are a large number of dogs on

the beach and lots of fighting. This beach is not safe for children when dogs are there. Council should take this opportunity to cease the use of the beach as a dog beach.

Mr P Goldthorpe, 239 Broome Street - Item 11.1.2, Northern Dog Beach - Review of Access Hours

Mr Goldthorpe stated that he hopes that council will leave the beach as it is. It has been used as a dog beach for a number of years and there is no reason for change. Perhaps the beach cleaner could be used in the area. Mr Goldthorpe feels that this is not a suitable swimming beach.

Mr T Scott, 196 Marine Parade - Item 11.1.2, Northern Dog Beach - Review of Access Hours

Mr Scott stated that the dog beach should be closed. The time restriction does not work. The numbers of dogs are increasing. Mr Scott raised the issues of damage to vegetation and the smell of urine on the beach and in the vegetation. Mr Scott suggested that there shouldn't be a dog beach in a residential area when there is another dog beach close by.

Ms T Davidson, 7 Hamersley Street - Item 11.1.2, Northern Dog Beach - Review of Access Hours

Ms Davidson urged Council to keep the beach open to dogs and not to restrict the hours during the summer. This is not an appropriate place for children to swim as it is not manned by a surf life saving club.

Ms W Farmer, 4 Henry Road - Item 11.2.2, Sea View Golf Club - Safety Plan and Jarrad Street Closure

Ms Farmer stated her support for the closure due to safety reasons.

Dr I Kerr, 13 Chamberlain Street - Item 11.2.2, Sea View Golf Club - Safety Plan and Jarrad Street Closure

Dr Kerr stated his support for permanent closure, as safety is fundamental in this issue.

Mr G Sheppard, 4 Henry Road - 11.2.2, Sea View Golf Club - Safety Plan and Jarrad Street Closure

Mr Sheppard endorses the closure for safety reasons. The Council and ratepayers need to be protected against litigation in the case of an accident.

Mr P Robinson, 254 Marmion Street - Item 11.2.2, Sea View Golf Club - Safety Plan and Jarrad Street Closure

Mr Robinson spoke as President of the Sea View Golf Club. As required by the Management Plan, this Safety Plan is now presented to Council. Whilst the actions discussed within the Safety Plan are most valuable, even their cumulative effect will be insignificant when compared to the safety improvement that was delivered to our suburb by the closure of Jarrad Street to traffic.

1. The Jarrad Street issue is a safety issue. With the road open, 4,000 balls were deliberately struck across an open road each week.

2. Legal opinions from Clayton Utz, Malcolm McCusker QC and Phillips Fox each state that Council will be held at least partly liable should there be a golfing accident on Jarrad Street under the circumstances where Council has insisted on the road being open.
3. The lawyers tell us that there is no legal way for the SVGC to indemnify Council against such liability.
4. Under the new 21 year lease, as under previous leases, the public has the right to cross and recross the reserves.
5. There were no high fences around the course when golf was first played on the reserves in 1909 and the SVGC does not wish to erect fences around the course 100 years on.
6. The SVGC encourages safe use of the reserves. Local residents know that golf is played on the reserves and they are aware of the dangers.
7. Visitors to our suburb don't have this local knowledge. They see the road ahead and assume that it must be safe, oblivious to the fact that they are crossing five golf holes and that golf is being played around them. Safety measures must be taken to encourage these visitors to walk around rather than through the course. Signage at the railway station and improved signage at the Jarrad Street/Broome Street intersection would be two such measures.
8. The Jarrad Street issue ran for 5 months, from May to September, 2003. There were two very well supported periods of public consultation during that period. Road closure was supported by 76% of the 309 respondents to the first petition and road closure was supported by 73% of the 188 respondents to the second petition.
9. Whilst 1,199 Cottesloe residents signed SVGC's petition in favour of road closure just 440 residents and non-residents signed an A Class Reserves Review Group proforma letter opposing closure.
10. Of the traffic travelling between Curtin Avenue and Marine Parade each day on the various inter-connecting roads (eg North St, Eric St, Napier St, Salvado etc) Jarrad Street accounts for just 4% of the total volume.
11. When Jarrad Street was open to traffic, for every 7 vehicles entering or leaving Jarrad Street at the Stirling Highway intersection, just one vehicle travelled through the golf course along Jarrad Street. These two points belie the claim that Jarrad Street was ever used as a major connecting road between Stirling Highway and the beach. Source: figures taken from the 2001 Town of Cottesloe Traffic Management Plan.
12. I understand that Council is also considering closure of the Jarrad Street railway crossing, which would completely eliminate any argument in relation to Jarrad Street being an important connecting road between the highway and the beach.
13. When compared to the prior arrangements, Sea View was happy with the 1999 partial closure agreement. However with the benefit of hindsight we can see this was a heavily flawed solution under which the road was closed for our most experienced and accomplished golfers whilst our juniors and our visitors were left to play across the open road. The solution did not address the golfers presenting the highest risk profile.

The current road closure runs until August next year. There is no need to rush the process. The recommendation before Council this evening serves to gauge community feeling on this matter and I ask that you put the matter out to public consultation.

9 PETITIONS/DEPUTATIONS/PRESENTATIONS

Nil

Note:

The items of this meeting were dealt with in the following order:

1. Items 11.1.2 and 11.1.3.
2. Items 12. 1.3, 12.2.5, 12.2.6, 12.2.7, 12.4.1
3. Item 10.1
4. Items 11.1.1, 11.1.4, 11.1.5 and 11.1.6 enbloc
5. Items 12.1.1, 12.1.2, 12.1.4, 12.1.5, 12.1.6, 12.1.7, 12.2.1-12.2.5, 12.3.1-12.3.4 enbloc

10 REPORT OF CHIEF EXECUTIVE OFFICER

Initial discussion was held.

COUNCIL RESOLUTION

Moved Cr Cunningham, seconded Cr Furlong

That this item be deferred until after discussion of the withdrawn items of the Development Services minutes and Works & Corporate Services minutes.

Carried 9/2

10.1 COTTESLOE BEACH HOTEL – UPDATE FOR COUNCIL 22 MAY, 2006

File No: 104 Marine Parade
Authors: Mr Andrew Jackson / Mr Stephen Tindale
Author Disclosure of Interest: Nil
Report Date: 18 May 2006

INTRODUCTION

At its last meeting the Development Services Committee requested a report from the CEO on the latest legal moves regarding the Cottesloe Beach Hotel. This is that report.

BACKGROUND

On 27 February 2006 Council resolved to dispense with mediation and move towards a hearing.

On 10 April 2006 as part of that process, Council considered the revised development proposal in order to respond to the State Administrative Tribunal (SAT) and resolved to:

- Not support the revised proposal for a range of reasons.
- Reaffirm the appointment of Malcolm McCusker as Senior Counsel in the matter.

Amongst other things the meeting discussed costs, the legal outlook and representation, the preliminary issue and the Supreme Court option which remained open. This option was to seek a ruling on the preliminary issue. Council indicated that the exercise of the Supreme Court option should be explored and this has been taken up by officers and Council's legal advisers.

At the same time the SAT procedures have been progressed in terms of lodging Council's revised Statement of Facts, Issues and Contentions and preparing the expert Witness Statements for the hearing. However, the Supreme Court procedures have effectively overtaken events.

The purpose of this report is to provide an update on the legal situation and processes affecting the course of action taken on behalf of Council.

PRELIMINARY ISSUE & SUPREME COURT

Given the original refusal by Council and its willingness to contest the development proposal, the preliminary issue has always been the first line of defence. While the SAT dismissed Council's preliminary argument, Council reserved the right to appeal the preliminary issue to the Supreme Court.

Strategically, it has now become necessary to pursue that appeal right ahead of the SAT hearing for two reasons.

One is that to a large extent it may obviate the SAT hearing and the second is that unless the Supreme Court matter is heard now, the preliminary issue would become that much more difficult to appeal after a SAT hearing if the SAT were to uphold the appeal.

Practically, it has also become necessary to act on the Supreme Court option as these things cannot be held open indefinitely. In this connection the appellant's solicitors agreed that the reservation of appeal rights ought to be exercised ahead of the SAT hearing, otherwise the appellant may no longer concede to it being activated and could oppose it.

Procedurally, advancing the Supreme Court action involves obtaining an extension of time for that purpose, preparing and lodging the appeal documentation, the SAT hearing being made pending and the actual appeal hearing. Consequently the documentation and formalities for this are being attended to by the solicitors as a priority.

These steps in the Supreme Court will cause a stay of the SAT proceedings and that is also being put in train by the solicitors.

The Supreme Court case will be about a point of law rather than the planning merits of the proposal and while essentially this is a technical matter, it is of critical significance to the fate of the development proposal refused by Council.

It is anticipated that the case would not be as long as the SAT hearing. As the Supreme Court will be reviewing all the existing legal argument on the matter, time and cost will not be great relative to the costs incurred to date (and yet to be incurred) for the SAT hearing.

In terms of Council's stance and in the public interest, it is considered appropriate to exhaust the Supreme Court option with a view to defeating the development proposal. The SAT hearing would remain as a fallback option. It is felt that Council's attitude to the development proposal has hardened and that there is a general expectation that Council will use every avenue available to it.

In this respect the appeal to the Supreme Court should be correctly seen as the exercise of a fundamental right to challenge the interpretation by the SAT of Cottesloe's town planning scheme and not simply a tactic to delay or frustrate the SAT hearing. In this light the cost of Supreme Court action can be seen as money well spent.

Both Council's solicitors and senior counsel are not content with the SAT ruling on the preliminary issue (which exposed SAT to the then legal opinions and arguments) and consider that there is still a reasonable case to be answered.

Experience shows that a Supreme Court ruling is often a quite efficient and definitive way to settle a matter. A swift and clear decision will remove the uncertainties and allow a more concerted effort by Council, its staff and legal advisers.

FURTHER REVISED PROPOSAL

Earlier the question of whether the revised proposal required referral by the SAT to the Heritage Council of WA (HCWA) was identified by the Town and taken up by its solicitors.

Multiplex also took the initiative to liaise with the HCWA in an endeavour to further revise the proposal to address heritage concerns so as to render the proposal more acceptable. The changes are understood to comprise the deletion of two of the units and the reconfiguration of a bar area on the ground floor. These are to be confirmed in further revised plans to be provided to the Town in due course and would be included for the SAT hearing.

To the extent that these revisions represent greater compliance with the town planning scheme and satisfaction of HCWA requirements, they can be viewed as acceptable in principle by Council, but are insufficient to alter Council's basic position of opposing the overall proposal as excessive.

ADVICE FROM SOLICITORS

Attached is an update letter from Council's solicitors echoing the information in this report and explaining the legalities and procedural matters in more detail.

Mr Julius Skinner will attend Council for this item to assist with understanding and discussion of the approach taken.

POLICY IMPLICATIONS

The outcome of the case will influence planning policy for the beachfront.

STRATEGIC IMPLICATIONS

The outcome of the case will affect Council's town planning scheme as it relates to development on the beachfront and generally.

FINANCIAL IMPLICATIONS

The case entails substantial legal and professional costs, which are considered justified for such an important issue and in the long term interests of the operation of the Scheme and development of the beachfront.

CONCLUSION

The preliminary issue has always been a key concern and reserving the right to appeal to the Supreme Court has been considered fair in the circumstances by the parties as an established legal avenue.

Council has been co-operative, patient and pro-active in the SAT mediation, but to no avail due largely to the unwillingness of the appellant to negotiate and compromise.

The drawn-out time frame, too, is largely attributable to the appellant.

At this juncture it is considered appropriate for Council to reinvigorate its opposition to the proposal, so as not to appear worn-down or resigned to events being allowed to take their course in the SAT.

Reverting to the preliminary issue via the Supreme Court is recommended as prudent and desirable. The alternative of forfeiting the right to argue the case and relying solely on the SAT hearing to determine the matter may result in a highly undesirable outcome.

If that outcome can be avoided, then so much the better.

VOTING

Simple Majority

COUNCIL COMMENT

Mr J Skinner advised the meeting that the Supreme Court appeal will involve a hearing of likely not more than two hours. It will not require the evidence of town planning consultants engaged by Council for the purposes of the SAT hearing.

The Supreme Court appeal will only be dealing with an interpretation of Town Planning Scheme No. 2. A minimum of legal preparation is required therefore the costs are estimated to be \$10,000 or less.

The meeting then began to discuss legal opinion.

COUNCIL RESOLUTION

Moved Cr Jeanes, seconded Cr Dawkins

That this part of the meeting be closed to members of the public on the grounds that the meeting is dealing with legal advice obtained on the Cottesloe Beach Hotel development proposal.

Carried 11/0

10.1 OFFICER RECOMMENDATION & COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Walsh

That Council:

- (1) Note the update advice contained in this report.**
- (2) Endorse the continuation of action for the preliminary issue to be heard in the Supreme Court.**

Carried 6/5

The vote was recorded:

| <i>For</i> | <i>Against</i> |
|---------------|----------------|
| Mayor Morgan | Cr Cunningham |
| Cr Carmichael | Cr Dawkins |
| Cr Miller | Cr Furlong |
| Cr Strzina | Cr Jeanes |
| Cr Walsh | Cr Utting |
| Cr Woodhill | |

The meeting was reopened to members of the public.

11 DEVELOPMENT SERVICES COMMITTEE MEETING HELD ON 15 MAY 2006

Moved Mayor Morgan, seconded Cr

That items 11.1. 2 and 11.1.3 be withdrawn from en-bloc voting.

Carried 11/0

The above items were dealt with first before items 10.1.1, 10.1.4, 10.1.5 and 10.1.6 were dealt with en-bloc.

Cr Carmichael was absent from the meeting from 9.33pm to 9.36pm, during the enbloc voting.

11.1 PLANNING

11.1.1 NO 28 (LOT 760) SALVADO STREET – PROPOSED SOLID FRONT FENCE

| | |
|---------------------------------------|--|
| File No: | 28 Salvado Street |
| Author: | Mr Lance Collison |
| Attachments: | Location Plan Submission from architect Plans |
| Author Disclosure of Interest: | Nil |
| Report Date: | 19 April, 2006 |
| Senior Officer: | Mr Andrew Jackson |
| Property Owner: | J Evangelista |
| Applicant: | Sharp & Van Rhyn Architects |
| Date of Application: | 22 March, 2006 |
| Zoning: | Residential |
| Use: | P - A use that is permitted under this Scheme |
| Density: | R30 |
| Lot Area: | 332m² |
| M.R.S. Reservation: | N/A |

SUMMARY

Council is in receipt of an application for a front boundary fence.

Given the assessment that has been undertaken, the recommendation is to approve the application subject to conditions.

PROPOSAL

The proposal is to build a solid front fence being 5.4m long facing the street. Smaller solid sections of fencing to 1972mm height are proposed at right angles to the street. The proposal also includes sections of open aspect fencing facing and at right angles to the street within the front 6m setback area.

STATUTORY ENVIRONMENT

- Town of Cottesloe Town Planning Scheme No 2
- Residential Design Codes

- Town of Cottesloe Fencing Local Law

POLICY IMPLICATIONS

N/A.

HERITAGE LISTING

- | | |
|-------------------------------------|-----|
| • State Register of Heritage Places | N/A |
| • TPS No 2 | N/A |
| • Town Planning Scheme Policy No 12 | N/A |
| • Draft Heritage Strategy Report | N/A |
| • Municipal Inventory | N/A |
| • National Trust | N/A |

APPLICATION ASSESSMENT

AREAS OF NON-COMPLIANCE

Town Planning Scheme Policy/Policies

| Policy | Required | Provided |
|-------------------|-------------------|-----------------------|
| Fencing Local Law | Open aspect fence | Partially solid fence |

STRATEGIC IMPLICATIONS

N/A.

FINANCIAL IMPLICATIONS

N/A.

CONSULTATION

REFERRAL

Internal

- Building

External

N/A.

ADVERTISING OF PROPOSAL

The Application was advertised as per Town of Cottesloe Town Planning Scheme No 2.

The advertising consisted of:

- Letter to Adjoining Property Owners

Submissions

There were 2 letters sent out. No submissions were received.

BACKGROUND

A development application for a two storey residence was approved under delegated authority on 19 May 2005. The approval had a condition in regards to fencing:

- (11) *Revised plans being submitted for approval by the Manager, Development Services, showing the front boundary fence being modified to provide an "Open Aspect Fence" in accordance with Council's local law;*

The applicant has reapplied for a partially solid front boundary fence.

STAFF COMMENT

In terms of the fencing component, some of the proposed solid sections do not meet the maximum 900mm height requirement of Council's Fencing Local Law.

A centralised solid section of stone wall is proposed to be 4580mm wide by approx. 1900mm high above NGL. A proposed letterbox wall 950mm wide and 1800mm high is attached to this, so in effect the proposed solid section of wall is 5440mm total width. In addition, two proposed solid sections of 1130mm width (eastern face) and 2100mm width (western face) are connected to the 5440mm solid section facing the street. These are proposed to be 1800mm high. The combined intent of these solid sections is to create a courtyard in the front setback to a large indoor dining/living area.

The gate on the southern elevation and the brick plinth on the eastern elevation appear to be open-aspect, whilst the remainder of the front fencing almost complies with the open-aspect requirements of the Fencing Local Law. The height of the solid sections of the open-aspect fencing is at 943mm above NGL at the highest point, whereas the Fencing Local Law requires the fence not to be solid above 900mm. Also, it is unclear from the elevations provided whether the brick plinths on the southern elevation would comply with the open-aspect provisions of the Fencing Local Law.

In support of the proposal the applicant has stated that:

- The width of the solid section of fence is not great.
- The solid section of fence compliments the house design.
- Salvado Street is busy with pedestrians so privacy in the front setback is important.
- Salvado Street has a wide verge.
- The fence materials will compliment the house.

In assessing the fencing proposal it is noted that the lot is not a normal configuration, as the front and rear boundaries are longer than the two side boundaries, whereby the dwelling sits transverse to the street rather than extending down a conventional lot. Hence on the one hand the proposed solid section of fencing would afford both the occupants and neighbours a degree of privacy screening to a dwelling with a wide lot frontage and orientation to the street and an open or even exposed feel.

However, on the other hand it can be seen that the solid fencing is not essential, as the main private outdoor entertainment / activity space is provided to the rear of the dwelling; whereby open-aspect fencing to the street would seem reasonable and not detrimental to the use or enjoyment of the dwelling.

In terms of discretion the Fencing Local Law provides the following criteria as a basis for consideration of variations to the open-aspect requirement:

- a) the safe or convenient use of land;
- b) the safety or convenience of any person; and
- c) the impact of the fence on the streetscape.

This flexibility is taken to be the exception rather than the rule and to be applicable in special situations such as on busy roads, or where there is only front open space, the dwelling sits above the fence level, or the established streetscape features a built-up urban character, and so on. Clearly the subject site is really a low-key suburban location on a local access road with no major invasion of privacy or loss of safety or convenience.

It may be perceived that the proposed solid fencing would assist safety or convenience as visual and physical barrier, yet it would actually block surveillance. It is debatable whether the streetscape would be enhanced, as the neighboring property at 26 Salvado Street has a combined hedge/wall at the front boundary which is solid to a low height of only 500mm, while the neighbouring property at 21 Broome Street is a corner lot and that front fence is predominantly open and only partially solid.

Stylistically, the contemporary architectural design of the subject dwelling reflects that adjacent at 21 Broome Street, which as mentioned has a mix of open-aspect fencing with some lesser solid sections to afford privacy. So in that respect the proposed fence could be regarded as consistent with that design approach and a similar rhythm would result.

That perspective aside, this streetscape experience is not cohesive, however, as the above-described dwelling to the west has an essentially open front yard and the extensive apartments property opposite has a wide, open verge and grounds creating a park-like outlook. This, together with the wide verge to the subject property and the actually comparatively quiet / secluded nature of the street and neighbourhood, means that the street and verges are effectively "privatised" so as provide a sense of spaciousness and peace, whereby higher or solid fencing may be seen as out-of-character and not vital to privacy or security – indeed, as indicated passive surveillance is generally preferable.

On balance, given all the above factors, the proposed solid fencing is not found to be the predominant aesthetic, nor intrinsic to the visibly-permeable dwelling design. Therefore, completely open-aspect fencing is recommended as the alternative for the benefit of the overall streetscape without undue detriment to the privacy or amenity of the subject dwelling.

CONCLUSION

The planning approval granted in May 2005 for the two storey residence contained a condition requiring open-aspect fencing and there appears to be no overriding reason to now allow a departure from the Fencing Local Law.

VOTING

Simple Majority

11.1.1 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Furlong, seconded Cr Strzina

That Council:

- (1) GRANT its Approval to Commence Development for the Front Fencing at No. 28 (Lot 760) Salvado Street, Cottesloe, in accordance with the plans submitted on 22 March 2006, subject to:**
 - (a) Revised plans showing the front fencing being open-aspect in accordance with Council's Fencing Local Law to the satisfaction of the Manager Development Services being submitted at Building Licence stage.**
 - (b) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.**

Carried 10/0

11.1.2 NO 52 (PT LOT 93 & LOT 94) FORREST STREET – TWO STOREY ADDITIONS TO EXISTING RESIDENCE & BELOW-GROUND SWIMMING POOL

| | |
|---------------------------------------|--|
| File No: | 52 Forrest |
| Author: | Stacey Towne |
| Attachments: | Location Plan Plans Photographs |
| Author Disclosure of Interest: | Nil |
| Report Date: | 27 April, 2006 |
| Senior Officer: | Andrew Jackson |
| Property Owner: | D Azzopardi |
| Applicant: | Kingsley Pearce Architect |
| Date of Application: | 27 April, 2006 |
| Zoning: | Residential |
| Use: | P - A use that is permitted under this Scheme |
| Density: | R20 |
| Lot Area: | 706m² |
| M.R.S. Reservation: | N/A |

SUMMARY

An application has been received to construct a swimming pool and two storey additions at the rear of the existing residence at No. 52 Forrest Street, which is listed in Schedule 1 of Town Planning Scheme No. 2, as Category 2 in the Municipal Inventory and listed by the National Trust. No. 52 Forrest Street comprises of two lots (one being a 3.3m wide strip of land) and existing development is built over both lots. Amalgamation is recommended to rectify this historical anomaly.

The proposal involves demolition of the modern double garage behind the residence and the construction of additions to the ground floor with a second storey over. It is also proposed to replace the concrete roof tiles on the existing residence with grey "Colorbond" custom orb to match the new extension and to carry out some minor maintenance work. Any work to the original heritage residence requires planning consent in this instance.

The proposal involves relaxation of a number of Residential Design Codes standards, which either comply with Performance Criteria or can be addressed through conditions of approval.

The proposal also involves a variation to the 6m wall height requirement of Town Planning Scheme No. 2, due to difficulties involved with the slope of the land at the rear and the inability to make major alterations to the heritage residence at the front of the property. Initial plans showed variations to both wall and roof height requirements, however, the applicant has since revised the plans. Whilst the roof height now complies, the maximum wall height requirement does not.

The applicant has attempted to protect and retain most of the original dwelling with the additions being constructed behind the existing residence. Given the assessment that has been undertaken the recommendation is to approve the application with conditions.

PROPOSAL

The property is located high above the road level and vehicular access is not possible from Forrest Street. The land at No. 52 Forrest Street slopes upwards from the south (front) to the north (rear) and upwards from the west to the east at the rear of the block.

Tuck pointing on the existing residence appears to be in reasonable condition, however, timberwork to the balustrades and the freeze to the verandah is to be upgraded by replacing the rotting timber. Repainting of all external timber work including rafters, beams, windows soffit linings, columns and balustrades is to be undertaken in the construction. Verandah flooring has had rotting timber floor boards removed and replaced with new to make safe recently and this will be re-oiled during the construction period. The front boundary picket fence has been upgraded and painted in the last few years.

All rectification work is to be carried out by suitably qualified tradesmen who are experienced in the art of carpentry, with painting undertaken by registered painting contractors.

It is proposed to demolish the existing double garage and the old sleep-out section at the rear of the existing residence and construct a dining room extension, new family room, kitchen, laundry and garage on the ground level with a new sitting room, bedroom, ensuite and balcony above. A new swimming pool and alfresco area are also proposed.

The garage is to be built on the eastern boundary, adjacent to an existing garage parapet wall on the neighbouring property.

Some cut into the rear of the block is proposed to reduce the impact of the height of the addition.

A new Armour Grey "Colorbond" custom orb roof is proposed for the existing residence to match the proposed extension. The new roof will replace concrete tiles which were a more-recent development around the 1960s.

The extension is to be painted rendered brickwork of a similar hue to the existing red tuck pointed face brickwork at the front of the existing house. Cream banding to the ground and first floor will also match the existing residence. White timber window frames and white timber work will also be proposed to match. Jarrah timber floors over concrete were to be placed within the residence.

In general support of the proposal the applicant has written:

“...The design for the new additions and alterations allows for a sympathetic joining of the old and the new, with all detailing to match that of the existing residence’s structure and heritage characteristics.

Additions to category 2 listed buildings are allowed, provided they occur behind the main ridge line when viewed from the street.

Our proposal demonstrates that we have positioned the new additions behind the main rooms and ridge line of the existing residence, we therefore have minimised the disruption and maintained the existing heritage characteristics of the building.

The existing rear sleepout which houses the kitchen and TV area is to be removed; this area appears to have been added on to the original house. The area has a low raking ceiling and is poorly appointed; it has no heritage significance when compared to the high ornate ceiling, timber windows and skirtings of the remainder of the house.

The dining room is to be enlarged with the floor level raised to FFL 34.637, to match the rear of the house. The existing ceiling is to be retained.

The laundry which has been built onto the western elevations verandah outside the dining room is to be removed. As this area has been enclosed in the last decade it has no heritage significance and its removal will only enhance the original building...

...By undertaking the upgrade to this residence we are in effect preserving the building for the future years.”

STATUTORY ENVIRONMENT

- Town of Cottesloe Town Planning Scheme No 2
- Residential Design Codes

POLICY IMPLICATIONS

- Building Heights Policy No 005

HERITAGE LISTING

- | | |
|-------------------------------------|---------------------------------------|
| • State Register of Heritage Places | N/A |
| • TPS No 2 | Schedule 1 |
| • Town Planning Scheme Policy No 12 | N/A |
| • Draft Heritage Strategy Report | John Street Heritage Area - Essential |
| • Municipal Inventory | Category 2 |
| • National Trust | Listed |

APPLICATION ASSESSMENT

AREAS OF NON-COMPLIANCE

Town of Cottesloe Town Planning Scheme No 2 - Text

| Clause | Required | Provided |
|--------------------------------|--------------------------------|--------------------------------------|
| Clause 5.1.1 – Building Height | 6m max wall height (39.5m AHD) | 6.966m max wall height (40.466m AHD) |

Town Planning Scheme Policy/Policies

| Policy | Required | Provided |
|--------|----------|----------|
| N/A | N/A | N/A |

Residential Design Codes

| Design Element | Acceptable Standards | Provided | Performance Criteria Clause |
|------------------------|--|----------|-----------------------------|
| No 3 Boundary Setbacks | 1.8m from kitchen/family to eastern side boundary | 1 - 1.5m | Clause 3.3.1 – P1 |
| No 8 Privacy | 6m privacy setback from dining room to western side boundary | 4m | Clause 3.8.1-P1 |
| No 8 Privacy | 7.5m privacy setback from alfresco/ pergola to western side boundary | 0 - 1.5m | Clause 3.8.1 P1 |

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

CONSULTATION

REFERRAL

Internal

- Building
- Engineering

External

N/A.

ADVERTISING OF PROPOSAL

The Application was advertised as per Town of Cottesloe Town Planning Scheme No 2.

The advertising consisted of:

- Letter to Adjoining Property Owners

Submissions

There were 5 letters sent out. One objection has been received from the owners of the property to the rear at No. 45 John Street (Mr and Mrs Barrett).

In summary, the submission states as follows:

- *Strongly oppose any relaxation of the 6m wall height restriction as it will have a significant impact on our amenity.*
- *Our main living area currently has views to the south west of the ocean, Garden Island and the Fremantle Heads. If approved, we will view the back of the new house addition.*
- *Our house complies with the Codes and we expect Council to uphold height requirements for the new development.*
- *If any other relaxations of the Codes are proposed relating to size, height, scale and setback from the rear boundary, then we object due to the impact on amenity of our property.*
- *The impact of the proposed extension is unclear:*
 - a) The plans seem to show the house 3m higher than the existing residence. If so, this will be higher than the 3 storey residence two houses higher up the hill.*
 - b) As the house is already 10m above road height, the house would look like a skyscraper. It will also look bulky and dominating from our property and from the heritage listed house next door to our property (which will also have its views obscured).*
- *The current roof of the heritage residence is slate and we feel that the new extension should match the existing roof. If Council agrees to a "Colorbond" roof, we request the colour is such that no glare occurs*

(Please note that the above submission was received prior to the receipt of revised plans).

In response to the objection, the applicant has provided the following comments (summarised):

- *We have reduced the overall ridge height to RL42 to comply and believe that the revised drawings do not affect the amenity of the adjoining properties and the amenity of the neighbours is not unreasonably diminished.*
 - *All setbacks, scale and height when measured from the rear comply with the R Codes and do not unreasonably diminish the neighbour's amenity.*
 - *The positioning of the residence and number of storeys complies with the Codes. The topography of the site indicates a 4.66m difference from the front to the rear boundary.*
 - *The existing roof is grey concrete, not slate as suggested. The original custom orb roof was replaced in the 1950's/60's with concrete roof tiles, therefore, the existing roof has no heritage significance. The current roof has deteriorated and the new roof will be non-reflective and restore the building to its original*
-

characteristics. The amenity of the neighbour will not be affected by the proposed roof.

BACKGROUND

The property at No. 52 Forrest Street is listed in Schedule 1 of Town Planning Scheme No. 2 – Places of Natural Beauty and Historic Buildings and Objects of Historical or Scientific Interest, on the Municipal Inventory as Category 2 and classified by the National Trust.

The existing residence is brick and tile single storey with wood work verandah, constructed around 1910. A free standing double garage was built at the rear of the property in 1997, gaining access from ROW 32A.

No. 52 Forrest Street comprises of Pt Lot 93 and Lot 94 and the existing residence is built over both lots. Pt Lot 93 is a 3.3m wide strip of land which appears to have once been a laneway that was later included on the title for Lot 94.

STAFF COMMENT

Heritage Listing

The property is listed in Schedule 1 of Town Planning Scheme No. 2. Clause 6.1.1 of the Scheme states that the “Council considers that the places...in Schedule 1 should be conserved and preserved.” Clause 6.2.3 of Town Planning Scheme No. 2 allows the Council to approve development notwithstanding non-compliance with the Residential Design Codes.

It is also a Category 2 listing in the Town’s Municipal Inventory. Its significance under the Inventory is stated as “...*typical of many built in Cottesloe in the early years of the twentieth century. It is better preserved than most of its contemporaries. It has additional features of architectural interest such as the delicate timber work and the limestone footings...*”.

The Category 2 management category provides for “*maximum encouragement to the owner under the Town Planning Scheme to conserve the significance of the place. Photographically record the place prior to any major redevelopment or demolition*”.

The review of Category 2 Places in 2005 by Hocking Planning & Architecture (not yet endorsed by the Council) recommends retention of the Category 2 and Schedule 1 listings.

This review considers the house has aesthetic significance because it is a fine example of Edwardian Filigree bungalow design, carried out in timber and limestone. It has a very high level of architectural quality, authenticity and integrity in its form, materials and retention of original and characteristic detailing. The place contributes to the aesthetic values of its setting because of its elevated position on limestone pier foundations on a dramatic hilltop site at the highest point of Forrest Street in view of the ocean and golf course.

The house has historical significance because it was built for prominent solicitor JH Barsden, who also owned the neighbouring property at 48 Forrest Street upon which he later built the current house occupying that site. The owner of the place may be associated with the naming of nearby Barsden Street.

The Municipal Inventory review recommends that 52 Forrest Street be retained in Category 2 and retained in Schedule 1 of the Town Planning Scheme.

The application subject to this report proposes to retain most of the existing original portion of the residence. The alterations proposed to the existing residence include removal of the sleep out addition and replacement of the roof tiles.

The applicant has not provided a photographic record of the property as encouraged by the Inventory. This may be required by a condition of approval prior to any demolition works commencing.

The proposal adequately addresses the heritage streetscape significance of the property by generally locating additions to the rear of the property. The second storey addition will be difficult to see from the street level, due to the position of the lot which is raised high above the road. There are no significant trees on the property.

Amalgamation

Setbacks, open space calculations and the like have been assessed for this application on the basis that the property comprises of one complete land holding, rather than two separate lots. The existing residence is constructed over both Pt Lot 93 and Lot 94. Although both lots are shown on the one certificate of title, it is considered opportune to rectify the historical anomaly and amalgamate the lots as a single entity.

Boundary Setbacks

The following table shows how the building setbacks to the east side boundary vary from the Acceptable Development standards of the Residential Design Codes:

| Wall ID | Wall Name | Wall Height | Wall Length | Major Openings | Required Setback | Actual Setback |
|------------------|----------------|-------------|----------------------------|----------------|------------------|----------------------------------|
| Ground East Wall | Family/kitchen | 4m maximum | 33m (entire side of house) | Nil | 1.8m | 1m to fireplace, 1.5m to balance |

As the proposed side boundary setback does not comply with the Acceptable Development Standards, consideration under the Performance Criteria is required. Performance Criteria Clause 3.3.1 of the RDC states the following:

“Buildings set back from boundaries other than street boundaries so as to:

- *Provide adequate direct sun and ventilation to the building;*
- *Ensure adequate direct sun and ventilation being available to adjoining properties;*
- *Provide adequate direct sun to the building and appurtenant open spaces;*
- *Assist with the protection of access to direct sun for adjoining properties;*

- *Assist in ameliorating the impacts of building bulk on adjoining properties; and*
- *Assist in protecting privacy between adjoining properties.”*

The variation to the setback for the kitchen/dining wall is considered to be minor. The reduced setback does not adversely affect the neighbour's access to northern sunlight and, as no major openings are proposed on this elevation, privacy is not affected.

The kitchen/dining wall setback variation, therefore, is considered to comply with the Performance Criteria of the Codes and in the absence of any objection being received from the adjoining land owner, it is recommended that this be supported.

Privacy

A privacy setback of 6m is required from the dining room windows to the western side boundary, as the finished floor level of that room is raised more than 0.5m. The proposal shows a minimum privacy setback of 4m.

A privacy setback of 7.5m is required from portion of the alfresco area to the western side boundary as part of this area is raised more than 0.5m. The proposal shows a nil privacy setback for part of the alfresco area.

As the proposed privacy setbacks do not comply with the Acceptable Development Standards, consideration under the Performance Criteria is required. Performance Criteria Clause 3.8.1 of the RDC states the following:

“Avoid overlooking between active habitable spaces and outdoor living areas of the development site and the habitable rooms and outdoor living areas within adjoining residential properties taking into account of:

- *The positioning of windows to habitable rooms on the development site and the adjoining property;*
- *The provisions of effective screening; and*
- *The lesser need to prevent overlooking of extensive back gardens, front gardens or areas visible from the street.”*

In both instances (dining room and alfresco area), the privacy cones of vision encroach the western side boundary. There is a tennis court located at the front of the adjacent property at No. 48 Forrest Street, which is raised and fenced. A row of trees also extends along the boundary line on the neighbour's side of the property. A brick screen wall also exists on the common western side boundary.

As some screening is provided by the common boundary fence and trees on the adjoining property it is considered that any overlooking would probably be minor. The area subject to overlooking, however, is an active outdoor living area. The applicant has not demonstrated that the height of the existing fence will meet the Acceptable Development Standards required by the Codes to provide effective screening.

Although no objection has been received from the owners of the adjoining property to the west with regards to these privacy variations, it is recommended that a condition

be imposed to require revised plans showing some sort of treatment to either finished floor levels or provision of screening to ensure that privacy setbacks are provided.

Height

The centroid level of the site for the purposes of measuring height under Town Planning Scheme No. 2 was calculated at 33.5m AHD. The Scheme generally requires a 6m wall height and an 8.5m roof height for two storey development.

In relation to the proposed application, the maximum wall height requirement is 39.5m AHD and the maximum roof height requirement is 42m AHD.

The maximum roof height proposed complies with the Scheme at 42m AHD. The wall height for the proposal, however, exceeds the Scheme requirement by 0.966m and is shown at 40.466m AHD.

Initial plans for this development showed a roof height of 42.609m AHD and wall height of 40.809. The applicant has since submitted revised plans successfully reducing the roof height to comply. The revised plans also show a reduction in floor levels and subsequently wall height by approximately 0.343m.

Clause 6.2.3 of Town Planning Scheme No. 2 allows Council to grant approval to an application involving a place listed in Schedule 1, notwithstanding that the development or work involved does not comply with the Residential Design Codes or with any requirement or standard specified in the Scheme Text.

In support of the proposed wall height, the applicant has provided the following justification:

- *The revised drawings now indicate a ridge height of RL42 to comply with the council's ridge height requirements of this site. Wall heights to the rear two storey additions have been reduced from the original submission.*
- *The elevations show the complexity of the steeply sloping site rising from 3.0 metres from the front boundary to flat plateau area situated 25 metres along the side boundary and continuing for a further 15 metres to the rear. 38% of the block is located within this plateau.*
- *The wall heights have been reduced with an overall ground floor to first floor plate height of 5.829 metres for the rear additions and are well under the maximum wall height allowed in the acceptable Development Criteria in the Residential Codes.*
- *The ground floor transition height between the two ground floor levels has been reduced to 0.857 metres and follows the change in the existing ground levels between existing floor level and the bank to the rear plateau area.*
- *The floor level reduction has resulted in the new additions being overall lower than the boundary levels on the eastern, western and rear ROW within the area of the new building envelope to the rear of the site. The extent of the cutting into the site is shown on the elevations.*
- *Wall heights measured from the centre of the laneway elevation are only 5.5 metres and 4.7 metres in the centre of the eastern elevation additions. The western elevation also shows that the new additions are lower than the adjoining boundary and buildings on it.*

- *Although the first floor plate is still higher than RL 39.5 as suggested by the planning department, we believe that the wall heights as shown do not affect the amenity of the adjoining properties and that the amenity of the neighbours are not unreasonably diminished. There are no overshadowing issues as the block is oriented in a north south direction.*
- *A variation to the policy in the calculation of the wall height is therefore warranted because of this unusual land topography, the position of the existing building and the preservation of the front category 2 heritage listed residence.*
- *As there appears to be no disadvantage to the adjoining properties due to our proposed wall heights and that our overall roof ridge height complies we request that the variations to the wall heights in this case be permitted under part V of the general provisions of the Town of Cottesloe TS 2.*

It is recognised that certain difficulties exist in achieving further reductions in the second storey wall height. The existing heritage residence is located forward on the block such that the finished floor level within the dwelling is raised quite considerably at the front. Due to the heritage significance of this residence, development is somewhat restricted. As such, the two storey additions are proposed behind the existing part of the residence, however, development needs to work in with the existing floor levels within the house and the nature of the land which continues to slope upwards.

The applicant has attempted to address the height issues by revising plans and also by further cutting into the land at the rear part of the block.

It considered more important that the proposal complies with the roof height requirement of 8.5m, as it is the overall height of the building that has most significance. The additional wall height does not adversely affect adjoining properties in terms of overlooking or overshadowing.

It is noted that an objection was received regarding loss of views from the owner of the land diagonally to the rear of the subject property (also separated from the subject property by the ROW).

Obtaining and maintaining views is generally difficult to guarantee. Because views are part of the amenity enjoyed by people in certain areas, the Residential Design Codes states in the explanatory section of 3.7 – Building Height, that “...*designers should take into account the desirability of protecting views enjoyed by neighbours, and in some cases, modify the design of dwellings accordingly.*” However, while views are mentioned in this manner, there are no actual provisions to guide how views may be protected.

Clause 5.1.2 of Council's Town Planning Scheme states (amongst other things) that “...*Council shall have regard to and may impose conditions relating to... (a) the need for limitation of height or location of buildings to preserve or enhance views...*”, but again there are no criteria or performance indicators given against which to assess a proposal.

As no one can claim ownership of views the concept of sharing views has emerged whereby over time the evolution of residential development results in dwellings

capturing various views which in turn may not be lasting s further development adjacent or nearby occurs. Where a proposal essentially complies and two storey development is virtually an as-of-right form of development today as contemplated by planning controls, it is considered that a local government would be hard-pressed to refuse a proposal by virtue of view impact in the absence of some specific local-area guidelines for some special planning purpose, such as a heritage precinct or public space, etc.

In this context there is an ongoing jostling for views which planning measures such as height controls and setbacks seek to regulate for consistency and fairness – while some views are closed-off, others may be opened up with demolitions and redevelopment. On this basis, support in principle for the subject proposal is in order, on the proviso of satisfactory compliance with the normal planning parameters.

The proposed residential additions at No. 52 Forrest Street, for the most part, comply with Council's development standards. A reduction in wall height would have little effect on maintaining views currently enjoyed by the neighbour at no. 45 John Street. Any two storey development to the permitted roof height level would adversely affect the views of this neighbour in some way and 45 John Street will still enjoy considerable views from its own upper floor level with extensive windows affording outlooks in other directions. In essence, where there are panoramic views, the loss of some of that view may be perceived as more noticeable or detrimental than the loss of a small or distant view, when actually there are still generous views available.

The effect on the neighbour's views could possibly be less if the second storey addition was placed directly above the existing heritage residence, however, whilst this scenario would impinge less on the views from No. 45 John Street it would more radically affect the original fabric, character and streetscape presentation of the heritage dwelling. In fact, bringing a building forward to dominate the front of a dwelling at second storey level usually has greater impacts on views and streetscape, as this is typically the primary orientation and vantage point for dwellings and the main direction of view corridors or vistas.

Given the special circumstances involved with this site in terms of heritage and land form, it is recommended that the maximum wall height be requirement be relaxed in this instance.

CONCLUSION

The additions to the existing residence have considered the heritage significance of the building by ensuring that minimal changes have been made to the original fabric and new development is placed to the rear.

The proposal complies with most of Council's requirements with the exception of a minor variation to the ground floor setback on the eastern side, privacy variation on the western side and an excessive wall height. The setback variation meets performance criteria of the Codes and can be supported, whilst it is recommended that revised plans be submitted to address privacy matters.

Under the provisions of Clause 6.2.3 of the Scheme, Council may relax the 6m wall height requirement to approve the proposal. As the application complies with the

overall roof height requirements of the Scheme, it is considered that the over height walls will have minimal adverse effect on surrounding amenity and should be supported in this instance.

VOTING

Simple Majority

COMMITTEE COMMENT

The Committee discussed the wall height in relation to its affect on 45 John Street and the possibility of it being lowered. It was noted that the overall building height has been reduced and that it would be difficult to achieve much more of a reduction in relation to the site and existing dwelling, and it was generally agreed that the applicant is proposing extensions sympathetic to the existing heritage building.

11.1.2 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Furlong, seconded Cr Dawkins

That Council:

- (1) GRANT its Approval to Commence Development for the proposed two-storey additions to the existing residence and proposed below-ground swimming pool at No. 52 (Lot 94) Forrest Street, Cottesloe, in accordance with the revised plans submitted on 9 May 2006, subject to the conditions outlined below:**
 - (a) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.**
 - (b) The external profile of the development as shown on the approved plans not being changed whether by the addition of any service plant, fitting, fixture or otherwise, except with the written consent of Council.**

Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve, rights-of-way or adjoining properties, and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the working drawings.
 - (d) The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining or nearby neighbours following completion of the development.**
 - (e) Air conditioning plant and equipment is to be installed as far as practicable from the boundary of adjoining properties or in such a manner as to ensure that sound levels emitted from equipment shall not exceed those outlined in the Environmental Protection (Noise) Regulations 1997.**
 - (f) The finish and colour of the boundary wall facing the neighbour on the eastern side shall be to the satisfaction of the Manager Development Services.**

- (g) The applicant providing adequate storage disposal on site to contain site stormwater in accordance with the Council's Local Law.
 - (h) Revised plans being submitted for approval by the Manager Development Services showing compliance with the privacy requirements of Acceptable Development Standard 3.8.1 A1 of the Residential Design Codes for the dining room window and the alfresco area, in relation to the western side boundary.
 - (i) The applicant complying with the Town of Cottesloe Policies and Procedures for Street Trees, February 2000, where development requires the removal, replacement, protection or pruning of street trees for development.
 - (j) The swimming pool pump and filter are to be located as far as practicable from the boundary of adjoining properties or in such a manner as to ensure that environmental nuisance due to noise or vibration from mechanical equipment is satisfactorily minimised to within permissible levels outlined in the Environmental Protection (Noise) Regulations 1997.
 - (k) Wastewater or backwash water from swimming pool filtration systems shall be contained within the boundary of the property on which the swimming pool is located and disposed of into adequate soakwells.
 - (l) A soakwell system shall be installed to the satisfaction of the Environmental Health Officer, having a minimum capacity of 763 litres and located a minimum of 1.8 metres away from any building or boundary.
 - (m) Wastewater or backwash water shall not be disposed of into the Council's street drainage system or the Water Corporation sewer.
 - (n) A professionally-prepared photographic and drawn archival record of the parts of the dwelling to be demolished and redeveloped shall be submitted to the Town of Cottesloe to the satisfaction of the Manager Development Services prior to the commencement of any works.
 - (o) The restoration works to the existing fabric of this heritage-listed building as detailed in the application shall be carried out as part of the overall development approval and completed prior to occupation of the finished development.
 - (p) The two subject lots being amalgamated into one lot and a new Certificate of Title verifying this being created prior to the completion and occupation of the new development.
- (2) Advise the submitters of Council's decision.

Carried 10/1

11.1.3 NO. 3 CLIVE ROAD – 14 GROUPED DWELLINGS

| | |
|---------------------------------------|---|
| File No: | 3 Clive Road |
| Author: | Mr Lance Collison/Mr Andrew Jackson |
| Attachments: | Location Plan Plans Submission from architect (2) Submissions (6) |
| Author Disclosure of Interest: | Nil |
| Report Date: | 11 May 2006 |
| Senior Officer: | Mr Andrew Jackson |
| Property Owner: | Clive Road Pty Ltd |
| Applicant: | D4 Design |
| Date of Application: | 8 March 2006 |
| Zoning: | Residential |
| Use: | AA – a use that is not permitted unless special approval is granted by Council |
| Density: | R50 (with built limitation of R42) |
| Lot Area: | 3002m² (Lots 10 & 120) |
| M.R.S. Reservation: | N/A |

SUMMARY

- Council is in receipt of an application for fourteen two-storey grouped dwellings on the subject site.
- The proposal flows from the prior scheme amendment which zoned the site for residential use and set planning parameters for its redevelopment.
- The application has addressed these requirements and following the advertising phase plus ensuing liaison with the proponents to address certain details the application is now ready to be determined.
- Given the assessment that has been undertaken the recommendation is to approve the application subject to conditions.

STATUTORY ENVIRONMENT

- Town of Cottesloe Town Planning Scheme No. 2
- Residential Design Codes.

POLICY IMPLICATIONS

- N/A.

HERITAGE LISTING

- | | |
|--------------------------------------|-----|
| • State Register of Heritage Places | N/A |
| • TPS No. 2 | N/A |
| • Town Planning Scheme Policy No. 12 | N/A |
| • Draft Heritage Strategy Report | N/A |
| • Municipal Inventory | N/A |
| • National Trust | N/A |

APPLICATION ASSESSMENT

AREAS OF NON-COMPLIANCE

Town of Cottesloe Town Planning Scheme No. 2 Text

| Clause | Required | Provided |
|--|--|--|
| Clause 5.1.1 (c) – Building Heights | Maximum 6m wall height RL 42.4 (Unit 1) | RL 42.8 to 44 (Unit 1) W RL 42.7to 43.9 (Unit 1) N |
| | RL 42.4 (Unit 2) | RL 42.2 to 43.6 (Unit 2) W |
| | RL 41.0 (Unit 3) | RL 41.9 to 43.3 (Unit 3) N RL 42.4 to 43.2 (Unit 3) W |
| | RL 41.0 (Unit 4) | RL 41.0 to 42.5 (Unit 4) W RL 42.1 (Unit 4) S |
| | RL 42.4 (Unit 5) | RL 42.5 to 43.7 (Unit 5) N RL 42.7 to 43.4 (Unit 5) S |
| | RL 42.4 (Unit 6) | RL 42 to 43 (Unit 6) N RL 42.3 to 43 (Unit 6) S |
| | RL 42.4 (Unit 7) | RL 42 to 43 (Unit 7) N RL 42.5 (Unit 7) E RL 42.3 to 43 (Unit 6) S |
| | RL 41.0 (Unit 8) | RL 41.8 to 42.5 (Unit 8) S RL 41.7 to 42.5 (Unit 8) N |
| | RL 41.0 (Unit 9) | RL 41.6 to 42.3 (Unit 9) S RL 41.5 to 42.3 (Unit 9) N |
| | RL 41.0 (Unit 10) | RL 41.5 to 42.3 (Unit 10) N RL 41.6 to 42.3 (Unit 10) S |
| | RL 41.0 (Unit 11) | RL 41.3 to RL 42 (Unit 11)S RL 41.2 to 42 (Unit 11) N |
| | RL 41.0 (Unit 12) | RL 41.2 to 42 (Unit 12) N RL 41.3 to RL 42 (Unit 12) S |
| | RL 41.0 (Unit 13) | RL 41 to 41.8 (Unit 13) N RL 41.1 to RL 41.8 (Unit 13) S |

| | | |
|--|--|--|
| | RL 41.0 (Unit 14) | RL 41 to 41.8 (Unit 14) N RL 41.1 to RL 41.8 (Unit 14) S RL 41.3 (Unit 14) E |
| Clause 5.1.1 (c) – Building Heights | Maximum 8.5m roof height RL 43.5 (Unit 3) RL 43.5 (Unit 4) | RL 43.96 (Unit 3) RL 43.690 (Unit 4) |

Town Planning Scheme Policy/Policies

| Policy | Required | Provided |
|-------------------------------------|---------------------|--|
| Council Resolution 6m front setback | 6m setback to front | Garage of Unit 1 at 3.5m Lounge of Unit 2 at 5.2m Garage of Unit 3 at 3.5m Lounge of Unit 4 at 3.5m |

Residential Design Codes

| Design Element | Acceptable Standards | Provided | Performance Criteria Clause |
|--------------------------------|--|--|-----------------------------|
| No. 3 – Boundary Setbacks | 2.3m, Unit 7 Upper East wall | 2.02m | Clause 3.3.1 – P1 |
| No. 3 – Boundary Setbacks | 2.3m, Unit 14 Upper East wall | 1.97m | Clause 3.3.1 – P1 |
| No. 5 – Access and Car Parking | 1 visitor bay provided for every 4 dwellings | 6 bays provided, some partially located on verge | Clause 3.5.3 – P3 |
| No. 8 – Privacy | Balconies require a 7.5m cone of vision setback | 5m (Unit 5) 6m (Unit 6) 3.8m (Unit 7) | Clause 3.8.1 – P1 |
| No. 10 – Essential Services | Lockable storage area accessible from outside the dwelling | Areas under garages | Clause 3.10.3 – P3 |

STRATEGIC IMPLICATIONS

- N/A.

FINANCIAL IMPLICATIONS

- N/A.

CONSULTATION

REFERRAL

Internal

- Building

- Engineering
- Health
- Works

External

- N/A.

ADVERTISING OF PROPOSAL

- The application was advertised in accordance with the Scheme.
- The advertising consisted of letter to surrounding property owners.
- It is noted that the applicant also undertook to liaise with the neighbours by way of an at-site meeting to discuss the proposal and their concerns.
- A degree of agreement reached on a several aspects is expressed in some of the submissions as summarised below.

Submissions

- There were 59 letters sent out to notify the neighbourhood and invite feedback on the proposal.
- There were 6 submissions received, of which 6 tended to be objections in the sense that they recorded concerns but also provided constructive comments.
- Details of the submissions received are set out below.

Jim Wilshire of 18 Mann Street

- *Wants the Morton Bay Fig tree kept and has agreed to suggest additional verge trees.*
- *Would like Pencil Pines being planted between Mann Street back fence line and the kerb.*
- *The residents would also like the Morton Bay Fig tree kept adjacent to proposed Unit 7.*
- *Believes traffic is a concern.*
- *The development has support but needs fine-tuning.*

David Petersen of 14 Mann Street

- *The three Morton Bay Fig trees in McNamara Way must stay and be protected by the developer.*
- *The developer is prepared to plant trees on both the western and eastern verges of McNamara Way and to consult with residents on tree selection.*
- *The developer will look at revising the depth of the verge outside unit 3 to ensure the required 6m radius available.*

Yvonne & Warren Hart of 26 Mann Street

- *Traffic is a concern.*
 - *McNamara Way is too narrow as well as has blind spots, excessive speed and heavy pedestrian usage.*
-

- *Believes traffic movements will increase and not decrease as the developers' traffic study indicates as this traffic will occur on a 24/7 basis.*
- *Believes that a cul-de-sac at the top of McNamara Way would solve the problem.*
- *Requests a condition that construction traffic be banned from Joinery Way and Pennefather Lane.*

Bill Currie & Denise Johnston of 4 Clive Road

- *Against the variation of the side setback for the eastern upper wall.*
- *Regards overshadowing of 4 Clive Road by Unit 7 will diminish value of their property and two bedrooms and a dining room will have decreased light.*
- *Overlooking from the rear balcony is unacceptable.*
- *A screening wall to the first floor balcony of Unit 7 is required.*
- *Requests a new boundary fence between 3 & 4 Clive Road at the developers, cost to 2.5m high.*
- *Against the pedestrian thoroughfare along the boundary between Units 7 & 4 Clive Road to three of the units.*
- *Dislikes placement of transformer against shared boundary wall.*
- *Air conditioning and spa motor placement should not be on northern or eastern boundaries.*
- *Lack of consultation on traffic and parking planning in respect to Clive Road.*

Elisabeth Scott of 30 McNamara Way

- *Clive Road is barely a two-lane road and may not cope with increased traffic.*
- *Increased traffic problems in general area.*
- *Clive Road access to Stirling Highway is a dangerous intersection.*
- *Believes McNamara Way was not designed for the amount of proposed traffic.*
- *Poor visibility in the laneway.*
- *Lack of parking in laneway already.*
- *Current traffic-calming ineffective.*
- *Garages from the rear at Mann Street do not have a safe reversing distance to access McNamara Way.*
- *Permits needed to restrict visitor parking and on one side of McNamara Way.*
- *McNamara Way needs resurfacing.*

B Butler of Units 9 & 209, 14 McNamara Way

- *The Morton Bay Fig tree must not be removed.*

BACKGROUND

- *The site has been used by the Australian Government as a laboratory for the National Measurement Institute.*
- *The Institute occupies both lots and its main access is from Clive Road, whilst a driveway and visitor parking bays are located off McNamara Way and this connects through to Clive Road.*

- In December 2005 Council resolved to initiate a Scheme Amendment allowing the rezoning of the lots to Residential with a density coding of R50 and associated special requirements, including limiting the actual built density to 14 units at the equivalent of R42.
- The Scheme Amendment documentation included a concept plan as well as a detailed planning justification report including traffic management considerations.
- This underwent the usual public advertising phase leading to further consideration and adoption by Council for final approval, subject to some refinement of the special requirements to assist traffic management.
- The Scheme Amendment was granted final approval by the Minister in March 2006.
- The corresponding development application was also received in March 2006, based on the concept plan and Scheme requirements, for assessment of the detailed planning parameters and design aspects.

STAFF COMMENT / TECHNICAL ASSESSMENT

Framework for development

- The Scheme Text now incorporates provisions in Schedule 5 specifying that:
 - a) The maximum number of dwellings permitted shall be 14 (representing a built density of R42).
 - b) The dwellings shall comply with the height controls of the Scheme.
 - c) The development shall be in accordance with the concept plans numbered A01 to A05 (all Revision E) submitted with the amendment, subject to any modification in a development approval by Council.
- In setting these development parameters for the site and consideration of aspects raised in submissions Council in anticipation of the development application also resolved to:
 - a) In supporting the amendment and having regard to ongoing development in this locality and its laneway system, review and improve the traffic-calming and management measures provided.
 - b) Include in the review examination of the option to share access to this site between Clive Road and McNamara Way.
 - c) Recognises that existing trees should be retained and protected.
 - d) Examine minimisation of adverse overlooking from the development to the rear of Mann Street properties at the planning approval stage.
- These criteria have guided the applicant in refining the detailed design and officers in its assessment, as outlined immediately below and then discussed at greater length:
 - Density – the application is for 14 units consistent with the concept plan.
 - Building heights – the two-storey development satisfies the height controls of the Scheme in terms of the height measures and scope for some relatively minor variations that do not cause undue impacts.
 - Concept Plan – the original document included the following plans:
 - A01 Proposed Site Plan.
 - A02 McNamara Way, Clive Road & North Elevations.

- A03 Internal South & South Elevations.
- A04 Typical Ground & Upper Floor Plans Residences 1-4.
- A05 Units 5-14 Ground & Upper Floor Plans.

And the application includes these plus more plans as follows:

- A00 Street Elevation (McNamara Way).
 - A01 Existing Site Survey Plan.
 - A03 Typical Ground & Upper Floor Plans Residence 1-4.
 - A04 Typical Ground & Upper Floor Plans Residences 5-14.
 - A05 West Elevation (McNamara Way), North Elevation (Common Driveway).
 - A06 South Elevation, South Elevation (Clive Road), East Elevation (Clive Road), Section of Gradient Driveway.
 - A07 Cone of Vision Diagram, section of vertical cone of vision
 - A08 Overshadowing diagram.
 - A08 (Revision A) Sections of Elevations with Basement Storages.
 - (Revision A) Proposed Site Plan.
 - A11 Proposed Site Plan (with storage floor areas)
- In this context the following aspects are presented from the technical assessment of the proposal, having regard to the requirements of the Scheme, elements of the R-Codes, comments made in submissions and liaison between officers and the applicants on the detailed design.

Vehicle access

- In response to the general concerns raised about overall traffic management in the wider laneway locality, the design and access arrangements of the development will now spread vehicle access and circulation.
- The garages of Units 2 and 5 to 7 will use the middle common driveway and will have a choice of access via Clive Road and McNamara Way, with controlled gates preventing access from through traffic.
- Units 4 and 8 to 14 will have garages off the southern common driveway with a controlled gate providing access via McNamara Way.
- Units 1 and 3 have their own driveways with direct access via McNamara Way.
- This is an improvement over the initial concept plan and will assist to share traffic choices and movements for the convenience and benefit of both the new occupants and all users of the local road / laneway network.
- Internal to the development, all the proposed driveway widths, gradients, and turning circles meet the applicable standards.

Clive Road vehicle circulation

- Concern has been raised regarding the new access to Clive Road.
- The present arrangement with the National Measurement Institute allows vehicles which discover a no-through-road at the end of Clive Road to either drive through the Institute's grounds to McNamara Way during business hours or turn around to exit.
- The development will mean that these options are no longer available.

- While the current pavement width of Clive Road is 5.2m and combined with the verge the width is 10m, there is no turning circle at the end.
- As it is difficult to undertake a three-point turn here the solution from discussion between officers and applicant is to provide two reversing bays allowing the full 10m width to facilitate exiting via Clive Road; at the applicant's cost as a contribution associated with the development.
- It is noted that the dead-end design of Clive Road is an existing situation not the cause or responsibility of the proposal, however, in utilising Clive Road for access the applicant is willing to assist in a solution for the benefit of the development and neighbourhood.

McNamara Way vehicle circulation

- The width of the McNamara Way pavement at present adjacent the site is approximately 4m wide, with a narrow "verge" of 60cm between the western kerb and rear fences of the Mann Street properties.
- The depth of the proposed visitor parking bays is 6m (5.5m is the minimum standard).
- In considering neighbour concerns about vehicle circulation officers and the applicants have agreed that McNamara Way could be widened to 4.8m outside the development site, which would allow two cars to pass at a slow speed, which will facilitate traffic circulation for the development as well as ease traffic circulation in the laneways; at the applicant's cost as a contribution associated with the development.

Pedestrian access

- Pedestrian access is available through pedestrian gates adjacent to the automatic vehicle gates.
- Units 11 to 14 can access Clive Road directly from their courtyards, while Units 1 to 4 have frontages to McNamara Way.
- All units can enter or exit the site by foot from either McNamara Way or Clive Road.
- No new pedestrian footpaths are proposed outside of the development.
- This arrangement is practical and acceptable.

Parking

- Each dwelling has two car bays on site for residents on in compliance with the R-Codes.
- Regarding visitor bays the Acceptable Development provisions of the R-Codes state:

On-site parking spaces provided in accordance with the following:

ii. Grouped Dwellings

- *Two spaces per dwelling; and*
 - *At least one space provided for the exclusive use of each dwelling and where two spaces are so allocated they may be in tandem; or*
 - *In addition, visitors' spaces at the rate of one space for each four dwellings, or part thereof, in excess of four dwellings served by a common access.*
-

- Whilst the Performance Criteria are:

Adequate car parking provided on-site in accordance with projected need related to:

- *The type, number and size of dwellings.*
 - *The availability of on-street and other offsite parking.*
 - *The location of the proposed development in relation to public transport and other facilities.*
- Six visitor bays are proposed to the McNamara Way frontage while three already exist there for the general public to use.
 - The R-Codes requirement is one visitor bay for every four dwellings so hence only four bays are required.
 - While these are usually required on site it is discretionary that they are to be located partially or wholly on the verge area to the property and lane – visitor bays 1 to 4 are partially on the verge while bays 5 and 6 are wholly on verge to Clive Road.
 - Effectively therefore sufficient and surplus visitor bays are provided at the applicant's cost and this provision of freely-accessible visitor bays is found in the lane and National Measurement Institute presently with parking located in the verge.
 - As an operational improvement these proposed visitor bays have a greater setback to McNamara Way than many of those existing.
 - The provision and location of the proposed visitor bays reflects the concept plan.
 - In terms of management of the visitor bays it is recommended that Council and the applicant come to a liability and maintenance agreement as part of any planning approval; or subject to further arrangements the applicant has indicated a willingness to cede that land outside the development to Council to become part of McNamara Lane and fully public-land for visitor parking and verge treatments.

Site levels

- There is an existing slope on the land from the north-west downwards to the south-east.
- The difference in level between these two corners is almost 4m, which is quite significant.
- The site has been modified over time with the development of the National Measurement Institute buildings and grounds.
- The development application is generally sympathetic to the existing levels.
- The dwellings are stepped-down in accordance with the NGL of the site.
- When comparing spot-levels provided on the site survey with levels shown on the development application the proposed cut and fill can be seen to be less than 500mm, which is compliant with Element 6 - Site Works of the R-Codes.

Building height

- Importantly, the overall building (roof) height standard of the Scheme is satisfied by the amended plans received which show a slight reduction.
-

- While some of the wall heights seek minor relaxation under the Scheme these are considered acceptable within the development and to not cause impacts of significance.
- The wall heights were taken from NGL at the centre of the site on each lot as the existing built-over site survey could not provide enough spot levels to give a NGL for each unit, which can be seen as penalizing some of the units by assigning them a slightly higher wall height, whereby their effective height may be less and the variation of no real consequence.
- Units 5 to 14 have skillion roofs and since this design is not discerned in the Scheme the R-Codes standard of a 7m wall height has been utilised which allows a median to be used in the calculation.
- Most of the walls for Units 5 to 14 adhere to this and those he walls which depart due to the design actually appear less bulky than a conventional pitched roof and do not cause amenity impacts.
- On the basis of the discretion within the Scheme, the achievement through revised plans of the basic height-of-building (roof ridge) limit of 8.5m, and the insignificant nature of the wall height variations, this design solution is assessed as supportable.

Setbacks

- The following side setback variations are proposed:

| Wall ID | Wall Name | Wall Height | Wall Length | Major Openings | Required Setback | Actual Setback |
|-----------------|------------------|--------------------|--------------------|-----------------------|-------------------------|-----------------------|
| Upper East wall | Unit 7/all | 6.6m | 18m | no | 2.3m | 2.02m |
| Upper East wall | Unit 14/all | 6.6m | 18m | no | 2.3m | 1.97m |

- They are required to be assessed under the Performance Criteria of the R-Codes which are:

Buildings set back from boundaries other than street boundaries so as to:

- *Provide adequate direct sun and ventilation to the building;*
 - *Ensure adequate direct sun and ventilation being available to adjoining properties;*
 - *Provide adequate direct sun to the building an appurtenant open spaces;*
 - *Assist in ameliorating the impacts of building bulk on adjoining properties; and*
 - *•Assist in protecting privacy between adjoining properties.*
- The eastern upper wall of Unit 7 has a 2.02m setback, which will still provide adequate sun and ventilation to the building and (while it reduces the amount) direct sun to the adjoining property. The wall also assists privacy between adjoining properties as there are no major openings. It is considered that this variation satisfies the above Performance Criteria.
 - Similarly, the eastern upper wall of Unit 14 has a 1.97m setback, which will perform satisfactorily in the same manner.
 - In terms of street setbacks the McNamara Way frontage if taken as a primary street (although the site has a Clive Road address) complies with the average 4m

under the R-Codes at R50, and if taken as secondary street 1m setback would apply.

- It should be noted that Council's resolution in favour of a 6m setback for R20 areas is not applicable here.
- Moreover, from a streetscape point of view the building envelope of the proposed units is in line with the neighboring property at 28 McNamara Way to provide a cohesive built form.

Streetscape, front fencing & trees

- Facing McNamara Way are four of the 14 grouped dwellings.
- Habitable rooms and two courtyards address the street.
- Similarly habitable areas of Units 12, 13 and 14 address Clive Road.
- This orientation and outlook provide surveillance and a social relationship to the street in fulfillment of the R-Codes objectives.
- Also, open-aspect fencing is proposed for Units 12, 13 and 14 to Clive Road and along the frontage of the units to McNamara Way, in satisfaction of the Fencing Local Law.
- Unfortunately for practical and construction reasons the established Morton Bay Fig tree in the north-eastern corner of the site needs to be removed.
- In terms of landscaping new semi-mature trees are to be planted in the verge of McNamara Way.
- The applicant appreciates the need to retain the Morton Bay Fig tree on the verge of McNamara Way and this will be reinforced by a condition.
- These measures go towards the resolution by Council to address the situation relating to trees.

Storage areas

- Ordinarily the R-Codes require that storage areas satisfy the following:

A3.1 An enclosed, lockable storage area, constructed in a design and material matching the dwelling, accessible from outside the dwelling, with a minimum dimension of 1.5m with an internal area of at least 4sqm, for each Grouped or Multiple Dwelling.

P3 Provision made for external storage, rubbish collection/storage areas, and clothes-drying areas that is:

- *adequate for the needs of residents; and*
 - *without detriment to the amenity of the locality.*
- The proposed storage areas are to be located in the basements with internal access, which in this case is considered acceptable as the size of the storage areas is much larger than required and considered to be more than adequate.
 - This is an advance over the concept plan which did not show the detail of any designated storage areas at that stage, and as limited space is available at ground level to incorporate sufficient storage rooms.
 - The proposal also meets the requirements for bin storage areas screened from the street by fencing and a gate.
-

Privacy

- Some of the privacy (cone of vision) setbacks of the proposed units vary from the Acceptable Development standards of the R-Codes.
- These variations are required to be assessed under the Performance Criteria of Clause 3.8.1 (P1) of the R-Codes, which are:

Avoid direct overlooking between active habitable spaces and outdoor living areas of the development site and the habitable rooms and outdoor living areas within adjoining residential properties taking account of:

- *the positioning of windows to habitable rooms on the development site and the adjoining property;*
- *the provision of effective screening; and*
- *the lesser need to prevent overlooking of extensive back gardens, front gardens or areas visible from the street.*

| Room | Required | Provided |
|----------------|-----------------|-----------------|
| Balcony Unit 5 | 7.5m | 5m |
| Balcony Unit 6 | 7.5m | 6m |
| Balcony Unit 7 | 7.5m | 2.02 - 3.8m |

- The proposal seeks a variation for the balconies of Units 5 & 6.
- In each case this does not comply with the Performance Criteria as overlooking is possible into the neighbouring property.
- Although the cone of vision only just encroaches the boundary and the neighbours did not object a condition requiring screening is recommended.
- The proposal seeks a variation for the balcony of Unit 7.
- This unit is located on the corner and there is a larger portion of viewable area into the neighbouring properties – this does not comply with the Performance Criteria as it is possible the balcony can overlook habitable rooms.
- On the eastern elevation it appears the balcony has a screen wall less than the 1.65m required minimum height and the overlooking/cone of vision indicated on Plan A07 appears to be drawn incorrectly in not looking directly east from the balcony.
- Again, conditioning is recommended for effective screening to prevent overlooking onto 4 Clive Road to the east as well as to the north.
- There was also concern expressed by some residents that their properties in Mann Street would be overlooked, however, the lane and setbacks meet the Acceptable Development Provisions of the R-Codes such that the proposed development is deemed to comply and screening is not required in this respect – in other words, there is more than adequate separation distance whereby the proposal is deemed to comply and does not need to provide privacy measures.
- Note, however, that as previously reported the types of rooms and smaller windows upstairs to the units are of lesser overlooking capacity and that the applicants have designed this way as they do not want the privacy of the units to be affected.
- While ultimately therefore it would be up to Mann Street property owners to address privacy from within their own sites, the applicant has agreed to

consider tree planting to create a screening effect and sense of privacy – a condition refers in this respect.

- In summary, some screening is required to satisfy normal requirements, which the applicant has indicated a willingness to attend to, while the applicant is also prepared to consider supplementary but not required vegetative screening in relation to the properties to the opposite side of the lane.

Overshadowing

- The overshadowing to the neighbouring property at 14 McNamara Way is 124sqm from a lot of 4135sqm.
- This represents only 2.9% of the adjacent site and is well within the Acceptable Development Provisions of the R-Codes.

Open space

- The R-Codes require a minimum of 45% open space for grouped dwellings coded R50.
- The proposal easily complies as 1479sqm of the 3002sqm site or 49.3% is open space.

| <i>Unit or Feature</i> | <i>Built Area sqm</i> | <i>Cumulative Built Area sqm</i> |
|-------------------------|-----------------------|----------------------------------|
| 1&3 | 117.52 | 235.04 |
| 2&4 | 119.65 | 239.30 |
| 5-14 | 100.06 | 1000.60 |
| Transformer | 18.24 | 18.24 |
| Bins / Metres | 30 | 30.00 |
| <i>Total Built Area</i> | | <i>1523.18</i> |
| <i>Total Open Space</i> | | <i>1478.82</i> |

- Also, each individual unit has the required percentage of open space.

Outdoor living areas

- Each of the fourteen units has a private courtyard and the dwellings fully-comply with the Acceptable Development provisions of the RCodes in this respect.

Water Corporation sewer

- A Water Corporation sewer runs through the middle of the site and is a constraint to the design and development.
- There will be no buildings over the sewer.

Boundary fencing

- The application proposes a new boundary fence between 3 and 4 Clive Road to address that interface and provide amenity to that neighbour.
- This 2.5m high fence would provide the neighbour of 4 Clive Road with some additional privacy and limit noise from the Western Power transformer to be relocated within the development site as requested.
- While taller than normal such fencing treatment is appropriate in this instance and it is fair that it be provided by the applicant as a contribution towards residential amenity.

Amalgamation of lots

- The amalgamation of the subject Lots 10 & 120 is required to consolidate the development site.
- The applicant has suggested an agreement or suitable arrangement so that the individual strata unit titles will not be issued until the amalgamation is completed.
- A deed of agreement/caveat is considered excessive as amalgamation would occur in any case to enable creation of the new unit titles; hence this is covered by a condition of approval which will allow sufficient time for the amalgamation to be completed during the construction phase.

CONCLUSION

- The principle of the subject land being redeveloped for residential use has been established through the proper rezoning process.
- This was facilitated by a quite detailed concept plan as a basis for future development, which helped to identify aspects of concern to the local community for further consideration and refinement by the applicant and Council.
- As a result parameters were set in the Scheme to limit the built density and guide the form and function of the development, and the parameters were subsequently modified in response to concerns raised about traffic movements to ensure the spreading of access arrangements for the new dwellings, amongst other considerations.
- The medium density development is consistent with planning for the locality and the removal of a non-residential use is consistent with ensuring residential amenity.
- The development application is essentially in accordance with the special scheme requirements, while ongoing consultation has achieved additional information and agreed modifications towards greater compliance and the management of impacts, whereby only a few special and a number of standard conditions are necessary.

- The outcome of the two advertising periods and the ongoing liaison with the applicant to address the planning and development requirements has resulted in an improved proposal with a relatively high degree of compliance and comparatively few variations for a multi-unit medium density residential development. This process has helped to narrow down the objections and a degree of agreement has been reached between some neighbours and the applicant about how best to address concerns.
- Overall, as a typical two-storey style of development the proposal is to deliver an outcome that is effectively integrated into the site and surrounds so as to be basically compatible with the pattern and character of residential development in the locality.
- Through the initial concept planning, then detailed planning, including ongoing consultation with the neighbours and officers, a comprehensive design has been arrived at which would be difficult to consider as overdevelopment of the site (indeed the number of dwelling is deliberately lower than the density coding), is fundamentally a conventional grouped dwelling type of development, and is largely compliant with all major and minor planning requirements with only marginal variations.
- It is therefore assessed that the application is in order for conditional approval.

VOTING

Simple Majority

COMMITTEE COMMENT

The Committee discussed the roof/wall heights in relation to the Scheme controls, R-Codes, layout of the development and context of the medium density zoning in the locality. There general concern about traffic was acknowledged although the relatively modest number of dwellings and access improvements were also noted. The tree retention was also clarified. The Manager Development Services advised that the proposed development is two units less than would normally be allowed and that the developer has had meetings with neighbours and officers to discuss and resolve various details, as evidenced by the absence of objections now being made.

COUNCIL COMMENT

Cr Walsh stated that having received the information from Ms Hart that he would be happy to move her recommendation that a cul-de-sac be formed.

The Manager Development Services will take on board Ms Hart's input regarding a cul-de-sac and will discuss this further with the Manager Development Services in relation to a traffic management proposal for the area.

OFFICER & COMMITTEE RECOMMENDATION

That Council:

- (1) GRANT its Approval to Commence Development for the Development Application for 14 Grouped Dwellings at No. 3 (Lots 10 & 120) Clive Road, Cottesloe, in accordance with the plans dated 24 March 2006 (excluding Plan A02) and 7 April 2006 and the further revised plans dated 4 May 2006, subject to the following conditions:

- (a) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 – Construction Sites.
- (b) The external profile of the development as shown on the approved plans not being changed whether by the addition of any service plant, fitting, fixture or otherwise, except with the written consent of Council.
- (c) Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve, rights-of-way or adjoining properties, and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the working drawings.
- (d) The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining or nearby neighbours following completion of the development.
- (e) Air conditioning plant and equipment is to be installed as far as practicable from the boundary of adjoining properties or in such a manner as to ensure that sound levels emitted from equipment shall not exceed those outlined in the Environmental Protection (Noise) Regulations 1997.
- (f) The applicant applying to the Town of Cottesloe for approval to construct all crossovers in accordance with Council specifications, to the satisfaction of the Manager Engineering Services or an authorised officer.
- (g) The existing redundant crossovers in McNamara Way being removed, and the verge, kerb and all surfaces being made good at the applicant's expense to the satisfaction of the Manager Engineering Services.
- (h) Revised plans being submitted to the satisfaction of the Manager Development Services showing the balcony from Unit 7 being modified to prevent overlooking into the adjoining property by:
 - (i) having solid screening to a height of at least 1650mm above the finished floor level to the eastern elevation; and
 - (ii) providing screening on the northern and eastern side boundaries of Unit 7 for the sections encroached by the 7.5m cone of vision from the balcony.
- (i) Revised plans being submitted to the satisfaction of the Manager Development Services showing the provision of additional screening for Units 5 and 6 on their northern boundaries to prevent overlooking from their balconies for the sections encroached by the cone of vision.
- (j) The existing Morton Bay Fig tree located in the McNamara Way verge must not be removed, pruned or damaged and shall be protected as part of the construction management plan.
- (k) The lots being amalgamated prior to the issue of a clearance for occupation of the completed development, with evidence being submitted to the satisfaction of the Manager Development Services.

- (l) The site being levelled and stabilised to the satisfaction of the Manager Development Services.
- (m) No major openings are permitted on the eastern elevations of Units 7 or 14 without a separate application to and approval by Council.
- (n) A reversing bay in Clive Road being constructed to the satisfaction of the Manager Engineering Services at the applicant's cost.
- (o) Council shall bear no responsibility or liability for any visitor parking bay or part thereof located on private property.
- (p) McNamara Way being widened to the satisfaction of the Manager Engineering Services at the applicant's cost. Alternatively the applicant may wish to liaise with Council to cede the visitor parking or verge land areas that are privately-owned so as to become part of the lane.
- (q) A new boundary fence shall be built between No. 3 and No. 4 Clive Road to a height of 2.5m surrounding the transformer site at the applicant's cost.
- (r) All proposed visitor parking bays shall be constructed to the satisfaction of the Manager Engineering Services at the applicant's cost.
- (s) A comprehensive Construction Management Plan shall be required when applying for a Building Licence and this shall include that all demolition and construction traffic shall travel via Clive Road and the southern end of McNamara Way only so as to minimise impacts on surrounding properties and the laneway and road network.
- (t) The applicant giving consideration to ameliorating any sense of overlooking from Units 5, 6 and 7 to properties to the north by planting of Pencil Pines or a similar tree species within the Clive Road property.

AMENDMENT

Moved Cr Walsh, seconded Mayor Morgan

That (p) be changed to read as follows:

- (p) McNamara Way being widened to the satisfaction of the Manager Engineering Services at the applicant's cost.

That a new clause be added to read as follows:

- (u) The applicant is to cede to the Council the visitor parking and verge land areas that are privately-owned so as to become part of the lane.

Carried 11/0

11.1.3 COUNCIL RESOLUTION

Moved Cr Furlong, seconded Cr Jeanes

That Council:

- (1) GRANT its Approval to Commence Development for the Development Application for 14 Grouped Dwellings at No. 3 (Lots 10 & 120) Clive Road, Cottesloe, in accordance with the plans dated 24 March 2006 (excluding**

Plan A02) and 7 April 2006 and the further revised plans dated 4 May 2006, subject to the following conditions:

- (a) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 – Construction Sites.
- (b) The external profile of the development as shown on the approved plans not being changed whether by the addition of any service plant, fitting, fixture or otherwise, except with the written consent of Council.
- (c) Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve, rights-of-way or adjoining properties, and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the working drawings.
- (d) The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining or nearby neighbours following completion of the development.
- (e) Air conditioning plant and equipment is to be installed as far as practicable from the boundary of adjoining properties or in such a manner as to ensure that sound levels emitted from equipment shall not exceed those outlined in the Environmental Protection (Noise) Regulations 1997.
- (f) The applicant applying to the Town of Cottesloe for approval to construct all crossovers in accordance with Council specifications, to the satisfaction of the Manager Engineering Services or an authorised officer.
- (g) The existing redundant crossovers in McNamara Way being removed, and the verge, kerb and all surfaces being made good at the applicant's expense to the satisfaction of the Manager Engineering Services.
- (h) Revised plans being submitted to the satisfaction of the Manager Development Services showing the balcony from Unit 7 being modified to prevent overlooking into the adjoining property by:
 - (i) having solid screening to a height of at least 1650mm above the finished floor level to the eastern elevation; and
 - (ii) providing screening on the northern and eastern side boundaries of Unit 7 for the sections encroached by the 7.5m cone of vision from the balcony.
- (i) Revised plans being submitted to the satisfaction of the Manager Development Services showing the provision of additional screening for Units 5 and 6 on their northern boundaries to prevent overlooking from their balconies for the sections encroached by the cone of vision.

- (j) The existing Morton Bay Fig tree located in the McNamara Way verge must not be removed, pruned or damaged and shall be protected as part of the construction management plan.
- (k) The lots being amalgamated prior to the issue of a clearance for occupation of the completed development, with evidence being submitted to the satisfaction of the Manager Development Services.
- (l) The site being levelled and stabilised to the satisfaction of the Manager Development Services.
- (m) No major openings are permitted on the eastern elevations of Units 7 or 14 without a separate application to and approval by Council.
- (n) A reversing bay in Clive Road being constructed to the satisfaction of the Manager Engineering Services at the applicant's cost.
- (o) Council shall bear no responsibility or liability for any visitor parking bay or part thereof located on private property.
- (p) McNamara Way being widened to the satisfaction of the Manager Engineering Services at the applicant's cost.
- (q) A new boundary fence shall be built between No. 3 and No. 4 Clive Road to a height of 2.5m surrounding the transformer site at the applicant's cost.
- (r) All proposed visitor parking bays shall be constructed to the satisfaction of the Manager Engineering Services at the applicant's cost.
- (s) A comprehensive Construction Management Plan shall be required when applying for a Building Licence and this shall include that all demolition and construction traffic shall travel via Clive Road and the southern end of McNamara Way only so as to minimise impacts on surrounding properties and the laneway and road network.
- (t) The applicant giving consideration to ameliorating any sense of overlooking from Units 5, 6 and 7 to properties to the north by planting of Pencil Pines or a similar tree species within the Clive Road property.
- (u) The applicant is to cede to the Council the visitor parking and verge land areas that are privately-owned so as to become part of the lane.

Carried 9/2

11.1.4 COTTESLOE FORESHORE VISION – REPORT ON COMMUNITY FEEDBACK

File No: D4.14.01
Attachment(s): Foreshore Vision Master Plan
Author: Ms Delia Neglie / Mr Andrew Jackson
Author Disclosure of Interest: Nil
Report Date: 12 May 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

- Late last year Council was presented with a privately-produced master plan of a vision for the possible future development of the Cottesloe foreshore.
- Council subsequently agreed to disseminate the vision with a view to gauging the level of community support.
- This was facilitated by the Scheme Review process and the vision was advertised for the duration of January 2006.
- A total of 102 submissions were received.
- Submissions provided positive and negative general comments in almost equal number.
- Many commented on the specific components of the plan, the most critiqued aspects being the underground parking, rugby park, beach pool, jetty and traffic and parking generally.
- The vision master plan and public submissions provide Council with a valuable resource towards consideration of planning for and improvements to the beachfront public domain.
- Council may therefore wish to take advantage of this in furtherance of its responsibilities for the area.
- While the vision may be seen as suggesting a complete transformation or even imposing a grandiose image, it has been worthwhile in stimulating considerable interest and comment as a catalyst for the formulation of tangible proposals for the foreshore.

STATUTORY ENVIRONMENT

- The vision master plan is informal only with no statutory status.
- A range of statutory and administrative processes would be required to translate the various components of the concept into formally-intended proposals and to manage their implementation.
- From a town planning point of view, the Metropolitan Region Scheme covers the beach, foreshore and Marine Parade (as well as the Napier Street reserve and golf course/playing fields, while the Council's Town Planning Scheme controls the beachfront development area.
- Environmental and coastal agencies would also become involved in proposals affecting the foreshore.

POLICY IMPLICATIONS

- Similarly, the vision if acted on would influence the operation of existing policies or the creation of new ones to enable and guide land use, development and management.
- This may entail both regional and local level policies for coastal matters, coastal management plans and more specific land use planning or development control aspects

STRATEGIC IMPLICATIONS

- In terms of links between the vision and Council's strategic directions the following is identified.

FINANCIAL IMPLICATIONS

- Council's overall objectives for a beautiful place, working with the community and sustainability.
- An infrastructure goal of the Strategic Plan is to enhance streetscape (Strategy 4.2), to which the vision relates as a broad and ambitious concept.

BACKGROUND

- The overall objectives for the public domain of the Cottesloe beachfront are stated as:
 - *To encourage the use of the foreshore by improving the amenity of the area and range of facilities available there.*
 - *To use the Napier Street regional open space to more actively link the north and south beachfront nodes.*
 - *To strengthen the pedestrian focus of the foreshore.*
 - *To encourage al fresco areas for commercial uses on Marine Parade.*
 - *To encourage the innovative re-use of existing structures on the beachfront while not permitting any further built structures for commercial use west of Marine Parade.*

Scheme Review

- The Scheme Review has also focussed attention on the beachfront and foreshore areas whereby the content of the draft Scheme, Local Planning Strategy and Beachfront Policy, plus the built-form and parking studies, are likewise connected to the future of the foreshore.
- The next step of formal public advertising could have regard to the vision concept in progressing these instruments as well as shaping the vision.
- The high degree of public interest in the beachfront is anticipated to continue and consultation with the local community and groups such as SOS and the Design Advisory Panel would serve to elaborate on the potentials and attitudes in assisting Council's strategic planning and operations.

FINANCIAL IMPLICATIONS

- It is apparent that vision has major financial implications in terms of the scope and scale of works, the environmental and engineering exercises entailed, the detailed planning and phase and the project management dimension.
- While land costs would basically not arise and public-agency administrative costs could in the main be absorbed, design, approval and construction would generate considerable costs and most likely require a number of specialist consultants.
- Several State bodies and Council would have to contribute funding and resources, while there may be some opportunity for private landowner/developer contributions towards betterment of the public foreshore.

BACKGROUND

- Mr Andrew Forrest presented Council, at its meeting on 28 November 2005, with a master plan of a vision for the possible future development of the Cottesloe foreshore.
- Mr Paul Jones (an architect and also a Cottesloe resident and ratepayer) provided a 'flyover' video presentation of the vision.
- Mr Forrest outlined that this is an independent vision, matching the natural coastal landscape with the built environment.
- It is aimed at creating one of the most beautiful built seaside suburbs in the world.
- Mr Forrest encouraged a united Council and community to present the vision to the Government.
- Council in receiving the vision resolved to:
 1. *Disseminate the vision for the beachfront (in conjunction with the informal consultation process for Town Planning Scheme No. 3) with a view to gauging the level of community support for the vision; and*
 2. *Extend its appreciation and thanks to Andrew Forrest, Paul Jones and others who have contributed to the vision and who have so obviously demonstrated a genuine interest in enhancing the development of Cottesloe.*

COMMUNITY CONSULTATION

- The vision was advertised for the duration of January 2006.
- A total of 102 submissions were received.
- Submissions provided general comments regarding the vision.
- Positive and negative comments were made in almost equal number.
- Most submissions made comment on the specific components of the proposed master plan.
- A tally of the number of submissions that made comments regarding each of these components is set out in the matrix below.
- The proposals that attracted the most comment are:
 - 13. Underground parking – whilst there is agreement to this proposal, a substantial number also disagree.

- 14. Rugby Park – there is significant disagreement to this proposal - comments mainly questioned the need to move the location of the existing rugby club.
- 18. Beach Pool – whilst there is agreement to this proposal, a substantial number also disagree – comments and questions mainly regarding its viability and location.
- 41. Jetty – whilst there is significant disagreement to this proposal, a number also agree with the proposal.
- General traffic and car parking issues were raised.

| MASTER PLAN COMPONENTS | POSITIVE COMMENTS | NEGATIVE COMMENTS | OTHER COMMENTS |
|---|-------------------------------|---|---------------------|
| Protected Dunal System | | | |
| 1. Grant Marine Park | II | I | IIII |
| 2. Grant Marine Park Picnic Area | I | II | I |
| 3. Dunal System – Grant St | I | | II |
| 4. Grant St Beach Access | IIII | IIII I | I |
| Eric St Beachside Plaza | | | |
| 5. Blue Duck Café | II | | |
| 6. Eric St Beachside Plaza | IIII | IIII | I |
| 7. Proposed Development Eric St | III | IIII III | |
| 8. Family Friendly Plaza Beach Zone | IIII | II | |
| 9. Ocean Beach Hotel | | | |
| Passive Recreation Dune Park | | | |
| 10. Multiple Use Cycle Corridor | I | | III |
| 11. Tennis Club | | | |
| 12. Sports Facility | | IIII IIII | |
| 13. Underground Car Park Facility | IIII IIII IIII IIII IIII | IIII IIII | IIII IIII |
| 14. Rugby Park | III | IIII IIII IIII IIII IIII IIII IIII IIII | IIII IIII IIII I |
| 15. John Black Dune Park | | IIII IIII | III |
| 16. Viewing Gallery | IIII | IIII | II |
| 17. Cottesloe Beach Park | IIII | I | II |
| 18. Cottesloe Beach Pool | IIII IIII IIII IIII IIII IIII | IIII IIII IIII II | IIII IIII IIII IIII |
| Cottesloe Promenade | | | |
| 19. Cottesloe Civic Centre | | | I |
| 20. de Bernales Walk | | | |
| 21. Spanish Steps | IIII | III | III |
| 22. Cottesloe Beaches Café; 23. Surf Shop / retail; 24. Newsagency / Deli; 25. Blue Waters Café; 26. Cottesloe Beach Hotel; 27. Seapines Holiday Chalets; 28. La Tropicana Cafe | | | |
| 29. Napier St Beach Access | I | II | |
| 30. Cottesloe Promenade - removal of beachfront car park | IIII II | | IIII IIII I |
| 31. Grass Terraces & Play Space | IIII II | IIII IIII | II |
| 32. Performance Space / Lookout | I | IIII IIII | I |
| 33. Indiana Teahouse | | | |
| 34. Beachside Recreation | I | IIII | I |
| 35. Forrest St Beach Access | I | IIII | |
| Environmental Buffer | | | |
| 36. Street Parking | IIII | I | I |
| 37. Grass Terraces | III | II | |
| 38. Cottesloe Surf Lifesaving Club | | I | III |
| 39. Dunal Conservation Zone | III | I | IIII |

| MASTER PLAN COMPONENTS | POSITIVE COMMENTS | NEGATIVE COMMENTS | OTHER COMMENTS |
|--|-------------------|-------------------|----------------|
| 40. Cottesloe Groyne | I | | |
| 41. Cottesloe Jetty | I | | |
| - Kiosk | I | I | |
| Unique Dunal Conservation Zone | | | |
| 42. Transition Buffer | I | | I |
| 43. Grass Parkland | | | |
| 44. Public Car Park | | | |
| 45. Multiple Use Cycle Corridor | I | | |
| 46. Dunal Observation Deck | I | I | |
| Other | | | |
| Beach access | I | | |
| Dune environment | I | I | |
| General environmental impact | I | | |
| Recreational facilities / green spaces / shade trees | | | |
| Traffic | I | | |
| Car parking | | | I |
| Change rooms / facilities | | | |
| Golf Course | | I | |
| Encroachment of Marine Parade | | | I |
| Commercial uses in front of car park | | | |
| Commercial uses | | | |
| Amenity | | | I |
| Financing | | | |
| General / Other | I | | |
| No change – dislike all | | | |

OFFICER COMMENT

- It is observed that the handful of proposals which attracted most comment probably diverted attention from the vision as a whole.
- Despite this, some common general sentiments between the submissions are the need to:
 - protect the dune environment;
 - control traffic and parking; and
 - maintain the coastal village atmosphere of the beachfront.
- While these are noteworthy there is also a lot more involved in ensuring a vibrant and sustainable beachfront and coastal foreshore – all land use, development, urban design, public domain, recreational and coastal management aspects need to be taken into account.
- The vision master plan and community feedback constitute very useful information as a basis for considering how the foreshore could develop.
- Council may wish to use this as a starting point for ongoing exploration of the options and means available.
- It is discerned there are two avenues Council choose between:
 - Acknowledge the vision and those who made submissions and use it as a reference in considering future improvements to the foreshore.
 - Examine the vision in more detail to determine the feasibilities and implications of the proposals with a view to formulating a Council concept plan.

- While Council did not initiate the vision and has no obligation to pursue the plan, it is an opportunity to build upon the ideas and opinions as a foundation for formulating improvements for the foreshore and beachfront area.

VOTING

Simple Majority

COMMITTEE COMMENT

Committee suggested thanking the authors of the vision. Committee also agreed with the suggestion of the Manager Development Services that the vision could be explored in more detail for advice to Council on the various options and feasibilities relating to strategic planning, works programmes, Scheme review, beachfront proposal, and so on, within a timeframe of say six months.

OFFICER RECOMMENDATION

That Council:

- (1) Note the community feedback on the vision and the appraisal outlined in this report;
- (2) Give consideration to how it might wish to utilise the vision as part of its planning for the area, involving the community and other stakeholders in exploring the merits of the various proposals, their feasibility and realisation; and
- (3) Inform the community of the preferred approach Council wishes to pursue.

11.1.4 COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Furlong, seconded Cr Strzina

That Council

- (1) Note the community feedback on the vision and the appraisal outlined in this report;**
- (2) Request staff to prepare a report, within the next six months, recommending how Council might wish to utilise the vision as part of its planning for the area, involving the community and other stakeholders in exploring the merits of the various proposals, their feasibility and realisation, including how preferred opportunities and priorities may be actioned;**
- (3) Inform the community of the preferred approach Council wishes to pursue; and**
- (4) Write to Mr Forrest and Mr Jones in appreciation of their proposal and providing them with a summary of the community feedback.**

Carried 10/0

11.1.5 ANNUAL REVIEW OF DELEGATION TO MANAGER DEVELOPMENT SERVICES & CHIEF EXECUTIVE OFFICER

File No: X4.6
Author: Mr Andrew Jackson
Author Disclosure of Interest: Nil
Report Date: 10 May 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

- To review the delegation of authority from Council to the Manager Development Services and Chief Executive Officer under clause 7.10 of Town Planning Scheme No. 2 (TPS2).
- The delegation is reviewed annually.
- It is recommended that the delegation continue with some refinements.

STATUTORY ENVIRONMENT

- Town Planning Scheme No. 2.
- Metropolitan Region Scheme.

POLICY IMPLICATIONS

- Nil.

STRATEGIC IMPLICATIONS

- Nil.

FINANCIAL IMPLICATIONS

- Nil.

BACKGROUND

- Clause 7.10 of TPS2 provides for Council to delegate its powers under the scheme to a committee or officer/s.
- This delegation is perpetual but for practical purposes is reviewed annually as an opportunity to monitor performance and make improvements or updates for evolving requirements.
- The current delegation is reproduced below.
- For ease of reference key headings and aspects are **bolded** or underlined.
- In considering changes, for ease of reference sections shown **shaded** are identified for amendment.

SUBDIVISION AND/OR AMALGAMATION OF LOTS OF LAND

- (1) Council delegates to the Manager of Development Services and the Chief Executive Officer, the authority to recommend to the Western Australian Planning Commission those applications for subdivision and/or amalgamation for **single houses** that:
- (a) conform to the provisions and requirements of Council's Town Planning Scheme and Town Planning Scheme policies.
 - (b) conform to an application for planning consent that Council granted its approval, which involved the subdivision or amalgamation of land as part of that application.
 - (c) do not involve a building that is listed in:
 - (i) State Register of Heritage Places;
 - (ii) Schedule of Places of Natural Beauty and Historic Buildings and Objects of Historical or Scientific Interest in the Text to the Town of Cottesloe Town Planning Scheme No. 2;
 - (iii) Municipal Inventory as Category 1 and Category 2 buildings.
 - (iv) Town Planning Scheme Policy No. 12; or
 - (v) those buildings that are listed as either "Essential" or "Contributory" in the proposed Heritage Areas under the Town of Cottesloe Heritage Strategy unless the application meets the requirements of (1)(b) above.
- (2) Subject to (1)(c), should an application for subdivision for single house lots be received, and those lots do not comply with the **average lot size** for the applicable density coding, the Manager of Development Services is authorised to make a determination on that application provided the original site is suitable for the development of grouped dwellings.
- (3) The delegate is to consider the imposition of such **conditions** as the delegate considers necessary to:-
- (a) meet the requirements of the Town Planning Scheme, or Residential Design Codes, Town Planning Scheme Policies or conditions of planning consent where appropriate; and
 - (b) preserve the amenity of the area by addressing such matters as effective site maintenance and controls, such as screening of the site where no development is proposed for that site.

Clearance of Conditions of Subdivision of Amalgamation Approval:

- (a) The Manager of Development Services or the Chief Executive Officer are authorised to grant a clearance of the conditions of subdivision approval for any application for subdivision or amalgamation, where the Manager of Development Services or the Chief Executive Officer are satisfied that the relevant conditions of approval have been complied with.

DETERMINATION OF APPLICATIONS FOR PLANNING CONSENT

In accordance with the provisions of Clause 7.10 of the text to the Town of Cottesloe Town Planning Scheme No. 2, Council delegates to the Manager of Development Services or the Chief Executive Officer, the authority to determine those applications for planning consent detailed in Clause 1, subject to the provisions of Clause 2.

(1) Extent of Delegation

(a) *Subject to the provisions of Clause 2, the authority to determine applications for planning consent shall be **restricted to the following types of applications:***

- *development relating to single houses;*
- *additional dwelling;*
- *no more than two grouped dwellings or multiple dwellings;*
- *home occupations;*
- *minor additions and alterations to existing unit developments;*
- *minor additions and alterations to existing commercial premises; and*
- *change in land uses.*

*In the case of applications for planning consent for the **demolition** of a building, the authority to grant planning approval is **restricted to only those buildings that are **not** listed in the:***

- (b) State Register of Heritage Places;
- (c) Schedule of Places of Natural Beauty and Historic Buildings and Objects of Historical or Scientific Interest in the Text to the Town of Cottesloe Town Planning Scheme No. 2;
- (d) Municipal Inventory as Category 1 and Category 2 buildings;
- (e) Town Planning Scheme Policy No. 12; or
- (f) List of those buildings that are listed as either “Essential” or “Contributory” in the proposed Heritage Areas under the Town of Cottesloe Heritage Strategy.

*The delegation referred to above, also extends to development that occurs within a **Primary Road Reservation under the Metropolitan Region Scheme.***

CONDITIONS OF DELEGATION

- (a) *If it is a requirement of:*
 - (i) *Town Planning Scheme No. 2; or*
 - (ii) *the Residential Planning Codes; or*
 - (iii) *the Town Planning Scheme Policies; or*
 - (iv) *any other relevant statutory document.*

- (b) that the **adjoining owners, occupiers and owners** of other properties which may be affected by the proposed development, be advised in writing of the application and given the opportunity to submit comments in writing to the Council, then before exercising this delegated authority, the Manager of Development Services or the Chief Executive Officer, must be satisfied that when such a requirement exists, the required notices were served.

Power to Grant Planning Approval

- (a) The Manager, Development Services or the Chief Executive Officer has delegated authority to determine those Residential applications for Approval to Commence Development where:
- (i) the development meets the Acceptable Standards in the Residential Design Codes;
 - (ii) the Manager, Development Services is satisfied that the development meets the Performance Criteria for Design Elements 2-6 and 8-10;
 - (iii) the development meets the Acceptable Standards of Part 4.1 – Special purpose Dwellings;
 - (iv) the development meets the requirements of the existing Town Planning Scheme Text and Policies; and
 - (v) **submissions received** on the development proposal:
 - (A) are determined by the Manager, Development Services to be irrelevant to the planning application or cannot be substantiated on planning grounds;
 - (B) are appropriate and can be reasonably addressed through the imposition of conditions of Planning Consent; OR
 - (C) can be resolved by the objector and the applicant in consultation with Council staff and to the satisfaction of all parties.
- (b) The Manager, Development Services or the Chief Executive Officer **does not have delegated authority** to make a determination on an application for Approval to Commence Development that:
- (i) seeks a variation to Design Element 1 – Density of the Residential Design Codes;
 - (ii) seeks approval for development forward of the 6.0m street setback line (unless the matter relates to Town Planning Scheme Policy 004 – Garages and Carports Forward of the Building Line);
 - (iii) development under Part 4.2 Mixed-Use Development provisions of the Residential Design Codes;
 - (iv) variations to the height controls under Clause 5.1.1 of the Town Planning Scheme text;

- (v) unless demolition approval has been granted through a development application and that approval is still valid, an applicant seeks to demolish a building that is listed in either the:
- (A) State Register of Heritage Places;
 - (B) Schedule of Places of Natural Beauty and Historic Buildings and Objects of Historical or Scientific Interest in the Text to the Town of Cottesloe Town Planning Scheme No. 2;
 - (C) Municipal Inventory as Category 1 and Category 2 buildings;
 - (D) Town Planning Scheme Policy No. 12; or
 - (E) those buildings that are listed as either "Essential" or "Contributory" in the proposed Heritage Areas under the Town of Cottesloe Heritage Strategy.
- (vi) that has been "**called in**", as set out in part (5) below.
- (c) Notwithstanding the requirements of parts (3)(a) and (b), where Council has previously made a determination on an application for Planning Approval and:
- (i) that **approval has expired** and a new application for planning approval has been lodged; or
 - (ii) a new application for Planning Approval has been lodged that incorporates **variations to the original approval**;
 - (iii) the Manager, Development Services or the Chief Executive Officer are authorised to deal with these application under Delegated Authority.

Power to Refuse Planning Approval

When the application does not conform to the provisions and requirements of the Council's Town Planning Scheme, Policies and/or the Residential Design Codes and no discretion to vary such control exists.

Call In Process for Applications

- (a) Before exercising their delegated powers, the relevant officer is required to provide a notice to each Councillor in writing, advising of their intention to make a determination on the application(s) for Planning Consent contained within that notice.
- (b) The notice will identify at least, the following information:
 - issue date of notice;
 - closing date for calling in of applications;
 - the address of the property,
 - the applicant;

- *description of the proposal;*
 - *whether proposal was required to be advertised,*
 - *whether there were any submissions;*
 - *Council or applicants response to the submission(s); and*
 - *the date the application was received.*
- (c) *Councillors have seven days from the date of the notice to call in any application to be dealt with by the Manager, Development Services or the Chief Executive Officer.*
- (d) *An application will be deemed to be "called in" when:*
- (i) *written notification of the call in has been received by the Planning Services Secretary; and*
 - (ii) *two Councillors have supported in writing, the call in of the application.*
- (e) *A called in application will be referred to the next appropriate meeting of the Development Services Committee for consideration.*
- (f) *The Planning Services Secretary is to confirm receipt of the calling in of any application.*
- (g) *Should one or both of the two Councillors that called in the application withdraw their support in writing, then the application is no longer "called in".*
- (h) *If one of the two Councillors withdraw their support for the calling in of the application, the staff are to inform the other councillor of the withdrawal of support.*
- (i) *The Manager, Development Services or the Chief Executive Officer are then authorised to proceed with making a determination on the application for Planning Consent.*

Development Applications for minor works requiring approval by the Western Australian Planning Commission

The Manager, Development Services is authorised under section 7.10 of the Town Planning Scheme text to provide comments to the Western Australian Planning Commission on development applications on Reserved Land that involves minor works, where the Western Australian Planning Commission is the determining authority.

STAFF COMMENT

Performance

- The purpose of the delegation is for efficiency for customers and Council.
 - It has been operating successfully for the following reasons:
 - The delegation is effective in distinguishing between minor and major matters.
 - It provides appropriate flexibility for guided discretion where performance criteria or other judgements are involved.
-

- Neighbour notification and liaison remain part to the process.
- Officers vet applications for potential delegated decisions and if in doubt consult the Manager Development Services who may decide to refer it to Development Services Committee and Council.
- The call-in procedure informs Councillors who may enquire about a proposal and if still concerned refer it to Development Services Committee and Council.
- Applicants being aware of a quicker decision under delegation may be more inclined to ensure a complying proposal.
- During the past year the delegation has assisted the turnover of applications and reduced the workload of DSC and Council.
- Applicants and neighbours have understood the process and there has been no concerns raised against a delegated decision as the planning considerations have been satisfactorily addressed.
- Councillors have a clear procedure by which they can oversee intended delegated items and intervene if they see fit.

Amendments

- As highlighted above a few aspects have been identified for review of the delegation as follows:

1. Minor subdivision or amalgamation

- Boundary adjustments, ROW widenings, corner truncations, etc are all minor technicalities that occasionally arise in relation to residential and non-residential properties.
- Usually these are of no consequence to other parties nor of strategic significance, such that a quick reply to the WAPC is desirable to be done under this delegation.
- Although seldom, it would be worthwhile to avoid such proposals having to go to Committee and Council.

2. Draft Heritage Strategy

- Some recent proposals have indicated that given Council's current outlook to heritage management reference to the draft Heritage Strategy, which has not been taken-up by Council, need no longer be a restriction on the delegation.
- Hence the references shown shaded above could be deleted from the delegation statement.
- Should the potential heritage or character aspect of a proposal be seen as significant then the Manager Development Services or Councillors may refer the item to Committee and Council.

VOTING

Absolute Majority.

COMMITTEE COMMENT

Committee suggested that the recommendation should specify the places in delegation schedule where the refinements are to be made – this has been incorporated in the recommendation below.

11.1.5 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Furlong, seconded Cr Strzina

That Council endorses continuation of the delegation of authority from Council to the Manager Development Services and Chief Executive Officer under clause 7.10 of Town Planning Scheme No. 2, subject to the following minor amendments:

- (a) Adding to this delegation in the section on Subdivision and Amalgamation the following; being new clause (1) (d):

Minor subdivision or amalgamation proposals such as boundary adjustments, ROW widenings, corner truncations, etc, and in relation to any zoning, land use or development, which are considered to be virtual technicalities and of no consequence to other parties nor of strategic significance, may be responded to under this delegation.

- (b) Deleting from this delegation the references to those buildings that are listed as either Essential or Contributory in the proposed Heritage Areas under the Town of Cottesloe Draft Heritage Strategy; being clause (1)(c)(v) in the Subdivision/Amalgamation section, clause (1)(f) in the Planning Consent section, and clause (b)(v)(E) in the Conditions of Delegation section as indicated in the report.

Carried by Absolute Majority 10/0

11.1.6 ANNUAL REVIEW OF DELEGATION TO DEVELOPMENT SERVICES COMMITTEE

File No: X4.6
Author: Mr Andrew Jackson
Author Disclosure of Interest: Nil
Report Date: 10 May 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

- To review the delegation of authority from Council to the Development Services Committee under clause 7.10 of Town Planning Scheme No. 2 (TPS2).
- The delegation is reviewed annually.
- It is recommended that the delegation continue with some refinements.

STATUTORY ENVIRONMENT

- Town Planning Scheme No. 2.
- Metropolitan Region Scheme.

POLICY IMPLICATIONS

- Nil.

STRATEGIC IMPLICATIONS

- Nil.

FINANCIAL IMPLICATIONS

- Nil.

BACKGROUND

- Clause 7.10 of TPS2 provides for Council to delegate its powers under the scheme to a committee or officers.
- This delegation is perpetual but for practical purposes is reviewed annually as an opportunity to monitor performance and make improvements or updates for evolving requirements.
- The current delegation is reproduced below:

That Council delegates its authority to the Development Services Committee:

- (1) *Under Section 7.10 of the Town Planning Scheme text to approve those Applications for Planning Consent which the Manager of Development Services does not have the authority to determine under the No. 2 Town Planning Scheme text and only if:*
- (a) *there are no concessions but there are objections;*
 - (b) *concessions are required and no objections have been received; and*

- (c) *the Committee is satisfied that the developers and objectors can reach a compromise on development proposals.*
- (2) *To make a determination on Applications for Planning Approval on sites that are reserved or partly reserved under the Metropolitan Region Scheme as a Primary Road Reservation for the following types of development:*
- (a) *residential development; and*
- (b) *non-residential development of a minor nature.*

STAFF COMMENT

Performance

- The purpose of the delegation is for efficiency for customers and Council.
- The vast majority of delegation is dealt with by the Manager Development Services for a range of circumstances as also reported-on in this agenda.
- The two situations covered by the above delegation to the Development Services Committee also streamline the planning process for these minor matters, which arise only rarely but if they do can be handled more expeditiously.
- Should such a minor proposal become of concern then Councillors or Committee may still refer items to full Council.
- Apart from that, the Committee serves as a useful and effective filtering mechanism in considering and recommending upon proposals that are proceeding to Council for determination.

Amendments

- No amendment or additional delegation is identified for the Development Services Committee.

VOTING

Absolute Majority.

COMMITTEE COMMENT

Nil

11.1.6 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Furlong, seconded Cr Strzina

That Council endorses continuation of the current delegation of authority from Council to the Development Services Committee under clause 7.10 of Town Planning Scheme No. 2.

Carried by Absolute Majority 10/0

12 WORKS AND CORPORATE SERVICES COMMITTEE MEETING HELD ON 16 MAY 2006

Moved Cr Miller, seconded Cr Strzina

That items 12.1.5, 12.2.5 and 12.2.7 be withdrawn from en-bloc voting.

Carried 11/0

The above items were dealt with first before items 12.1.1, 12.1.2, 12.1.4, 12.1.5, 12.1.6, 12.1.7, 12.2.1-12.2.5, 12.3.1-12.3.4 dealt with en-bloc.

12.1 ADMINISTRATION**12.1.1 COTTESLOE BUSINESS ASSOCIATION - REQUEST FOR WORKS**

| | |
|---------------------------------------|---------------------------|
| File No: | X5.1 |
| Author: | Mr Stephen Tindale |
| Author Disclosure of Interest: | Nil |
| Report Date: | 11 May, 2006 |
| Senior Officer: | Mr Stephen Tindale |

SUMMARY

This report recommends that Council seek a detailed submission from the Cottesloe Business Association on its proposed plans for signage in the town centre.

STATUTORY ENVIRONMENT

Nil.

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

To be ascertained.

BACKGROUND

The President of the Cottesloe Business Association, Leo Schaper, has written to Council as follows;

At the meeting held on the 18th April 2006 the following motions were passed and the motions were to be sent to council.

Motion 1

It is moved that the Town of Cottesloe organize gateway signage as a matter of urgency to indicate the "Cottesloemain" shopping precinct. That the signage is in line

with the new logo and name as was unveiled recently by PROCOTT INCORPORATED.

Motion 2

It is moved that the Cottesloe Town Council in the budget for 2006/07 make allowance for promotional flag poles to be erected in the town for the purpose of promoting various events conducted by different bodies in the Town of Cottesloe.

I will speak to these motions at the meeting.

CONSULTATION

The CEO has met with Leo Schaper in order to gain a better understanding of what is being asked of the Council.

STAFF COMMENT

In relation to the gateway signage it was suggested by the CEO that the Town of Cottesloe might approve the erection of illuminated street name signs off Stirling Highway pointing down Jarrad Street, Napoleon Street and Station Street. Each of these signs would be on a single pole with an illuminated panel above which could carry the "Cottesloemain" sign. The panel as well as the street name would be internally illuminated at night.

The signs could carry other advertising in the event that "Cottesloemain" becomes defunct as a concept.

The second request (that of flag poles) could introduce added "liveliness" to the shopping precinct and better connect activities on the beachfront and in other places, with the town centre e.g. Sea Dragon Festival, Sculpture by the Sea, Carols by Candlelight, Australia Day, Surf Club events, school fetes.

There will no doubt, be costs involved in administering the use of the flagpoles and maintenance of same.

VOTING

Simple Majority

COMMITTEE COMMENT

Suggestion that a working group be formed, including representatives from ProCott, Council and administrative support from staff, to develop a submission to Council regarding the cost, maintenance and other details of the proposed banner poles.

OFFICER RECOMMENDATION

That Council seek a detailed submission from the Cottesloe Business Association on its proposed plans for signage in the town centre.

12.1.1 COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Strzina

That Council form a working group comprised of Cr Cunningham, Cr Dawkins and two representatives from Procott, supported by the Manager Engineering Services, to report back to Council on proposed plans for signage in the town centre, costs and cost-sharing arrangements.

Carried 11/0

12.1.2 NORTHERN DOG BEACH - REVIEW OF ACCESS HOURS

File No: C15. 2
Author: Mr Graham Pattrick
Author Disclosure of Interest: Nil
Report Date: 10 May, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

Thirty five submissions have been received from the public regarding proposed changes to the hours for the northern beach in Cottesloe. Fourteen of the submissions were in favour of extending the hours and twenty-one were against.

This report recommends that the Northern Dog Beach be closed as a dog exercise area.

The person presiding at this meeting is required to give notice of the proposed amendment of the *Town of Cottesloe Dog Local Laws* the purpose of which is to prescribe dog exercise areas and areas in which dogs are prohibited and the effect of which is to extend the control over dogs that exists under the Dog Act 1976.

STATUTORY ENVIRONMENT

Part 4 of Council's *Dog Local Laws* is reproduced in full below. The part which is of particular relevance has been shown in bold font.

PART 4 - DOGS IN PUBLIC PLACES**4.1 PLACES WHERE DOGS ARE PROHIBITED ABSOLUTELY**

- (1) Dogs are prohibited absolutely from entering or being in any of the following places –
 - (a) where so indicated by a sign, a public building;
 - (b) a theatre;
 - (c) all premises or vehicles classified as food premises or food vehicles under the *Health (Food Hygiene) Regulations 1993*;
 - (d) a public beach or Reserve not being a beach or Reserve prescribed in clause 4.2; and
 - (e) "children's playground" designated by sand/soft fall area or fence.
- (2) If a dog enters or is in a place specified in subclause (1), every person liable for the control of the dog at that time commits an offence.

Penalty: Where the dog is a dangerous dog, \$2,000; otherwise \$1,000.

4.2 PLACES WHICH ARE DOG EXERCISE AREAS

- (1) Subject to clause 4.1 and subclause (2) of this clause, for the purposes of sections 31 and 32 of the Act, the following are dog exercise areas within the Town of Cottesloe:–

Public Beaches**Southern Dog Beach**

The public beach situated to the south of the northern side of the access path to the beach groyne (located generally in a westerly direction across Marine Parade from the prolongation of Beach Street) then southerly to the southern boundary of the district.

Northern Dog Beach

The public beach situated to the north of the prolongation westerly of the southern boundary of Lot 67 of Cottesloe Suburban Lot 13 to the western boundary of the municipality and thence northerly to the northern boundary of the municipality except between the hours of 10.00 am and 4.00pm from 1st November to 31st March (both dates inclusive) during which time this public beach shall be a prohibited area.

Reserves

- (a) Reserve A 1203 known as Grant Marine Park
 - (b) Reserve 29939 known as Andrews Place
 - (c) Reserve 24793 known as Jasper Green Reserve
 - (d) Cottesloe Oval, Reserve A6271 (Cottesloe Suburban Lot 63)
 - (e) Harvey Field, Part of Reserve A1664 (Cottesloe Suburban Lot 68)
 - (f) In Curtin Avenue
 - (g) In Railway Street:
 - (i) An area bounded on the north by the prolongation westerly of the southern alignment of William Street; on the south by the prolongation westerly of the northern alignment of Eric Street; on the east by a line 3 metres to the west of and parallel to the western edge of the constructed road pavement; and on the west by the eastern boundary of the Railway Reserve.
 - (ii) An area bounded on the north by the prolongation westerly of the southern alignment of Eric Street; on the south by the prolongation westerly of the northern alignment of Burt Street; on the east by a line 3 metres to the west of and parallel to the western edge of the constructed road pavement; and on the west by the eastern boundary of the Railway Reserve.
 - (h) John Black Dune Reserve A3235 (part of Napier Street Reserve):
 - (i) An area bounded on the north by the prolongation easterly of the southern alignment of Eric Street; on the south by the prolongation easterly of northern alignment of Forrest Street; on the east by the western boundary of the Railway Reserve; and on the west by a line 3 metres to the east of, and parallel to the eastern edge of the constructed road pavement.
 - (ii) An area bounded on the north by the prolongation easterly of the southern alignment of Grant Street; on the south by the prolongation easterly of the northern alignment of Florence Street; on the east by the western boundary of the Railway Reserve; and on the west by a line 3 metres to the east of and parallel to the eastern edge of the constructed road pavement.
 - (iii) John Black Dune Reserve A3235 (part of Napier St Reserve) between the constructed Car Park adjoining the western boundary and the Tennis Courts and appurtenances constructed on the eastern boundary.
- (2) Subclause (1) does not apply to –
- (a) land which has been set apart as a children's playground;
 - (b) an area being used for sporting or other activities, as permitted by the local government, during the times of such use; or
 - (c) a car park.

Any proposal to amend a local law must observe the following requirements:

Local Government Act 1995**3.12. Procedure for making local laws**

- (1) In making a local law a local government is to follow the procedure described in this section, in the sequence in which it is described.
- (2) At a council meeting the person presiding is to give notice to the meeting of the purpose and effect of the proposed local law in the prescribed manner.

- (3) The local government is to -
- (a) give Statewide public notice stating that -
 - (i) the local government proposes to make a local law the purpose and effect of which is summarized in the notice;
 - (ii) a copy of the proposed local law may be inspected or obtained at any place specified in the notice; and
 - (iii) submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given;
 - (b) as soon as the notice is given, give a copy of the proposed local law and a copy of the notice to the Minister and, if another Minister administers the Act under which the local law is proposed to be made, to that other Minister; and
 - (c) provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.
 - (3a) A notice under subsection (3) is also to be published and exhibited as if it were a local public notice.
 - (4) After the last day for submissions, the local government is to consider any submissions made and may make the local law* as proposed or make a local law* that is not significantly different from what was proposed.

** Absolute majority required.*
 - (5) After making the local law, the local government is to publish it in the *Gazette* and give a copy of it to the Minister and, if another Minister administers the Act under which the local law is proposed to be made, to that other Minister.
 - (6) After the local law has been published in the *Gazette* the local government is to give local public notice -
 - (a) stating the title of the local law;
 - (b) summarizing the purpose and effect of the local law (specifying the day on which it comes into operation); and
 - (c) advising that copies of the local law may be inspected or obtained from the local government's office.
 - (7) The Minister may give directions to local governments requiring them to provide to the Parliament copies of local laws they have made and any explanatory or other material relating to them.
 - (8) In this section -

making- in relation to a local law, includes making a local law to amend the text of, or repeal, a local law.

3. Notice of purpose and effect of proposed local law — s. 3.12(2)

For the purpose of section 3.12, the person presiding at a council meeting is to give notice of the purpose and effect of a local law by ensuring that —

- (a) the purpose and effect of the proposed local law is included in the MINUTES for that meeting; and
- (b) the minutes of the meeting of the council include the purpose and effect of the proposed local law.

POLICY IMPLICATIONS

The Town of Cottesloe *Beach* policy makes no specific reference to the dog beaches.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

If Council ultimately decides to amend its local law then there will be some expense in advertising, receiving, considering and amending its local law. Inclusive of any preliminary consultation on the matter, direct and indirect costs in effecting a change are likely to be in the vicinity of \$4,000.

BACKGROUND

This matter was last looked at in earnest by the Council in March 1998.

At the time, Council was informed of the following in relation to submissions that were received on proposed changes to the *Dogs Local Law*.

Council received 115 letters from the public and two petitions. All correspondence related to the Northern Dog Beach and whether it should remain a dog exercise area or not, and if so whether hours of access for dog owners should be changed.

Of these 115 letter writers, 20% would like to see dogs banned from the beach altogether, the remaining 80% would like to see the status quo maintained or the present restrictions removed.

The two petitions represented two opposing views: The “pro dog lobby” gathered 411 signatures of people who would like to see the beach remain open to dogs and supported the removal of current restrictions. The opposing lobby group collected 214 signatures of people who would like to see the beach closed to dogs.

(4) **ARGUMENTS FOR AND AGAINST RETAINING NORTH BEACH AS A DOG EXERCISE AREA**

Arguments: For/Against Change

Arguments for removing restrictions at the Northern Dog Beach:

- Beach conditions can be dangerous
- Beach is not patrolled by lifesavers
- Beach is not favoured by swimmers
- Use as a fishing beach compatible with dogs
- Owners utilise 'poo bags'
- Rangers' time patrolling dog beach can be spent doing other duties
- Frequency of beach cleaning can be increased if necessary
- Dog Beach is very popular
- Seasonal restrictions are confusing.

Arguments for not allowing dogs to access the beach at all:

- Pollution from dog excreta
- Removal of dog access will encourage use by other beach users
- Cleaning costs
- There are other dog beaches
- Swimmers and other patrons have more usable beach, i.e. cleaner and safer.

Arguments for retaining status quo:

- Fair trade-off between dog owners and swimmers
- Restricted dog use reduces pollution
- Beach use is optimised.

(5) **CONCLUSION**

After reviewing the submissions from the public and submissions from various council officers, it is recommended that the status quo regarding the use of the Northern Dog Beach be maintained. Therefore, the following draft Local law relating to Dogs has been drafted in such away as to maintain that status quo.

Council's decision then was to maintain the status quo which was to allow the beach to continue to be used as a dog beach except between the hours of 9.00am to 4.00pm from 1st November to 31st March.

The hours were subsequently amended in a minor way to 10.00am to 4.00pm to "accommodate users who can't get to the beach early".

More recently and following two submissions earlier this year seeking a relaxation on the hours of access to the beach, Council resolved to seek community submissions on what, if any, changes should be made in relation to dogs accessing the Northern Dog Beach during summer.

CONSULTATION

Public submissions were sought in the Cottesloe Post on the 1st April 2006 and via the Town of Cottesloe website.

AUTHOR'S COMMENT

The public submissions can be summarised as follows:

For the extension of hours: Fourteen submissions (4 non-residents and 10 residents) generally enjoy being able to take dogs to the beach and don't want to be hindered by changing hours for different seasons.

Against the extension of hours: Twenty one submissions (19 residents and 2 organisations) generally dislike the dog faeces left by some dog owners and subsequent related odours. Some residents are scared of dogs, especially around their children. Complaints were raised regarding dogs running loose 'off-the-leash'. There were references to dog attacks and dog fights. The fact that there is already a designated dog beach in the southern part of Cottesloe was frequently mentioned as being an adequate provision for dog owners.

Seventeen of these submissions preferred to see the beach closed completely to dogs.

I also obtained feedback from the Senior Ranger who said he would rather the beach have a permanent designation either way. That is, Council make a decision to declare the beach always, or never, available to dogs. The change in times for different seasons adds to the difficulties of policing the area and confuses users of the beach.

CEO'S COMMENT

It has also been ascertained that the area of the beach which has been opened immediately to the north of the Cottesloe boundary within the City of Nedlands is less generous than previously thought. It amounts to less than 30 metres and simply allows dog owners to enter and leave the beach via the City of Nedlands' southernmost beach access way.

It facilitates the movement of dogs via existing pathways to the Swanbourne dog beach the other side of the main Swanbourne Beach.

The close proximity and existence of the Swanbourne dog beach begs the question as to why this beach should not be recommended as an alternative to Cottesloe's Northern Dog Beach.

Several of the submissions pointed to the redevelopment of the Swanbourne Beach car parking area (with public toilets and easier beach access) and the newly created area that is available as a dog exercise area to the north of Swanbourne Beach.

By closing Cottesloe's Northern Dog Beach the potential for conflicts between ordinary beach users and dog owners is eliminated.

These conflicts relate to:

- dog faeces and urination (on the lawns above and on the beach itself)
- smells from bins
- dog fights
- dog attacks
- over-friendly dogs
- dogs running across Marine Parade
- additional traffic
- thrown balls and sticks
- limited parking facilities
- difficulties in policing the local law excluding dogs at certain times

Only one submission from a person in favour of extending the hours of the Northern Dog Beach referred to the Swanbourne dog beach as an alternative. Her view was that all beaches (including the Northern Dog Beach) should be opened.

As it stands now, the North Cottesloe beach is just not long enough for a decent walk, and personally I do not enjoy the newly opened Swanbourne end, not being a nudist myself!. Besides which there are rarely any other dogs at the nudie beach in any case for mine to interact with.

Given the low response rate in terms of the number of submissions received (when compared to 1998) and the alternative provided by the new Swanbourne dog beach, I believe it would be appropriate to further test the community's views further on the complete closure of the Northern Cottesloe Dog Beach.

This can be done by flagging Councils intention to delete the relevant clause from its *Dogs Local Law* and seeking public submissions on same as required under the *Local Government Act 1995*.

VOTING

Simple Majority

OFFICER RECOMMENDATION

That the Town of Cottesloe:-

- (1) Give Statewide public notice stating that -
 - (i) the Town of Cottesloe proposes to amend the *Town of Cottesloe Dogs Local Law* by deleting the following clause from the local law -

Northern Dog Beach

The public beach situated to the north of the prolongation westerly of the southern boundary of Lot 67 of Cottesloe Suburban Lot 13 to the western boundary of the municipality and thence northerly to the northern boundary of the municipality except between the hours of 10.00 am and 4.00pm from 1st November to 31st March (both dates inclusive) during which time this public beach shall be a prohibited area.

the purpose of which is to prescribe dog exercise areas and areas in which dogs are prohibited and the effect of which is to extend the control over dogs that exists under the Dog Act 1976.

- (ii) a copy of the proposed local law may be inspected or obtained at any place specified in the notice; and
 - (iii) submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given;
- (2) As soon as the notice is given, give a copy of the proposed local law and a copy of the notice to the Minister; and
- (3) Provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.

12.1.2 COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Furlong

That the Town of Cottesloe take no action to amend the Local Law.

Carried 11/0

12.1.3 CONDITIONAL TENURE - WEARNE HOSTEL LAND

File No: C16.3
Author: Mr Stephen Tindale
Author Disclosure of Interest: Nil
Report Date: 11 May, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

The purpose of this report is to seek Councils acceptance of the proposal to transfer title of the land on which the Wearne Hostel stands into the name of the four local governments of Claremont, Cottesloe, Mosman Park and Peppermint Grove.

STATUTORY ENVIRONMENT

Nil.

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

The only impact will be the payment of the ¼ of the legal fees associated with the transfer of the land.

BACKGROUND

The proposal to have the land transferred to the four local governments has been under active consideration for several years now. The last three hurdles that had to be overcome were: -

1. The WA Heritage Council's insistence that the four local governments sign a Heritage Agreement that would commit the four local governments to restoration of the old building under the Heritage Council's terms.
2. A provision in Section 75 of the Local Administration Act relating to conditional tenure titles that allows the Minister for Lands to confiscate the land for any breach of the conditions and impose a penalty of up to the unimproved value of the land which, in this instance, is currently \$11,700,000.
3. Finalisation of the lease details for the Curtin Aged Persons Homes Inc and the four Local Governments.

CONSULTATION

The CEO has liaised with the CEOs of the Shire of Peppermint Grove, the Town of Mosman Park and the Town of Claremont on this matter.

STAFF COMMENT

Curtin Aged Persons Homes Inc (and its managing agent Churches of Christ Homes and Community Services Inc) have been negotiating with the Heritage Council of WA to complete a Heritage Agreement in relation to the old Wearne buildings. This significant change in focus to allow CAPH to be a party to the agreement takes away the onus from the four local governments.

The condition imposed on the transfer of land document that enables the Minister to resume the ownership of the land and impose a substantial financial penalty for a breach of condition that may be made by the lessee (or its managing agent) has been discussed with the Department of Planning and Infrastructure. Its officers have advised that:

There is a problem with section 75(4)(b)(i) which will be addressed in the amending Bill, which is currently under preparation. This will remove any doubt over the inequity of double dipping currently worded in the Act. This was never intended and would not be exercised by Government.

The finalisation of the lease is nearing completion. Mr Philip Wilson of Corrs Chambers Westgarth and the CEOs acting for the four local governments have met with CAPH representatives and solicitors to finalise the terms.

The finalisation of the lease is not a prerequisite to accepting tenure of the land.

VOTING

Simple Majority

12.1.3 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Strzina

That the Town of Cottesloe:

- (1) Accept the conditional tenure title to the Wearne Hostel Site land on the understanding that the advice from the Department of Planning and Infrastructure that the forfeited penalty provisions will not be exercised by the State Government is correct and accurate.**
- (2) Advise the partnering local governments of this decision.**

Carried 11/0

12.1.4 EMERGENCY SERVICES LEVY - ADMINISTRATION AGREEMENT

File No: C7.21
Author: Mr Stephen Tindale
Author Disclosure of Interest: Nil
Report Date: 10 May, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

A recommendation is made to place the Common Seal of the Town of Cottesloe on an agreement with the Fire and Emergency Services Authority (FESA) relating to the administration of the Emergency Services Levy (ESL).

STATUTORY ENVIRONMENT

The Fire and Emergency Services Act provides the following:

36ZJ. Authority may enter into agreements with local governments

- (1) The Authority may, with the approval of the Minister, enter into a written agreement with a local government that provides for the local government to pay to the Authority an amount equal to the total amount of levy payable for a levy year on all leviable land in the local government's district.*
- (2) An ESL agreement may provide for the amount that is to be paid to the Authority under the agreement to be paid by instalments.*
- (3) If an amount (including an instalment) remains unpaid after it becomes due and payable under an ESL agreement, the Authority may recover the amount, and interest on the amount at the rate prescribed by the regulations, as well as any costs of proceedings for that recovery, in a court of competent jurisdiction.*

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

The current administrative agreement with FESA allows Council to stagger the remittance of the levy to FESA in three equal quarterly instalments of 30% with a final quarterly instalment of 10% in June of each year.

This arrangement is particularly attractive in that the bulk of the levy is collected by the Town at the start of the financial year. By staggering the remittance of the levy to FESA, the Town is able to collect bank interest on accumulated funds in the interim.

BACKGROUND

As advised to Council in July of 2005 the introduction of the ESL on 1 July, 2003 saw two payment options being made available to local governments when remitting the ESL to FESA. These were:

Option A – remit the levy amounts collected to FESA on a monthly basis including any allowance for any discounts, penalties, rebates etc.

Option B – remit to FESA the total amount billed at the commencement of the financial year in four instalments as follows:

- 30% by 21st September
- 30% by 21st December
- 30% by 21st March, and
- 10% (+ or - ESL billing adjustments) by 21st June.

Under this arrangement Council retains any late payment interest and deferred ESL interest amounts paid by the Office of State Revenue in relation to eligible pensioners.

Council resolved to exercise Option B in July, 2005 for the 2005/06 financial year.

CONSULTATION

Nil.

STAFF COMMENT

Option B has worked well from an administrative and financial point of view.

The new agreement (copy attached) envisages Option B being exercised for a three year period rather than one which obviates the need to obtain Council approval each year.

VOTING

Simple Majority

12.1.4 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Strzina

That Council authorise the Mayor and CEO to sign and seal the three-year agreement with the Fire and Emergency Services Authority relating to the administration of the Emergency Services Levy.

Carried 11/0

12.1.5 DELEGATED POWERS

File No: X4.11
Author: Mr Stephen Tindale
Author Disclosure of Interest: Nil
Report Date: 10 May, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

In order to expedite decision-making within the Town of Cottesloe, a recommendation is made to delegate a number of powers and duties to the Chief Executive Officer as provided for in the Local Government Act (1995).

STATUTORY ENVIRONMENT

Sections 5.42 and 5.43 of the Local Government Act (1995), provides as follows.

5.42 Delegation of some powers and duties to CEO

- (1) *A local government may delegate to the CEO the exercise of any of its powers or the discharge of any of its duties under this Act other than those referred to in section 5.43.*
- (2) *A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.*

5.43 Limits on delegations to CEOs

A local government cannot delegate to a CEO any of the following powers or duties:

- (a) *any power or duty that requires a decision of an absolute majority or a 75% majority of the local government;*
- (b) *accepting a tender which exceeds an amount determined by the local government for the purpose of this paragraph;*
- (c) *appointing an auditor;*
- (d) *acquiring or disposing of any property valued at an amount exceeding an amount determined by the local government for the purpose of this paragraph;*
- (e) *any of the local government's powers under section 5.98, 5.99 or 5.100; **(fee, expenses and allowances)***
- (f) *borrowing money on behalf of the local government;*
- (g) *hearing or determining an objection of a kind referred to in section 9.5; **(objection to a decision)***
- (h) *any power or duty that requires the approval of the Minister or the Governor; or*
- (i) *such other powers or duties as may be prescribed. **(nil)***

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Nil.

BACKGROUND

This is a standard agenda item which is presented to Council in May of each year.

It allows the CEO to make decisions under the authority of Council without having to constantly refer business of a routine nature to Council. The CEO delegates some of the powers in turn to senior staff.

CONSULTATION

Nil.

STAFF COMMENT

As advised last year, the list of delegated powers was considerably reduced in May of 2002.

No customer service difficulties have arisen as a result of working with a reduced list.

VOTING

Absolute Majority

COUNCIL COMMENT

Cr Utting stated that the actions taken against Dr Salmon were excessive and he wouldn't like to see these actions taken against any other dog owner.

Cr Cunningham reiterated what was discussed at the Works & Corporate Services Committee meeting in relation to the appointment of a councillor who looks after dogs. Alternatively a call back system would enable all Councillors to be aware of impending prosecutions, this would take the pressure off the CEO, as all Councillors would be involved.

The Mayor wondered how the call in procedure would work and would Councillors want to be called in to every dog matter.

AMENDMENT

Moved Cr Utting, seconded Cr Cunningham

That proposed prosecutions under the Dog Act be subject to a report and call back procedure for Councillors to consider over seven days.

Lost 3/8

12.1.5 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Furlong

That Council delegate the following powers and duties to the Chief Executive Officer effective to 30 May, 2007.

DELEGATED COUNCIL FUNCTIONS

| | |
|-------------------|---|
| Section | Local Government Act 1995 |
| 3.18 | Administration and enforcement of local laws |
| 3.21 | Performance of executive functions relating to land |
| 3.24/3.25/3.26(3) | Powers to be exercised by authorised persons in relation to land |
| 3.28/3.29 | Powers of entry to land |
| 3.31/3.33/3.34 | Powers of entry to land |
| 3.36 | Opening/closing of fences |
| 3.39 | Authorising employees to impound goods |
| 3.46 | Withholding of goods |
| 3.47 | Disposal of impounded goods |
| 3.47A | Disposal of sick or injured animals |
| 3.48 | Recovery of costs associated with impounded goods |
| 3.50 | Closure of thoroughfares to certain vehicles |
| 3.50A | Closure of thoroughfares for repairs or maintenance |
| 3.57 | Inviting tenders for goods and services under contract |
| 5.2 | Ensuring that an appropriate structure exists for administration |
| 5.36 | Employment of persons other than the Chief Executive Officer |
| 6.12 | Waive, grant concessions or write off individual debts to a maximum of \$100 |
| 6.14 | Investing funds not required |
| 6.49 | Make agreements with persons regarding payment of rates |
| 6.64 | Action taken when rates are unpaid for at least 3 years |
| 6.76(4,5,6) | Dealing with objections to rates records |
| 9.10 | Appointment of authorised persons |
| Section | Local Government (Miscellaneous Provisions) Act 1960 |
| 374.(1) (b) | Plans of buildings to be approved |
| 401 | Give notice of required alterations to buildings |
| Section | Dog Act 1976 |
| 9 | Administer and enforce provisions of the Dog Act. |
| Law No. | Signs, Hoardings and Billposting Local Law |
| 28 | Revoke sign licences |
| 33 | Issue and revoke special permits for signs |
| 36A | Remove and dispose of signs unlawfully displayed |
| Law No. | Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law |
| 6.2 | Approve or refuse an application for a permit to trade, conduct a stall or outdoor eating facility. |
| Regulation | Building Regulations 1989 |
| 20 | Issue a certificate of classification |
| Regulation | Local Government (Financial Management) Regulations 1996 |
| 12(1)(a) | Power to make payments from the municipal and trust funds |

Carried by Absolute Majority 10/1

12.1.6 ORDINARY ELECTION - APPOINTMENT OF STATE ELECTORAL COMMISSIONER AS RETURNING OFFICER FOR POSTAL VOTE ELECTIONS

File No: X 6. 1
Author: Mr Graham Pattrick
Author Disclosure of Interest: Nil
Report Date: 1 May, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

A recommendation is made to declare, in accordance with section 4.20(4) of the *Local Government Act, 1995*, the Electoral Commissioner to be responsible for the conduct of the 2007 ordinary elections together with any other elections or polls which may also be required and to decide, in accordance with section 4.61(2) of the *Local Government Act, 1995* that the method of conducting the election will be as a postal election.

STATUTORY ENVIRONMENT

Local Government Act, 1995 - Sections 4.20(4) and 4.61(2).

POLICY IMPLICATIONS

The relevant sections of the *Local Government Act, 1995* read as follows:

4.20 CEO to be returning officer unless other arrangements are made

- (1) Subject to this section the CEO is the returning officer of a local government for each election.
- (2) A local government may, having first obtained the written agreement of the person concerned and the written approval of the Electoral Commissioner, appoint* a person other than the CEO to be the returning officer of the local government for an election

*** Absolute majority required**

- (3) An appointment under subsection (2) has no effect if it is made after the 80th day before election day.
- (4) A local government may, having first obtained the written agreement of the Electoral Commissioner, declare* the Electoral Commissioner to be responsible for the conduct of an election and, if such a declaration is made, the Electoral Commissioner is to appoint a person to be the returning officer of the local government for the election.

*** Special majority required**

- (5) A declaration under subsection (4) has no effect if it is made after the 80th day before election day.
- (6) A declaration made under subsection (4) on or before the 80th day before election day cannot be rescinded after that 80th day.

4.61 Choice of methods of conducting the election

- (1) The election can be conducted as a -
“postal election” which is an election at which the method of casting votes is by posting or delivering them to an electoral officer on or before election day; or
“voting in person election” which is an election at which the principal method of casting votes is by voting in person on election day but at which votes can also

- be cast in person before election day, or posted, or delivered, in accordance with regulations.
- (2) The local government may decide* to conduct the election as a postal election
* **Special majority required**
 - (3) A decision under subsection (2) has no effect if it is made after the 80th day before election day.
 - (4) A decision under subsection (2) has no effect unless it is made after a declaration is made under section 4.20(4) that the Electoral Commissioner is to be responsible for the conduct of the election or in conjunction with such a declaration.
 - (5) A decision made under subsection (2) on or before the 80th day before election day cannot be rescinded after that 80th day.
 - (6) For the purposes of this Act, the poll for an election is to be regarded as having been held on election day even though the election is conducted as a postal election.
 - (7) Unless a resolution under subsection (2) has effect, the election is to be conducted as a voting in person election.

STRATEGIC IMPLICATIONS

The following section of the Strategic Plan applies:

Governance/Broad Representation: Council acknowledges the views and interests of all components of the community and strives to achieve a balanced and proactive position on issues which affect public, commercial and private sectors.

To the extent that postal elections encourage broader participation in local government elections, postal elections can be seen as strengthening the acknowledgement that Council gives to "... the views and interest of all components of the community."

FINANCIAL IMPLICATIONS

The estimated cost for the 2007 election is \$21,000 plus GST, which has been based on the following assumptions:

- 5,320 electors;
- response rate of approximately 45%;
- 5 vacancies; and
- count to be conducted at the premises of the Town of Cottesloe.

Costs not incorporated in the estimate include:

- non-statutory advertising;
- any legal expenses other than those that are determined to be borne by the WA Electoral Commission in a Court of Disputed Returns; and
- one local government staff member to work in the polling place on election day.

BACKGROUND

To assist in budget preparations the WA Electoral Commission has provided Council with an estimate for the next scheduled ordinary elections, planned for 5 May, 2007.

The current procedure required by the *Local Government Act, 1995* is that the Electoral Commissioner's written agreement is to be obtained before the vote is taken. To facilitate the process, the letter received by Council from the Electoral Commissioner can be taken as agreement to be responsible for the conduct of the ordinary elections in 2007 for the Town of Cottesloe, together with any other elections or polls that may also be required.

CONSULTATION

Nil.

STAFF COMMENT

Given Council's previous resolutions and with a view to maximising voter turnout and minimising levels of disruption to the Town of Cottesloe it is felt that postal elections would be appropriate.

VOTING

Special Majority

12.1.6 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Strzina

That Council:

- (1) Declare, in accordance with section 4.20(4) of the *Local Government Act, 1995*, the Electoral Commissioner to be responsible for the conduct of the 2007 ordinary elections together with any other elections or polls which may also be required; and**
- (2) Decide, in accordance with section 4.61(2) of the *Local Government Act, 1995*, that the method of conducting the election will be as a postal election.**

Carried by Special Majority 11/0

12.1.7 PROPOSED BUILDING ACT

File No: D 7. 1
Author: Mr Sam Neale
Author Disclosure of Interest: Nil
Report Date: 9 May, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

On 8 November, 2005 the Department of Housing and Works released *Discussion Draft - A New Building Act for Western Australia*. A formal extension to the public consultation period for submissions has been extended to 30 June, 2006.

This report recommends that Council note the report and provide any comments to the CEO and that Council will be kept informed of the response to the Minister by the Local Government Association.

STATUTORY ENVIRONMENT

Section 374 of the *Local Government (Miscellaneous Provisions) Act, 1960*, provides that anybody wishing to construct a building must first submit plans to the local government and have them approved by that authority, prior to commencing construction. The person currently employed by the local authority to assess the plans for compliance with the relevant legislation, mainly the Building Code of Australia (BCA) is the Building Surveyor.

POLICY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

It will be mandatory for local governments to provide a risk management function to enable the issue of building approvals, licences and occupancy certificates and to enforce building standards. Local government may employ a suitably qualified building surveyor, or place the onus on the owner to engage the services of a private sector certifier. Initially, the proposal appears to introduce a significant responsibility on local government in terms of resourcing, however the revised role may well be limited to record keeping.

FINANCIAL IMPLICATIONS

There is likely to be a significant reduction in revenue from building licence application fees, which is estimated to be \$130,000 for the current financial year.

The fees for issue of building approval, building licences and certificate of occupancy will be reviewed as part of the introduction of the proposed *Building Act*. Fees are expected to be lower than at present, because the licence issuing process carried out by the Licence Issuing Authority (LIA) will no longer include the process of certifying compliance with the BCA, or inspecting construction. These separate aspects of building control will be provided on a fee for service basis, by either private sector

registered certifiers or by local authorities as separate contestable service from their LIA role

Due to a significant increase in the administrative workload an additional staff member may be required.

BACKGROUND

The Minister for Consumer and Employment Protection has undertaken a general review of all building legislation to ensure the maintenance of quality work standards and consumer protection. In addition, the Minister for Housing and Works is reviewing building legislation as part of National Competition Policy requirements and the national reforms provoked by the Productivity Commission review. A cooperative approach has been adopted by both Ministers to respond to the needs of the industry and the consumer.

The proposed Act outlines a comprehensive proposal for a building regulatory framework that ensures compliance with national building standards. It will link the process of building to policy principles of competition, competency responsibility and community safety. A fundamental objective of the proposed Act is to provide a speedier and more cost efficient approval process, and to that end, the State government has indicated its intention that local government maintains its involvement in issuing building licences. This is in contrast to some States where local government is no longer involved in the process other than being responsible for record keeping when approved plans are lodged. The purpose of this report is to identify the role of the Town of Cottesloe in the proposed Building Act framework.

Under the proposed Act, the critical function of issuing building licences and certificates of occupancy will be performed by a LIA.

A LIA can be:

- A state government for state owned buildings and buildings of state significance;
- A local government for most buildings in the local government district;
- A special authority, for specialist building types, or buildings in regions broader than a single local government.

The LIA will rely on a person to provide the required technical knowledge by either:

- 1 Delegating its approval powers to a suitably qualified person, expected to be an employee of the local authority (currently a Building Surveyor); or
- 2 A paid consultant, or similar, providing advice direct to the council, who will then make the decision.

A certifier may be a building surveyor, engineer, architect, specialist designer or builder registered by the appropriate registration body as competent to certify compliance with one or more aspects of the BCA. Notwithstanding that specialist certifiers have confirmed that each aspect of the building complies with the relevant section of the BCA, an appropriately registered person must certify that the building as a whole complies with the BCA, again this could be the person employed full time by Council, or an external consultant.

It is proposed the LIA will merely provide a certification program based on the provision of a series of certificates such as:

- Design Liability,
- Design Compliance,
- Construction Liability,
- Building Approval,
- Building Licence,
- Construction Inspection Construction Compliance,
- Occupancy.

There is no current regulatory requirement for the monitoring of building usage and essential service maintenance. It is proposed the relevant LIA will be given the power to inspect/audit buildings to check that essential services are being maintained and are best placed to carry out this role on behalf of the community.

There are to be provisions in the proposed Act for retrospectively approving unauthorised building work. Depending on the level of unauthorised work, this may have a significant impact on the workload of administration and the building surveyor.

The registration and issuing of building licences function will remain unchanged; however there will be a significant increase in the role of administration with the addition of Certificates of Occupancy. These certificates will be required for all occupied buildings, which includes residential buildings. The monitoring of building usage and essential service maintenance, combined with random audits of the entire approval and enforcement process, are new services to be provided by the LIA. The role of the building surveyor will shift from proactive to reactive, however the workload is unlikely to increase. The administration workload will increase significantly and may require an additional staff member.

CONSULTATION

All local governments have had since November, 2005 to discuss the proposed Act and a submission is being prepared on behalf of local government by the Western Australian Local Government Association. The Western Suburbs Building Surveyors are also in the process of finalising a collective submission.

STAFF COMMENT

The Town of Cottesloe is likely to remain as the Licence Issuing Authority. Under the current legislation, the applicant is required to submit their application to the local government for assessment and subsequent issue, however under the proposed legislation; the owner will have a choice of either the local government or a private certifier.

Unlike many of the larger metropolitan councils, Cottesloe clients do not experience delays in the approval of their applications, or in any other matter related to their application.

The Town of Cottesloe is well placed to continue providing excellent customer service, professional advice from their staff, all at a reasonable cost.

VOTING

Simple Majority

COMMITTEE COMMENT

The Mayor requested that a copy of the Western Suburbs Building Surveyors submission be made available to Council prior to it being submitted to the Minister.

12.1.7 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Strzina

That Council

- (1) Note the report and provide any comments to the Chief Executive Officer; and
- (2) Be kept informed of the response to the Minister by the Local Government Association.

Carried 11/0

12.2 ENGINEERING

12.2.1 55 GRANT STREET - COMPLAINT REGARDING VERGE PARKING AREA

File No: 55 Grant Street
Author: Mr Geoff Trigg
Author Disclosure of Interest: Nil
Report Date: 9 May, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

A report has been requested by Council on the history of the unsealed verge parking area on the east side of Marmion Street, at the Grant Street intersection opposite 55 Grant Street.

This report recommends that Council:

- (1) Remove the mountable kerb section and road base area adjacent to 55 Grant Street, in Marmion Street, and install replacement barrier kerb plus parking control signs;
- (2) Inform the owners of 55 Grant Street of Council's decision; and
- (3) Require a report from the Manager Development Services on the history of parking requirements for the 'Daisies' delicatessen, particularly any unmet planning condition.

STATUTORY ENVIRONMENT

Council has vested care, control and maintenance power through the *Local Government Act, 1995* for road reserves in the Town of Cottesloe. This includes verge areas, verge parking areas and road surfaces.

POLICY IMPLICATIONS

Council's *Parking - Residential* policy is partially applicable to this case.

PARKING - RESIDENTIAL

OBJECTIVE

To encourage property owners to provide sufficient on site parking.
To minimise vehicle damage to road verges.
To provide guidelines for temporary parking areas on road verges where conventional on site parking cannot be achieved.

PRINCIPLE

On-site parking should be provided on all residential lots in accordance with the residential Planning Codes, Town Planning Scheme and decisions of Council. Council recognises that there are occasions where this is not immediately possible and temporary solutions may be required.

ISSUES

Verges are part of the road reserves, and as such are not a parcel of land which can be developed in such a way that property rights to individuals may accrue. Residents who may be granted approval to develop verge parking need to be aware that the land remains under the ultimate control of Council.

Continuous or regular parking on verges can cause serious damage to the verge surface, creating dust problems in summer and mud problems in winter. Paving verges continues the extension of hardstanding areas which may contribute to an ongoing drainage problem, as well as difficulties for the healthy growth of street trees and other nearby plants. Verge parking on a regular basis should be discouraged and should not contribute to drainage responsibilities of Council, or significantly disadvantage local plant life.

The general provisions of this policy will apply to all existing verge parking areas including crossovers made obsolete by redevelopment, or the construction of walls, or other obstructions.

The provisions of the Local Government Act, Cottesloe Council Local Laws, Town Planning Scheme and relevant Policies will apply.

POLICY

- 4.1 The Chief Executive Officer is delegated responsibility to approve residential parking other than on-site parking.
 - 4.2 In the event of any redevelopment, any verge parking area approved in accordance with this policy, or by any previous decision of Council, or any vehicle crossing place made obsolete, is to be removed and the verge reinstated at no cost to Council.
 - 4.3 Applications for a verge parking area should detail the special circumstances which currently prevent vehicle access onto private property.
 - 4.4 Council reserves the right to order the removal of any verge parking area which is not built, used, or maintained to the satisfaction of Council.
 - 4.5 Council, pursuant to Clause 4.4 above, will consider an application for the construction of a verge parking area as a temporary measure in the following circumstances only:
 - (a) where the applicant acknowledges that the verge parking area is to be totally removed at no cost to Council if the property is redeveloped, or if the removal is required by Council;
 - (b) where vehicle access onto private residential property cannot reasonably be gained by a conventional vehicle crossover, or from a trafficable right of way;
 - (c) where a vehicle cannot be accommodated on site due to insufficient area, or major variation of natural ground levels, or where access to available space on-site is an unreasonable expectation, or
 - (d) where on-site parking, with turn around space on a busy road cannot be reasonably achieved, and
 - (e) where a vehicle may be safely accommodated on the verge without adversely affecting the sight distance.
 - 4.6 Construction of a temporary verge parking area shall be in accordance with written approval in regard to the following conditions:
 - (a) the dimensions and finished level of a verge parking area being consistent with the specification for a single width vehicle crossing place;
 - (b) provision for two vehicles parked in tandem if space permits;
-

- (c) a standard concrete kerb entry being built in accordance with the design for a brick paved crossover.
 - (d) the surface being protected paving brick, approved by the Manager of Engineering and laid on a sand bed evenly graded to conform with verge levels;
 - (e) provision being made for the disposal of all stormwater in close proximity without contributing water to the road/public drainage system;
 - (f) existing or proposed verge parking areas are not to include any fence or sign, which restricts usage to any property owner, occupier, business or customer.
 - (g) reinstatement resulting from excavation by other service authorities, or by Council in the course of road works, is to be carried out at the expense of the property owner.
- 4.7 Paved set down areas will be considered in special circumstances for approval on road verges where the following applies:
- (a) The set down area will be limited to one bay, 6m long by 2.7m wide, at a right angle to the kerbline and immediately behind the kerbline.
 - (b) A footpath from the set down area to the private property, maximum width 1.2 metres, may be approved.
 - (c) If the surface of an original crossover is being converted to this use, then the remainder of the crossover is to be removed and replaced with indigenous native plant species in a non-lawn setting.
 - (d) Wherever possible, drainage water from the verge, in this situation, is to be controlled and directed into a private soak pit.
 - (e) Where existing parking restrictions are compromised by this approval, the applicants will find the change of signage necessary to allow "Authorised Vehicles Only" signs for the set down area plus any other required sign changes.
 - (f) This approval, if given, for a set down area, does not grant the right for full time long term parking. Its use is restricted to short term visits, mail and other forms of deliveries, and to aid the infirm and disabled to access private properties as visitors.
 - (g) Applicants for the approval of "Set Down Areas" must demonstrate the difficulties in the normal form of access from rear ROW or parking areas on adjacent streets or formal parking bays. Other factors would include narrow laneway widths, extreme level changes on existing vehicle ROW accesses and problems of access for the frail and disabled.
- 4.8 With every development approval including a condition requiring the removal of a redundant crossover because of the creation of a side or rear lane access, a \$500 bond shall be paid at the time of building licence approval to ensure the redundant crossover is removed. If the redundant crossover hasn't been removed within two months of the new rear access being used by the owner, and the owner refuses to undertake the removal, Council staff shall remove the crossover and rehabilitate the crossover area using funds taken from the \$500 bond. Any unspent bond funds shall then be returned.
- 4.9 If no alternative exists, and justification has been provided by the property owner, as part of a separate application, for a constructed verge parking area, consideration will be given to approval based on a reinforced grass area using available commercial products, to ensure a green aspect to the verge and capacity for drainage water to soak away without overflowing onto the street surface.

RESOLUTION NO: 12.2.2
ADOPTION: 27 February, 2006
REVIEW: February, 2014

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Minor, depending on choice of action.

BACKGROUND

Number 55 Grant Street is on the south east corner of the Marmion Street/Grant Street intersection. In April/May, 2005 this intersection was reconstructed to create a roundabout, funded two-thirds from the State Blackspot grant system.

At that time, the old house on 55 Grant Street was being demolished and the block prepared for a new dwelling.

Discussions were held with the operators of 'Daisies' store on the south west corner of the intersection, regarding the impact of the new roundabout, particularly on parking. At that time, prior to roundabout construction, a low barrier kerb existed on the east side of Marmion Street opposite 55 Grant Street, plus an area behind that kerb, used particularly by delivery trucks, servicing 'Daisies' on an approximate three metre width parallel to the kerb line, within the 15 metre road verge.

When the roundabout was built, a mountable kerb was installed on this section of road edge as part of the total kerbing requirements. Road base was installed and compacted behind the kerb line to allow the parking to continue.

CONSULTATION

The owners have had discussions with staff over a period of months while their house has been under construction. Landscaping on the verge between the road base area has been offered, as well as restricting the road base area to prevent right angle parking or expansion of the site. The owners have not accepted this proposal.

Letters were delivered to the affected properties prior to the roundabout commencing explaining the general works proposed. The major impact was on the 'Daisies' store operation and the parking requirements including trucks delivering goods. Discussions were held on site with the operator.

STAFF COMMENT

Delivery trucks were observed by staff prior to and during the roundabout construction. The operator of 'Daisies' asked for the, then, parking of delivery trucks to continue to be allowed on the east side of Marmion Street, due to the problems experienced when these trucks tried to park in other adjacent areas.

Discussions with Council's Rangers have supported the memory/view that parking had been allowed on this verge, parallel with the kerb for a number of years, with Council's Rangers not being aware of any problems with this practice.

The proposal put to the owners of 55 Grant Street regarding the restriction of the use of parallel parking area plus landscaping is a viable alternative. The width of verge concerned is similar in size to the 55 Grant Street property width, allowing substantial

landscaping or screening potential. Restrictions to allow an approximate 3 metres parallel width for parking to be used, by kerbs or bollards are also possible. Improved verge protection could be created with an embayed parking area being constructed at this site to match the western side embayment.

The alternative is to rip up the existing kerbs, install heavy barrier kerbs and backfill behind these kerbs, with 'No Parking on Verge' signs being installed.

Prior to this report being finalised, a discussion was held with the current operator of 'Daisies'. He is certainly concerned with retaining some level of approved parking on the east side verge of Marmion Street, for the occasional large truck.

There is an extensive history relating to the requirement for 'Daisies' to seal, kerb, linemark and drain the carpark on the Grant Street median island. This is an unfulfilled condition for a previous development.

VOTING

Simple Majority

12.2.1 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Strzina

That Council:

- (1) Remove the mountable kerb section and road base area adjacent to 55 Grant Street, in Marmion Street, and install replacement barrier kerb plus parking control signs;**
- (2) Inform the owners of 55 Grant Street of Council's decision; and**
- (3) Require a report from the Manager Development Services on the history of parking requirements for the 'Daisies' delicatessen, particularly any unmet planning condition.**

Carried 11/0

12.2.2 SEA VIEW GOLF CLUB - SAFETY PLAN AND JARRAD STREET CLOSURE

File No: 2 Jarrad Street
Author: Mr Geoff Trigg
Author Disclosure of Interest: Nil
Report Date: 11 May, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

The Sea View Golf Club has provided a Safety Plan to cover all operations of the Club which may impact on the safety of golfers and the public on the Golf Course. It has also requested consideration by Council of the future of the Jarrad Street closure.

This report recommends that Council:

- (1) Use the Sea View Golf Club Safety Plan, with the Management Plan, for the period of the first Management Plan, ending in June, 2008 to guide the solution of safety issues on the course; and
- (2) Advertise, under Section 58 of the *Land Administration Act, 1997*, for the proposed permanent closure of a section of Jarrad Street east of Marine Parade, which is currently closed for a period of four years under the *Local Government Act, 1995*.

STATUTORY ENVIRONMENT

For the Safety Plan, the overall Management Plan accepted by Council would control the need for a document to provide for safety requirements on the site.

For the road closure, Section 3.50 of the *Local Government Act, 1995* covers a closure up to four years. For a permanent closure, Section 58 of the *Land Administration Act, 1997* is applicable.

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Nil.

BACKGROUND

The Sea View Golf Club was granted a 21 year lease by Council in 2005. Under the arrangements for this lease, a Management Plan for 2005 to 2008 was created by the Golf Club and accepted by Council, after a period of modifications and document improvements.

One major heading within the Management Plan was 'Safety' and the club's first Safety Plan document has been completed and provided to Council for acceptance and/or comment.

In addition, the four year closure period for Jarrad Street onto Marine Parade will end in August, 2007. A request has been made to consider the future of this closure.

CONSULTATION

There has been previous public consultation regarding the Sea View Golf Club lease, Management Plan and the Jarrad Street road closure. No other consultation has occurred since the lease was finalised.

STAFF COMMENT

The Safety Plan provided by the Sea View Golf Club is very practical and addresses the obvious problem areas, with proposed actions to remove the problems, provide protection or warn of the dangers via signs, inclusion in the Fixture Booklet or on the club noticeboard.

Part of the analysis of accident risk relating to the Golf Club use of the site points out that warnings regarding potential danger may be the only solution at some sites. At other sites, very high and obvious steel mesh fences or nets may improve the safety but also may create an obvious aesthetic or sight problem for adjacent residents.

One of the major potential safety risks originally was Jarrad Street, when vehicles drove between Broome Street and Marine Parade faced the risk of a golf ball strike. A section of Jarrad Street was closed in 2003, for a temporary four year period, under Section 3.50 of the *Local Government Act, 1995*. The club has requested consideration of the August, 2007 end date of that closure.

The three main alternatives for this closure are:

1. End the closure in August, 2007, with no extension.
2. Use Section 3.50 of the *Local Government Act, 1995* to create another four year closure period, if Council agreed to that closure after an advertised objection period.
3. Advertise under Section 58 of the *Land Administration Act, 1997* for the permanent closure of the section of Jarrad Street currently closed for the four year period under the *Local Government Act*.

With the establishment of the 21 year lease of the golf course to the Sea View Golf Club, the adoption of the Management Plan and now the creation of the Safety Plan, with its explanation of the dangers caused to vehicles travelling between Broome Street and Marine Parade on Jarrad Street, there is a strong case for permanent closure of the current temporarily closed section of Jarrad Street.

DECLARATION OF IMPARTIALITY

Mayor Morgan, Cr Furlong and Cr Strzina made declarations of impartiality as members of the Sea View Golf Club and advised the meeting that while there may be a perception that impartiality on the matter may be affected they would consider the matter on its merits and vote accordingly.

VOTING

Simple Majority

COUNCIL COMMENT

Cr Cunningham stated that previously the Jarrad Street Action Group put up quite a fight against any closing of the road. The public perception that this is a land grab by Sea View Golf Club Councillors. He agrees with conducting public consultation. If Council is concerned about the dangers of the golf course then that part of the road should only be closed, keeping the entry statement.

The Mayor clarified that an entry statement will remain to the oval, kindergarten and Sea View Golf Club.

Cr Strzina raised that it is also important to protect the safety of visitors who are not aware of the risks from the golf club.

Cr Miller questioned the Sea View Golf Club's request for signage at the railway station, regarding the safety of walking at the golf club.

Mayor Morgan stated that the real issue is to ensure that no serious injury is caused to the public, therefore opening the road may expose the town to not having insurance cover for any injury.

OFFICER RECOMMENDATION

That Council:

- (1) Use the Sea View Golf Club Safety Plan, with the Management Plan, for the period of the first Management Plan, ending in June, 2008 to guide the solution of safety issues on the course; and
- (2) Advertise, under Section 58 of the *Land Administration Act, 1997*, for the proposed permanent closure of a section of Jarrad Street east of Marine Parade, which is currently closed for a period of four years under the *Local Government Act, 1995*.

COMMITTEE RECOMMENDATION

That Council:

- (1) Use the Sea View Golf Club Safety Plan, with the Management Plan, for the period of the first Management Plan, ending in June, 2008 to guide the solution of safety issues on the course; and
- (2) Advertise, under Section 58 of the *Land Administration Act, 1997*, for the proposed permanent closure of a section of Jarrad Street east of Marine Parade and the eastern most point of the eastern boundary of the Sea View Golf Course where it crosses the road, on the basis that if this section is closed permanently that:
 - (a) A portion of the closed road will remain to provide a driveway entrance to Sea View Golf Club, the Kindergarten and for oval access; and

- (b) The closed road be amalgamated into the adjoining recreation "A" Class Reserve 6613.

AMENDMENT

Moved Mayor Morgan, seconded Cr Strzina

That item (2) be amended to read:

- (2) Advertise, under Section 58 of the *Land Administration Act, 1997*, for the proposed permanent closure of a section of Jarrad Street between Marine Parade and the eastern most point of the eastern boundary of the Sea View Golf Course where it crosses the road, on the basis that if this section is closed permanently that:

Carried 11/0

AMDENDMENT

Moved Mayor Morgan, seconded Cr Furlong

That item (2) be added as follows:

- (2) Conduct a public consultation process, in accordance with the consultation policy, and advertise, under Section 58 of the *Land Administration Act, 1997*, for the proposed permanent closure of a section of Jarrad Street between Marine Parade and Broome Street, on the basis that if this section is closed permanently that: (a) and (b)

Carried 8/3

12.2.2 COUNCIL RESOLUTION

Moved Cr Furlong, seconded Cr Strzina

That Council:

- (1) **Use the Sea View Golf Club Safety Plan, with the Management Plan, for the period of the first Management Plan, ending in June, 2008 to guide the solution of safety issues on the course; and**
- (2) **Conduct a public consultation process, in accordance with the consultation policy, and advertise, under Section 58 of the *Land Administration Act, 1997*, for the proposed permanent closure of a section of Jarrad Street between Marine Parade and Broome Street, on the basis that if this section is closed permanently that:**
- (a) **A portion of the closed road will remain to provide a driveway entrance to Sea View Golf Club, the Kindergarten and for oval access; and**
- (b) **The closed road be amalgamated into the adjoining recreation "A" Class Reserve 6613.**

Carried 9/2

The vote was recorded:

| | |
|---------------|---------------|
| For: | Against: |
| Mayor Morgan | Cr Cunningham |
| Cr Carmichael | Cr Miller |
| Cr Dawkins | |
| Cr Furlong | |
| Cr Jeanes | |

Cr Strzina
Cr Utting
Cr Walsh
Cr Woodhill

12.2.3 FIVE YEAR PLAN - RETICULATED AREAS AND GROUNDWATER BORES

File No: E11.2
Author: Mr Geoff Trigg
Author Disclosure of Interest: Nil
Report Date: 9 May, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

This report covers the results of a public consultation process dealing with this five year plan and recommends that Council adopt the modified Five Year Plan for Reticulated Areas and Groundwater bores, including the works to be funded by the Federal Community Water Grant in 2006/07 and include year one works into the 2006/07 draft budget for funding consideration.

STATUTORY ENVIRONMENT

Section 3 of the *Local Government Act* provides, in part, as follows:

3.1 General function

- (1) The general function of a local government is to provide for the good government of persons in its district.
- (2) The scope of the general function of a local government is to be construed in the context of its other functions under this Act or any other written law and any constraints imposed by this Act or any other written law on the performance of its functions.
- (3) A liberal approach is to be taken to the construction of the scope of the general function of a local government.

3.2 Relationship to State Government

The scope of the general function of a local government in relation to its district is not limited by reason only that the Government of the State performs or may perform functions of a like nature.

3.18 Performing executive functions

- (1) A local government is to administer its local laws and may do all other things that are necessary or convenient to be done for, or in connection with, performing its functions under this Act.
- (2) In performing its executive functions, a local government may provide services and facilities.
- (3) A local government is to satisfy itself that services and facilities that it provides -
 - (a) integrate and coordinate, so far as practicable, with any provided by the Commonwealth, the State or any public body;
 - (d) do not duplicate, to an extent that the local government considers inappropriate, services or facilities provided by the Commonwealth, the State or any other body or person, whether public or private; and
- (c) are managed efficiently and effectively.

Within Part 3 of the *Waters and Rivers Commission Act, 1995* the following powers and functions are granted to the Waters and Rivers Commission:

10. Functions

- (2) In addition the Commission has the functions of:
 - (a) advising the Minister on all aspects of policy in relation to water resources;
 - (b) assessing water resources, and carrying out works under Part 4;
 - (c) planning for the use of water resources;

- (d) promoting the efficient use of water resources;
- (e) undertaking, coordinating, managing and providing practical and financial assistance to, activities and projects for the conservation, management or use of water resources;
- (f) developing plans for and providing advice on flood management;
- (g) carrying out, collaborating in or procuring research or investigations relating to water resources; and
- (h) publishing information and material relating to water resources.

11. Powers

- (1) The Commission has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) Without limiting subsection (1) or the other powers conferred on the Commission by this Act or any other written law the Commission may, subject to section 12 -
 - (a) acquire, hold, manage, improve, develop, dispose of and otherwise deal in real and personal property; and
 - (b) act in conjunction with -
 - (i) any person or firm, or a public or local authority; or
 - (ii) any department of the Public Service or any agency of the State or the Commonwealth.

POLICY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

The Town of Cottesloe's mission is: *To preserve and improve the unique village character of Cottesloe by using sustainable strategies in consultation with the community.*

An environmental objective for the Council is: *To promote community awareness of issues affecting the whole environment in relation to sustainability, cleanliness, greening, community safety and conservation.*

FINANCIAL IMPLICATIONS

The reduction of the numbers of bores, pumps and area reticulated will reduce the costs of running these systems and water volumes.

The five year program involves commitment to the restoration of these systems to a high efficiency level, but at an annual cost for capital works.

BACKGROUND

The Town of Cottesloe has a number of reticulation systems, most of which are fed by groundwater supplies, of which the majority are bores. A number of small areas are connected to the Water Corporation scheme supply. Areas reticulated range from active recreation grounds through to small neighbourhood parks, landscaping around Council owned buildings and carparks, plus several large areas of road verge.

Water is also used for several street tree systems and for establishing juvenile street trees planted as replacements or as an extension to the existing stock of mature, non-reticulated verge trees.

The Town's use of irrigation water comes under close scrutiny from local residents and visitors alike. All watering carried out by the Town is in accordance with the statutory requirements set out by the Department of Environment and the Water Corporation. Groundwater irrigation is considered the most environmentally responsible method of irrigating the Town's parks and reserves. The current focus on scheme water use and reduced water availability provides opportunities to review the Town's use of scheme water for irrigation of landscapes.

An equally pressing need in the Cottesloe peninsula area is to address the growing concern regarding the growth of bores being installed to access the limited groundwater supply. The Town of Cottesloe's practical response is the minimisation of the number of bores and the areas reticulated. These actions, however, do not address the need for controls and monitoring regarding private reticulation bores.

The Town's reticulation and bore systems have been installed over time by external contractors, to various specifications. This has led to a great variation in infrastructure quality and effectiveness.

The variety of sprinkler pipelines, sprinkler design and layout has led to the past practice of maintenance, repair or replacement on an 'as required' basis.

Previous methods of installation, the varying nature of groundwater in the Cottesloe area and the absence of planned replacement has led to a situation today where reticulation failure compromises the capacity of the irrigation system to maintain landscape quality.

The Town's reticulation systems are heavily used over the drier months from October to April. Reticulation failure during periods of heavy use compromises the longevity of landscapes, utilisation of open space by user groups and budget control. Planned replacement programs for reticulation infrastructure on the basis of a 10 year life cycle is an industry standard. Reactive repair and or replacement of infrastructure is not considered appropriate when that infrastructure needs to be relied on to provide a critical service.

With regards to the Town's groundwater bore systems, where groundwater quality is good and is non-corrosive the average useful life expectancy of a groundwater bore is 20 years. However this can vary. The age of the Cottesloe Oval bore, for example, is approximately 42 years! A groundwater bore may typically require air or chemical redevelopment after 10 years of use. It is not unusual for a bore to require development annually as it approaches the end of its useful life. This requirement is a reliable indication that collapse may be imminent and where possible this situation should be avoided.

Due to the below ground location of this infrastructure, problems can go undetected and failure is often sudden. The resulting down time can be considerable when bore infrastructure requires removal to allow investigation to identify the cause of the problem.

Reactive repair and/or replacement of a bore or bore infrastructure compromises the longevity of landscapes, utilisation of open space by user groups and budget control.

To identify potential problems, and to program replacement or repairs on a priority basis, bores and pumps need to be assessed on an annual basis. Typical problems encountered include:

- faulty or damaged pumps,
- faulty or damaged bore column,
- bores requiring redevelopment due to collapse or contamination.

If the problem is pump related, the pump is required to be dismantled and detailed investigation of the problem undertaken.

Where a bore fails completely and requires replacing, the Town is required to apply to the Department of Environment (formally Waters and Rivers Commission) for a licence to install a new bore. Such applications can take in excess of two months to resolve. Two months without irrigation can have a large impact on any of the Town's recreation grounds and parks during the summer months. Proactive management of the Town's assets requires recognition of useful life expectancy and the planned replacement of such assets to manage the community's resources in the best long term interest of all.

The proposed five year program takes into consideration the age and condition of the Town's bores, pumps, wells and reticulation systems, their useful life expectancy, known problems, the need to rationalise on the areas under reticulation and the water used for the highest value areas available to the community.

At its March, 2006 meeting, Council resolved to have staff undertake a report on the possible landscaping of a native vegetation entry statement on the Eric Street verges from Stirling Highway. Council has also resolved not to expend funds on the Department of Planning and Infrastructure owned bore at the Flour Mill site to enable it to be made operative again.

CONSULTATION

This report is on the results of the public consultation process, which included a local newspaper advertisement, posting on Council's web page and display on the Civic Centre and town centre noticeboards.

STAFF COMMENT

Since the presentation of this draft five year program in February, Council has been informed of its success in receiving a \$45,000 + GST Community Water Grant from the Federal Government.

The main content of this grant relates to the installation of the three 90kl concrete water storage tanks, plus the conversion of the Flour Mill site to native vegetation. To provide the level of financial support for this grant, the full \$75,000 2006/07 proposal is required, giving a total \$75,000 plus \$45,000 project totalling \$120,000.

In addition, Council has already resolved not to provide asphalt parking on the verges of Napier Street and Broome Street fronting the tennis courts and that the existing

reticulated lawns on the Eric Street verges from Stirling Highway to Railway Street will remain, pending a report on a native vegetation entry statement.

With the expanded 2006/07 plan, to include the Federal grant works, \$2,000 can be removed from 2007/08 for the Flour Mill site works and \$30,000 from 2009/2010 for a third concrete tank installation at the Pearse Street/Marine Parade intersection.

With regards to the public consultation process, no comments were received from the public, on the draft five year plan.

Therefore, a modified Five Year Plan for Reticulated Areas and Groundwater Bores is proposed, with year one being considered for funding in the 2006/07 budget.

VOTING

Simple Majority

COMMITTEE COMMENT

Mayor Morgan queried whether the tank installation will change the topography of the land in any way.

The Manager Engineering Services advised that the tank will be sunk underground and the land topography will not be raised.

12.2.3 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Strzina

That Council:

- (1) Adopt the modified Five Year Plan for Reticulated Areas and Groundwater Bores, including the works to be funded by the Federal Community Water Grant in 2006/07; and**
- (2) Include year one works into the 2006/07 draft budget for funding consideration.**

Carried 11/0

12.2.4 NATIONAL WATER INITIATIVE - TOWN OF COTTESLOE - BUDGET

File No: E15.10
Author: Mr Geoff Trigg
Author Disclosure of Interest: Nil
Report Date: 9 May, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

At its meeting in February, 2006, Council resolved to submit a formal request for a financial contribution from the State government for any shortfall of the originally requested Federal government grant application.

The Federal government has agreed to fund one-third (\$782,000 plus GST) compared to the originally requested 60%.

The State government has been requested to financially assist this project with a further one-third contribution, so that all three levels of government are equally involved.

A signature is required from the Mayor on the Federal Grant Acceptance/Contract.

This report recommends that Council:

- (1) Authorise the Mayor to sign documentation on behalf of the Town of Cottesloe regarding the funding agreement with the Australian Government for the Water Smart Project: "Restoration of the Groundwater Aquifer on the Cottesloe Peninsula";
- (2) Include in its 2006/07 budget documentation the sale of No. 45, Lot 8 Lyons Street, Cottesloe for a minimum value of \$1m; and
- (3) Prepare a business plan covering this land transaction, with advertising to comply with Section 3.59 of the Local Government Act, 1005 and Council consideration of the results prior to any sale of No. 45, Lot 8 Lyons Street taking place in 2006/07.

STATUTORY ENVIRONMENT

There is no specific legislation relevant to this report.

POLICY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

The most applicable headings within Council's Strategic Plan are:

District Development/Environment: Council will promote community awareness of issues affecting the whole environment in relation to sustainability, cleanliness, greening, community safety and conservation.

District Development/Town Planning/Sustainability: Promote the use of sustainable materials, energy and resource conservation and green open space.

FINANCIAL IMPLICATIONS

The total project cost is \$2.346m (plus GST) over four years, of which the Federal government has agreed to fund \$782,000 plus GST. The State government has been formally requested for financial assistance totalling one-third of the project cost. If the project is to proceed, Council would have to fund \$1.564m over four years if there is no State assistance or a lesser amount depending on the final decision by the State government.

BACKGROUND

Council has previously been informed of this project, the approved Federal Grant and the works proposed.

CONSULTATION

There has been no ratepayer/resident consultation on this project, other than the widely accepted regional aims of water preservation, drainage control, removal of sea and land pollution and environmental sustainability.

STAFF COMMENT

No answer has been received from the State government regarding the request for financial assistance with this project, other than contact from a Department of Environment officer requesting details for a report to the Minister.

The vast majority of work proposed over four years would have been considered by Council over the next 15 years, given the current scale and content of Council's five year drainage improvement program which included provision for annual extension of the drainage soak pit system, closure of ocean outfall drains and conversion of large open sumps. However 15 years time may have proved to be too late to have a major positive impact on the Cottesloe aquifer.

With the 2006/07 draft budget documentation being prepared, a decision is required on how to fund Council's portion of this project, at least for year one (2006/07) and approval is required for the Mayor to sign the Agreement with the Federal government to allow the project to commence.

The works for year one (2006/07) are proposed to cover the installation of 70 drainage soak pits, the replacement of two large open sumps with underground tanks (similar to the Broome Street sump installation) and the closure of three ocean outfall pipelines.

The two proposed sump replacements are the site at the corner of Marmion Street and Ackland Way plus the site at the Brixton Street/Jarrad Street intersection.

The three ocean outfall sites are at the southern end of Marine Parade with the intention of works progressively moving north each year.

The first 70 soak pits are proposed in a variety of locations where illegal drainage pipelines run through private properties or where ongoing drainage problems are affecting private properties. These include the area around Margaret and Ozone Streets, between Broome Street and Marmion Street, Elizabeth Street, Melville Street, Congdon Street near Stirling Highway, Little Marine Parade and Deane Street.

Generally, the solution with all of the 10 ocean outfalls will include extra soak pits on Marine Parade and on the streets draining water to Marine Parade.

With the draft budget details now being completed, financing this project becomes an urgent decision. Council has previously been informed that, if State government does not contribute, substantial extra funding will be required from Council sources.

There is a total of \$727,000 over four years available if Council included the next four years road drainage allocations plus \$350,000 'in-house' provision of Engineering staff capacity. This figure, added to the Federal grant of \$782,000 totals \$1,509,000

Year one of the four year project period will also see full installation of the required soak pits in the Margaret Street and Lyons Street sump catchments, to remove the need to retain these two private sump properties.

In 2005, the cost of these installations were costed at \$95,000 for Lyons Street and \$173,000 for Margaret Street.

A total of \$629,000 is programmed for expenditure in 2006/07, for year one of this project, of which \$220,000 cash will be provided by the Federal grant. \$75,000 will be charged against internal staff time already normally funded through Public Works Overheads.

In addition, under Council's previous five year drainage improvements program, 2006/07 drainage allocations undertaken with street resurfacing etc, totalled \$98,000.

| | | |
|------------|------------------|------------------------------|
| Therefore; | \$629,000 | total expenditure in 2006/07 |
| - | \$220,000 | Federal grant |
| - | \$ 75,000 | staff time allocation |
| - | \$ 98,000 | street drainage provision |
| | <u>\$236,000</u> | additional funding required |

Depending on the State government's response for financial assistance, this amount, or a lesser amount, will be required as increased funding towards the works involving 70 new soak pits, the closure of three ocean outfalls and the conversion of two large open sumps, plus the commencement of the education program.

The proposed works in 2006/07 will remove the requirement for large sumps on Lot 8 Lyons Street and Pt Lot 43 Margaret Street, Cottesloe. Both are then available for re-use for other purposes or for sale.

The sale of one property would cover all of Council's financial obligations with this four year project with a high probability that extra funds beyond the grant project requirements would become available.

In April, 2005 valuations for No. 45, Lot 8 Lyons Street from two real estate agencies, covered the range of value, at that time, at \$1.05m to \$1.1m. This value would probably have increased since April, 2005. The main alternatives are major rate increases, a loan, or major cutbacks in other works or services.

VOTING

Simple Majority

COMMITTEE COMMENT

Cr Utting noted his concerns regarding selling off land and the possible requirement for use of the sump in the future.

Cr Carmichael raised the importance of educating the public regarding water sustainability.

OFFICER RECOMMENDATION

That Council:

- (1) Authorise the Mayor to sign documentation on behalf of the Town of Cottesloe regarding the funding agreement with the Australian Government for the Water Smart Project: "Restoration of the Groundwater Aquifer on the Cottesloe Peninsula;
- (2) Include in its 2006/07 budget document the sale of No. 45, Lot 8 Lyons Street, Cottesloe for a value of \$1m; and
- (3) Prepare a business plan covering this land transaction, with advertising to comply with Section 3.59 of the *Local Government Act, 1995* and Council consideration of the results prior to any sale of No 45, Lot 8 Lyons Street, taking place in 2006/07.

12.2.4 COMMITTEE RECOMMENDATION

Moved Cr Miller, seconded Cr Strzina

That Council:

- (1) Authorise the Mayor to sign documentation on behalf of the Town of Cottesloe regarding the funding agreement with the Australian Government for the Water Smart Project: "Restoration of the Groundwater Aquifer on the Cottesloe Peninsula;**
- (2) Prepare a business plan covering this land transaction, with advertising to comply with Section 3.59 of the *Local Government Act, 1995* and Council consideration of the results prior to any sale of No 45, Lot 8 Lyons Street, taking place in 2006/07.**

Carried 11/0

12.2.5 STREET LIGHTING - MARINE PARADE, NORTH COTTESLOE

File No: E16. 3
Author: Mr Geoff Trigg
Author Disclosure of Interest: Nil
Report Date: 10 May, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

At its meeting in August, 2005 Council resolved:

That Council:

- (1) Request Western Power to provide a cost estimate to install shades or shields on street lights in Marine Parade from the north end of Little Marine Parade to North Street;
- (2) Develop a 'brief' on the requirement for a consultant study into the deficiencies of street and footpath lighting in the Town of Cottesloe, for consideration by Council prior to obtaining quotations for that study, to be considered for funding in the 2006/07 budget; and
- (3) Thank all signatories of the received petition, including an explanation of Council's decision in this matter.

This report provides a 'brief' for a consultant study into deficiencies of street and footpath lighting.

The recommendation is for Council to consider the inclusion of an allocation of \$10,000 for a consultant report based on the content of the brief of requirements presented by the Manager Engineering Services.

STATUTORY ENVIRONMENT

Apart from a small number of street lights owned by the Town of Cottesloe in the town centre, all street lights in the town are owned by Western Power. The town pays Western Power for all power used within the light system, for the installation, removal or modification of street lights and for any changes to power inlets into Council controlled properties. All maintenance e.g. the fixing of inoperative lights, is funded by the town under a maintenance agreement with Western Power.

Only Western Power can change any street lighting system within the Town of Cottesloe, with the system having to meet all Western Power and Australian Standards for street lighting.

However, the type of lights, location, style and colour of lights and light poles and other non-safety issues have some flexibility.

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

The most applicable provisions within Council's Strategic Plan are:

District Development – Environment: Council will promote community awareness of issues affecting the whole environment in relation to sustainability, cleanliness, greening, community safety and conservation.

District Development – Sustainability: Promote the use of sustainable materials, energy and resource conservation and green open space.

Council's *Sustainable Development Plan* also covers street lighting:

- NE 5.5: Provide better lighting by investigating bollard and solar lighting options.
- CW 2.3 Improve lighting on footpaths, carparks and other public areas, investigate solar power and bollards option.

FINANCIAL IMPLICATIONS

Minor, for any shielding of existing Marine Parade lights undertaken by Western Power/Synergy. Potentially high, for major improvements to the street and path lighting system and the replacement of lights in Marine Parade. For the 2006/07 budget, an allocation of \$10,000 is proposed for this lighting study.

BACKGROUND

Virtually all of the 700 street lights in the Town of Cottesloe are owned by Western Power. These lights are mercury vapour or high pressure sodium with the wattage being between 80w and 250w apart from 2 x 400 watt lights.

The 80w and 125w lights would be on residential streets, with the higher level wattage being used at sites requiring better lighting i.e. intersections, near car parking areas etc.

Approximately 185 lights are 150w or 250w in power, for use on the most significant roads i.e. Curtin Avenue, Marine Parade and the Cottesloe side of Stirling Highway.

These roads carry in excess of 2000 vehicles per day and several of them much higher than that figure. Street lights in the Town of Cottesloe have been basically unchanged since 2000, when the underground power program was completed. This is also true for the north end of Marine Parade, the site for the petition/request for lighting changes.

CONSULTATION

No Council initiated consultation has occurred on this matter. The original petition received, requesting a downgrading of Marine Parade street lights (north end) listed 12 properties.

STAFF COMMENT

This matter was generated from a small petition from residents on the north end of Marine Parade, north of Little Marine Parade.

A request was sent in September, 2005 to Western Power, requesting a quote for the shading of existing street lights on Marine Parade, north of Little Marine Parade.

An email answer has recently been received which noted that some time in past years, black paint was used on the light fixtures to reduce the light reflecting into private property. It was also noted that the Australian Standards for street lighting requires a certain level of lighting for different types of road or street use, ie the more traffic the higher the lighting level required. If any lighting level is reduced and an accident occurs due to poor lighting, a local government authority may be held liable for the accident.

The August, 2005 agenda report covered the following matters regarding street lighting in Cottesloe:

- Does Cottesloe street lighting conform to Australian Standards?
- Are the current luminaries in use the most suitable, in terms of energy efficiency, running cost and environmental suitability?
- Is the lighting fronting the residential sections of Marine Parade the most applicable, in terms of glare impact on residential properties and suitability for the correct lighting for current vehicle use of Marine Parade?
- The wide street verges in Cottesloe often reduce available lighting on footpaths - what are suitable solutions to this problem?

The draft consultant brief, the refore, covers these aspects. If Council agrees to fund the study, the results of the study would then be considered for any future street light improvements and required funding.

VOTING

Simple Majority

COUNCIL COMMENT

Cr Utting suggested the footpaths may be moved closer to the roads and under the lighting when they come up for reconstruction within the five year footpath replacement program.

Mayor Morgan noted his concern of moving footpaths closer to the roads and traffic. This report seeks to analyse if lighting on the current footpaths can be undertaken.

Cr Jeanes left the meeting at 9.49pm and returned at 9.51pm.

Cr Walsh urged Councillors to vote against this due to the financial implications. Currently Western Power meets these expenses.

Cr Carmichael noted the lack of footpath lighting on Forrest Street and advised that she has had a number of complaints from residents.

Cr Woodhill asked if Council makes changes to the lighting will this negate Western Power?

The Manager Engineering Services advised that the current power costs are \$80,000 per year. Where new lighting is inserted Council pays for the installation, then for the power to the street light from then on. Council would pay for all additional installations, the asset would be owned by Western Power and they would provide maintenance and service and Council would pay for the power used.

12.2.5 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Strzina

That Council consider an allocation of \$10,000 in the 2006/07 budget for a lighting consultant report on the adequacy of street and footpath lighting in Cottesloe, including the standard of lighting fronting residential properties in Marine Parade.

Carried 9/2

12.2.6 STYLE GUIDE/STREET FURNITURE

File No: E17.8
Author: Mr Geoff Trigg
Author Disclosure of Interest: Nil
Report Date: 9 May, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

Several types of street furniture are to be upgraded or replaced in 2005/06, particularly the capital replacement of \$30,000 of rubbish bins on the foreshore and in the town centre.

Before this can be undertaken, a 'Style Guide' is required, to cover, particularly, the exact colour of all furniture not dictated by Australian Standards, plus the style and letter fonts of all signage.

As it is proving difficult to obtain a Style Guide at a relatively low cost, this report recommends that Council include \$5,000 in the 2006/07 budget to develop a simple style guide regarding the colour of street furniture and the style/letter fonts for public information signs and transfer allocations for funding of rubbish/litter bins (\$30,000) and new bus shelters (\$20,000) from the 2005/06 year into 2006/07 to be expended once the Style Guide is adopted.

STATUTORY ENVIRONMENT

Nil.

POLICY IMPLICATIONS

Council has adopted the contents of its Streetscape Manual as a policy. Pertinent areas of this policy are included in the attachments.

STRATEGIC IMPLICATIONS

The most appropriate provision is under:

District Development/Environment/Streetscape - Provision of clean, safe, sustainably managed streetscapes, with appropriate selections of trees and infrastructure, which are pedestrian friendly and incorporate tidy verges.

FINANCIAL IMPLICATIONS

The 2005/06 budget includes \$30,000 for expenditure from the Waste Management Reserve Account for new rubbish bins. This can be held over into 2006/07, when \$60,000 rather than \$30,000 can be used to fund new rubbish bins. A three year program for new bins has previously been agreed to. All other street furniture replacement is through maintenance allocations.

In addition, \$20,000 is included in the 2005/06 budget for the replacement of three bus shelters. These shelters should be of a colour and style determined by a Style Guide.

The only financial question relates to an acceptable consultants cost for a Style Guide creation.

BACKGROUND

At Council's meeting on 12 December, 2005 it was resolved:

That Council contact Mr Paul Jones regarding the preparation of a colour/style guide to be used for streetscape and road furniture replacement.

This Style Guide had to be developed before staff could proceed with the installation of three new bus shelters, street bollards, bike resting rails, recycling stations and rubbish/litter bins and bin surrounds.

Three attempts have been made to obtain a style guide. These included a quote of \$90,000 from Paul Jones, discussions with an architect who was a partner in the original development of Council's *Streetscape* policy and an attempted contact with another consultant who did not return any of the calls made.

CONSULTATION

No public consultation has been made on this matter so far. When a Style Guide is developed, Council may wish to seek public comment. The Streetscape and Road Furniture Five Year Plan was advertised for comment prior to adoption.

STAFF COMMENT

There had been no formal funding allocation for the development of a Style Guide in the original 2005/06 budget.

It was expected that a low cost guide dealing with colours and signage lettering fonts could be easily arranged and charged to the rubbish/litter bin replacement allocation. No viable options have been found so far for a low cost, short time guide creation.

Staff do also not have a solid understanding of the importance Council places on this task and hence the level of acceptable cost.

The current heavy demand for all level of consultants and contractors would also appear to be affecting cost and timing of this type of provision.

In order not to accept a poor quality or highly expensive result for this project, it is proposed to allow for a \$5,000 allocation for a Style Guide development early in the 2005/06 budget year, dealing with colours and signage styles and that the 2005/06 budget allocations for new rubbish bins and rubbish/litter bins be available for expenditure in 2006/07.

VOTING

Simple Majority

COMMITTEE COMMENT

That the Design Advisory Panel consider the style guide report and make recommendations to Council.

OFFICER & COMMITTEE RECOMMENDATION

That Council:

- (1) Include \$5,000 in the 2006/07 budget year to develop a simple Style Guide regarding the colour of street furniture and the style/letter fonts for public information signs; and
- (2) Transfer allocations for funding of rubbish/litter bins (\$30,000) and new bus shelters (\$20,000) from the 2005/06 year into 2006/07, to be expended once the Style Guide is adopted.

AMENDMENT

Moved Mayor Morgan, seconded Cr Strzina

That a new item be added as follows:

- (3) Invite members of the Design Advisory Panel to comment on the draft Style Guide once prepared.

Carried 11/0

12.2.6 COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Strzina

That Council:

- (1) **Include \$5,000 in the 2006/07 budget year to develop a simple Style Guide regarding the colour of street furniture and the style/letter fonts for public information signs; and**
- (2) **Transfer allocations for funding of rubbish/litter bins (\$30,000) and new bus shelters (\$20,000) from the 2005/06 year into 2006/07, to be expended once the Style Guide is adopted.**
- (3) **Invite members of the Design Advisory Panel to comment on the draft Style Guide once prepared.**

Carried 10/1

12.2.7 RIGHTS OF WAY AND LANEWAYS POLICY - NAMING OF LANEWAYS

File No: E13. 1
Author: Mr Geoff Trigg
Author Disclosure of Interest: Nil
Report Date: 9 May, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

At its meeting in March, 2006, as part of a larger resolution, Council resolved "That staff prepare a further report on the naming of Rights of Way and Pedestrian Access Ways".

This report recommends that Council advertise for public comment the proposal that Council's *Rights of Way and Laneways* policy be changed to allow for the consideration of applicable and appropriate names for laneways and rights of way, within and controlled by the Town of Cottesloe, if such naming requests are received.

STATUTORY ENVIRONMENT

Rights of Way (ROWs)/Laneways in the Town of Cottesloe are either Crown land, privately owned by the Town of Cottesloe or privately owned by a number of individuals or companies.

Those which are Crown land or owned by the Town of Cottesloe are maintained by Council and Council has control over the naming of such accesses, with the Department of Land Information having to approve, through the Geographical Names Committee, the choices made regarding suitable names.

POLICY IMPLICATIONS

Council's *Rights of Way/Laneways* policy applies.

RIGHTS OF WAY / LANEWAYS**OBJECTIVES:**

1. To provide a safe environment and trafficable surface for residents to access their properties while managing risk to the public and the Town of Cottesloe.
2. To establish a procedure for the progressive upgrading of all public Rights of Way and Laneways, by paving and drainage, using all available sources of funding.
3. To establish a procedure for private developments and subdivisions to contribute to the upgrading of public Rights of Way and Laneways, where those developments impact on those routes.
4. To establish a procedure for sections of private laneways to become Crown land, including land held by Council as private property and used by the public as access.

PRINCIPLES:

1. To recognise that the Rights of Way (ROW)/Laneway network provides valuable access to residential and commercial properties.
2. To recognise that aesthetic improvements occur in street frontages when garages and carports are accessed from ROW's and Laneways.

3. To ensure that the costs of improvements to ROW's/Laneways are funded by developers and subdividers, if such improvements are required to service such developments.
4. To recognise that the ROW/Laneway network is of benefit to the whole community and that the Town of Cottesloe should contribute towards upgrading, if landowners wish to contribute towards ROW or Laneway upgrading.
5. To recognise that any ROW or Laneway used by the general public should be Crown land vested in Council for the purpose of public access, maintained by Council through the normal annual budgeted maintenance programs.
6. To discourage motorists from using laneways as de-facto streets or using laneways as shortcuts.

ISSUES:

1. When compared with similar Local Government Authorities in the metropolitan area, the Town of Cottesloe has a high proportion of its ROW's and Laneways in a poor to undeveloped condition.
2. A large proportion of ROW's and Laneways in the Town of Cottesloe are privately owned by the Town, with the remaining sections being either Crown land or privately owned by various individuals or companies.
3. ROW's and Laneways are being progressively built, piecemeal, due to conditions placed on developments and subdivisions, with no long term air of this construction. Such construction has not included a requirement to connect the built section to a built street or existing built Laneway or ROW.
4. ROW's and Laneways often contain Service Authorities infrastructure eg; deep sewers, water supply pipes, as well as Council installed drainage systems. Machine access is required at all times to maintain and service this infrastructure, regardless of ownership.
5. The mixture of Crown control, private ownership and Council ownership of ROW's and Laneways has created confusion in the past for staff trying to maintain these accesses while trying not to expend Council funds on privately owned sections.
6. The amount of privately owned laneway sections (by Council and individuals) requires a lot of control regarding actions, filing, knowledge of ownership etc, which could be greatly simplified by their surrender to the Crown.
7. Past completion of various short sections of ROW and Laneway construction by various contractors organised by various developers to meet development conditions have left Council with varying levels, construction standards and quality standards of these sections throughout the Town area. This will inevitably result in a variety of maintenance problems as ROW and Laneway use grows.
8. Many of the past approved laneway constructed sections have been to a 100mm thick, un-reinforced concrete standard. With vehicle weights increasing and the use of heavy machinery by Service Authorities to service their infrastructure in laneways, it is also inevitable that Council will be involved in expensive repairs to cracked and damaged concrete laneway sections. Therefore laneway surfacing should be based on flexible rather than inflexible pavements.

POLICY:

1. Council's attitude towards the status of ROW's/Laneways is that all such accesses should be Crown land, where they are used by the general public rather than for a specific restricted property access function.
2. Any sections of ROW's/Laneways owned by the Town of Cottesloe will be surrendered to the Crown under processes included in the *Local Government Act*. Any such sections owned by ratepayers of the Town of Cottesloe, which become available to Council for little or no cost, will also be surrendered to the Crown for Crown land.

3. When a ROW or Laneway is required for primary access to a new development the developer will upgrade by paving, kerbing and drainage, the ROW or Laneway from the nearest built gazetted road or existing built laneway to the furthestmost lot boundary, to the satisfaction of the Manager Engineering Services.
4. The developer may elect to have the Laneway upgrading works done by the Town of Cottesloe or by a Contractor.
 - (a) If the Town is to undertake the works, payment of the full estimated value of the works must be received by the Town before works commence.
 - (b) If the developer employs contractors, a supervision and inspection fee is to be charged, in accord with Section 6.16 of the *Local Government Act, 1995*.
5. The design of the ROW or Laneway must recognise the need to minimize vehicle speeds and maximize safety and security.
6. When a ROW is required for primary or secondary access from an existing property redevelopment, it is conditional (Town Planning) upon the developer to contribute an amount equivalent to 50% of the costs to construct a portion of standard ROW 4m x 20m in area.
 - (a) Where a charge has been applied, as condition of development for the upgrade of a ROW, the money is to be placed in a Reserve Account established under Section 6.11 of the *Local Government Act, 1995*, for the specific purpose of ROW upgrade.
7. Notwithstanding averaging requirements for developments under the residential codes for rear setbacks and fencing specifications in Council's fencing local laws, there shall be a minimum building setback for carports and garages, to allow a minimum turning circle of six (6) metres, measured from the far side laneway boundary to the closest part of the structure, for each car bay, carport and garage designed at 90° to the laneway or ROW.
8. Fees and charges for contribution to works, supervision and inspection will be determined annually by Council in accordance with the provisions of Section 6.16 of the *Local Government Act, 1995*.
9. In situations where new developments or redevelopments are not factors in laneway upgrading and the condition of particular laneways has created concern regarding unsafe conditions for drivers and pedestrians, an increased public liability risk and ongoing maintenance requirements, the following shall apply regarding upgrading:
 - (a) A construction program of ROW's and Laneways will be determined by priority on the basis of vehicle and pedestrian usage, existing surface condition, drainage problems and condition of private fencing.
 - (b) The design of the ROW/Laneway will recognise the need to minimize vehicle speeds and maximize safety and security.
 - (c) All fences abutting ROW's and Laneways shall be constructed and maintained in accordance with Council's fencing Local Laws.
 - (d) The funds available for ROW/Laneway upgrading per budget year shall be total of:
 - (i) The equivalent of the total of minimum rates levied on privately owned ROW/Laneway sections per financial year; plus
 - (ii) Contributions received through the development process as covered under point #6, ie the contents of the Reserve Account for this purpose; plus
 - (iii) An amount determined by Council in each budget document, to be made available from Council funds for ROW/Laneway upgrading and construction.
 - (e) Where adjacent landowners wish to contribute to the cost of construction of a ROW/Laneway or section thereof, the project will be given priority over all other such works, subject to the following:

- (i) The application shall contain confirmation by landowners of their request for the upgrading and the amount each is willing to contribute.
 - (ii) It will be the responsibility of the applicants to collect the contributions and deliver all monies to the Council.
 - (iii) A minimum of 50% of the total cost of the work, estimated by the Council's Manager Engineering Services will be required prior to acceptance of any application. If the ROW/Laneway or section thereof already includes work previously required to be done in the preceding five years then expenditure involved will be treated as contributions, in order to assess priorities and make up the minimum of 50%.
 - (iv) Work will not commence until the full amount of the contribution has been received by the Council.
 - (v) The programming and design of the work will be at the sole discretion of the Council.
 - (vi) Applications will be approved in the order in which the full amount of the contribution is received by the Council and will be subject to the availability of funds to meet the Council's contribution through budget allocations each year.
10. The higher the percentage of cost of laneway upgrading to be provided by private property owner contribution, the higher the priority of project acceptance from Council, apart from the need to allow for funding to remove public liability risks and unsafe conditions on any other ROW or Laneway.
11. As a general rule it is Council policy to keep Laneways open, even if un-constructed. Applications for closure are to be considered by Council.
12. The widths of ROW's/Laneways, the need for truncations on 90° bends, 'Tee' junctions and outlets of laneways onto gazetted roads, and set back requirements from laneways are issues dealt with in other Council documents.
13. Naming of Laneways is not supported as this may create problems of residents requesting the normal services of a street eg; access for emergency vehicles, postal services, refuse collection and street numbering.
However, the installation of metal plates at each end of the ROW's/Laneways showing the ROW number is supported.
14. Where a development or subdivision approval includes a condition requiring the sealing and drainage of a portion of ROW/Laneway to allow rear vehicle access, and the developer believes there is a substantial negative attitude from other affected landowners for such ROW/Laneway improvements, it is up to the developer to demonstrate to Council that attitude.
15. Where no application for a development has been received relating to the drainage and sealing of a laneway, and one or more landowner wishes to prevent the sealing and drainage of a laneway, then the concerned landowner(s) would undertake the requirements of #16 to present Council will the case to prevent such sealing and drainage.
16. The demonstration of a local landowner attitude against the drainage and sealing of a laneway to meet a development condition must include the signatures of at least two thirds of all landowners affected by the proposal supporting the 'no sealing and drainage' case and accepting that any future request to Council from any affected landowner to upgrade or seal that laneway must include an acceptance of two thirds of those owners for a differential rating payment system for those properties to fund such improvement works.

RESOLUTION NO: 12.2.5
ADOPTION: 28 November, 2005
REVIEW: December, 2012

STRATEGIC IMPLICATIONS

Governance/Consistency: All decisions made are consistent with relevant statutes, Council policy and the aims of the Strategic Plan.

Management/Statutory Compliance: All procedures and decisions comply with external and internal statutes.

FINANCIAL IMPLICATIONS

Minor - possible purchase, installation and maintenance of extra street signs.

BACKGROUND

Council's existing policy does not support the naming of laneways.

13. Naming of Laneways is not supported as this may create problems of residents requesting the normal services of a street eg; access for emergency vehicles, postal services, refuse collection and street numbering.
However, the installation of metal plates at each end of the ROW's/Laneways showing the ROW number is supported.

This matter arose when a request for the reinstatement of bollards on ROW 29 included a request for this laneway to be named "Marchant Walk", after a former prominent Cottesloe resident.

CONSULTATION

This matter would be advertised for public consultation if Council resolved to adopt a draft policy change to allow naming of ROWs/Laneways.

STAFF COMMENT

There is a range of attitudes regarding the naming of ROWs/Laneways. Those that reject the naming of laneways use reasons such as the perception that these named laneways are available for all through traffic when they are not capable of carrying some, and the expectation that regular services may become available via laneways eg; emergency vehicle access, postal services, refuse collection and street numbering. Naming also means ongoing street sign maintenance costs.

Reasons in support of the naming of laneways include:

- Laneway names improve the process of directing visitors, deliveries and service vehicles to the rear of properties.
- Naming provides Council with the opportunity to honour previous residents, pioneers, historical events and local features.
- Naming allows a more precise description by Council, staff and residents when referring to a particular location regarding requests, complaints and proposed works.
- Approved names can be listed in a street directory.

In the Town of Cottesloe, it is suggested that privately owned sections of laneways are not appropriate for naming and only Council controlled ROWs/Laneways should be considered.

With regards to the perceived negatives regarding naming:

- Emergency vehicle access will occur regardless of whether a laneway is named or not.
- A postal service already exists for each property and will not be duplicated if a rear laneway is named.
- Refuse collection already occurs on a variety of laneways, with routes normally based on practical accessibility.
- Properties would normally have existing street numbers. Council retains the right to determine any new street numbers. There is little likelihood of numbers being created for laneways.
- While an increase in costs to install laneway signs and the ongoing maintenance costs is a real factor for consideration, it would not be expected that many laneways would be requested for naming per year. Costs should therefore be minimal.

The author believes the consideration of naming requests for ROWs/Laneways would be of benefit to Council, staff and residents.

If the naming of laneways is to be included into the *Rights of Way/Laneways* policy, the Geographic Names Committee have advised that:

The preferred sources for names to be used are:

- Descriptive names appropriate to local features;
- Pioneers; war casualties and historical events connected with the area;
- Names from Aboriginal languages currently or formerly identified with the general area.

In preparing such names the following should be adhered to:

- Generic terms must be appropriate to the features described.
- New names proposed must be accompanied by exact information regarding location, feature identification, origin or, if alteration is proposed, by rationale.
- The use of the genitive apostrophe is to be avoided (eg; Butcher's).
- Hyphenated words in place names shall only be used where these have been adopted in local usage.
- Name duplication and dual naming should be avoided.
- Names of living persons should only be used in exceptional circumstances.
- Names characterised as follows are to be avoided where possible: incongruous, given and surname combinations; qualified names; double names; corrupted, unduly cumbersome, obscene, derogatory or discriminating names; commercialised names.

A list of suggested names from an unknown source was found on the file, which gives some possibilities.

If adopted, a reserved list could be put to the Geographic Names Committee for pre-approval.

List of suggested names:

- Ocean Lane
- Hotel Lane
- Indiana Lane
- Wave Lane
- Golf Lane
- Marine Lane
- Curtin Lane
- Board Lane
- Depot Lane
- Norfolk Lane
- North Cott Lane
- Sand Lane
- Groyne Lane
- Lifesaver Lane
- Highway Lane
- Shipping Lane
- Shade Lane
- Sea Lane
- Beach Lane
- Surfboat Lane
- Surf Ski Lane
- Railway Lane
- Coast Lane
- Wearne Lane
- Pine Lane

VOTING

Simple Majority

OFFICER & COMMITTEE RECOMMENDATION

That Council advertise for public comment the proposal that Council's *Rights of Way/Laneways* policy be changed to allow for the consideration of applicable and appropriate names for rights of way and laneways with and controlled by the Town of Cottesloe, if such naming requests are received.

AMENDMENT

Moved Mayor Morgan, seconded Cr

That Council advertise for public comment the proposal that Council's *Rights of Way/Laneways* policy be changed to:

- (1) Allow for the consideration of applicable and appropriate names for rights of way and laneways with and controlled by the Town of Cottesloe, if such naming requests are received; and
- (2) Make clear that the naming of a row/laneway is not to be taken in anyway whatsoever as that the provision of services will not be provided in that row/laneway.

Carried 8/3

12.2.7 COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Strzina

That Council advertise for public comment the proposal that Council's *Rights of Way/Laneways* policy be changed to:

- (1) Allow for the consideration of applicable and appropriate names for rights of way and laneways with and controlled by the Town of Cottesloe, if such naming requests are received; and**
- (2) Make clear that the naming of a row/laneway is not to be taken in anyway whatsoever as that the provision of services will not be provided in that row/laneway.**

Carried 10/1

12.3 FINANCE

12.3.1 STATUTORY FINANCIAL STATEMENTS FOR THE PERIOD ENDING 30 APRIL, 2006

File No: C 7. 4
Author: Mr Graham Pattrick
Author Disclosure of Interest: Nil
Period Ending: 30 April, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

The purpose of this report is to present the Operating Statement, Statement of Assets and Liabilities and supporting financial information for the period ending 30 April, 2006, to Council.

STATUTORY ENVIRONMENT

Financial reporting is a statutory requirement under the *Local Government Act 1995*.

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Nil.

BACKGROUND

The Financial Statements are presented monthly.

CONSULTATION

Nil.

STAFF COMMENT

The Operating Statement on page 17 of the Financial Statements shows an operating surplus of \$921,351 as at 30 April, 2006. Operating revenue is ahead of budgeted figures by an amount of \$310,061. A report on the variances in income and expenditure for the period ended 30 April, 2006 is shown on pages 38 & 39. Some of the main factors contributing to this operating revenue surplus include higher than expected funds for the disposal of assets, namely the former sump site at 103 Eric Street, increased revenues from parking fines, and grant income received ahead of schedule.

Operating expenditure is \$611,290 less than budgeted for this time of year. The main factors contributing to this are less than anticipated expenditure on the procurement of a new Business IT System (\$56,940), this project is now expected to take place in the next financial year. Other factors include less than anticipated expenditure on the

Civic Centre (\$83,135), on contractors in the area of beaches (\$25,800), and also on contractors in Transport (\$42,379). For a more detailed listing please refer to page 39.

The Capital Works Programme is listed on pages 22 to 24 and shows a total under spend of \$602,903 for this time of year. The major projects impacting on this under spend are Railway Street (\$102,553), Marine Parade (\$134,262), Curtin Avenue/Marine Parade Roundabout (\$145,916) and the Civic Centre Restoration (\$53,989). Of these, the Railway Street and Marine Parade are expected to be completed by the end of the financial year but the Curtin Avenue Roundabout and Civic Centre Restoration will not be completed.

VOTING

Simple Majority

12.3.1 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Strzina

That Council receive the Operating Statement, Statement of Assets and Liabilities and supporting financial information for the period ending 30 April, 2006, as submitted to the 16 May, 2006 meeting of the Works and Corporate Services Committee.

Carried 11/0

12.3.2 SCHEDULE OF INVESTMENTS AND SCHEDULE OF LOANS FOR THE PERIOD ENDING 30 APRIL, 2006

File No: C12 and C13
Author: Mr Graham Pattrick
Author Disclosure of Interest: Nil
Period Ending: 30 April, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

The purpose of this report is to present the Schedule of Investments and Schedule of Loans for the period ending 30 April, 2006, to Council.

STATUTORY ENVIRONMENT

Financial reporting is a statutory requirement under the *Local Government Act 1995*.

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Nil.

BACKGROUND

The Schedule of Investments and Schedule of Loans are presented monthly.

CONSULTATION

Nil.

STAFF COMMENT

The Schedule of Investments on Page 45 of the Financial Statements shows that \$2,619,068.83 was invested as at 30 April, 2006. These savings were boosted during the month by the sale of the old sump site at 103 Eric Street which sold at auction for a price of \$745,000.00.

Reserve funds make up \$631,297.29 of the total funds invested and are such, restricted funds. Approximately thirty five per cent of the funds were invested with the Home Building Society, fifty seven per cent with National Australia Bank, and eight per cent with Bankwest.

The Schedule of Loans on Page 46 shows a balance of \$371,832.35 as at 30 April, 2006. Of this \$179,829.79 relates to self supporting loans

VOTING

Simple Majority

12.3.2 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Strzina

That Council receive the Schedule of Investments and Schedule of Loans for the period ending 30 April, 2006, as submitted to the 16 May, 2006 meeting of the Works and Corporate Services Committee.

Carried 11/0

12.3.3 ACCOUNTS FOR THE PERIOD ENDING 30 APRIL, 2006

File No: C 7. 8
Author: Mr Graham Pattrick
Author Disclosure of Interest: Nil
Period Ending: 30 April, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

The purpose of this report is to present the List of Accounts for the period ending 30 April, 2006, to Council.

STATUTORY ENVIRONMENT

Financial reporting is a statutory requirement under the *Local Government Act 1995*.

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Nil.

BACKGROUND

The List of Accounts is presented monthly.

CONSULTATION

Nil.

STAFF COMMENT

Significant payments included in the list of accounts commencing on page 40 of the Financial Statements, brought to Council's attention include:

- \$11,542.29 to West Australian Local Government Superannuation Plan being for employer contributions to the plan.
- \$12,191.30 to Western Power for street lighting.
- \$23,715.80 to the Australian Taxation Office for the March BAS.
- \$10,952.70 to Claremont Asphalt for asphalt works along Curtin Ave etc
- \$10,078.12 to Surf Lifesaving WA for the monthly lifeguard contract.
- \$52,560.55 to the Town of Mosman Park for the construction of a roundabout at the intersection of Eric Street and Railway Street.
- \$42,590.42 to Trum for the monthly domestic waste collection.
- \$13,345.45 to the WA Treasury for a loan repayment.
- \$20,000 to Procott being disbursement of part of the specified area rate monies raised for the Town Centre promotion.
- \$55,264.13 & \$49,937.60 for staff payrolls.

VOTING

Simple Majority

12.3.3 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Strzina

That Council receive the List of Accounts for the period ending 30 April, 2006, as submitted to the 16 May, 2006 meeting of the Works and Corporate Services Committee.

Carried 11/0

**12.3.4 PROPERTY AND SUNDRY DEBTORS REPORTS FOR THE PERIOD
ENDING 30 APRIL, 2006**

File No: C 7. 9
Author: Mr Graham Pattrick
Author Disclosure of Interest: Nil
Period Ending: 30 April, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

The purpose of this report is to present the Property and Sundry Debtors Reports for the period ending 30 April, 2006, to Council.

STATUTORY ENVIRONMENT

Financial reporting is a statutory requirement under the *Local Government Act 1995*.

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Nil.

BACKGROUND

The Property and Sundry Debtors Reports are presented monthly.

CONSULTATION

Nil.

STAFF COMMENT

The Sundry Debtors Report on page 43 of the Financial Statements shows a balance of \$102,535.46 of which \$28,844.99 relates to the current month. The balance of aged debt greater than 30 days stood at \$73,690.47 of which \$64,532.60 relates to grant funding for State Blackspot monies & \$5,978.02 relates to rejected pensioner rebate claims which need are yet to be reconciled.

The Property Debtors Report on page 44 of the Financial Statements shows a balance of \$542,151.31. Of this amount \$167,734.83 and \$7,040.25 are deferred rates and deferred ESL respectively. As can be seen on the Balance Sheet on page 17 of the Financial Statements, rates as a current asset stood at \$367,377 as against \$395,010 at the same time last year

VOTING

Simple Majority

12.3.4 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Strzina

That Council:

- (1) Receive and endorse the Property Debtors Report for the period ending 30 April, 2006; and**
- (2) Receive the Sundry Debtors Report for the period ending 30 April, 2006.**

Carried 11/0

12.4 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY ELECTED MEMBERS/OFFICERS BY DECISION OF MEETING**12.4.1 RIGHT OF WAY NO. 29 - CLOSURE TO VEHICLE ACCESS**

File No: E13. 1.29
Author: Mr Geoff Trigg
Author Disclosure of Interest: Nil
Report Date: 12 May, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

This report covers the results of the public consultation process regarding the legal reinstatement of bollards in Right of Way (ROW) No. 29, to prevent 'through' movement of vehicles.

The recommendation is that Council:

- (1) Proceed under Section 3.50 of the *Local Government Act, 1995* with the formal process of closing, to vehicle use, Right of Way No. 29, at a point approximately 11 metres east of the tee junction, as shown on Plan No. ROW 29; and
- (2) Inform all respondents of Council's decision in this matter.

STATUTORY ENVIRONMENT

The Laneway/ROW is owned by the Town of Cottesloe but the Certificate of Title refers to this and other similar accesses in the area as 'Rights of Way' giving it the same status as a vested Crown Land ROW.

On this basis, the requirements of Section 3.50 of the *Local Government Act, 1995* applies.

POLICY IMPLICATIONS

Council's *Rights of Way/Laneways* policy applies.

(1) OBJECTIVES:

1. To provide a safe environment and trafficable surface for residents to access their properties while managing risk to the public and the Town of Cottesloe.
2. To establish a procedure for the progressive upgrading of all public Rights of Way and Laneways, by paving and drainage, using all available sources of funding.
3. To establish a procedure for private developments and subdivisions to contribute to the upgrading of public Rights of Way and Laneways, where those developments impact on those routes.

4. To establish a procedure for sections of private laneways to become Crown land, including land held by Council as private property and used by the public as access.

(2) PRINCIPLES:

1. To recognise that the Rights of Way (ROW)/Laneway network provides valuable access to residential and commercial properties.
2. To recognise that aesthetic improvements occur in street frontages when garages and carports are accessed from ROW's and Laneways.
3. To ensure that the costs of improvements to ROW's/Laneways are funded by developers and subdividers, if such improvements are required to service such developments.
4. To recognise that the ROW/Laneway network is of benefit to the whole community and that the Town of Cottesloe should contribute towards upgrading, if landowners wish to contribute towards ROW or Laneway upgrading.
5. To recognise that any ROW or Laneway used by the general public should be Crown land vested in Council for the purpose of public access, maintained by Council through the normal annual budgeted maintenance programs.
6. To discourage motorists from using laneways as de-facto streets or using laneways as shortcuts.

(3) ISSUES:

1. When compared with similar Local Government Authorities in the metropolitan area, the Town of Cottesloe has a high proportion of its ROW's and Laneways in a poor to undeveloped condition.
2. A large proportion of ROW's and Laneways in the Town of Cottesloe are privately owned by the Town, with the remaining sections being either Crown land or privately owned by various individuals or companies.
3. ROW's and Laneways are being progressively built, piecemeal, due to conditions placed on developments and subdivisions, with no long term air of this construction. Such construction has not included a requirement to connect the built section to a built street or existing built Laneway or ROW.
4. ROW's and Laneways often contain Service Authorities infrastructure eg; deep sewers, water supply pipes, as well as Council installed drainage systems. Machine access is required at all times to maintain and service this infrastructure, regardless of ownership.
5. The mixture of Crown control, private ownership and Council ownership of ROW's and Laneways has created confusion in the past for staff trying to maintain these accesses while trying not to expend Council funds on privately owned sections.
6. The amount of privately owned laneway sections (by Council and individuals) requires a lot of control regarding actions, filing, knowledge of

ownership etc, which could be greatly simplified by their surrender to the Crown.

7. Past completion of various short sections of ROW and Laneway construction by various contractors organised by various developers to meet development conditions have left Council with varying levels, construction standards and quality standards of these sections throughout the Town area. This will inevitably result in a variety of maintenance problems as ROW and Laneway use grows.
8. Many of the past approved laneway constructed sections have been to a 100mm thick, un-reinforced concrete standard. With vehicle weights increasing and the use of heavy machinery by Service Authorities to service their infrastructure in laneways, it is also inevitable that Council will be involved in expensive repairs to cracked and damaged concrete laneway sections. Therefore laneway surfacing should be based on flexible rather than inflexible pavements.

(4) POLICY:

1. Council's attitude towards the status of ROW's/Laneways is that all such accesses should be Crown land, where they are used by the general public rather than for a specific restricted property access function.
2. Any sections of ROW's/Laneways owned by the Town of Cottesloe will be surrendered to the Crown under processes included in the *Local Government Act*. Any such sections owned by ratepayers of the Town of Cottesloe, which become available to Council for little or no cost, will also be surrendered to the Crown for Crown land.
3. When a ROW or Laneway is required for primary access to a new development the developer will upgrade by paving, kerbing and drainage, the ROW or Laneway from the nearest built gazetted road or existing built laneway to the furthestmost lot boundary, to the satisfaction of the Manager Engineering Services.
4. The developer may elect to have the Laneway upgrading works done by the Town of Cottesloe or by a Contractor.
 - (a) If the Town is to undertake the works, payment of the full estimated value of the works must be received by the Town before works commence.
 - (b) If the developer employs contractors, a supervision and inspection fee is to be charged, in accord with Section 6.16 of the *Local Government Act, 1995*.
5. The design of the ROW or Laneway must recognise the need to minimize vehicle speeds and maximize safety and security.
6. When a ROW is required for primary or secondary access from an existing property redevelopment, it is conditional (Town Planning) upon the developer to contribute an amount equivalent to 50% of the costs to construct a portion of standard ROW 4m x 20m in area.

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- (a) Where a charge has been applied, as condition of development for the upgrade of a ROW, the money is to be placed in a Reserve Account established under Section 6.11 of the *Local Government Act*, for the specific purpose of ROW upgrade.
7. Notwithstanding averaging requirements for developments under the residential codes for rear setbacks and fencing specifications in Council's fencing local laws, there shall be a minimum building setback for carports and garages, to allow a minimum turning circle of six (6) metres, measured from the far side laneway boundary to the closest part of the structure, for each car bay, carport and garage designed at 90° to the laneway or ROW.
8. Fees and charges for contribution to works, supervision and inspection will be determined annually by Council in accordance with the provisions of Section 6.16 of the *Local Government Act, 1995*.
9. In situations where new developments or redevelopments are not factors in laneway upgrading and the condition of particular laneways has created concern regarding unsafe conditions for drivers and pedestrians, an increased public liability risk and ongoing maintenance requirements, the following shall apply regarding upgrading:
- (a) A construction program of ROW's and Laneways will be determined by priority on the basis of vehicle and pedestrian usage, existing surface condition, drainage problems and condition of private fencing.
- (b) The design of the ROW/Laneway will recognise the need to minimize vehicle speeds and maximize safety and security.
- (c) All fences abutting ROW's and Laneways shall be constructed and maintained in accordance with Council's fencing Local Laws.
- (d) The funds available for ROW/Laneway upgrading per budget year shall be total of:
- (i) The equivalent of the total of minimum rates levied on privately owned ROW/Laneway sections per financial year; plus
- (ii) Contributions received through the development process as covered under point #6, ie the contents of the Reserve Account for this purpose; plus
- (iii) An amount determined by Council in each budget document, to be made available from Council funds for ROW/Laneway upgrading and construction.
- (e) Where adjacent landowners wish to contribute to the cost of construction of a ROW/Laneway or section thereof, the project will be given priority over all other such works, subject to the following:
- (i) The application shall contain confirmation by landowners of their request for the upgrading and the amount each is willing to contribute.
- (ii) It will be the responsibility of the applicants to collect the contributions and deliver all monies to the Council.
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- (iii) A minimum of 50% of the total cost of the work, estimated by the Council's Manager Engineering Services will be required prior to acceptance of any application. If the ROW/Laneway or section thereof already includes work previously required to be done in the preceding five years then expenditure involved will be treated as contributions, in order to assess priorities and make up the minimum of 50%.
 - (iv) Work will not commence until the full amount of the contribution has been received by the Council.
 - (v) The programming and design of the work will be at the sole discretion of the Council.
 - (vi) Applications will be approved in the order in which the full amount of the contribution is received by the Council and will be subject to the availability of funds to meet the Council's contribution through budget allocations each year.
10. The higher the percentage of cost of laneway upgrading to be provided by private property owner contribution, the higher the priority of project acceptance from Council, apart from the need to allow for funding to remove public liability risks and unsafe conditions on any other ROW or Laneway.
11. As a general rule it is Council policy to keep Laneways open, even if unconstructed. Applications for closure are to be considered by Council.
12. The widths of ROW's/Laneways, the need for truncations on 90° bends, 'Tee' junctions and outlets of laneways onto gazetted roads, and set back requirements from laneways are issues dealt with in other Council documents.
13. Naming of Laneways is not supported as this may create problems of residents requesting the normal services of a street eg; access for emergency vehicles, postal services, refuse collection and street numbering.
- However, the installation of metal plates at each end of the ROW's/Laneways showing the ROW number is supported.
14. Where a development or subdivision approval includes a condition requiring the sealing and drainage of a portion of ROW/Laneway to allow rear vehicle access, and the developer believes there is a substantial negative attitude from other affected landowners for such ROW/Laneway improvements, it is up to the developer to demonstrate to Council that attitude.
15. Where no application for a development has been received relating to the drainage and sealing of a laneway, and one or more landowner wishes to prevent the sealing and drainage of a laneway, then the concerned landowner(s) would undertake the requirements of #16 to present Council will the case to prevent such sealing and drainage.
16. The demonstration of a local landowner attitude against the drainage and sealing of a laneway to meet a development condition must include the signatures of at least two thirds of all landowners affected by the proposal supporting the 'no sealing and drainage' case and accepting that any
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future request to Council from any affected landowner to upgrade or seal that laneway must include an acceptance of two thirds of those owners for a differential rating payment system for those properties to fund such improvement works.

STRATEGIC IMPLICATIONS

Governance/Consistency: All decisions made are consistent with relevant statutes, Council policy and the aims of the Strategic Plan.

Management/Statutory Compliance: All procedures and decisions comply with external and internal statutes.

FINANCIAL IMPLICATIONS

Nil.

BACKGROUND

Bollards have been in place on ROW No. 29 for many years.

Investigation of the file contents has indicated that the original installation of the bollards may not have satisfied legal requirements.

The file contains a 1979 request for closure of this ROW to vehicles, signed by a number of residents. A letter dated April, 1981 states that Council rejected the closure request.

In 1988, a ROW/Laneways report mentions the existence of a closure, in the same position as recently noted.

The laneway is now privately owned by Council and has the term 'Right of Way' on the Certificate of Title. As such, it should be treated in the same way as a Crown land ROW.

Recent laneway upgrading works associated with a recent land development included the temporary removal of the bollards.

A local resident had requested the replacement of these bollards in their original positions.

Council therefore resolved in March, 2006:

That Council:

- (1) Follow the requirements of Section 3.50 of the *Local Government Act, 1995* in assessing local resident and general public support for the closure to vehicle use of Right of Way No. 29, at a point 11 metres east of the Tee junction, as shown on Plan No. ROW 29, including public advertising and letters to affected residents in Nailsworth Street, Napier Street and Broome Street;
- (2) That staff prepare a further report on the naming of Rights of Way and Pedestrian Access Ways; and

- (3) Inform the owners of 30 Napier Street of Council's decisions on these matters.

CONSULTATION

This report provides the results of the public consultation process regarding the legal replacement of bollards in ROW 29.

STAFF COMMENT

Two comments were received on this proposal, both in favour of the legal replacement of bollards in ROW 29, to prevent 'through' vehicle movement between Broome Street and Nailsworth Street, while still allowing for pedestrian and cyclist use.

VOTING

Simple Majority

12.4.1 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Furlong

That Council:

- (1) Proceed, under Section 3.50 of the *Local Government Act, 1995* with the formal process of closing, to vehicle use, Right of Way No. 29, at a point approximately 11 metres east of the Tee junction, as shown on Plan No. ROW 29; and**
- (2) Inform all respondents of Council's decision in this matter.**

Carried 8/3

13 ELECTED MEMBERS' MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil

14 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY ELECTED MEMBERS/OFFICERS BY DECISION OF MEETING

Nil

15 MEETING CLOSURE

The Mayor announced the closure of the meeting at 10.20pm.

CONFIRMED: MAYOR DATE:/...../.....