



# Town of Cottesloe

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

**Tuesday, 24 August 2021**

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

Signed:

A handwritten signature in blue ink, appearing to read 'I. B. J. ...'.

Presiding Member

Date:

26/10/2021

# TOWN OF COTTESLOE



## ORDINARY COUNCIL MEETING

# MINUTES

ORDINARY COUNCIL MEETING  
HELD IN THE  
Council Chambers, Cottesloe Civic Centre, 109 Broome Street, Cottesloe  
6:00pm Tuesday, 24 August 2021

**MATTHEW SCOTT**  
Chief Executive Officer

31 August 2021

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

The Presiding Member announced the meeting opened at 6:06pm.

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

**2 DISCLAIMER**

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

**3 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION**

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

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

John Brooksby – 1B Eileen Street, Cottesloe – Item 10.1.6 (Provided in Writing)

Q4: What locations at the Broome Street Recreational Precinct were considered and/or rejected by Council and on what grounds?

A4: Please refer to page 8 to 10 of the Convic Feasibility Report within the July 2021 Ordinary Council Meeting attachments.

Q5: If the Broome Street Recreational Precinct was considered, which areas were identified, and is there evidence of those discussions?

A5: As per response above.

Q6: If Broome Street Recreational Precinct locations were considered to be too close to residents, how is it that the John Black Dune Park is under consideration when it is equally close to residents?

A6: The Broome Street location falls within the 50 metres impact zone whilst a significant area of John Black Dune Park sits outside that.

Q7: How can the Council decide on the size of the skate park before it has decided its location?

A7: Size will determine possible locations. There is little point in considering a location that is subsequently physically unable to fit the facility.

Q8: Similarly, how can it be too close to residents when we don't know how big it is?

A8: Convic has advised the appropriate skate park size is 600m<sup>2</sup> to 800m<sup>2</sup>.

Q9: What infrastructure is to be provided given that a District Park should '*... ideally provide shaded seating options and viewing areas for a family friendly space. In addition, amenities such as drinking fountains,*

*signage, landscaping should be included within the precinct with consideration given to the inclusion of complimentary (sic) alternative active recreation program. Power and lighting are preferable, but not necessary for the facility to function properly'?*

A9: This will be determined at concept design.

Q10: How much is all this going to cost ratepayers?

A10: Convic has recommended that the cost of \$750,000.

Rebecca King – 72 Eric Street, Cottesloe – Item 10.1.6

Q1: Could you please tell me why the cement area, adjacent to the kindergarten, not used by golf or football has not been considered, given that it is part of the recreational precinct and does not disturb residents and is perfect for a local skate park?

A1: It is understood this question relates to area to the immediate west of SV Kindergarten, which would result in a lack of passive surveillance, which the Council has been advised is important to reduce potential anti social behaviour.

Q2: Before a decision is made on John Black Dune Park what feasibility has been done regarding demographic of numbers of users, given that 823 of the 1,000 who wanted it were not from Cottesloe; problems faced by other skate parks; facilities and infrastructure required e.g. high ramps, fencing, toilets, lights, paving; parking, ongoing financial liability regarding maintenance, public liability insurance damages, etcetera, noise and light pollution, aesthetic intrusion and loss of sand dune nature reserve for which Cottesloe is famous?

A2: The current consultation is to determine which site (The Foreshore or John Black Dune Park) is preferred by the community. Once a location is decided on, concept design will need to address site specific issues (such as those raised above).

Stephen Mellor - 8 Graham Court, Cottesloe WA 6011 on behalf of the Cottesloe Residents and Ratepayers Association – Items 10.1.6, 10.1.4, Car Park 2

Q1: As the Foreshore Precinct 100% has been separated from the Masterplan, how much is allocated in this new and all previous financial year budgets towards the development of the Car Park 2 elements of the Masterplan?

A1: No specific budget has been allocated at this stage for Car Park No.2.

Q2: When is the proposal and feasibility consultants report likely to be presented to Council and the wider community?

A2. Council has received a briefing on the report. The Feasibly Report currently poses an number of questions, particularly with State Agencies

around current tenure issues, which require resolving, prior to commencing a public discussion on progressing Car Park No.2.

Q3: Does the Council have a community consultation strategy for Car Park 2?

A3. Not at this stage.

Q4: Will public toilets be included in the development?

A4. The Masterplan discusses Public Toilets at Car Park No.2.

Q5: Will the Foreshore Precinct Advisory Panel on-going, be asked to advise on the Car Park 2 elements of the main Masterplan?

A5. As Car Park No.2 is included in the overall Foreshore Masterplan, the Foreshore Precinct Advisory Committee (FPAC) will most likely be asked to provide advice to Council.

Q6: If so, will the FPAC be re-established in the same way as the recent DAP Panel, to exclude Elected Members being on the Committee?

A6. The changes to the Design Review Panel was based on WAPC guidelines. There are no similar guidelines from the State in relation to FPAC.

Q7: Noting the Bulletin Action note *2.1.e. Several other proposals along Marine Parade subject to State Government processes, providing feedback* can you advise which properties and which State Government Processes are involved?

A7. No, the State Development Advisory Unit (SDAU) has requested all discussions regarding individual properties proposals be kept confidential, unless the SDAU has invited public submission on proposals.

Q8: When was the Concept Design of the Anderson Pavilion approved and by whom?

A8. Council, May 2021 OCM, Resolution OCM 075/2021

Q9: Noting the Bulletin Action comment 2.2.b *Ongoing meetings with stakeholder groups regarding recreation precinct plan. Rugby club upgrades works determined and included in 21/22 Budget.*

Why was the Sea View Golf Club not regarded as a stakeholder in Anderson Pavilion discussions as they previously were?

A9. The Sea View Golf Club was asked for comment, but advised they would not as they have no direct interest in Anderson Pavilion.

Q10: What is the scope and cost to ToC of the Rugby Club upgrades?

A10. There no upgrades planned for the Rugby Club Facilities in the 21/22 Budget.

Q11: Do such upgrades presume a continuation of the Rugby Club House lease after 2024?

A11. No.

Q12: When will the community have the opportunity to review and comment on the finalised designs of the Anderson Pavilion?

A12. This will be a decision of Council.

Q13: When will the Community be made aware that the Concept Designs are available on the website?

A13. The Town's website is in the public domain.

Q14: Can you confirm whether you will be going out to tender on a design and build contract or separate contracts?

A14. The tender has been advertised as a design and construct tender

Yvonne Hart – Mann Street, Cottesloe – Item 10.1.2

Q1. Amber Technology – Sound level meter equipment - \$12,316.50

What is this sound level meter equipment? Is this a new purchase? Is the amount the full value of the purchase? How will the equipment be used?

A1. The Town purchased an approved sound level metre (SLM); approved in accordance with the Environmental Protection (Noise) Regulations 1997 to enable Environmental Health Officers to carry out noise assessments to assist with resolving noise complaints and other matters such as monitoring noise from events, railway noise etc.

The cost includes all supporting licenses (annual licence) and materials to download and assess the data.

Q2. Julieman Pty Ltd – various hardware - 11,339.74

An enormous amount for 'hardware'. Who is Julieman Pty Ltd? What does the \$ sum cover?

A2. Trading as "Complete Building Supplies WA", this was for supply of building material such as timber, stirrups, screws etc for Beach Access Path S4.

Q3. Mahjae Pty Ltd – Foreshore business case -update & summary - \$8,206.00

What the Foreshore business case update & summary? Why is the business case necessary? Who received a copy of the update & summary?

A3. Mahjae is T/as Whitney Consulting. This is for consultancy work seeking State Government funding for the proposed Foreshore improvement works. The document is currently being reviewed by the Administration.

Q4. John Hughes – Volkswagen Tiguan 7 \$42,507.20

Titan Ford – Ford Ranger ute \$31,850.99

\$74,358.19

Who are these vehicle for? For what reason?

A4. The vehicles have been purchased to replace part of the current fleet as part of the normal Plant Replacement Program. Vehicles are for use by staff.

- Q5. Landgate – Certificate of title and Property Interest Report - \$175.90  
Certificate of Title = \$27.20  
Property Interest Report = \$61.25  
Total = \$88.45  
What Certificate of Title over which property?  
What was revealed in the Property Interest Report?  
The difference between the two reports was \$86.45. What did this cover?
- A5. The invoice is for two 2 Certificate of Titles which are often required to assist Planners in carrying out their assessments. Each had a Certificate of Title search at \$26.70, and a Property interest report at \$61.25 each (ie \$87.95 per property x 2 = \$175.90). The information contained on Certificates of Titles is in relation to land details and it is not appropriate to name the properties.
- Q6. The Operating Surplus Ratio has fallen every year since 2012/2013.  
What steps will be taken to reduce expenditure, and over the next few years bring the Operating Surplus Ratio back to the 0.1% minimum required by the State Government, and the 0.25% expected by ratepayers.
- A6. Council will set the Budget each year depending on a number of competing priorities and with respect to available funding which comes from a variety of sources. The Operating Surplus Ratio is one form of measurement used by external parties to compare various local governments and targets are recommended and not mandated. Any expectation on rates increase or penalties attributed as a rate rise are views external to Council.

Mr Kevin Morgan – 1 Pearse Street, Cottesloe – Indiana Teahouse, Caucusing, Beach Policy, Responses to Previous Questions – Provided in Writing

- Q1. As to the Council owned Indiana Teahouse should Council take charge of the local debate to ensure Cottesloe residents have a large say on what happens, and an early indication whether residents will accept a replacement, and other than the Indiana Teahouse concept?
- A1. Any Changes to the Indiana building will be subject to Council approval, and as such, Council will decide how residents are consulted in relation to any changes.
- Q2. The minutes of 27 April 2021 record that Council agreed behind closed doors to add a new clause to what is now the *Town of Cottesloe Code of Conduct for Council Members, Committee Members and Candidates* dated 18 May 2021 whereby the new Code was presented to Council with the new clause already added - does this mean that Council illegally caucused to make a purportedly binding decision, other than at a properly constituted and conducted Council meeting, and how is it that

you as CEO have any power to give effect to a purported decision made other than at such a Council meeting?

- A2. No decisions are made by Council other than at Council Meetings. All decision relation to the Code of Conduct were held in open meetings as evidenced in the minutes.
- Q3. Before Council agreed to add the new clause, (clause 8(2)), did Council obtain advice on whether it unnecessarily restricts freedom of political communication which is an implied right under the *Constitution* and is a breach of *Human Rights*, and as such would be read down to only apply to comment by elected members without clarifying it as their own personal view and not that of Council, and never apply to debates in this chamber?
- A3. No comment is made in respect of the expressions of opinion in the question. The changes reflect longstanding principles of local government decision-making, which have been included in Council's Code of Conduct for many years. There was no need to take advice on the inclusion of such provisions.
- Q4. Was it not you, as CEO, who had a duty to advise Council of the implications of its proposed resolution, in particular that it would breach strategy 7.2 of the Beach Policy, and did you fail to so advise them, or if you did, is and if so where is there any record of you doing so?
- A4. The resolution regarding the location of the facility was made by way of Councillor motion moved at the December Ordinary Council meeting as an alternative motion to the Officer's Recommendation. As such, no Officer's Report was prepared on the matter. The implications of the Beach Policy were subsequently addressed at the Special Council meeting in April.
- Q5. Did the Council rely on last year's budget allocation of \$3million to "Sports Precinct Development" as authorising its expenditure last financial year in relation to the proposed football clubhouse at Cottesloe Oval, and if so, is there any other record of a project by that name?
- A5. All aspects of the Anderson Pavilion upgrade, including all expenditure, have been authorised by decisions of Council, as evidence in the relevant minutes.
- Q6. Will the Council ensure its auditor addresses whether all of those expenditures were properly organised?
- A6. The Town's Auditors operate independently from the Council and Administration, and will review all items of significant expenditure as part of normal audit processes.
- Q7. With regard to your response to my Question 10 at last month's meeting is it not the case that the project did not result from community input but was instead inserted by the then CEO in March 2016, when our current

CEO was undertaking the same project at the last Council at which he was employed?

A7. No.

### **Questions Taken on Notice – Special Council Meeting 3 August 2021**

#### Stephen Mellor – 8 Graham Court, Cottesloe – Item 9.1.1

Q1: Why has it been impossible for the community to review details of the Anderson Pavilion replacement?

A1: This information is available as part of the tender documentation, currently publicly available.

Q2: What is the future community consultation strategy and timing?

A2: This is yet to be determined by Council.

Q3: Will going to tender for design and construct be after community consultation?

A3: The Design and Construct Tender has been advertised.

Q4: Please give project description details of the following: (Page numbers of budget)

P31 What is the foreshore revitalisation \$120,000?

Outstanding accounts associated with the Foreshore and Rotunda Design.

P36 What is the scanning project \$12,500?

To assist administration with scanning all planning and building documents into the Town's record keeping system (Trim) to ensure documents are safe and readily available to staff and ratepayers.

What is the Strategic Planning cost \$25,000 for?

To commence the review of the Town's strategic planning framework; both the Strategy and the Scheme.

Foreshore Development marketing \$50,000?

Promote the Foreshore Redevelopment Project to source funding required for the works

Ocean ramp \$15,000 where is this located?

Expected to be at a suitable location at main beach pending engineering investigations.

Contractors and consultants \$233,907 for which projects and sub allocation

Surf Lifesaving contract through SLSWA.

P61 Anderson Pavilion maintenance \$28,948 are you spending this before the rebuild starts?

This would be dependent on whether there are minor repairs required to the current building in order to maintain its functionality

Other buildings \$35,248 - is this the Rugby Club upgrade?

No

Recreation Centre Masterplan \$20,000 - what is this for?

This would be to finalise the rationalised concept approved by Council for the Recreation Precinct.

P64 Art and Culture Project is zero. \$10,000 was allocated last year. If this expenditure was regarded as necessary last year, why was it not used?

There was a Council decision not to purchase an art piece.

Note –this matter refers to the Sculpture Curatorial Service which was not utilised in 2020/21. A budget allocation has been made in 2021/22.

P68 Parking permits income \$5,000 is this a new permit system?

Predicted income from issuing of and/or replacement of lost parking permits.

It should be noted that Council agreed NOT to charge for parking permits so this is likely to be less.

P71 Consultants Area Promotion \$113,555?

For marketing, promotion and business development of the Central Business District. This is paid to Procott Inc from the monies raised by the differential general rate.

P76 Cottesloe Village Precinct \$215,000?

Costs required to complete the Cottesloe Village Precinct Plan – now referred to as Structure Plan.

Please direct me to where Car Park 2 development costs are in the budget.

This is not in the current budget

What is the annual cost of WALGA membership?

\$36,670.50 plus GST.

## 4.2 PUBLIC QUESTIONS

David Prosser – 32 John Street, Cottesloe – Verge Work Permit

Q1. Is there a new developing culture within Council against males ... them against us mentality creating a hostile environment lacking common courtesy, a heart, soul, decency and plain common sense?

A1. Taken on Notice.

Stephen Mellor – 8 Graham Court, Cottesloe – On Behalf of the Cottesloe Residents’ and Ratepayers’s Association – Follow Up re Questions and Responses Given at Agenda Forum 17 August 2021

Q1. What is the Strategic Planning cost \$25,000 for?

A1. To commence the review of the Town’s strategic planning framework; both the Strategy and the Scheme.

Q2. Is this review done by ‘in-house’ staff? Can you please describe what these costs are for? Outside Consultants or facilitators etc?

A2. The costs would be for outside consultants and workshop facilitation.

Q3. Ocean ramp \$15,000 where is this located?

A3. Expected to be at a suitable location at main beach pending engineering investigations.

Q4. When was the need for a ramp identified? Why was this not included in the recent South of Indiana foreshore steps rebuild? Or why was this not part of Aspect Studios brief?

A4. Universal access has always been part of the Corporate Business Plan. The recent foreshore step rebuild, south of the Indiana Tea House was only to improve accessibility from Marine Parade onto the beach. This ocean ramp provides universal access from the beach into the ocean. The Aspect Studio contract is only relevant to the Foreshore Redevelopment Project that starts north of the Indiana Tea House.

Q5. Anderson Pavilion maintenance \$28,948 are you spending this before the rebuild starts?

A5. This would be dependent on whether there are minor repairs required to the current building in order to maintain its functionality.

Q6. Can you please explain why then this is such a precise figure for ‘minor’ works?

A6. This has been developed based on past year’s budget and is only used for routine maintenance.

Q7. Other buildings \$35,248 - is this the Rugby Club upgrade?

A7. No.

Q8. As ‘No’ is the response given it would have been helpful to then state what it is for. What is it for?

A8. This would be for routine maintenance of the rugby clubhouse.

Q9. Art and Culture Project is zero. \$10,000 was allocated last year. If this expenditure was regarded as necessary last year, why was it not used?

The response given was that there was a Council decision not to purchase an art piece. This was incorrect and there was a correction in today's agenda and the hard copy I received in the post today:

*'Note: this matter refers to the Sculpture curatorial Service which was not utilised in 2020/21. A budget allocation has been made in 2021/22.'*

There was no withdrawal of the incorrect response and what is the budget line identifier so that I can see where it is in the budget?

A9. With regards to this question, Mr Mellor has answered his own question by reading out the additional note that has been provided to him. These questions will now be tabled in the minutes. Questions from the Agenda Forum are not printed in the Minutes but we will correct them in the minutes of this meeting along with the responses to all your other written questions.

Q10. Cottesloe Village Precinct \$215,000?

A10. Costs required to complete the Cottesloe Village Precinct Plan – now referred to as Structure Plan.

Q11. As this is a one financial year allocation please break down the cost total a bit further. Does this cover additional staff costs, consultants, designers public consultations etc?

A11. Yes expenditure components relating to the management of the project which includes staff costs, etc.

Q12. Please direct me to where Car Park 2 development costs are in the budget.

A12. This is not in the current budget.

Q13. Can you tell me what expenditure line the Business Feasibility Report Consultant fees for Car Park 2 is under and in which financial year?

A13. This was funded under 45.6080.50 in the 2020/2021 financial year.

Q14. When was the Concept Design of the Anderson Pavilion approved and by whom?

I read in today's Cottesloe Newsletter, that arrived with the rates notice, that Council recently approved a concept design for the Anderson Pavilion. Also stated that it is consistent with the 2018 Recreation Precinct Masterplan. The pavilion is not a multi-use concept or in the Masterplan location. There were no building concept drawings in that meeting attachments. Can you please confirm when Council reviewed and accepted the concept drawings not just the thumbnail sketch plan of the site?

A14. Effectively going back to October 2020 Council approved the design principles for the concept of the Anderson pavilion. It was subsequently

put through the Design Review Panel and in May 2021 Council approved the concept design as part of the resolution in regards to Anderson Pavilion and was not purely on the thumbnail as has been suggested. Those plans are now publicly available in the tender documentation in the public domain.

Q15. What is the scope and cost to ToC of the Rugby Club upgrades?

A15. There no upgrades planned for the Rugby Club Facilities in the 21/22 Budget.

Q16. I can't remember where I have read that upgrades/renovations were planned for the Rugby Club. Has this perhaps been accounted for in last year's budget or is it planned for 2022/2023? Was it a discussion item at one of the recent Budget workshops? Or are these costs to be paid for by the club?

A16. There was a budget item in the 2020/2021 financial year.

## 5 PUBLIC STATEMENT TIME

Tom Hockley – 125 Hamersley Road, Subiaco - Item 10.1.4

Mr Hockley summed up his comments in relation to the impacts of the proposed dwelling at 21 Deane Street on his client's properties at 24 Avonmore Terrace.

Luigi D'Orsogna – 1 Torrens Court, Cottesloe – Item 10.1.6

Mr D'Osogna spoke against the officer's recommending rejecting residents requests for exemptions to tree planting on the verge fronting his property.

Brett Mitchell – 3 Torrens Court, Cottesloe - Item 10.1.4

Spoke against the officer's recommendation and relying on discretionary authority to plant additional trees on the verge.

Greg Boland - 2B Sydney Street, Cottesloe, Deputy Chair of the Cottesloe Residents and Ratepayers Association - 13.1.1

Mr Boland spoke about the Development Application at 120 Marine Parade, Cottesloe and supported the Town's opposition to the proposal.

## 6 ATTENDANCE

### Elected Members

Acting Mayor Lorraine Young  
Cr Caroline Harben (to 7:17pm)  
Cr Helen Sadler  
Cr Craig Masarei  
Cr Melissa Harkins  
Cr Michael Tucak  
Cr Kirsty Barrett

Cr Paul MacFarlane

**Officers**

Mr Matthew Scott

Chief Executive Officer

Mr Shane Collie

Director Corporate and Community Services

Ms Freya Ayliffe

Director Development and Regulatory Services

Mr Shaun Kan

Director Engineering Services

Mr Ed Drewett

Coordinator Statutory Planning

Ms Mary-Ann Winnett

Governance Coordinator

**6.1 APOLOGIES**

Nil

**6.2 APPROVED LEAVE OF ABSENCE**

**6.3 APPLICATIONS FOR LEAVE OF ABSENCE****6.3.1 LEAVE OF ABSENCE – CR MASAREI****OCM135/2021****COUNCIL RESOLUTION****Moved Acting Mayor Young                      Seconded Cr Harkins****That Cr Masarei be granted leave of absence from 23 September 2021 to 29 September 2021.****Carried 8/0****6.3.2 LEAVE OF ABSENCE – CR MACFARLANE****OCM136/2021****COUNCILLOR MOTION****Moved Acting Mayor Young                      Seconded Cr Sadler****That Cr MacFarlane be granted leave of absence from 21 September 2021 to 31 October 2021.****Carried 8/0****7 DECLARATION OF INTERESTS**

Cr Harben declared an IMPARTIALITY INTEREST in item 13.1.1 by virtue "The architect for the site was the architect for a property I own."

Cr Sadler declared an IMPARTIALITY INTEREST in item 10.1.4 by virtue "One of the neighbours is known to me."

Cr Sadler declared an IMPARTIALITY INTEREST in item 11.1 by virtue "My son formerly worked for the North Street Store, but all outstanding financial matters have been resolved."

Cr Masarei declared an IMPARTIALITY INTEREST in item 10.1.4 by virtue "Mr Howard Read is known to me."

Cr Masarei declared an IMPARTIALITY INTEREST in item 10.1.6 by virtue "Some of the residents of Torrens Court are known to me."

Cr Harkins declared an IMPARTIALITY INTEREST in item 10.1.6 by virtue "Some of the residents are known to me."

Cr Tucak declared an IMPARTIALITY INTEREST in item 10.1.2 by virtue "I live in the affected area."

Cr Tucak declared an IMPARTIALITY INTEREST in item 10.1.9 by virtue "I work in the film industry and the film company is known to me."

Cr Tucak declared an IMPARTIALITY INTEREST in item 10.1.4 by virtue "If Mr Algeri is still the applicant's planner then he is known to me outside of Council."

Cr Tucak declared an IMPARTIALITY INTEREST in item 11.1 by virtue "the two Directors of Do a Dinner are known to me outside of my role on Council."

Cr Tucak declared an IMPARTIALITY INTEREST in item 13.1.4 by virtue "I declare an impartiality interest as I am a party to the complaint."

Cr Barrett declared an IMPARTIALITY INTEREST in item 10.1.6 by virtue "Affected people are known to me. "

Cr MacFarlane declared an IMPARTIALITY INTEREST in item 10.1.4 by virtue "I know a resident in Deane Street."

Cr Young declared an IMPARTIALITY INTEREST in item 10.1.6 by virtue "Some of the residents known to me."

Cr Young declared an IMPARTIALITY INTEREST in item 13.1.4 by virtue "I am the respondent in that complaint."

Cr Sadler declared an IMPARTIALITY INTEREST in item 10.1.9 by virtue "The producer of the film company is known to me."

Cr Tucak declared an IMPARTIALITY INTEREST in item 13.1.1 by virtue "The senior counsel is known to me."

The CEO declared a FINANCIAL INTEREST in item 13.1.3 by virtue "The item relates to conditions of my employment."

Cr Barrett declared an IMPARTIALITY INTEREST in item 13.1.2 by virtue "Some of the affected people are known to me."

Cr Masarei declared an IMPARTIALITY INTEREST in item 13.1.2 by virtue "Mr McQueen gave a deputation on this item at 9.3.1 and he is known to me."

## **8 CONFIRMATION OF MINUTES**

**OCM137/2021**

**Moved Cr Sadler**

**Seconded Cr Masarei**

**That the Minutes of the Ordinary Meeting of Council held on Tuesday 27 July 2021 be confirmed as a true and accurate record.**

**That the Minutes of the Special Meeting of Council held on Tuesday 3 August 2021 be confirmed as a true and accurate record.**

**Carried 8/0**

**9 PRESENTATIONS****9.1 PETITIONS*****Section 9.4 - Procedure of Petitions***

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

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

**9.2 PRESENTATIONS**

Nil

**9.3 DEPUTATIONS****9.3.1 DEPUTATION FROM PAUL MCQUEEN OF LAVAN ON ITEM 13.1.2**

Mr McQueen gave a Deputation on Item 13.1.2 Lots 64 & 65 (176) Little Marine Parade - Two-Storey Dwelling - Development Application SAT Section 31 Reconsideration.

**10 REPORTS**

**10.1 REPORTS OF OFFICERS**

**OCM138/2021**

**Moved Acting Mayor Young      Seconded Cr Harkins**

**COUNCIL RESOLUTION**

**That Council adopts en-bloc the following Officer Recommendations contained in the Agenda for the Ordinary Council Meeting 24 August 2021:**

<b>Item #</b>	<b>Report Title</b>
<b>10.1.4</b>	<b>Lot 18 (21) Deane Street - Two-Storey Dwelling with Undercroft</b>
<b>10.1.8</b>	<b>Revised Combined Australia Day Celebration MOU</b>

**Carried 8/0**

The Presiding Member advised that 10.1.6 Street Trees would be brought forward in the agenda and then return to the items as listed in the agenda.

**DEVELOPMENT AND REGULATORY SERVICES****10.1.4 LOT 18 (21) DEANE STREET - TWO-STOREY DWELLING WITH UNDERCROFT**

**Directorate:** Development and Regulatory Services  
**Author(s):** Ed Drewett, Coordinator Statutory Planning  
**Authoriser(s):** Freya Ayliffe, Director Development and Regulatory Services  
**File Reference:** D21/36867  
**Applicant(s):** A. Moore  
**Author Disclosure of Interest:** Nil

Cr Sadler declared an IMPARTIALITY INTEREST in item 10.1.4 by virtue "One of the neighbours is known to me."

Cr Masarei declared an IMPARTIALITY INTEREST in item 10.1.4 by virtue "Mr Howard Read is known to me."

Cr Tucak declared an IMPARTIALITY INTEREST in item 10.1.4 by virtue "If Mr Algeri is still the applicant's planner then he is known to me outside of Council."

Cr MacFarlane declared an IMPARTIALITY INTEREST in item 10.1.4 by virtue "I know a resident in Deane Street."

**SUMMARY**

On 27 July 2021, Council resolved:

*That Council DEFERS consideration of the item to allow the owners of the properties at 17 Deane St and 24 Avonmore Terrace to provide feedback on the revised plans, and to allow Elected Members the opportunity to visit the neighbouring properties to consider the impact of the proposed development should the neighbours still have concerns, with the matter to be brought back to Council at the August meeting.*

A site visit with Councillors, the proponent, the owners at 24 Avonmore Terrace, their planning consultant - Tom Hockley, the CEO and was held on Friday 13 August 2021 at 4.00pm.

This report (amended in blue) discusses the statutory provisions and assessment criteria relevant to a development application received 15 April 2021, and revised plans received 26 July 2021, for a two-storey dwelling with undercroft on Lot 18 (21) Deane Street, Cottesloe.

The revised plans were submitted by the applicant in response to the officer's recommended conditions 3 & 4 in the 27 July 2021 Council report.

**OFFICER RECOMMENDATION IN BRIEF**

That Council conditionally approve the development application received 15 April 2021 and revised plans received 26 July 2021.

**BACKGROUND**

Details of the proposal are as follows:

Basement	• Garage
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		<ul style="list-style-type: none"> <li>• Storage/workshop</li> <li>• Cellar</li> <li>• Stairs/lift</li> </ul>
Ground floor		<ul style="list-style-type: none"> <li>• 3 bedrooms plus 1 WIR</li> <li>• 1 bathroom/ensuite/WC</li> <li>• Laundry</li> <li>• Family/dining/kitchen/pantry</li> <li>• Games room</li> <li>• Alfresco area/pool</li> <li>• Stairs/lift</li> </ul>
Upper floor		<ul style="list-style-type: none"> <li>• Master bedroom/ensuite/WIR</li> <li>• Bedroom/study</li> <li>• Bathroom</li> <li>• Store</li> <li>• Lounge/balcony</li> <li>• Stairs/lift</li> </ul>
Zoning	MRS:	Urban
	LPS:	Residential R30
Use Class:		Single house
Lot size:		Parent lot: 926m <sup>2</sup> Front lot (WAPC approved): 515m <sup>2</sup>
Existing Land Use:		Vacant, except for a small modular home at the rear.
Value of development:		\$1M
Owners:		Adrian & Katherine Moore
<p><b><u>History</u></b></p> <p>The site has an extensive history. However, a summary of relevant key dates are provided below:</p> <p><b><u>20 September 2013</u></b></p> <p>Planning approval issued for demolition of a single house on the lot.</p> <p><b><u>22 July 2014</u></b></p> <p>Planning approval issued for a two-storey dwelling and pool (not constructed).</p> <p><b><u>29 January 2015</u></b></p> <p>Planning application submitted for two-storey dwelling and pool (not constructed).</p>		

24 August 2015

Council resolved to:

*DEFER determination of the application for a two-storey dwelling and pool at 21 (Lot 18) Deane Street, Cottesloe, as shown on the plans received on 14 July 2015, in order to enable the applicant in liaison with the Town to submit revised plans showing the proposed natural ground level being lowered to reflect existing ground levels at the lot boundaries, deletion of the proposed crossover from Deane Street and all vehicle access being from the rear right-of-way, and satisfactorily addressing the other matters raised in this report.*

1 September 2015

An appeal was lodged by the applicant to the State Administrative Tribunal (SAT) seeking review of the Council's decision of 24 August 2015.

23 November 2015

Pursuant to S.31 (1) of the *SAT Act 2004 (WA)* Council was invited to reconsider its decision of 24 August 2015 in light of additional information, including advice from the Town's surveyors "Whelans", with respect to the determination of natural ground levels (NGL).

Council resolved:

*That the recommendation contained within the confidential report be endorsed.*

This meant that the original Council decision was modified so as to exclude reference to the determination of natural ground levels, but to maintain Council's objection to the proposed vehicle access from Deane Street.

14 December 2015

Council was requested by the SAT to reconsider its resolution pursuant to a SAT directions hearing.

Council resolved:

*THAT pursuant to S.31 (1) of the SAT Act 2004 (WA) Council resolves to modify its resolution of 23 November 2015 and refuse the application for a two-storey dwelling at 21 (Lot 18) Deane Street, Cottesloe as shown on the plans received 14 July and 7 December 2015 for the following reasons:*

- 1. The proposed vehicle access from Deane Street does not satisfy the relevant aims of the Scheme, the Planning and Development (Local Planning Schemes) Regulations 2015 and/or the Residential Design Codes.*
- 2. The proposed vehicle access would reduce the amenity, character and streetscape quality of the locality and be contrary to orderly and proper planning.*
- 3. The proposed vehicle access would reduce traffic safety, as it would utilise the same point of access as the existing crossover serving 17 Deane Street, which is steeply-graded and necessitates vehicles exiting onto the street in reverse gear.*
- 4. The lot has safe and suitable vehicle access available from the sealed right-of-way at the rear as the preferable point and form of access.*
- 5. The proposal would unnecessarily increase the number of vehicle crossovers to the lot.*

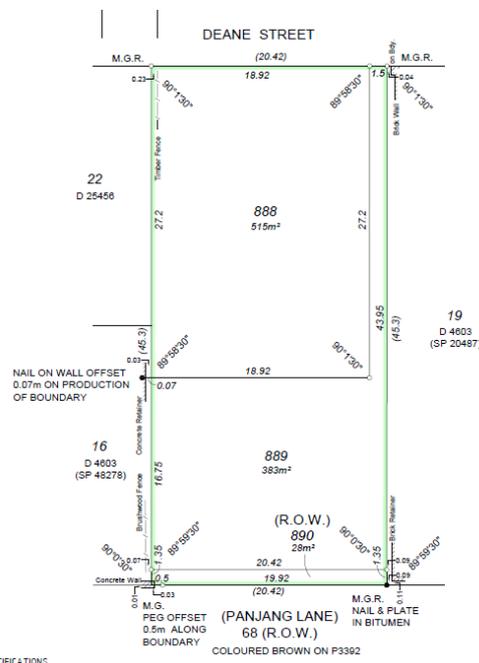
6. *The proposal would increase the impact of vehicle access points on the streetscape.*
7. *The plans received on 7 December 2015 have not addressed the relocation of services necessary within the Deane Street road reserve, which would affect the feasibility of the proposal and compliance with engineering and Australian Standards, and must be acceptable to the Town and the utility service authorities.*
8. *The proposal would set an undesirable precedent for this unusual form of vehicle access creating a tunnel in a raised verge with a pedestrian bridge over the access void, and constituting a permanent obstruction within the thoroughfare.*

28 September 2016

The SAT Appeal was dismissed (DR308/2015) as the Tribunal found that the proposed development did not comply with cl 5.3.5 of the Residential Design Codes and considered that the proposed cutting into the existing embankment in the verge adjacent to Deane Street would have a detrimental impact on the streetscape, character and amenity of the locality. Furthermore, that having regard to these conclusions, as well as to the history of the site, the suitability of the land for the development, and to the submission made by the neighbour who would be directly impacted by the proposed development, the Tribunal determined that the application for development approval should be refused.

5 April 2017

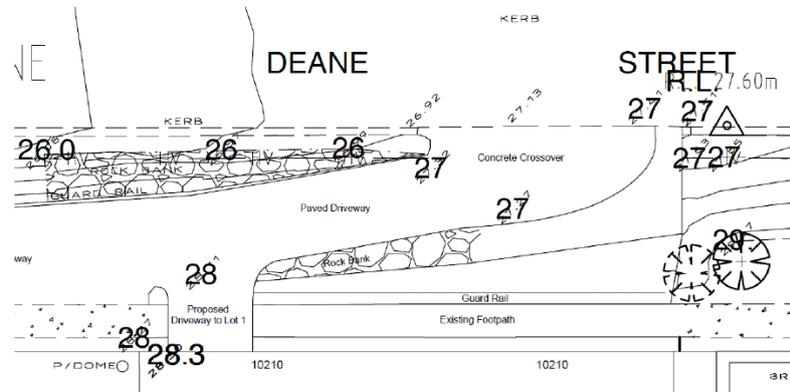
A subdivision to create two lots was conditionally approved by the Western Australian Planning Commission (WAPC), with access off Deane Street to the front lot. This decision was made having regard to the SAT decision, and was against the Town’s recommendation and representations made to the WAPC’S Statutory Planning Committee by the Town’s Planning staff, legal representative, and traffic engineer (WAPC minutes 28 March 2017).



**Above: WAPC conditionally approved subdivision plan**

Condition 3 of the WAPC approval stated:

Suitable arrangements being made with the local government for the provision of a vehicle crossover to service Lot 1 as shown on the approved plan of subdivision. The design of the crossover is to be generally in accordance with 'Crossover Option 3' listed in the Transcore technical note dated 1 December 2016, provided in support of the application.



Above: Crossover Option 3 from Transcore report dated 1 December 2016

3 October 2017

The Town conditionally approved a crossover arrangement to the new lot from Deane Street, based on WAPC conditional approval.

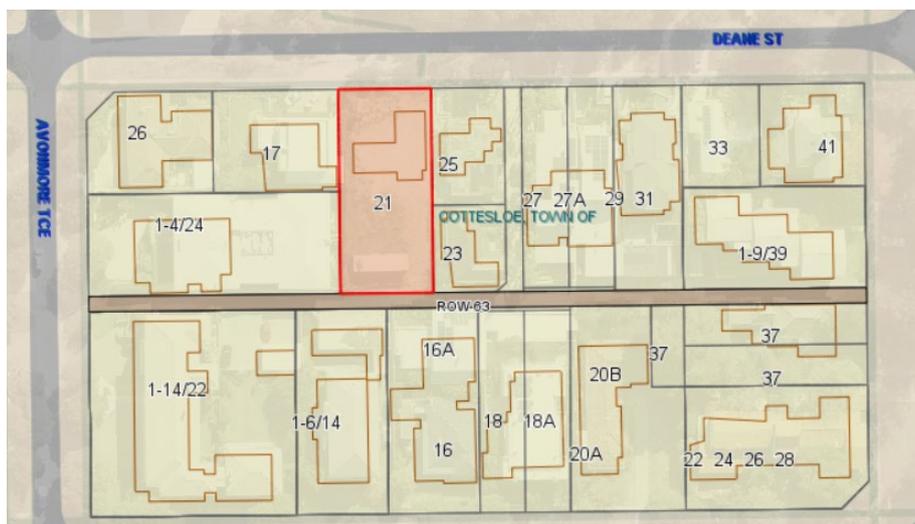
28 July 2020

The WAPC approved the deposited subdivision plan.

26 July 2021

Revised plans received (hard copies).

Site Context



Above: Site map



**Above: Aerial photo of site**

The site is bounded by Deane Street to the north which runs below the natural ground level; two dwellings to the east (one under construction); a two-storey dwelling and four (4) multiple-dwellings to the west; and a sealed right-of-way to the south.

Between Deane Street and the lot there is a limestone embankment which is densely vegetated in places and rises steeply up from Deane Street towards the lot.

An existing access driveway to No. 17 Deane Street traverses in front of the lot by way of a steeply graded crossover which begins in front of the site. This will be shared by the proposed development, in accordance with the WAPC subdivision approval.

### **OFFICER COMMENT**

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

#### **Local Planning Scheme No. 3**

The aims of the Scheme relevant to this development include:

- provide opportunities for housing choice and variety in localities which have a strong sense of community identity and high levels of amenity;
- sustain the amenity, character and streetscape quality of the Scheme area;
- ensure that proper regard is given to the needs of the local community in the determination of land use and development proposals;
- ensure that development and the use of land within the district complies with accepted standards and practices for public amenity and convenience; and
- recognise the principle of the maintenance and enhancement of important views to and from public places.

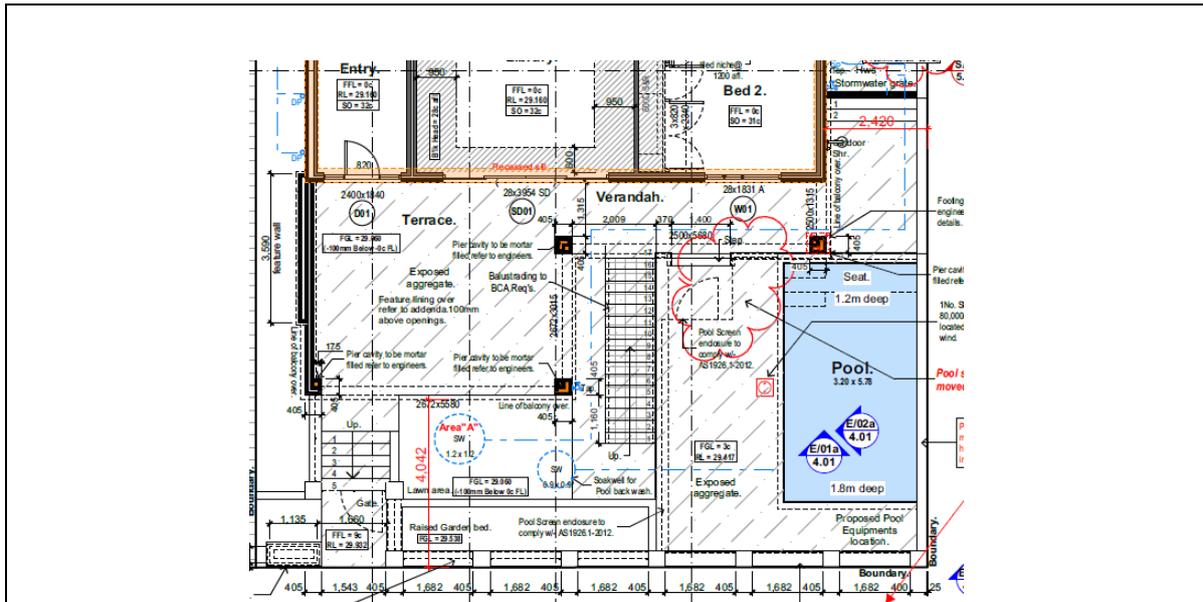
The objectives of the Residential zone are to:

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

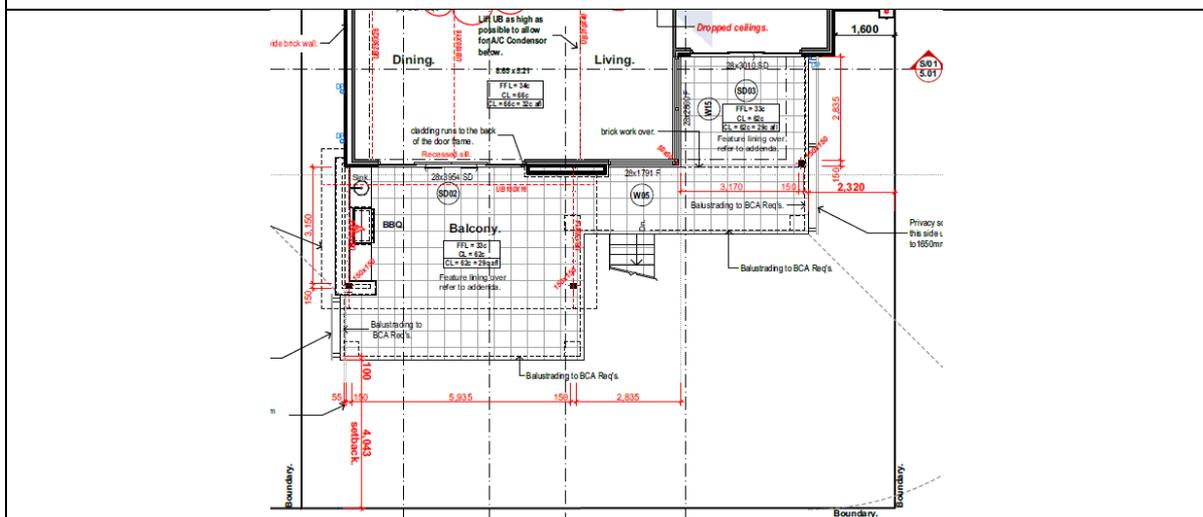
The table below is a summary of the planning assessment of the proposal against the statutory planning provisions. Where the proposal requires the exercise of discretion the relevant planning element is discussed in the section of the report following this table.

Provision	Complies with Local Planning Scheme No. 3 and/or <i>deemed-to-comply</i> provisions of the Residential Design Codes	Requires exercise of judgement
Storeys	✓	
Building height	✓ (based on TPS 1 NGL)	
Street setback		✓
Lot boundary setbacks		✓
Open space		✓
Street surveillance	✓	
Street wall and fences		✓
Sightlines	✓	
Outdoor living area	✓	
Parking	✓	
Vehicle Access	✓	
Privacy	✓	
Solar Access		✓
Site Works/retaining walls		✓
Utilities and Facilities	✓	
Street trees	✓	
Matters to be considered by local government		✓

<b>Front setback</b>	
<b>Requirement (deemed-to-comply)</b>	<b>Proposed</b>
<u>Residential Design Codes</u> 4m <u>LPS 3 - clause 5.3.7</u> <i>May require an R20 front setback of 6m to be applied for the preservation of streetscapes, view corridors and amenity.</i>	<u>Front setback:</u> Basement: 8m Ground floor: 4.7m - 8m Upper floor: 4.5m – 8m
<u>Applicant's comment</u> <ul style="list-style-type: none"> <li>• Neighbouring properties abutting the east of the site are situated higher;</li> <li>• When factoring in the topography difference and the proposed compliant building height, it is submitted that any views of significance from neighbouring properties will be maintained;</li> <li>• The proposed dwelling assists in providing a transition from the approximate 1.5m secondary street setback of No. 26 Avonmore Terrace to the approximate 5.5m setback to No. 25 Deane Street;</li> <li>• From an overall streetscape perspective, it is submitted that the existing dwellings do not display consistent or homogenous front setbacks, with individual properties ranging from 4 - 11m;</li> <li>• Based on the above, it is submitted that the front setback will preserve the streetscape in Deane Street. View corridors to the street and towards the ocean will be maintained and, consequently, there will be no significant adverse amenity impacts as a result of the development.</li> </ul>	
<u>Officer comment</u> <p>The Residential Design Codes <i>explanatory guidelines</i> advise that in the case of established residential areas with valued streetscapes, it will usually be the case that there is a consistent pattern of street setbacks and therefore new development should closely conform to the established pattern.</p> <p>Although the proposed street setback meets the <i>deemed-to-comply</i> provisions of the Residential Design Codes (4m), it is also necessary to have regard to clause 5.3.7 of the Local Planning Scheme in respect to the preservation of the streetscape, view corridors and amenity. In this regard, the adjoining eastern neighbour at 25 Deane Street has raised concerns regarding the proposed first floor front balcony blocking their ocean view, but has also advised that they would be happy to allow their pool to be overlooked and for the proposed eastern screen wall to be setback further.</p> <p>The approved dwelling at 25 Deane Street has a minimum front setback of 4.042m to its ground floor terrace and 4.043m to an upper floor balcony, which is compliant with the <i>deemed-to-comply</i> provisions of the Residential Design Codes. It was also assessed as being acceptable under clause 5.3.7 in LPS 3, especially having regard to the large setback to the remainder of the dwelling and streetscape.</p>	



Above: Ground floor of approved development at 25 Deane Street (adjoining eastern lot)



Above: Upper floor of approved development at 25 Deane Street (adjoining eastern lot)

The proposed dwelling at 21 Deane Street will have a greater front setback to the upper floor balcony (4.5m), compared to the dwelling at 25 Deane Street (4.043m), so it is unlikely that the proposal will have a detrimental impact on the streetscape, especially as the lot is higher than the road level and will be screened from the street by existing vegetation.



**Above: Aerial photo showing front setbacks of existing dwellings to east of Lot 18**

The main concern therefore appears to be the proposed 2.1m high solid privacy screen along the eastern side of the proposed upper floor balcony as this may impact on view corridors and visual amenity from the adjoining eastern property. It is therefore recommended that a condition be included on the approval to ensure that the proposed screen does not exceed 1.6m within 6m of the front boundary, thereby affording some privacy to both neighbours whilst lessening any potential impact on westerly view corridors.

**Lot boundary setbacks (side and rear)**

Requirement ( <i>deemed-to-comply</i> )	Proposed
<p><u>Residential Design Codes (RDC)</u></p> <p><b>To eastern boundary (proposed pedestrian accessway):</b></p> <ul style="list-style-type: none"> <li>• Ground floor - (Bedroom 3/robe) – 1.1m</li> </ul> <p><b>To western boundary:</b></p> <ul style="list-style-type: none"> <li>• Ground floor – (Bedroom 1) – 1.5m</li> <li>• Ground floor (Games Room) – 1m.</li> </ul> <p><b>To southern proposed lot boundary:</b></p> <ul style="list-style-type: none"> <li>• Bathroom 1 recess – 1.5m</li> <li>• Bedrooms 1, 2 &amp; 3 – 1.7m.</li> </ul> <p>Note: <i>The stated distances may be reduced by half the width of an adjoining pedestrian access way, to a maximum reduction of 2m.</i></p> <p><i>Boundary walls may be built behind the street setback within the following limits:</i></p>	<p><b>To eastern boundary (proposed pedestrian accessway):</b></p> <ul style="list-style-type: none"> <li>• Ground floor – (Bedroom 3/robe) - wall on boundary.</li> </ul> <p><b>To western boundary:</b></p> <ul style="list-style-type: none"> <li>• Ground floor (Bedroom 1) – 1.5m</li> <li>• Ground floor (Games Room) – wall on boundary.</li> </ul> <p><b>To southern proposed lot boundary:</b></p> <ul style="list-style-type: none"> <li>• Bathroom 1 recess – 1.2m</li> <li>• Bedrooms 1, 2, &amp; 3 - walls on boundary.</li> </ul>

<ul style="list-style-type: none"> <li><i>In areas coded R30 and higher, walls not higher than 3.5m for two-thirds the length of the balance of the lot boundary behind the front setback, to up to two side boundaries.</i></li> </ul>	
<p><u>Design Principles</u></p> <p><i>Buildings setback from lot boundaries or adjacent buildings on the same lot so as to:</i></p> <ul style="list-style-type: none"> <li><i>reduce impacts of building bulk on adjoining properties;</i></li> <li><i>provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and</i></li> <li><i>minimise the extent of overlooking and resultant loss of privacy on adjoining properties.</i></li> </ul> <p><i>Buildings built up to boundaries (other than the street boundary) where this:</i></p> <ul style="list-style-type: none"> <li><i>makes more effective use of space for enhanced privacy for the occupant/s or outdoor living areas;</i></li> <li><i>does not compromise the design principles contained in clause 5.1.3 P3.1 (above);</i></li> <li><i>does not have any adverse impact on the amenity of the adjoining property;</i></li> <li><i>ensures direct sun to major openings to habitable rooms and outdoor living areas for adjoining properties is not restricted; and</i></li> <li><i>positively contributes to the prevailing or future development context and streetscape as outlined in the local planning framework.</i></li> </ul>	
<p><u>Applicant's comment</u></p> <p><u>Eastern boundary</u></p> <ul style="list-style-type: none"> <li>The proposed setbacks will not result in adverse building bulk presentation as the abutting pedestrian access way (PAW) provides an additional 1.5m separation to the external eastern neighbour (No. 25 Deane Street);</li> <li>The dwelling at No.25 is orientated northwards towards the street as opposed to directly facing the eastern façade of the proposed dwelling;</li> <li>Wall articulation is provided across both floors of the proposed eastern elevation;</li> <li>There will be no overshadowing of No.25 as the proposed setback variations are to their western lot boundary;</li> <li>Floor-to-ceiling glazing is provided to openings on the eastern façade to minimise blank walls facades. These openings are to non-habitable areas of the proposed dwelling and will not create any privacy implications;</li> <li>No. 25's main outdoor living area is predominately situated in the street setback area and generally forward of the eastern façade of the proposed dwelling. Accordingly, it is submitted that there will be no sense of 'enclosure' of the neighbouring property. Furthermore, adequate access to ventilation will be maintained as a result of the sufficient separation between the dwellings;</li> </ul>	

- The proposed eastern boundary wall will occupy less than one-third of the boundary and is located in the south-eastern corner of the site, hidden from view of the street;
- The boundary wall abuts the PAW and is acceptable as there will be no building bulk projected to outdoor living areas or habitable rooms on neighbouring lots.

#### Western boundary

- Building bulk is minimised through the use of wall articulation combined with extensive use of glazing to minimise blank facades;
- The proposed horizontal shutters to the master bedroom provides varied building materials to the western façade;
- The dwelling on the abutting western lot (No. 17 Deane Street) is orientated northwards, towards Deane Street (as opposed to directly facing the proposed western elevation);
- The western lot boundaries will not result in any overshadowing of outdoor living areas or major openings of the abutting western neighbours as measured during the winter solstice;
- The proposed setbacks still afford access to direct sun and ventilation of No. 17 as the overall separation between the dwellings will be approximately 5m;
- There will be no loss of privacy to No. 17 as 4.5m and 7.5m deemed-to-comply visual privacy setbacks have been provided to the master bedroom and balcony respectively.
- In regard to the proposed boundary wall, it will occupy less than one-third of the western boundary and is setback 13.2m from the primary street. The single-storey parapet will also abut an existing solid fence on the communal boundary with No. 17.
- Whilst it is acknowledged that the proposed boundary wall is in proximity to a covered courtyard area on No. 17, this is not their main outdoor living area and the wall will not prevent direct sunlight and ventilation into this courtyard.
- The above lot setbacks are considered acceptable having regard to the context of the site and its topography as well as orientation of existing surrounding dwellings. These setbacks will not result in a loss of privacy for neighbouring properties and will not result in an undesirable precedent being set for future development within the locality.
- With respect to the boundary walls, it is submitted that they are acceptable as their aggregate length to the external side neighbours is less than two-thirds maximum permitted by the deemed-to-comply requirements of cl. 5.1.3, C3.2(iii). In this regard, the overall length is distributed to two side boundaries, rather than one. This alternative distribution will not result in additional building bulk or overshadowing, or any privacy implications to these neighbours.

#### Southern boundary

The proposed boundary wall components along the southern boundary equate to 13.9m in aggregate length. It is submitted that their position on the southern boundary is acceptable when having regard to the following:

- The approximate 7.6m line of shadow cast onto Lot 889 as a result of the boundary walls is eclipsed by the approximate 9m line of shadow cast by the upper floor of the dwelling;
- As the southern lot boundary setbacks of the upper floor exceed the relevant deemed-to-comply requirements, this illustrates that the proposed boundary walls will not have any additional overshadowing impacts and will not inhibit access to sun for Lot 889. Accordingly, there will be no significant adverse impact on the amenity of the future southern lot;
- The overall height of the southern boundary walls is a result of their additional retaining wall function, with the actual height of the walls above NGL being between 0.5m-0.8m less;
- Lot 889 is currently held under the same ownership as the subject site and the landowner has no concerns with respect to the proposed overshadowing from the dwelling onto Lot 889.

#### Officer comment

##### Eastern boundary

Under the *deemed-to-comply* provisions of the Residential design Codes, the required lot setbacks along the eastern side of the proposed development may be reduced by half the width of the proposed 1.5m wide pedestrian access way (PAW) ie: 0.75m. This means that Council is not required to consider any lot setback discretion on this side, except for the proposed single-storey 'Bedroom 3/robe' which is proposed on the PAW boundary.

The proposed 'Bedroom 3/robe' will be setback 1.5m from the lot boundary of No. 25 Deane Street which exceeds the *deemed-to-comply* setback requirements by 0.4m, it is also single-storey, and will only be visible for approximately 28% of the length of the adjoining PAW and is unlikely to have any significant impact on the adjoining property. Furthermore, the owner of the PAW is the same as the applicant so has no objection to the proposal. As such, the proposed wall can be supported under design principles.



**Above: View of western side of No. 25 Deane Street**

Western setback

The lot setbacks from the proposed dwelling to the western boundary meet the *deemed-to-comply* provisions of the Residential Design Codes, except for the proposed single-storey ‘Games Room’ which is proposed on the boundary, and the setback to ‘Bedroom 1’.

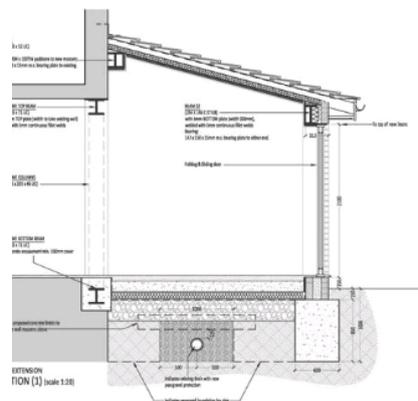
Games room

The proposed Games Room will be 6.5m in length and up to 3.056m above the TPS 1 NGL along the western boundary. Whilst it is well setback from the street so will not impact on the streetscape, the actual height of the proposed wall will be up to approximately 4m above the existing ground level on the boundary and therefore will be quite visible to the adjoining western property at No. 17 Deane Street, albeit that it will be adjoining a partially covered outdoor area at the side/rear of the house. The adjoining owner has expressed concern regarding loss of light, ventilation, and amenity to their courtyard as a result of the proposed wall on the boundary and has requested that it be setback further from the boundary and/or reduced in height.



**Above: View of adjoining western neighbour’s dwelling and courtyard**

In terms of addressing the relevant design principles, it does not appear that the proposed wall can be supported as it will likely result in a loss of sunlight, ventilation, and amenity to the adjoining neighbour. It is therefore recommended that it be redesigned to have a skillion or pitched roof, with the lower side on the boundary, and this has therefore been conditioned accordingly.



**Above: Example of a skillion roof**

Although the proposed wall on the western boundary (games room) has not been changed by the applicant, it is noted that its height will be more than 0.5m below that permitted under the *deemed-to-comply* provisions in the R-Codes that were modified on 2 July 2021 (3.056m in lieu of 3.5m). Furthermore, although it could still have some adverse impact on the amenity of the adjoining property at 17 Deane St, this would be unlikely to be a significant factor if the matter went to the State Administrative Tribunal (SAT), especially in view of the fact it will only be adjoining a rear/side partly-covered outdoor area, the setbacks to the proposed upper floor exceed the *deemed-to-comply* requirements thereby assisting in building bulk, light and ventilation, and having regard to the proposed changes made to the height of the walls on the other boundaries. Furthermore, it will be outside the R-Codes cone-of-vision to have any significant visual impact on 24 Avonmore Terrace. On balance, it is therefore considered that the western boundary wall may be supported.

### Bedroom 1

The proposed 1.2m setback from Bedroom 1 to the western boundary is less than the *deemed-to-comply* provisions by 0.3m, based on the accumulated length of the proposed Games Room and Bedroom 1 above the TPS 1 NGL. Again, whilst it is well setback from the street so will not impact on the streetscape, the actual height of the proposed wall will be up to approximately 5m above the existing ground level on the boundary and may be visible to the adjoining western properties at No. 24 Avonmore Terrace, which are lower. The adjoining owners have expressed concern regarding loss of light and visual amenity to their courtyard area and have requested that it be setback further from the boundary.

In terms of addressing the relevant design principles, it does not appear that the proposed setback can be supported as it will likely result in a loss of amenity to the western neighbours, especially due to the difference in ground levels between the two properties. It is therefore recommended that Bedroom 1 be setback a minimum 1.5m from the western boundary to comply with the *deemed-to-comply* provisions of the Residential Design Codes, and this has been conditioned accordingly.



**Above: View of north-eastern boundary from 24 Avonmore Terrace (from Allerdig & Associates submission)**

The revised plans received 26 July 2021 show a 1.5m setback from Bedroom 1 to the western boundary which now complies with the *deemed-to-comply* provisions of the Residential Design Codes.

Southern Setback

The setbacks to the proposed southern boundary meets the *deemed-to-comply* provisions of the Residential Design Codes, except for the proposed Bedrooms 1, 2 & 3 and the Bathroom 1 recess.

These proposed ground floor walls and recess area are along a proposed internal boundary whereby, other than an existing modular home, there is no other development currently on or proposed for that portion of the lot, and the same owner owns the entire site. However, the height of the proposed boundary walls range from 3.894m to 4.007m which is 3.33m above the proposed floor level (RL: 29.35), and this height does not appear to be reducing impacts of building bulk and could reduce sunlight and ventilation to the future occupants of the southern lot, and also possibly the adjoining western properties at 24 Avonmore Terrace, which are lower. Therefore, in terms of addressing the relevant design principles, it does not appear that the proposed walls can be supported and it is recommended that they be redesigned to have a skillion or pitched roof, with the lower side on the proposed southern boundary. This has been conditioned accordingly.

The revised plans received 26 July 2021 show the following changes:

Bedrooms 1-3;

- *Skillion roof structure to all three bedrooms (has reduced eastern boundary wall average height from 3.779m to 3.585m);*
- *Box gutter to bedrooms 1-3 have been removed and replaced with standard gutter at RL:32.35; and*
- *Southern elevation boundary wall heights (to beds 1-3) have been reduced from 32.68 to 32.08.*

Bedrooms 1-3 will be reduced in height by 0.6m (0.33m to the gutter) along the proposed southern boundary with a corresponding reduction in height along the eastern and western boundaries by changing the design to a skillion roof, as was suggested in the officer’s report to satisfy the relevant *design principles*.

Although the proposed bedroom ceiling heights (2.73m) could still be reduced a further 0.33m to comply with the BCA (min. 2.4m) it is unlikely that such a further reduction in height will have any significant impact on the amenity of adjoining properties and it may appear out-of-keeping with the ceiling heights proposed in the remainder of the development. On balance, it is therefore considered that the revised southern boundary walls may be supported.

<b>Open space</b>	
<b>Requirement (deemed-to-comply)</b>	<b>Proposed</b>
45% (231.75m <sup>2</sup> )	44% (227m <sup>2</sup> ) – shortfall = 4.75m <sup>2</sup>

Design Principles

*Development incorporates suitable open space for its context to:*

- *Reflect the existing and/or desired streetscape character or as outlined under the local planning framework;*
- *Provide access to natural sunlight for the dwelling;*
- *Reduce building bulk on the site, consistent with the expectations of the applicable density code and/or as outlined in the local planning framework;*
- *Provide an attractive setting for the buildings, landscape, vegetation and streetscape;*
- *Provide opportunities for residents to use space external to the dwelling for outdoor pursuits and access within/around the site; and*
- *Provide space for external fixtures and essential facilities.*

Applicant's comment

- A large undeveloped outdoor living area, which includes a substantial grassed area, is located in front of the dwelling and will be visible from Deane Street. This development configuration is consistent with other houses in the streetscape and also allows the occupants to make effective use of a levelled outdoor living area, given the sloping topography of the site;
- The northern orientation of the dwelling and the associated outdoor living area ensures access to natural sunlight will occur;
- The undercroft garage structure is hidden from view from the street, thereby reducing visible building mass from the street. Furthermore, a front-facing balcony and extensive use of floor-to-ceiling glazing along the street elevation also assists in this regard;
- Building bulk is further minimised as the building is under-height, there is wall articulation to each elevation of the dwelling and the upper floor is located centrally within the ground floor footprint (and the site itself);
- There will be adequate room for external fixtures and essential services such as bin storage and clothes-drying areas that will be screened from the street.

Officer comment

The proposed open space falls short of the *deemed-to-comply* provisions of the Residential Design Codes by approximately 4.75m<sup>2</sup> and so the applicant has requested that this variation be considered under *design principles*.

The proposed dwelling has a relatively large north-facing front setback comprising a covered alfresco area, garden, pool and balcony thereby assisting in providing natural sunlight for the dwelling. The articulation to the walls and the upper floor side and rear setbacks also will assist in reducing its building bulk on the site and provide an attractive setting to Deane street, whilst also providing opportunity for the occupants to utilise the open spaces within and around the site. Furthermore, sufficient area is available to provide for storage areas in the basement and a drying area to the side. For these reasons, together

with the applicant's justification, it is considered that the proposed open space can be supported under *design principles*.

<b>Street walls and fences</b>	
<b>Requirement (deemed-to-comply)</b>	<b>Proposed</b>
<p>Front fences within the primary street setback area that are visually permeable above 1.2m of natural ground level, measured from the primary street side of the front fence.</p> <p>Solid pillars that form part of a front fence not more than 1.8m above natural ground level provided that the horizontal dimension of the pillars is not greater than 0.4m by 0.4m and pillars are separated by visually permeable fencing in line with C4.1.</p>	<p>Compliant visually permeable fencing above 1.2m.</p> <p>1.8m high x 1.4m long x 0.3m wide solid column in front fence next to entry gate.</p>
<p><u>Design principles</u></p> <p><i>Front fences are low or restricted in height to permit surveillance (as per Clause 5.2.3) and enhance streetscape (as per clause 5.1.2), with appropriate consideration to the need:</i></p> <ul style="list-style-type: none"> <li>• <i>for attenuation of traffic impacts where the street is designated as a primary or district distributor or integrator arterial; and</i></li> <li>• <i>for necessary privacy or noise screening for outdoor living areas where the street is designated as a primary or district distributor or integrator arterial.</i></li> </ul>	
<p><u>Applicant's comment</u></p> <p>Has requested that the proposed column width be considered under design principles.</p>	
<p><u>Officer comment</u></p> <p>The proposed visually permeable fencing will provide adequate surveillance to Deane street and will enhance the existing streetscape. The proposed single solid column which exceeds 0.4m in length will have a negligible impact on the streetscape, taking up less than 7.5% of the frontage. It can therefore be supported under <i>design principles</i>.</p>	

<b>Solar access</b>	
<b>Requirement (deemed-to-comply)</b>	<b>Proposed</b>
<p>Overshadowing up to 35% of adjoining site area (134.05m<sup>2</sup>)</p> <p><i>NB: dividing fences of up to 2.0 metres in height do not contribute to overshadowing calculations; and site area refers to the surface of the adjoining lot and is measured</i></p>	<p>45% overshadowing of proposed rear lot (172.35m<sup>2</sup>)</p>

<i>without regard to any building on it but taking into account its natural ground level.</i>	
<p><u>Design principles</u></p> <ul style="list-style-type: none"> <li>• <i>Effective solar access for the proposed development and protection of the solar access.</i></li> <li>• <i>Development designed to protect solar access for neighbouring properties taking account the potential to overshadow existing:</i> <ul style="list-style-type: none"> <li>○ <i>outdoor living areas;</i></li> <li>○ <i>north facing major openings to habitable rooms, within 15 degrees of north in each direction; or</i></li> <li>○ <i>roof mounted solar collectors.</i></li> </ul> </li> </ul>	
<p><u>Applicant's comment</u></p> <p>The proposed dwelling has a northern orientation, as evidenced by the main outdoor living area being located in front of the dwelling as well as extensive floor-to-ceiling glazing.</p> <p>With respect to external adjoining neighbours, the proposal will not create any significant adverse amenity impacts on their outdoor living areas, major openings or any solar panels. This is due to:</p> <ul style="list-style-type: none"> <li>• Neighbouring properties are similarly orientated in a north-south arrangement;</li> <li>• The main outdoor living area of neighbouring lots are located between the street and their respective dwellings to capture direct northern sunlight.</li> </ul> <p>With respect to the future southern lot, the following is considered relevant:</p> <ul style="list-style-type: none"> <li>• Lot 889 is currently held within the same ownership as the subject site and the landowner has no concerns with respect to the proposed overshadowing;</li> <li>• A house design has not been finalised for Lot 889. Notwithstanding, the owner of both lots has investigated preliminary sketches for Lot 889, which suggest a boundary wall to its northern boundary is likely. Accordingly, it is expected that the overshadowing from Lot 888 will largely fall onto the roof space of any future dwelling;</li> <li>• The proposed building is under height and southern lot boundary setbacks exceed the relevant deemed-to-comply requirements;</li> <li>• A “compliant” design would still produce overshadowing in excess of 35%.</li> </ul>	
<p><u>Officer comment</u></p> <p>The proposed rear lot has an area of 383m<sup>2</sup> on the deposited plan and the proposed development will result in 45% overshadowing of this rear lot, which equates to 38.3m<sup>2</sup> over the <i>deemed-to-comply</i> provision of the Residential Design Codes (refer plan DA01 – rev C).</p> <p>The proposed dwelling has a north-facing outdoor living area to maximise solar access, whereas the proposed rear lot has no current development plans and is vacant (except for</p>	

a small modular home). However, although it would appear that the proposed overshadowing may be supported under *design principles*, this could have ramifications on the future design of the dwelling on the proposed southern lot and therefore reducing the height of the proposed ground floor bedrooms along the proposed southern boundary is recommended to assist in ameliorating the shadow cast. This has been conditioned accordingly.

<b>Site works/retaining walls</b>															
<b>Requirement (deemed-to-comply)</b>	<b>Proposed</b>														
<p>Retaining walls, fill and excavation between the street boundary and the street setback, not more than 0.5m above or below the natural ground level, except where necessary to provide for pedestrian, universal and/or vehicle access, drainage works or natural light to a dwelling.</p> <p>Retaining walls, fill and excavation within the site and behind the required street setback to comply with Table 4.</p> <p><b>Table 4 – Setback of site works and retaining walls</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">Height of site works and/or retaining walls</th> <th style="text-align: center;">Required minimum height</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">0.5m or less</td> <td style="text-align: center;">0m</td> </tr> <tr> <td style="text-align: center;">1m</td> <td style="text-align: center;">1m</td> </tr> <tr> <td style="text-align: center;">1.5m</td> <td style="text-align: center;">1.5m</td> </tr> <tr> <td style="text-align: center;">2m</td> <td style="text-align: center;">2m</td> </tr> <tr> <td style="text-align: center;">2.5m</td> <td style="text-align: center;">2.5m</td> </tr> <tr> <td style="text-align: center;">3m</td> <td style="text-align: center;">3m</td> </tr> </tbody> </table> <p><u>Local Planning Scheme No. 3 – clause 5.10 - Filling of land and height of retaining walls</u></p> <p>In considering applications for planning approval, in relation to the maximum permissible height of land fill and the height of retaining walls the following shall apply —</p> <ul style="list-style-type: none"> <li>• on level land, fill will not generally be permitted, as determined by the local government; and</li> <li>• on sloping land, the local government may permit fill and the construction of retaining walls, provided there is approximately equal cut and fill of the existing ground levels and the amenity of surrounding properties is not unduly adversely affected.</li> </ul>	Height of site works and/or retaining walls	Required minimum height	0.5m or less	0m	1m	1m	1.5m	1.5m	2m	2m	2.5m	2.5m	3m	3m	<p><b><u>Excavation (based on TPS 1 NGL)</u></b></p> <p><b><u>Within 3m of front boundary</u></b></p> <ul style="list-style-type: none"> <li>• Up to 0.93m for front lawn area;</li> <li>• Up to 0.57m for paving around pool;</li> <li>• Up to 2.33m for pool.</li> </ul> <p><i>(vehicle &amp; pedestrian access are excluded)</i></p> <p><b><u>Behind the 3m front setback</u></b></p> <p>Up to 3.3m excavation for undercroft.</p> <p><b><u>Site works/fill</u></b></p> <p>Up to 0.56m in south-west corner; Up to 0.7m in south-east corner.</p>
Height of site works and/or retaining walls	Required minimum height														
0.5m or less	0m														
1m	1m														
1.5m	1.5m														
2m	2m														
2.5m	2.5m														
3m	3m														

Design principles

*Development that considers and responds to the natural features of the site and requires minimal excavation/fill.*

*Where excavation/fill is necessary, all finished levels respecting the natural ground levels at the lot boundary of the site and as viewed from the street.*

*Retaining walls that result in land which can be effectively used for the benefit of residents and do not detrimentally affect adjoining properties and are designed, engineered and landscaped having due regard to clauses 5.3.7 and 5.4.1.*

Applicant's comment

The natural topography of the site falls approximately 1.85m in a north-south direction, from 30.48AHD to 28.63AHD. Given the considerable slope on the on the site, excavation and fill is considered necessary to enable an appropriate form of development on-site. In this regard an approximate equate amount of fill and excavation is proposed in conformity with clause 5.10 of LPS 3.

Notwithstanding the above, the proposed development responds to the natural features and topography of the site, particularly when viewed from Deane Street. The extent of the proposed fill and excavation is all below NGL (as viewed from the street) and enables the site to efficiently be developed with a landscaped front area and to accommodate a contemporary two-storey dwelling design.

The appearance of the dwelling from Deane Street respects the natural slope of the site north to south.

The effective use of excavation/fill has enabled the following:

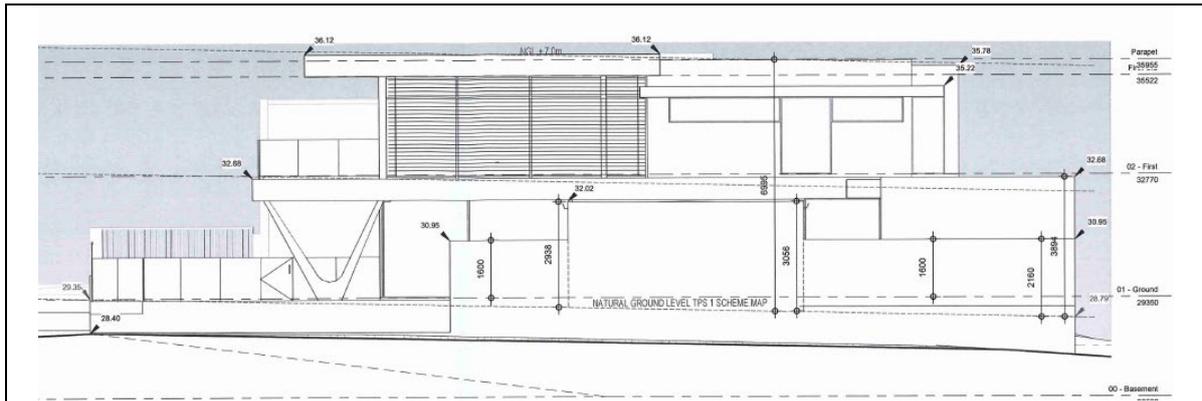
- A useable outdoor living area to be located in the front of the dwelling to obtain northern solar access; and
- Car parking to be located towards the southern boundary of the site. This will screen the undercroft garage structure as well as parked vehicles to improve the overall presentation of the development to the street.

The proposed retaining walls allow for raised courtyard areas to be provided to bedrooms 1-3 and the games room. This is considered an effective use of the land as it provides an external outlook for these rooms and increases the amount of sunlight and ventilation to these parts of the dwelling, which benefits the future occupants of the dwelling. Furthermore, it will not detrimentally impact upon abutting properties as it will not result in any overlooking of neighbouring outdoor living areas or major openings to the south or west.

Officer comment

The proposed cut and fill has been calculated using the TPS 1 NGL shown on drawing no. DA05-rev C as these were levels previously agreed to by Council at its meeting on 14 December 2015, following a request for reconsideration by the SAT. As the TPS 1 NGL are higher than the existing pavement levels on the north side of the lot there is an apparent need to excavate this area to achieve the proposed courtyard level (RL: 29.3). However, as the existing footpath level will remain, the maximum proposed excavation will actually be approximately 0.35m in the north-eastern corner of the lawn area and up to 0.5m fill in





**Above: Proposed western elevation showing TPS 1 natural ground levels and existing ground levels along boundary.**

The excavation required for the proposed undercroft is normally acceptable subject to compliance with the Building Code of Australia. Construction Management Plans and Dilapidation reports are also matters that will be considered at the Building Permit stage.

On balance, it appears that the proposed site works satisfy *design principles* and can be supported.

#### Clause 67 – Matters to be considered by Local Government

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

- a) the aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area;
- b) the requirements of orderly and proper planning ;
- c) any approved State planning policy;
- d) the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development;
- e) the amenity of the locality including the following
  - environmental impacts of the development;
  - the character of the locality;
  - social impacts of the development;
- f) the likely effect of the development on the natural environment or water resources and any means that are proposed to protect or to mitigate impacts on the natural environment or the water resource;
- g) whether adequate provision has been made for the landscaping of the land to which the application relates and whether any trees or other vegetation on the land should be preserved;
- h) the suitability of the land for the development taking into account the possible risk to human health or safety;

- |  |
|--|
| <p>i) the amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety;</p> <p>j) the impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals; and</p> <p>k) any submissions received on the application.</p> |
|--|

Officer comment

Following Council's decision to accept the TPS 1 NGLs for the site at its meeting in December 2015 after an invitation from the SAT, and the WAPC's decision of April 2017 to approve the proposed lot configuration with access from Deane Street via the existing crossover serving No. 17 Deane Street, the proposed development appears generally acceptable based on the comments made in this report, the recommended conditions, and having regard to clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015.

Council should note that the applicant has the right to appeal a decision and/or conditions associated with an approval.

**ATTACHMENTS**

- 10.1.4(a) Development Plans [under separate cover]**
- 10.1.4(b) Subdivision Plan [under separate cover]**
- 10.1.4(c) Applicants' Submission [under separate cover]**
- 10.1.4(d) Neighbour Submissions [under separate cover]**
- 10.1.4(e) REVISED Plans [under separate cover]**

**CONSULTATION**

The application was advertised on 18 June 2021 to 22 adjoining owners and occupiers. Advertising was for a minimum 14 days and closed on 5 July 2021.

Four submissions were received during the advertising period, including one on behalf of the owners of 24 Avonmore Terrace.

A summary of the key points raised are as follows:

- Excessive building bulk in proximity to western boundary and loss of direct sun to internal and external habitable spaces;
- Absence of detail relating to proposed vehicle access arrangements;
- The proposed boundary walls do not reduce impacts of building bulk on adjoining properties. The bulk and scale of the proposal, in particular the southern boundary wall, will result in a highly visible and overbearing feature when observed from the internal and external habitable spaces of 24 Avonmore Terrace;
- The height of walls along the southern and western portions of the ground floor has the potential to reduce direct sun to major openings and outdoor living areas to the west and not protect their amenity;

- A reasonably-sized dwelling could be built on the site without reliance on development to three boundaries;
- Future development on the southern lot will be unreasonably disadvantaged by the extent of boundary development along the southern elevation and could result in a built form that reduces amenity on neighbours;
- The setting back of the built form from the southern boundary may assist in reducing solar impacts associated with the proposal;
- There is a need for detailed engineering to achieve vehicle manoeuvrability and suitable access gradients and there may be a need to remove vegetation within the verge which could negatively impact on the streetscape;
- Clarification sought regarding correct site levels;
- Requests conditions at building stage to restrict blocking the rear lane, loading on the vacant site, dust mitigation, and a dilapidation report;
- Setback concern from upper floor to eastern boundary and open space less than required 50%;
- Eastern wall of first floor balcony will block ocean views, but would have no issue if was setback to same distance as the streetscape;
- Prefer driveway to be similar to No. 17 Deane Street, but not shared;
- Prefer proposed games room to not be on the boundary as it will reduce light and breeze to adjoining courtyard area and, if overheight, then would prefer reduced to a reasonable level;
- Unclear where the walls of the house and the brick fence area is in relation to actual boundary. The closer the walls are to the western boundary the greater the detrimental effect there will be in terms of bulk and shade in rear terrace and lack of ventilation;
- Requests bedroom 1 should be setback an additional 0.5m from western boundary and notes that it will overlook back terrace area;
- The proposed basement excavation may affect stability of the adjoining house and the dividing fence is old and will collapse;
- It is unclear extent of proposed brick fence on boundary;
- Air-conditioners should be relocated due to potential noise and amenity impact;
- The street setback should have consideration of amenity and view corridors.

The submissions are attached, and relevant planning considerations have been referred to in this report. It should further be noted that the Town's Engineering department is generally satisfied with the location of the proposed crossover following the WAPC's decision to allow the subdivision of the lot.

The revised plans were made available for viewing by the adjoining western owners.

### **STATUTORY IMPLICATIONS**

- *Planning and Development Act 2005;*
- *Planning and Development (Local Planning Schemes) Regulations 2015 (as amended);*

- Local Planning Scheme No. 3;
- State Planning Policy 7.3 - Residential Design Codes.

### **POLICY IMPLICATIONS**

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

### **STRATEGIC IMPLICATIONS**

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

Priority Area 4: Managing Development

### **RESOURCE IMPLICATIONS**

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

### **ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS**

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

### **VOTING REQUIREMENT**

Simple Majority

**OCM139/2021**

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

**Moved Acting Mayor Young      Seconded Cr Harkins**

**THAT Council APPROVES the development application for a two-storey dwelling with undercroft on Lot 18 (21) Deane Street, Cottesloe, as shown on the revised plans received 26 July 2021, subject to the following conditions:**

- 1. All water draining from roofs and other impermeable surfaces should be directed to garden areas, sumps or rainwater tanks within the development site where climatic and soil conditions allow for the effective retention of stormwater on-site.**
- 2. The finish and colour of the boundary wall(s) facing the adjoining eastern, western and southern boundaries shall be to the satisfaction of the Town. Details to be shown at the Building Permit stage.**
- 3. The privacy screen on the eastern side of the upper floor front balcony shall not exceed 1.6m in height above the finished floor level where located within 6m of the front boundary. Details to be shown at the Building Permit stage to the satisfaction of the Town.**
- 4. The proposed fencing within the front setback area shall be visually permeable above 1.2m of natural ground level, measured from the primary street side, except where shown on the approved plans. Details to be shown at the Building Permit stage to the satisfaction of the Town.**

5. Walls, fences and other structures shall be truncated or reduced to no higher than 0.75m within 1.5m of where the driveway joins the front boundary/street. Details to be shown at the Building Permit stage.
6. Plant and equipment, including air-conditioning units, should be designed, positioned and screened so as to not be visible from the street; designed to integrate with the building; or located so as not to be visually obtrusive.
7. Finalisation of the subdivision issued by the Western Australian Planning Commission on 5 April 2017 (Application No: 153378) and new Certificates of Title being issued for the proposed lots prior to occupation.
8. The driveway shall be designed to ensure that the manoeuvring area is designed and provided in accordance with *Australian Standard AS2890.1 (as amended)*.
9. The roof surface(s) may be required to be treated to reduce glare if the Town considers that the glare adversely affects the amenity of adjoining or nearby neighbours following completion of the development.
10. A tree shall be provided in the street setback area, with not more than 50 per cent of this area to consist of impervious surfaces, in accordance with clause 5.3.2 (C2.2) of the Residential Design Codes. Details to be shown at the Building Permit stage to the satisfaction of the Town.

#### Advice notes

1. The owner/applicant is responsible for ensuring that all lot boundaries shown on the approved plans are correct and that the proposed development is constructed entirely within the owner's property.
2. The owner/applicant is responsible for applying to the Town for a Building Permit and obtaining approval prior to undertaking the works.
3. The owner/applicant is responsible for applying to the Town for a new crossover and obtaining approval prior to commencement of works. In this regard reference should be made to the Town's approval granted under Regulation 12 of the Local Government (Uniform Local Provisions) Regulations 1996 dated 3 October 2017.
4. The owner/applicant is requested to liaise with adjoining landowners prior to undertaking works that may affect the health of trees located on adjoining lots or altering dividing fences.
5. The owner/applicant is advised that the lots may be required to be subdivided and a new Certificate of Titles be issued prior to the granting of a Building Permit.
6. All construction work shall be carried out in accordance with the requirements of the *Environmental Protection (Noise) Regulations 1997*.
7. The owner/applicant is advised that this approval shall be deemed to be an approval under the Metropolitan Region Scheme.

Carried by En Bloc Resolution 8/0

**EXECUTIVE SERVICES****10.1.8 REVISED COMBINED AUSTRALIA DAY CELEBRATION MOU**

**Directorate:** Executive Services  
**Author(s):** Matthew Scott, Chief Executive Officer  
**Authoriser(s):** Matthew Scott, Chief Executive Officer  
**File Reference:** D21/38347  
**Applicant(s):** Internal  
**Author Disclosure of Interest:** Nil

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**SUMMARY**

For Council to consider the revised Combined Councils' Australia Day Celebrations Memorandum of Understanding (MOU) between the Town of Cottesloe, Town of Mosman Park and Shire of Peppermint Grove.

**OFFICER RECOMMENDATION IN BRIEF**

That Council endorses the attached Draft Combined Councils' Australia Day Celebrations MOU.

**BACKGROUND**

The Towns of Cottesloe and Mosman Park and the Shire of Peppermint have combined their respective Australia Day Celebrations since 2011, via a Memoranda of Understanding (MOU). Though these combined Australia Day celebrations have worked well for all communities involved, there have been concerns raised as to the need for each Local Government to have their own award for each Australia Day Award category.

Given the relative size of the three communities, it has been difficult for some communities to nominate individuals or groups within their respective communities. Likewise it is understood that potentially the same individual or group could be nominated within more than one local government, given our relatively close physical association, particularly with community groups.

Since the 2021 Australia Day Celebration there has been discussion at CEO level of each the Local Governments as to the possibility to have one awardee for each category across the three local governments, resulting in the attached revised MOU.

Attached is a marked up updated MOU identifying proposed changes to the current arrangements. This report is to determine if Council is prepared to endorse the proposed changes. Officer Comment

The revised MOU (attached) is relatively self-explanatory, with the significant change being the combined Australia Day Award categories. If necessary, the Town of Cottesloe can present its own Mayoral Award if there is an individual or group the Council believes should be formally recognised on Australia Day. The MOU has also been updated to clearly identify the roles and responsibility of each individual Local Government and Hosting Local Government.

**ATTACHMENTS**

10.1.8(a) DRAFT - Combined Councils Australia Day - MOU 2021 [under separate cover]

**CONSULTATION**

Informal discussions between the CEOs of Town of Cottesloe, Town of Mosman Park and Shire of Peppermint Grove.

Informal discussion with the Mayors and President of the respective three local governments.

**STATUTORY IMPLICATIONS**

There are no statutory implications associated with this item.

**POLICY IMPLICATIONS**

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

**STRATEGIC IMPLICATIONS**

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

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

Major Strategy 1.3: Identify places to host more cultural events and activities.

**RESOURCE IMPLICATIONS**

Resource requirements are in accordance with the existing budgetary allocation.

**ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS**

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

**VOTING REQUIREMENT**

Simple Majority

**OCM140/2021**

**OFFICER RECOMMENDATION AND COUNCIL RESOLUTION**

Moved Acting Mayor Young      Seconded Cr Harkins

**THAT Council ENDORSES the attached Draft Combined Council's Australia Day Celebrations MOU (as marked up) for signing.**

**Carried by En Bloc Resolution 8/0**

**ENGINEERING SERVICES****10.1.6 STREET TREES**

**Directorate:** Engineering Services  
**Author(s):** Shaun Kan, Director Engineering Services  
**Authoriser(s):** Matthew Scott, Chief Executive Officer  
**File Reference:** D21/36281  
**Applicant(s):** Internal  
**Author Disclosure of Interest:** Nil

Cr Masarei declared an IMPARTIALITY INTEREST in item 10.1.6 by virtue "Some of the residents of Torrens Court are known to me."

Cr Harkins declared an IMPARTIALITY INTEREST in item 10.1.6 by virtue "Some of the residents are known to me."

Cr Barrett declared an IMPARTIALITY INTEREST in item 10.1.6 by virtue "Affected people are known to me."

Cr Young declared an IMPARTIALITY INTEREST in item 10.1.6 by virtue "Some of the residents known to me."

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**SUMMARY**

Council is asked to consider street tree planting exemptions request from 1 and 3 Torrens Court, Cottesloe including the planting of Peppermint trees on Deane Street, noting that this is not the species within the approved street tree masterplan.

**OFFICER RECOMMENDATION IN BRIEF**

That Council REJECTS the planting exemption request for 1 and 3 Torrens Court including the planting of Olive trees being asked based on the rationale detailed in the comments section of this document.

**BACKGROUND**

In May 2021, in accordance with the Street Tree Policy ([street-trees-policy cottesloe.wa.gov.au](https://www.cottesloe.wa.gov.au/street-trees-policy)), notification letters were sent to residents whose verges were receiving a tree in the 2021 planting season. A copy of the letter has been attached.

At the July 2021 Ordinary Meeting, Council resolved to defer the planting exemption being asked by the residents of 1 and 3 Torrens Court to allow them an opportunity to make a public statement before a decision is made.

Since then, the resident of 26 Deane Street has made a request to the Director of Engineering for them to plant an Olive Tree outside their property located at the top of an embankment.

**OFFICER COMMENT**

Section 4.3.1 (i) of the policy requires a minimum of one tree to be planted on each verge and there is no provision for Director Engineering Services to provide exemptions unless a resident is asking for the planting to be deferred to facilitate building works.

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Other clauses within section 4.3.1 allow residents to plant verge trees with an approved application by the Director of Engineering Services and must be in accordance with the Street Tree Master Plan. This then becomes the property and the maintenance responsibility of the Town.

Council is asked to consider the following officer's comments and recommendations to the following matters:

### **1 Torrens Court and 3 Torrens Court – Request for Planting Exemption**

Council has previously deferred consideration as the resident was not able to attend the July Ordinary Meeting to make a public statement.

In summary, the residents, in a telephone conversation with Town staff, are concerned that:

- Given the narrowness of the street, a planted tree will impact traffic safety along the street with vehicles now having to park on the road instead of the verge; and
- Existing utility services within their verge and property boundary infrastructure may be impacted by the tree root system.

Information from dial before you dig indicates that there are no services within the verges. The trees can be planted in a location such that it still allows for a single vehicle to be parked on the verge and at the same time mitigates against any potential infrastructure damage with it being a minimum of 1.5 metres from such items.

Notwithstanding the officer's comments above, Council is asked to note that:

- This will impact the concrete slab path feature as the verge;
- It previously rejected a John Street resident's request for planting exemption for similar reasons; and
- Approving this request sets precedence.

Further to communicating with the Town's Administration, the residents attended the 17 August 2021 Agenda Forum to provide an Arborist Report and addressed Council during public statement time. The additional concerns raised have been detailed below:

- Impact on northern light – the tree will reduce energy efficiencies; and
- Existing tree on verges – olive tree to the west of 1 Torrens Court and a similar type tree to the east of 3 Torrens Court;

The Arborist Report (attached) reinforces the points raised above. However, Council is asked to note that whilst there may be existing trees, the street tree policy provision that requires a minimum of one tree to be planted on each verge (Clause 4.3.1i) which allows the Administration the discretion to plant additional trees if this is possible to do so. The officers have assessed this to be the case.

Given the additional information received above, the following options are available for Council's consideration:

- Option One: Exempt the planting; or
- Option Two: Defer the planting until next season to allow the Administration to investigate alternative trees, possibly a deciduous type species that addresses the

northern light concerns which is a key consideration of the street tree policy (Clause 4.3.3 vi).

The Administration’s preference is Option Two given the provisions of the street tree policy and Council has in the past approved such a situation to occur for northern light impact reasons. However, whilst not advisable, Council can amend the officer’s recommendation should they wish to do so.



1 Torrens Court



3 Torrens Court

**26 Deane Street Resident Planting Request**

The resident has asked for permission to plant Olive Trees along Deane Street adjacent to the top of a steep embankment to predominantly replace trees of the same species previously planted by them that had been damaged during the recent storm. Notwithstanding the ones that had been destroyed, by the adverse weather, there are Olive trees that still exist.

Council is asked to note that Section 4.3.1 of the Street Tree Policy only permits the Director of Engineering Services to approve only the Norfolk Island Pine for planting by residents given that this is the allocated Deane Street species under the Street Tree Masterplan.

For the reasons above, a recommendation has been made to decline the resident's request. Council can however amend this should it wishes to do so.

Alternatively, as the planting of all Norfolk Island Pines are not suitable given the confined location, Council is asked to consider allowing the Director of Engineering a one off discretion to approve either the Olive Trees requested or another species subject to an arborist advice at the cost of and in discussion with the resident.



#### **ATTACHMENTS**

- 10.1.6(a) Letter to Residents - Verge Street Tree Infill Planting Program [under separate cover]**
- 10.1.6(b) Paperbark Technologies Report - Torrens Court Verge Tree Species Selection August 2021 [under separate cover]**

#### **CONSULTATION**

Affected Residents – Notification letters were sent in May 2021 (attached)

**STATUTORY IMPLICATIONS**

There are no perceived statutory implications.

**POLICY IMPLICATIONS**

The street tree policy requires a minimum of one tree to be planted on each verge and unless approved by Council, all street trees must be in accordance with the endorsed Street Tree Masterplan.

**STRATEGIC IMPLICATIONS**

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

Priority Area 5: Providing sustainable infrastructure and community amenities

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

**RESOURCE IMPLICATIONS**

Resource requirements are in accordance with the existing budgetary allocation.

**ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS**

There are no perceived sustainability implications arising from the officer's recommendation. The planting of street trees are one of the actions mitigating against the effects of climate change and is one of the key actions within the Town's Corporate Business Plan.

**VOTING REQUIREMENT**

Simple Majority

**OFFICER RECOMMENDATION**

**Moved Cr Sadler**

**Seconded Acting Mayor Young**

THAT Council:

1. DEFERS 1 and 3 Torrens Court, Cottesloe residents request for tree planting exemptions as per the reasons stated in the Administration's preferred option two to allow further investigations to be undertaken to determine a suitable tree species that addresses the northern light concerns;
2. NOTES that subject to the APPROVAL of Point One, an item will be brought back to an Ordinary Council Meeting and the resident notified of the timing of this item being re-tabled; and
3. REJECTS 26 Deane Street resident Olive Tree planting application as this is not consistent with the provisions of the Street Tree Policy.

**OCM141/2021**

**Moved Cr Harkins**

**Seconded Cr Barrett**

**COUNCILLOR AMENDMENT**

That point 3 be amended as follows:

3. **APPROVES 26 Deane Street resident olive tree planting application.**

Carried 8/0

**OCM142/2021**

**COUNCILLOR AMENDMENT**

Moved Cr Masarei

Seconded Cr Harben

Amend point 1 as follows:

**DEFERS 1 and 3 Torrens Court residents' request for verge tree planting exemptions as per the reasons stated in the Administration's preferred Option 2, to allow further investigations to be undertaken (including further discussions with the residents) to determine a suitable tree species that addressed concerns including northern light access and appropriate scale for the setting.**

Carried 6/2

For: Cr Young, Harben, Masarei, Harkins, Tucak and Barrett

Against: Crs Sadler and MacFarlane

**AMENDMENT**

Moved Cr Tucak

A point 4 be added:

CONFIRMS that a tree (single) will be planted on the Stanhope St verge of 86 Broome St.

The Presiding Member ruled Cr Tucak's amendment as a revocation motion and rejected it.

**COUNCILLOR MOTION**

Moved Cr Tucak

No Seconder, Lapsed

That the Presiding Member's decision be set aside.

**OCM143/2021**

**SUBSTANTIVE MOTION AND COUNCIL RESOLUTION**

**THAT Council:**

1. **DEFERS 1 and 3 Torrens Court residents' request for verge tree planting exemptions as per the reasons stated in the Administration's preferred Option 2, to allow further investigations to be undertaken (including further discussions with the residents) to determine a suitable tree species that addressed concerns including northern light access and appropriate scale for the setting;**
2. **NOTES that subject to the APPROVAL of Point One, an item will be brought back to an Ordinary Council Meeting and the resident notified of the timing of this item being re-tabled; and**
3. **APPROVES 26 Deane Street resident olive tree planting application.**

Carried 7/1

**For: Cr Young, Harben, Sadler, Masarei, Harkins, Barrett and MacFarlane**

**Against: Cr Tucak**

COUNCILLOR RATIONALE:

- There are already olives trees in the area being discussed and these new trees are simply replacing ones damaged in the recent storm.
- The approved street tree is a Norfolk Island Pine which has been deemed not suitable in this particular location in the street due to the embankment.
- As these trees have successfully grown in the location previously there is no need to require the rate payer to spend money on an arborists report to identify an alternative species of tree.
- Although the ultimate choice of specie will be the Town's decision, Including the residents in the specie selection would be a constructive approach to reassure them that their concerns have been listened to and that Council desires an outcome that meets concerns in a way that is consistent with the Intent of the Town's Street Tree Policy.
- As a general principle it is not desirable to plant street trees which would have a very significant impact on a property's access to northern light. It is also appropriate to ensure that the scale of tree selected is appropriate to the context. It is likely that a smaller tree of a different specie could.

The Presiding Member advised that Council would return to the order of agenda as listed.

**CORPORATE AND COMMUNITY SERVICES****10.1.1 TOWN OF COTTESLOE RECONCILIATION ACTION PLAN**

**Directorate:** Corporate and Community Services  
**Author(s):** Esther Cullity, Events Coordinator  
**Authoriser(s):** Shane Collie, Director Corporate and Community Services  
Matthew Scott, Chief Executive Officer  
**File Reference:** D21/28497  
**Applicant(s):** Internal  
**Author Disclosure of Interest:** Nil

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**SUMMARY**

Council is being asked to consider the establishment of a Reconciliation Action Working Group (RAWG) to assist in the development of the Town's first Reconciliation Action Plan (RAP).

**OFFICER RECOMMENDATION IN BRIEF**

That Council approves the establishment of a Reconciliation Action Working Group and the development of the Town's first Reflect RAP.

**BACKGROUND**

**What is a RAP** (Source [www.reconciliation.org.au](http://www.reconciliation.org.au))

A RAP is a strategic document that supports an organisation's business plan. It includes practical actions that will drive an organisation's contribution to reconciliation both internally and in the communities in which it operates. There are four types of RAP that an organisation can develop: Reflect, Innovate, Stretch and Elevate.

**Reflect**

– *Scoping reconciliation*

A Reflect RAP clearly sets out the steps you should take to prepare your organisation for reconciliation initiatives in successive RAPs. Committing to a Reflect RAP allows your organisation to spend time scoping and developing relationships with Aboriginal and Torres Strait Islander stakeholders, deciding on your vision for reconciliation and exploring your sphere of influence, before committing to specific actions or initiatives. This process will help to produce future RAPs that are meaningful, mutually beneficial and sustainable.

**Innovate**

– *Implementing reconciliation*

An Innovate RAP outlines actions that work towards achieving your organisation's unique vision for reconciliation. Commitments within this RAP allow your organisation to be aspirational and innovative in order to help your organisation to gain a deeper understanding of its sphere of influence, and establish the best approach to advance reconciliation. An Innovate RAP focuses on developing and strengthening relationships with Aboriginal and

Torres Strait Islander peoples, engaging staff and stakeholders in reconciliation, developing and piloting innovative strategies to empower Aboriginal and Torres Strait Islander peoples.

### **Stretch**

#### *– Embedding reconciliation*

A Stretch RAP is best suited to organisations that have developed strategies, and established a strong approach towards advancing reconciliation internally and within the organisation's sphere of influence. This type of RAP is focused on implementing longer-term strategies, and working towards defined measurable targets and goals. The Stretch RAP requires organisations to embed reconciliation initiatives into business strategies to become 'business as usual'.

### **Elevate**

#### *– Leadership in reconciliation*

An Elevate RAP is for organisations that have a proven track record of embedding effective RAP initiatives in their organisation through their Stretch RAPs and are ready to take on a leadership position to advance national reconciliation. Elevate RAP organisations have a strong strategic relationship with Reconciliation Australia and actively champion initiatives to empower Aboriginal and Torres Strait Islander peoples and create societal change. Elevate RAP organisations also require greater transparency and accountability through independent assessment of their activities.

Each type of RAP is designed to suit an organisation at different stages of their reconciliation journey.

The RAP framework enables organisations to contribute to reconciliation by:

- building and encouraging relationships between Aboriginal and Torres Strait Islander peoples, communities, organisations, and the broader Australian community.
- fostering and embedding respect for the world's longest surviving cultures and communities.
- develop opportunities within your organisation or services to improve socio-economic outcomes for Aboriginal and Torres Strait Islander peoples and communities.

### **What is a RAP Working Group**

The RAP Working Group (RWG) is considered the governing body of the RAP. The RWG is ultimately responsible for the development, implementation and reporting phases of a RAP. It is therefore important to establish an effective RWG in order to develop a RAP.

### **OFFICER COMMENT**

- Research has shown that the following local governments have already developed a RAP;
- City of Fremantle;
- Town of East Fremantle;
- City of Melville;

- City of Cockburn;
- City of Rockingham ;
- City of Stirling;
- City of Vincent.

The Town's Events Coordinator recently attended a 'RAP Ready' workshop facilitated by Kambarang Services and CSD Network, and was advised that the establishment of a Reconciliation Working Group, in addition to developing a Reflect RAP would be the most appropriate first step for the Town.

It is recommended that a RAWG include the following members:

- Three (3) Elected Members (including the Mayor or Deputy Mayor);
- Town of Cottesloe CEO or nominated Director;
- Up to five (5) community members including Aboriginal and Torres Strait Islander Community Members (to be invited by way of public advertisement).

Vacancies for the community representatives will generally be advertised in the local papers, the Town of Cottesloe webpage and notice boards. Council will then select and appoint new members.

Community representation is valid for two years, until the person resigns, the Group is disbanded or the next Ordinary Council Election, which ever happens first. Nothing prevents an existing member re-nominating. It is recommended for Council to consider nominations after the October 2021 Local Government Elections.

### **ATTACHMENTS**

- 10.1.1(a) Terms of Reference - Reconciliation Action Working Group [under separate cover]**

### **CONSULTATION**

In October 2020, the Director of Corporate and Community Services and Events Coordinator met with Danny Ford and Tim Muirhead from Kambarang Services and CSD Network who are specialists in Reconciliation and developing RAPs for Local Governments. Following the meeting, a proposed Methodology, Budget and Timeline explaining how they can assist the Town's Reconciliation journey was received. Tim Muirhead and Danny Ford were selected as the Town's consultants.

In February 2021, the Town's elected members and staff attended a Cultural Awareness training facilitated by Danny Form and Tim Muirhead from Kambarang Services and CSD Network.

### **STATUTORY IMPLICATIONS**

*Local Government Act 1995*

**POLICY IMPLICATIONS**

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

**STRATEGIC IMPLICATIONS**

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

Priority Area 6: Providing open and accountable local governance

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

**RESOURCE IMPLICATIONS**

\$10,000 is allocated in the 2021/22 financial year budget to facilitate the initial development of a Reconciliation Action Plan.

**ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS**

*Local Government Act 1995*

*Aboriginal Heritage Act 1972*

Mudurup Rocks is a protected site under the *Aboriginal Heritage Act 1972* and any works at this site must be done in accordance with the processes provided for in this Act.

**VOTING REQUIREMENT**

Simple Majority

**OFFICER RECOMMENDATION**

THAT Council:

1. APPROVES the establishment of the Town's first Reflect Reconciliation Action Plan (RAP);
2. APPROVES the establishment of a Reconciliation Action Working Group (RAWG) as per the attached Terms of Reference.
3. CALLS for nominations for the Community Members positions;
4. INSTRUCTS the CEO to present the nominations received at the Ordinary Council Meeting after the October 2021 Local Government Elections.

**COUNCILLOR MOTION**

**Moved Cr Tucak**

**No Seconder, Lapsed**

THAT Council:

1. APPROVES the establishment of the Town's first Reflect Reconciliation Action Plan (RAP);

2. APPROVES the establishment of a Reconciliation Action Working Group (RAWG) as per the attached Terms of Reference, with these additions:
  - (a) after the first para acknowledging the Whadjuk Ngoonyar as traditional owners, add:

*“The Town also acknowledges the area known as Mudurup Rocks, Cottesloe Beach and the marine environment has great significance for the Traditional Custodians, and the Town will respect the cultural significance of this area, and work with the Traditional Owners to understand the ways that they would like to see the significance of the area recognised, preserved and promoted to all”* (December 2018 Resolution);
  - (b) at the end of para 3 (Purpose) add:

*“and reflects the Town’s intention to first consult with the Traditional Custodians on these matters (August 2018 and December 2018 Resolutions)”*;
  - (c) add a new point (e) to para 4 (Terms of Reference):

*“To ensure early and meaningful engagement with Traditional Custodians occurs in the implementation of the above”* (December 2018 Resolution).
3. CALLS for nominations for the Community Members positions;
4. INSTRUCTS the CEO to present the nominations received at the Ordinary Council Meeting after the October 2021 Local Government Elections.

**OFFICER RECOMMENDATION (FORESHADOWED)****Moved Acting Mayor Young      Seconded Cr Sadler**

THAT Council:

1. APPROVES the establishment of the Town’s first Reflect Reconciliation Action Plan (RAP);
2. APPROVES the establishment of a Reconciliation Action Working Group (RAWG) as per the attached Terms of Reference.
3. CALLS for nominations for the Community Members positions;
4. INSTRUCTS the CEO to present the nominations received at the Ordinary Council Meeting after the October 2021 Local Government Elections.

**COUNCILLOR AMENDMENT****Moved Cr Tucak      No Seconder, Lapsed**

2. APPROVES the establishment of a Reconciliation Action Working Group (RAWG) as per the attached Terms of Reference, with these additions:
  - (a) after the first para acknowledging the Whadjuk Ngoonyar as traditional owners, add:

*“The Town also acknowledges the area known as Mudurup Rocks, Cottesloe Beach and the marine environment has great significance for the Traditional Custodians, and the Town will respect the cultural significance of this area, and*

*work with the Traditional Owners to understand the ways that they would like to see the significance of the area recognised, preserved and promoted to all* (December 2018 Resolution);

- (d) at the end of para 3 (Purpose) add:

*“and reflects the Town’s intention to first consult with the Traditional Custodians on these matters (August 2018 and December 2018 Resolutions)”*;

- (e) add a new point (e) to para 4 (Terms of Reference):

*“To ensure early and meaningful engagement with Traditional Custodians occurs in the implementation of the above”* (December 2018 Resolution).

#### **OCM144/2021**

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

**Moved Acting Mayor Young      Seconded Cr Sadler**

**THAT Council:**

- 1. APPROVES the establishment of the Town’s first Reflect Reconciliation Action Plan (RAP);**
- 2. APPROVES the establishment of a Reconciliation Action Working Group (RAWG) as per the attached Terms of Reference.**
- 3. CALLS for nominations for the Community Members positions;**
- 4. INSTRUCTS the CEO to present the nominations received at the Ordinary Council Meeting after the October 2021 Local Government Elections.**

**Carried 8/0**

**10.1.2 AIRLIE STREET DEVELOPMENT CONTRACTOR PARKING**

**Directorate:** Corporate and Community Services  
**Author(s):** Shane Collie, Director Corporate and Community Services  
**Authoriser(s):** Matthew Scott, Chief Executive Officer  
**File Reference:** D21/36215  
**Applicant(s):** Internal  
**Author Disclosure of Interest:** Nil

Cr Tucak declared an IMPARTIALITY INTEREST in item 10.1.2 by virtue "I live in the affected area."

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**SUMMARY**

For Council to consider the potential use of Public Transport Authority (PTA) Reserve 3399 Curtin Avenue for the use by Multiples Contractors for parking whilst a Development in the neighbouring local government of Claremont is being undertaken.

**OFFICER RECOMMENDATION IN BRIEF**

It is recommended that Council ADVISES the Developer Multiplex, the Town of Claremont and PTA that there is no suitable location within Cottesloe (including Reserve 3399 Curtin Avenue) for use as a parking facility in relation to the construction phase of the 1 Airlie Street, Claremont (the Grove).

**BACKGROUND**

The Town of Cottesloe has been approached by the Developer Multiplex in conjunction with the Town of Claremont and the PTA to facilitate a solution to an anticipated parking issue associated with a large Development in Airlie Street, Claremont. It has been the Town of Cottesloe's preference that the Town of Claremont take responsibility for the Development as it is in that local government area and that local government has the opportunity through the Planning Framework or its Local Laws to address the matter.

Multiplex have put forward that the parcel of land directly to the north of the Cottesloe Train Station, being Reserve 3399 (Lot 116) on Plan 6560 be utilised for parking during the duration of the Development. The land is held by the PTA and is the subject of a License to the Town of Cottesloe (License Plan 6560-2) for the purposes of Landscaping and Beautification. The License Term is 10 years and concludes on 31 March 2024.

Town of Cottesloe representatives have participated in meetings with the relevant stakeholders where potential solutions to the issue have been canvassed.

**OFFICER COMMENT**

The anticipated disruption from this Development is possible to be in the vicinity of 2 years with construction estimated to be that period. Vehicles requiring parking over the construction period are estimated to be in excess of 250 per day.

The Town of Claremont have introduced parking restrictions in the vicinity of the Development effectively pushing the parking issue into surrounding areas including East Cottesloe.

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The Town of Cottesloe has limited options in dealing with this matter as it is not the Development Approval Authority and the Development is not contained within the Town's boundary.

The Developer Multiplex have stated in part:

*"During the Stage 2 Main Building Works site workforce personnel are forecast to be approximately 275 at peak. Whilst it is anticipated that a significant portion of the site workforce will utilise public transport as is common practice on MPX projects, in accordance with the Town of Claremont's Development Approval Condition 3, MPX will implement an additional solution to provide Subcontractors access to car parking adjacent to the Cottesloe train station to alleviate any potential parking impacts to residential streets and amenity. Based on the projected peak workforce, MPX anticipates 30% will utilise public transport and cycling, 15% will carpool with remaining 55% utilising single vehicle transport thereby requiring approximately a total of 152 parking bays. The designated parking is proposed for Lot 116, Reserve 3399 Curtin Avenue, Cottesloe as shown in Appendix 10. Parking capacity based on this proposed layout is 159 parking bays. As part of this overall strategy, from the carpark and to the train station, MPX will direct subcontractors to access the site via Forrest Street (commercial properties to southern side) and Stirling Highway thereby avoiding other surrounding residential streets. Refer to Figure 2 below for the site access pedestrian route."*

Some of the statements contained in the above are questionable particularly in respect of assumptions of behaviour. The extent to which the company can force its employees to use the designated carpark or the designated walk route is also questionable. Even if this area is used for parking it is anticipated that parking in the already congested area of East Cottesloe will still be impacted.

The following factors are relevant in the License to Occupy Document:

1. The Licensed area is non exclusive in its use (Item 2).
2. PTA can revoke the License at any time when the service of the public requires it (this does not appear to be applicable as this is related to a private Development). (Item 3.2).
3. Termination of the License can be by PTA before the end of the Term by providing 6 months notice. (Item 14.1).
4. The Licensee (The Town) is to ensure that no vehicles are parked on the land (Item 18.1) which means that the Town could be potentially in breach of the License Terms if it permits parking on this land while the License remains in place.
5. The Permitted Use of the License is Landscaping and Beautification. Parking does not fit that definition and there would be expected to be degradation and loss of vegetation including recent plantings on the land. The amenity of the area would be negatively impacted.

Additionally the following other matters have also been identified which are of concern should Council agree to have this land used for parking:

#### **Traffic Access from Curtin Avenue**

No traffic impact study has been undertaken. The bottleneck areas of Eric Street and Jarrad Street are already at their capacity and in peak times beyond capacity. Additional traffic in this area will increase traffic congestion, particularly on Curtin Avenue heading north where at peak times right hand turns into the parking area would see traffic banked up more than it already is. There is also a unit development opposite the entrance/exit point.

#### **Community Consultation**

None has been undertaken and it should not be Town of Cottesloe resources that go into any consultation for a Development and activity that is not of any benefit to the district.

#### **Approvals Required**

It is unclear what approvals are required.

#### **Financial Benefit**

There is no lease fee or parking fees that would be applicable to the Town of Cottesloe.

#### **Environmental Impact**

The negative environmental impact that parking will have on the Reserve. The amenity of the area would be negatively impacted also on one of the main thoroughfares in Cottesloe.

#### **ATTACHMENTS**

**10.1.2(a) Plan of the proposed carpark [under separate cover]**

**10.1.2(b) Licence to Occupy 6560-2 [under separate cover]**

#### **CONSULTATION**

Multiplex

Town of Claremont

Public Transport Authority

#### **STATUTORY IMPLICATIONS**

*Local Government Act 1995*

*Town of Cottesloe Parking and Parking Facilities Local Law 2009*

#### **POLICY IMPLICATIONS**

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

#### **STRATEGIC IMPLICATIONS**

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

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

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

**RESOURCE IMPLICATIONS**

Resource requirements are in accordance with the existing budgetary allocation.

**ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS**

It is considered that should parking be permitted on Reserve 3399 which has a License to Occupy to the Town of Cottesloe for the purpose of "Landscaping and Beautification" that there would be a negative environmental impact with vegetation removed and recent planting and green space lost.

**VOTING REQUIREMENT**

Simple Majority

**OFFICER RECOMMENDATION**

**Moved Acting Mayor Young                      Seconded Cr Sadler**

THAT Council ADVISES the Developer Multiplex, the Town of Claremont and PTA that there is no suitable location within Cottesloe (including Reserve 3399 Curtin Avenue) for use as a parking facility in relation to the construction phase of the 1 Airlie Street, Claremont (the Grove).

**OCM145/2021**

**COUNCILLOR AMENDMENT**

**Moved Cr Tucak    Seconded Cr Barrett**

THAT Council ADVISES the Developer Multiplex, the Town of Claremont and PTA that there is no suitable location within Cottesloe (including Reserve 3399 Curtin Avenue) for use as a parking facility in relation to the construction phase of the 1 Airlie Street, Claremont (the Grove) and requests the Developer Multiplex and Town of Claremont to urgently identify other suitable parking facility locations within the Town of Claremont to avoid undue impact on residential areas in Town of Cottesloe, particularly East Cottesloe.

**Equality 4/4**

**For: Crs Young, Harkins, Tucak and Barrett**

**Against: Crs Harben, Sadler, Masarei and MacFarlane**

**Acting Mayor exercised the casting vote to vote against**

**Lost 4/5**

OCM146/2021

**OFFICER RECOMMENDATION COUNCIL RESOLUTION**

THAT Council ADVISES the Developer Multiplex, the Town of Claremont and PTA that there is no suitable location within Cottesloe (including Reserve 3399 Curtin Avenue) for use as a parking facility in relation to the construction phase of the 1 Airlie Street, Claremont (the Grove).

Carried 8/0

**10.1.3 MONTHLY FINANCIAL STATEMENTS FOR THE PERIOD 1 JULY 2021 TO 31 JULY 2021**

**Directorate:** Corporate and Community Services  
**Author(s):** Lauren Davies, Finance Manager  
**Authoriser(s):** Shane Collie, Director Corporate and Community Services  
**File Reference:** D21/37273  
**Applicant(s):** Internal  
**Author Disclosure of Interest:** Nil

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**SUMMARY**

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

**OFFICER RECOMMENDATION IN BRIEF**

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

**BACKGROUND**

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

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

**OFFICER COMMENT**

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

- The net current funding position as at 31 July 2021 was \$1,594,184 as compared to \$11,870,271 this time last year. This is due to rates being raised in July last year compared to in August this year.
  - Rates receivables as at 31 July 2021 stood at \$238,570 as compared to \$10,784,489 this time last year as shown on page 23 of the attached financial statements. This is due to the timing of the raising of rates.
-

- Operating revenue is more than year to date budget by \$13,197 with a more detailed explanation of material variances provided on page 19 of the attached financial statements. Operating expenditure is \$209,933 less than year to date with a more detailed analysis of material variances provided on page 21.
- The capital works program is shown in detail on pages 32 to 33 of the attached financial statements.
- The balance of cash backed reserves was \$8,543,720 as at 31 July 2021 as shown in note 4 on page 21 of the attached financial statements.

#### **List of Accounts Paid for July 2021**

The list of accounts paid during July 2021 is shown on pages 34 to 39 of the attached financial statements. The following significant payments are brought to Council's attention:

- \$25,959.55 & \$27,447.41 to SuperChoice Services Pty Ltd for staff superannuation contributions.
- \$28,209.48 & \$28,209.48 to Titan Ford for purchase of two replacement vehicles.
- \$45,753.42 to Hidrive Group for two canopies on replacement vehicles purchased.
- \$60,049.75 to Environmental Industries for progress payment on Dutch Inn Playground Upgrade.
- \$182,221.95 to Roads 2000 Pty Ltd for re-surfacing of Marmion St.
- \$40,756.73 to West Australian Local Government Association (WALGA) for the 2021/2022 membership and subscription service.
- \$181,527.46 to Western Metropolitan Regional Council which consists of \$155,116 for contributions as a member council and the remainder is for June transfer station waste disposal.

#### **Investments and Loans**

Cash and investments are shown in note 4 on page 23 of the attached financial statements. The Town has approximately 24% of funds invested with the National Australia Bank, 43% with the Commonwealth Bank of Australia and 24% with Westpac Banking Corporation. A balance of \$8,543,720 was held in reserve funds as at 31 July 2021.

Information on borrowings is shown in note 10 on page 31 of the attached financial statements. The Town had total principal outstanding of \$3,140,786 as at 31 July 2021.

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

Rates outstanding are shown on note 6 on page 23 and show a balance of \$230,570 outstanding as compared to \$10,748,489 this time last year.

Sundry debtors are shown on note 6 on page 23 of the attached financial statements. The sundry debtors report shows that 22% or \$28,878 is older than 90 days. Infringement debtors are shown on note 6 on page 25 and were \$453,137 as at 31 July 2021.

#### **ATTACHMENTS**

**10.1.3(a) Monthly Financial Report 1 July to 31 July 2021 [under separate cover]**

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**CONSULTATION**

Senior staff.

**STATUTORY IMPLICATIONS**

*Local Government Act 1995* Local Government (Financial Management) Regulations 1996

**POLICY IMPLICATIONS**

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

**STRATEGIC IMPLICATIONS**

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

Priority Area 6: Providing open and accountable local governance

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

**RESOURCE IMPLICATIONS**

Resource requirements are in accordance with the existing budgetary allocation.

**ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS**

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

**VOTING REQUIREMENT**

Simple Majority

**OCM147/2021**

**OFFICER RECOMMENDATION AND COUNCIL RESOLUTION**

Moved Cr Masarei

Seconded Cr Harben

**THAT Council RECEIVES the Monthly Financial Statements for the period 1 July 2021 to 31 July 2021 as submitted to the 24 August 2021 meeting of Council.**

Carried 7/1

For: Cr Young, Harben, Sadler, Masarei, Harkins, Barrett and MacFarlane

Against: Cr Tucak

**ENGINEERING SERVICES****10.1.5 STEERING COMMITTEE FOR CHRMAP**

<b>Directorate:</b>	<b>Engineering Services</b>
<b>Author(s):</b>	<b>Emma Saikovski, Coordinator Enviromental Projects</b>
<b>Authoriser(s):</b>	<b>Shaun Kan, Director Engineering Services</b>
<b>File Reference:</b>	<b>D21/33303</b>
<b>Applicant(s):</b>	<b>Internal</b>
<b>Author Disclosure of Interest:</b>	<b>Nil</b>

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**SUMMARY**

For Council to approve the terms of reference and advertising for community representatives to form the Coastal Hazard Risk Management and Adaptation Plan (CHRMAP) Steering Committee.

**OFFICER RECOMMENDATION IN BRIEF**

For Council to approve the terms of reference and request the CEO to seek nominations for community representatives to form the CHRMAP Steering Committee.

**BACKGROUND**

In July 2021, the Town was successful in receiving \$100,000 in co-funding from Department of Planning Lands and Heritage (DPLH), on behalf of West Australian Planning Commission to prepare a CHRMAP in accordance with State Planning Policy 2.6 (SPP 2.6).

The purpose of the CHRMAP is to provide strategic guidance on coordinated, integrated and sustainable management of coastal areas identified as being at risk of coastal hazard through erosion and storm surge inundation.

As a part of this program, the Town is required to contribute \$70,000 and form a steering committee consisting of representatives from the Town, DPLH, the appointed consultant and the community. There is no requirement for elected members to be part of this group.

The project will be completed over a period of two years and the funding for stage one has been included within the 2021/2022 budget (57.6080.1117 – CHRMAP Development Stage 1).

**OFFICER COMMENT**

While characterising coastal hazards will be done by technical experts, assessing risk arising from coastal hazards, consequences, asset values, and risk management measures is best done through an open process with input from an informed community and stakeholders. This ensures that all stakeholders can understand the risk management measures and the trade-offs that have been agreed and ensures a successful outcome for the risk management process.

Under the minimum requirements of DPLH, the steering committee would need to be made up of the following membership:

- Two representatives from the Town of Cottesloe Administration
-

- One representatives from DPLH
- One representative from the consultant
- One representative from the community

A call for nominations will be advertised through all of the Town's usual communication streams, for a period of two weeks. Applicants will be requested to complete a nomination form which will be presented to Council at the September 2021 Ordinary Council Meeting.

Whilst a minimum of one community representative is required by DPLH, Council can exercise its discretion to appoint the preferred number of representatives and elected members onto the committee should it wish to do so. It would also be important to note that the North Cottesloe Surf Lifesaving Club at a recent meeting relating to a similar matter had indicated interest in being part of the steering group.

Given the development of the CHRMAP involves input from various staff from different areas of the Town, the Town's representative will comprise of the following:

- The Chief Executive Officer or delegate
- The Director of Engineering Services or delegate
- The Coordinator of Environmental Services
- The Director of Development and Regulatory Services or delegate

The terms of reference of this steering group is attached.

### **ATTACHMENTS**

**10.1.5(a) Charter - CHRMAP Steering Committee - August 2021 [under separate cover]**

### **CONSULTATION**

The final document will be put out for public consultation.

The expression of interest will be advertised through the following sources:

- Local Newspaper
- Public Notice Boards

This will be further publicised through the Town's social media streams.

### **STATUTORY IMPLICATIONS**

*Local Government Act 1995*

Section 5.8 Establishment of Committees

### **POLICY IMPLICATIONS**

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

**STRATEGIC IMPLICATIONS**

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

Priority Area 6: Providing open and accountable local governance

Major Strategy 6.1: Ongoing implementation of Council's community consultation policy.

**RESOURCE IMPLICATIONS**

Resource requirements are in accordance with the existing budgetary allocation.

**ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS**

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

**VOTING REQUIREMENT**

Simple Majority

Cr Harben left the meeting at 7:17pm and did not return.

**OCM148/2021**

**OFFICER RECOMMENDATION AND COUNCIL RESOLUTION**

Moved Cr Barrett

Seconded Cr Masarei

**THAT Council:**

- 1. ADOPTS the attached CHRMAP Charter;**
- 2. REQUESTS the Chief Executive Officer to seek nominations for Community Representatives on the CHRMAP Steering Committee; and**
- 3. NOTES the representatives from the Administration and nominated Stakeholder Organisations;**
- 4. INSTRUCTS the CEO to present the nominations received at the Ordinary Council Meeting after the October 2021 Local Government Elections.**

**Carried 7/0**

**10.1.7 BEACH ACCESS PATH RATIONALISATION**

**Directorate:** Engineering Services  
**Author(s):** Shaun Kan, Director Engineering Services  
**Authoriser(s):** Matthew Scott, Chief Executive Officer  
**File Reference:** D21/36348  
**Applicant(s):** Internal  
**Author Disclosure of Interest:** Nil

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**SUMMARY**

Council is asked to consider the public consultation results relating to the proposed closure of N11 to remove this beach access path. Similarly, S11 should also be closed given there is no appropriate external funding opportunities to finance its upgrade.

As the treatment to N10 and N12 has previously been deferred pending the above mentioned investigations, Council is also being asked to consider a recommendation for both these paths to remain open and included in the Town's upgrade program.

**OFFICER RECOMMENDATION IN BRIEF**

Council is asked to approve the closure of beach access paths S11 and N11. N10 and N12 is recommended to remain open and prioritised in the Town's upgrade program.

**BACKGROUND**

At the November 2020 Ordinary Meeting, Council approved for the public to be consulted on the Beach Access Path Rationalisation Strategy. This occurred between 19 January and 8 February 2021.

The results were presented at the February 2021 Ordinary Meeting where Council asked for investigation relating to the upgrade and maintenance cost for N10, N11, N12 and S11 followed by an elected member workshop to discuss the terms of reference resolved at this meeting.

The February investigative outcomes were considered at the April 2021 Ordinary Meeting where Council deferred any decision on N11 and S11 for further studies to be done on the implications of keeping both these paths in their current form. No decision had been made on N10 and N12 at that time.

Recently at the June 2021 Ordinary Meeting, Council resolved as follows:

*OCM104/2021*

*Moved Cr Harkins*

*Seconded Cr Masarei*

*THAT Council:*

- 1. DEFERS the closure of path S11 subject to all external funding opportunities being explored, and if available, considered within the 2021/2022 Annual Budget or as a separate future report to an Ordinary Council Meeting;*
  - 2. APPROVES the public consultation on the principles of closing N11; and*
-

3. *NOTES an item will be brought to the August 2021 Ordinary Council Meeting upon the completion of Point Two.*

*Carried 9/0*

### **OFFICER COMMENT**

#### **Beach Access Path S11**

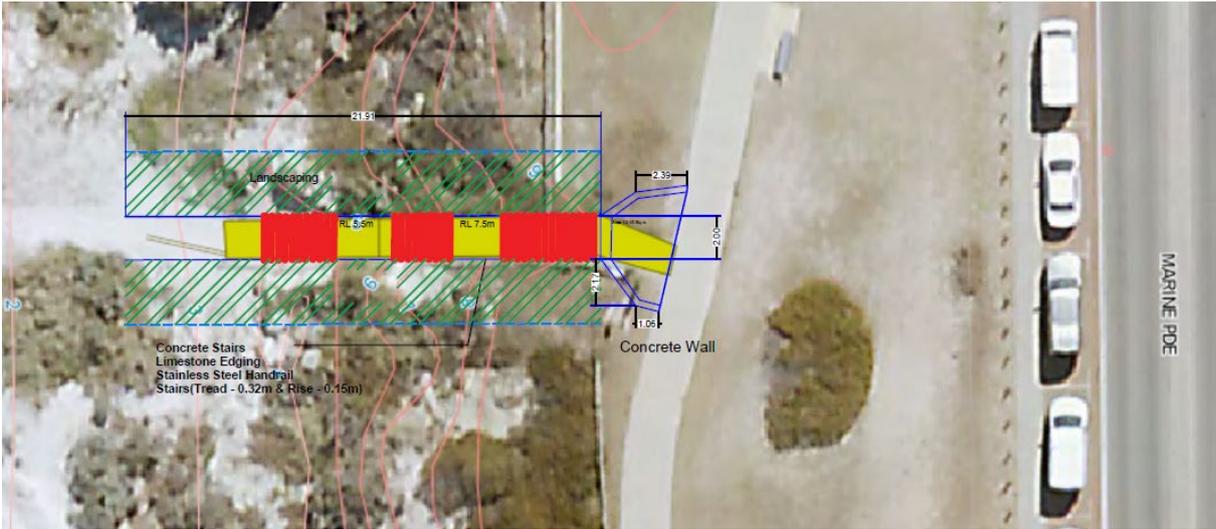


S11 has been recommended to be closed for the following reasons:

- There is no appropriate external funding source (including the one identified following the June 2021 Agenda Forum) to finance the upgrade to this narrow and steep sand surfaced access point, bordered by deteriorated parallel running copper logs that has potential public liability issues given its poor condition;
- The cost of preservation whereby the Town currently spends approximately \$1,200 to \$2,000 per annum on maintenance activities such as cleanliness, pruning and repairs to underlying wooden planks; and
- There are two fairly new (upgraded in 2019) S10 and S12 paths approximately 80 metres away on either side that provides access to the same section of beach.

Notwithstanding the above and whilst not supported, Council can amend the officer's recommendation to keep this path open should it wishes. However, in the interest of public safety, serious consideration would need to be given towards allocating municipal funds to upgrade S11 should this be Council's position.

These improvements have been estimated to be in the order of \$150,000 (\$130,000 construction and \$20,000 design) (shown below) excluding ongoing maintenance in comparison to a once off \$10,000 for its closure. Given the volatility of the building industry, this can only be confirmed when a quantity surveyor cost plan is developed as part of the detail design.



Beach Access Path N10, N11 and N12





N10



N12

Two sets of public consultation have been undertaken to determine whether there is support for the closure of these paths. This occurred over January and February 2021 for N10 and N12 whilst N11 took place in July 2021. Both were done through an online survey.

The consultation reports have been attached and the results can be summarised as follows:

#### N11

- Total of 52 respondents of which:
  - 70% were residents (36) within the close proximity catchment bordered by Marine Parade, Grant Street, North Street and Broome Street;
  - 30% (16) were Cottesloe residents in general;
- 54% of the total respondents were supportive of the closure whilst 39% were against and the remaining 7% undecided.

- 50% of the residents living within close proximity of the catchment mentioned were supportive of the closure whilst 44% were against and the remaining 6% undecided.

N10 and N12

- From the previous survey, 32 percent are supportive and 53 percent do not agree with the closure of N10 and N12

Given the above public consultation results, the following options are available to Council for consideration:

Option One: Keep N10, N11 and N12 open with all access points to remain as sand paths with upgrade to hand rails only.

Option Two: Keep N10, N11 and N12 open with only upgrading N11 to universally accessible path whilst N10 and N12 remain as sand paths with handrails upgrade only.

Option Three: Keep N10 and N12 open (remaining as sand paths and handrail upgrade) with the closure of N11.

Option Four: Keep N10 and N12 open with the closure of N11. N10 to be widened to provide for beach sports access whilst N12 upgraded to a boardwalk type path.

Option Five: N10 and N12 open with the closure of N11. N10 and N12 upgraded to a boardwalk type path.

The following is a whole of life cost impact analysis table for the five options above

Option	Annual Maintenance			Capital Upgrade			Total (Whole of Life) 20 years
	N10	N11	N12	N10	N11	N12	
One	\$8,500	\$8,500	\$8,500	\$20,000	\$20,000	\$20,000	\$570,000
Two	\$8,500	\$2,000	\$8,500	\$20,000	\$300,000	\$20,000	\$720,000
Three	\$8,500	\$0	\$8,500	\$20,000	\$10,000	\$20,000	\$390,000
Four	\$8,500	\$0	\$2,000	\$70,000	\$10,000	\$250,000	\$540,000
Five	\$2,000	\$0	\$2,000	\$180,000	\$10,000	\$250,000	\$520,000

Based on the cost analysis above, combined with the feedback from the public consultation survey, the Administration recommends option three. Alternatively, should Council wish to keep all three paths open, the preferred option would then be option one, noting that this comes at an opportunity cost of \$180,000.

## **ATTACHMENTS**

**10.1.7(a) Combined Analysis Report and Survey Summary Data - BAP N11 Closure  
[under separate cover]**

## **CONSULTATION**

Town of Cottesloe residents – January to February 2021 and July 2021.

Town of Cottesloe Staff

## **STATUTORY IMPLICATIONS**

There are no perceived statutory implications.

**POLICY IMPLICATIONS**

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

**STRATEGIC IMPLICATIONS**

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

Priority Area 5: Providing sustainable infrastructure and community amenities

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

**RESOURCE IMPLICATIONS**

A budget item would need to be included in future financial years for the paths to be either closed or upgraded. It is anticipated that any upgrade will be done by contractors and closures undertaken by staff, volunteers and external resources.

**ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS**

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

**VOTING REQUIREMENT**

Simple Majority

**OFFICER RECOMMENDATION**

THAT Council:

1. APPROVES the permanent closure of S11 given there is no appropriate external funding suitable to finance the upgrade; and
2. APPROVES the permanent closure of N11 and with N10 and N12 to remain open and treated as per Option Three within the officer's comment.

**OCM149/2021**

**COUNCILLOR MOTION AND COUNCIL RESOLUTION**

**Moved Cr Barrett**

**Seconded Cr Harkins**

**That Council:**

1. **APPROVES the retention of beach access path S11 in its current format as a sand path with repairs and installation of handrails as required to make the path safe for use.**
2. **REQUESTS Administration to keep costs to a minimum and utilise the \$50,000 within the Budget for Beach Access Paths for the required works in point 1.**
3. **APPROVES the permanent closure of N11 and with N10 and N12 to remain open and treated as per Option Three within the Officer's comments.**

**Carried 5/2**

**For: Cr Young, Masarei, Harkins, Tucak and Barrett**

**Against: Crs Sadler and MacFarlane**

COUNCILLOR RATIONALE:

- i. Community consultation supports the retention of S11 and the closure of N11.
- ii. In addition, S11 provides ease of access to the beach for users who might find stair access at adjacent access paths too challenging.
- iii. The path needs some maintenance, which should be done economically and in keeping with the current simple structure. Safety issues at the site might be addressed by simple and economic treatments, such as handrails.
- iv. Para 3 is as per the Officer's Recommendation.

**10.1.9 WAIVER OF FEES - PROFESSIONAL FILM AND PHOTO SHOOTS**

**Directorate:** Corporate and Community Services  
**Author(s):** Matthew Scott, Chief Executive Officer  
**Authoriser(s):** Matthew Scott, Chief Executive Officer  
**File Reference:** D21/38379  
**Applicant(s):** Internal  
**Author Disclosure of Interest:** Nil

Cr Tucak declared an IMPARTIALITY INTEREST in item 10.1.9 by virtue "I work in the film industry and the film company is known to me."

Cr Sadler declared an IMPARTIALITY INTEREST in item 10.1.9 by virtue "The producer of the film company is known to me."

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**SUMMARY**

For Council to consider a waiver of fees in relation to a professional film and photo shoot by a commercial production company.

**OFFICER RECOMMENDATION IN BRIEF**

That Council NOT APPROVE the waiver of \$500 in fees and \$200 in bond to Artemis Films for filming in and around Cottesloe.

**BACKGROUND**

On 5 August 2021, the Town received an application from Artemis Films to film at Cottesloe Beach and surrounding areas (South Cottesloe, Cottesloe Oval, Marine Parade and Grant Marine Park) in relation to an SBS observational documentary series they are producing. On 6 August 2021, the Town received a request from the Production Coordinator requesting a waiver of fees and bond for the filming (attached).

Based on the Film or Photo Shoot Application (attached), it has been determined (via the Schedule of Fees and Charges) that following fees should be charged:

Professional Film and Photo Shoot

Bond \$200 (refundable)

Commercial Hire half day (4 hours) \$500

The Chief Executive Officer has declined to approve the waiver under delegated authority on the basis of Artemis Film being a commercial enterprise, but has agreed to put the request to Council for consideration, on the basis that the proponent would like their request resolved prior to filming commencing (planned for later this month).

**OFFICER COMMENT**

Artemis Filming have provided the following reasons for their request:

1. They are majority funded by government agencies and public broadcaster (SBS), which does not allow for high location budgets;

2. Operate a small low impact crew four(4) and do not require traffic or pedestrian management;
3. Are not exclusively hiring a specific space;
4. Are prepared to publically thank the Town of Cottesloe in their credits;
5. Have previously received waivers from other Local Governments for similar shoots.

Though the Administration can appreciate the above reasons, Artemis Films is a commercial enterprise and the Town has specifically adopted fees (and a bond) for this specific type of activity. Likewise should Council approve this waiver, it could set a precedent for future applications from other production companies, to film in a unique and highly recognisable location, not available anywhere else (in the world). Finally the fees involved (\$500) are not considered significant or prohibitive. Based on these considerations the Administration is not supportive of this request.

Council has the discretion to approve this waiver, should it decide to do so.

### **ATTACHMENTS**

- 10.1.9(a) Request for Waiver of Fees **[CONFIDENTIAL] [UNDER SEPARATE COVER]**
- 10.1.9(b) Photo Shoot Application **[CONFIDENTIAL] [UNDER SEPARATE COVER]**
- 10.1.9(c) Email and Supporting Letter **[CONFIDENTIAL] [UNDER SEPARATE COVER]**

### **CONSULTATION**

Nil

### **STATUTORY IMPLICATIONS**

*Local Government Act 1995*

Section 6.12 Power to defer, grant discount, waive or write off debts.

### **POLICY IMPLICATIONS**

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

### **STRATEGIC IMPLICATIONS**

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

Priority Area 6: Providing open and accountable local governance

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

### **RESOURCE IMPLICATIONS**

Should Council approve the waiver it will forego \$500 of income.

**ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS**

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

**VOTING REQUIREMENT**

Simple Majority

**OFFICER RECOMMENDATION**

THAT Council NOT APPROVE a waiver of \$500 in fees and \$200 in bond to Artemis Films for filming in and around Cottesloe.

**OCM150/2021**

**COUNCILLOR MOTION AND COUNCIL RESOLUTION**

**Moved Cr Harkins**

**Seconded Cr Masarei**

**The council APPROVE a waiver of \$500 in fees and \$200 bond to Artemis Films for filming in and around Cottesloe as per the application.**

**Carried 7/0**

Following discussion the Mover and Seconder agreed to add the words 'as per the application' to the end of the motion.

**COUNCILLOR RATIONALE:**

- The fee and bond is relatively minor and will have very little impact on the Town's overall financial position as it is revenue not expected.
- We have been informed that it is only a crew of 4 people, filming for one hour, so I expect this will have very little impact on the beach area and its users.
- The goodwill generated and possible tourism promotion for Cottesloe is worth the \$500 fee waiver to the Town and the state.

**10.2 RECEIPT OF MINUTES AND RECOMMENDATIONS FROM COMMITTEES**

Nil

**11 ELECTED MEMBERS MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN****11.1 COUNCILLOR MOTION - PROSECUTION AGAINST DO A DINNER**

Cr Sadler declared an IMPARTIALITY INTEREST in item 11.1 by virtue "My son formerly worked for the North Street Store, but all outstanding financial matters have been resolved."

Cr Tucak declared an IMPARTIALITY INTEREST in item 11.1 by virtue "the two Directors of Do a Dinner are known to me outside of my role on Council."

The following motion has been proposed by Cr Young.

**COUNCILLOR MOTION**

**Moved Acting Mayor Young                      Seconded Cr Masarei**

That Council REQUESTS the CEO to publish on the Town's website a summary of the material facts and the reasons for the Officer's Recommendation in respect of the prosecution against Do a Dinner Pty Ltd, as resolved in item 13.1.1 at Council's July Ordinary Council meeting.

**COUNCILLOR AMENDMENT**

**Moved Cr Tucak**

That a point 2 be added:

That Council REQUESTS the CEO to publish on the Town's website details of the 7 options and the rationale (including Public Open Space Working Group feedback) in the Officer's Recommendation in respect of approval of the Dutch Inn Playground Tender, as resolved in item 13.1.1 at Council's March 2021 Ordinary Council meeting.

The Presiding Member ruled the amendment irrelevant to the current motion.

**COUNCILLOR MOTION**

**Moved Cr Tucak                                      No Seconder, Lapsed**

That the Presiding Member's ruling be set aside.

**OCM151/2021**

**COUNCILLOR MOTION AND COUNCIL RESOLUTION**

**That Council REQUESTS the CEO to publish on the Town's website a summary of the material facts and the reasons for the Officer's Recommendation in respect of the prosecution against Do a Dinner Pty Ltd, as resolved in item 13.1.1 at Council's July Ordinary Council meeting.**

**Carried 7/0**

**COUNCILLOR RATIONALE**

- i. Some members of the community have expressed concern that the Town's prosecution of Do a Dinner Pty Ltd (being the operators of the North Street Store) is unfair and is targeted to close the business down.
- ii. The material facts relating to the prosecution are such that Council had little alternative in approving prosecution.
- iii. These facts are not known to the community because they were dealt with in a closed Council meeting.
- iv. Consequently, Council and individual councillors are not able to discuss any of the details of the matter with members of the community to clarify Council's position.
- v. Publishing details on the Town's website would allow the position of Council and the Town to be understood and may give some comfort to members of the community on the matter.

**OFFICER COMMENT**

Advice will be provided if requested at the meeting.

**12 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING BY:****12.1 ELECTED MEMBERS****COUNCILLOR MOTION****12.1.1 URGENT BUSINESS****Moved Cr Tucak**

That Council urgently pause the ongoing construction work at the Dutch Inn Playground to address the concerns of residents.

The Presiding Member advised that it was a revocation of a previous resolution of Council so could not accept it on that basis and she did not consider it urgent business.

**COUNCILLOR MOTION****Moved Cr Tucak No Secunder, Lapsed**

That the Presiding Member's ruling be overturned.

**12.2 OFFICERS****13 MEETING CLOSED TO PUBLIC****13.1 MATTERS FOR WHICH THE MEETING MAY BE CLOSED****OCM152/2021****MOTION FOR BEHIND CLOSED DOORS****Moved Acting Mayor Young Seconded Cr Barrett**

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

**Carried 7/0**

*The public and members of the media were requested to leave the meeting at 7:54pm.*

**OCM153/2021****COUNCILLOR MOTION****Moved Acting Mayor Young Seconded Cr MacFarlane**

That the meeting be adjourned for five minutes.

**Carried 7/0**

**13.1.1 WAPC DECISION REVIEW**

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

Cr Harben declared an IMPARTIALITY INTEREST in item 13.1.1 by virtue "The architect for the site was the architect for a property I own."

Cr Tucak declared an IMPARTIALITY INTEREST in item 13.1.1 by virtue "The senior counsel is known to me."

**OFFICER RECOMMENDATION**

THAT Council:

1. INSTRUCTS the Chief Executive Officer to organise a special workshop of Council, prior to the September Ordinary Council Meeting, to further investigate options to have the decision by the West Australian Planning Commission (WAPC) regarding the conditional development approval of 120 Marine Parade, Cottesloe externally reviewed and challenged;
2. INVITE the following external parties to inform and advise Council at the special workshop of Council:
  - a. Council's legal representative(s);
  - b. West Australian Local Government Association.

**OCM154/2021****COUNCILLOR MOTION AND COUNCIL RESOLUTION**

**Moved Acting Mayor Young      Seconded Cr Barrett**

1. **INSTRUCTS the Chief Executive Officer to organise a special workshop of Council, prior to the September Ordinary Council Meeting, to further investigate options to have the decision by the West Australian Planning Commission (WAPC) regarding the conditional development approval of 120 Marine Parade, Cottesloe externally reviewed and challenged, and to identify other avenues to address its impact on the wider community;**
2. **INVITES the following external parties to inform and advise Council at the special workshop of Council:**
  - a. **Council's legal representative(s);**
  - b. **West Australian Local Government Association.**
3. **INSTRUCTS the CEO to obtain for circulation to Elected Members prior to the workshop a written legal opinion from Henry Jackson SC (or other senior counsel if Mr Jackson is not available), advising on possible legal grounds to challenge the WAPC decision, the likelihood of success in such challenge and the effect of a successful challenge.**

**Carried 7/0**

## COUNCILLOR RATIONALE:

- i. Council should have definitive legal advice on what grounds may be available to challenge the decision and an understanding of the effect of a successful challenge, prior to proceeding further.
- ii. Obtaining this advice prior to the workshop will allow elected members to understand the issues more fully and will therefore make the workshop more effective and enable Council to determine the appropriate course of action as soon as possible.
- iii. Mr Jackson represented the Town at the WAPC hearing, is an expert in Planning law and is familiar with the issues in the case.
- iv. The cost of obtaining expert legal advice is relatively low and the expenditure is justified given the importance of the matter to ratepayers and the broader community.

**13.1.2 LOTS 64 & 65 (176) LITTLE MARINE PARADE - TWO-STOREY DWELLING - DEVELOPMENT APPLICATION SAT SECTION 31 RECONSIDERATION**

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

Cr Barrett declared an IMPARTIALITY INTEREST in item 13.1.2 by virtue "Some of the affected people are known to me."

Cr Masarei declared an IMPARTIALITY INTEREST in item 13.1.2 by virtue "Mr McQueen gave a deputation on this item at 9.3.1 and he is known to me."

**OCM155/2021****OFFICER RECOMMENDATION AND COUNCIL RESOLUTION****Moved Cr Barrett****Seconded Cr Sadler**

**THAT under s.31 of the *State Administrative Tribunal Act 2004 (WA)* Council set aside its decision of 25 May 2021 and substitute a new decision to GRANT development approval for a two-storey dwelling on Lots 64 & 65 (176) Little Marine Parade, Cottesloe, as shown on the revised plans received 11 August 2021, subject to the following conditions:**

- 1. All water draining from roofs and other impermeable surfaces should be directed to garden areas, sumps or rainwater tanks within the development site where climatic and soil conditions allow for the effective retention of stormwater on-site.**
- 2. The finish and colour of the gatehouse facing the adjoining northern boundary shall be to the satisfaction of the Town, details to be shown at the Building Permit stage.**
- 3. The northern and southern sides to the upper-floor front balcony; the southern side of the upper-floor mid terrace; the north-facing upper-floor kitchen window; and the southern side of the ground-floor raised front outdoor living area shall all be permanently screened to a minimum height of 1.6m above the finished floor level**

as shown on the approved plans to restrict overlooking of the adjoining properties. Details to be shown at the Building Permit stage to the satisfaction of the Town.

4. The proposed fencing within the front setback area shall be visually permeable above 1.2m of natural ground level, with the horizontal dimensions of supporting solid pillars not exceeding 0.4m x 0.4m and 1.8m in height, measured from the primary street side.
5. Plant and equipment, including air-conditioning units, should be designed, positioned and screened so as to not be visible from the street; designed to integrate with the building; or located so as not to be visually obtrusive.
6. Finalisation of the subdivision/amalgamation issued by the Western Australian Planning Commission on 24 March 2021 (Application No: 160276) and new Certificates of Title being issued for the proposed lots prior to occupation.
7. The roof surface may be required to be treated to reduce glare if the Town considers that the glare adversely affects the amenity of adjoining or nearby neighbours following completion of the development.
8. The driveway shall be designed in accordance with *Australian Standard AS2890.1 (as amended)*.
9. A tree shall be provided in the street setback area, with not more than 50 per cent of this area to consist of impervious surfaces, in accordance with clause 5.3.2 (C2.2) of the Residential Design Codes. Details to be shown at the Building Permit stage to the satisfaction of the Town.

**Advice notes:**

1. The owner/applicant is responsible for ensuring that all lot boundaries shown on the approved plans are correct and that the proposed development is constructed entirely within the owner's property.
  2. The owner/applicant is responsible for applying to the Town for a Building Permit and obtaining approval prior to undertaking the works.
  3. The owner/applicant is responsible for applying to the Town for a new crossover and obtaining approval prior to commencement of works.
  4. The owner/applicant is responsible for removing the redundant crossover adjoining the lot(s) to the satisfaction of the Town.
  5. The owner/applicant is requested to liaise with adjoining landowners prior to undertaking works that may affect the health of trees located on adjoining lots or altering dividing fences.
  6. The owner/applicant is advised that the lots may be required to be subdivided/amalgamated and new Certificates of Title be issued prior to the granting of a Building Permit.
  7. All construction work shall be carried out in accordance with the requirements of the *Environmental Protection (Noise) Regulations 1997*.
  8. The owner/applicant is advised that this approval shall be deemed to be an approval under the Metropolitan Region Scheme.
-

Carried 7/0

**13.1.3 CEO PERFORMANCE REVIEW 2021**

This item is considered confidential in accordance with the *Local Government Act 1995* section 5.23(2) (b) and (e(iii)) as it contains information relating to the personal affairs of any person and a matter that if disclosed, would reveal information about the business, professional, commercial or financial affairs of a person.

The CEO declared a FINANCIAL INTEREST in item 13.1.3 by virtue "The item relates to conditions of my employment."

The CEO left the meeting at 8:33pm.

**OCM156/2021****OFFICER RECOMMENDATION AND COUNCIL RESOLUTION****Moved Cr Harkins****Seconded Cr Barrett**

**THAT Council by absolute majority APPOINTS Price Consulting as an independent consultant to assist the Chief Executive Officer's performance review for the 2020-2021 period.**

**Carried by Absolute Majority 7/0****13.1.4 ELECTED MEMBERS CODE OF CONDUCT COMPLAINT INVESTIGATION OUTCOME**

This item is considered confidential in accordance with the *Local Government Act 1995* section 5.23(2) (b) and (f(i)) as it contains information relating to the personal affairs of any person and a matter that if disclosed, could be reasonably expected to impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law.

Cr Tucak declared an IMPARTIALITY INTEREST in item 13.1.4 by virtue "I declare an impartiality interest as I am a party to the complaint."

Cr Young declared an IMPARTIALITY INTEREST in item 13.1.4 by virtue "I am the respondent in that complaint."

The Director Development and Regulatory Service, Directory Engineering Services, Director Corporate and Community Services and Coordinator Statutory Planning left the meeting at 8:35pm.

The Presiding Member invited Council to appoint someone to preside over this part of the meeting and asked if someone would like to volunteer. Cr Sadler volunteered.

**OCM157/2021****COUNCILLOR MOTION****Moved Acting Mayor Young****Seconded Cr Harkins**

**That Cr Sadler preside over this part of the meeting.**

Carried 6/1

For: Cr Young, Sadler, Masarei, Harkins, Barrett and MacFarlane

Against: Cr Tucak

Cr Sadler took the chair at 8:35pm.

### **OFFICER RECOMMENDATION**

THAT Council:

1. RECEIVES Complaint 01/21 (dated 19 May 2021) and the Independent Complaints Assessor Investigation Report into Complaint 01/21 (dated 26 July 2021);
2. ACCEPTS the findings of the Independent Complaint Assessor that the alleged breach(s) regarding Complaint 01/21 has not occurred and take no further action.
3. AUTHORISES the Chief Executive Officer to provide the Complainant and Respondent with written notice of information referred to in clause 8.1, Elected Members, Committee Members and Candidate Code of Conduct Behaviour Management Policy.

### **OCM158/2021**

### **COUNCILLOR MOTION AND COUNCIL RESOLUTION**

Moved Cr Masarei

Seconded Cr Harkins

THAT Council:

1. RECEIVES Complaint 01/21 (dated 19 May 2021) and the Independent Complaints Assessor Investigation Report into Complaint 01/21 (dated 26 July 2021).
2. ACCEPTS the findings of the Independent Complaint Assessor that the alleged breach(s) regarding Complaint 01/21 has not occurred, that the Complaint is frivolous and without merit, and take no further action.
3. AUTHORISES the Chief Executive Officer to provide the Complainant and Respondent with written notice of information referred to in clause 8.1, Elected Members, Committee Members and Candidate Code of Conduct Behaviour Management Policy.
4. REQUESTS Administration to review the "Elected Members, Committee members and Candidates Code of Conduct Behaviour Complaints Management Policy (Complaints Policy)" and advise Council:
  - i. on suitable amendments to the process in the Policy to provide for the weeding out of frivolous complaints and complaints that are obviously without merit before costs are incurred in engaging external Mediators and/or Complaints Assessors.
  - ii. on the appropriateness of the current confidentiality provisions in the Policy, with reference to elected member accountability.

Carried 5/2

For: Cr Young, Masarei, Harkins, Barrett and MacFarlane

Against: Crs Sadler and Tucak

## COUNCILLOR RATIONALE:

1. The complaint in the present case was found by the independent Complaints Assessor to be frivolous and without merit. The current policy sets out a process which requires the Complaints Manager (the CEO) to engage a Complaints Assessor unless the complaint is resolved via mediation or withdrawn.
2. The cost to the Town of Cottlesloe in following the process in the present case was \$2,250.00 in direct costs plus administration time. It is noted that the current policy doesn't allow the weeding out of frivolous claims.
3. We need to review our Complaints Policy to see if it can be amended to introduce another step in the complaints process to capture complaints that are frivolous, vexatious and/or with no merit before costs are incurred in engaging a Mediator or an independent Complaints Assessor.
4. The Policy provisions for confidentiality are somewhat unclear on whether Complaints can be dealt with in open meetings. Given the uncertainty it is fair to deal with them in closed meetings until clarification is provided. Elected Members might want to consider whether Complainants (particularly Elected Member complainants) should be accountable to the community for their actions relating to complaints. The pros and cons of confidentiality should be explored.

The Presiding Member resumed the chair at 8:49pm.

**OCM159/2021****MOTION FOR RETURN FROM BEHIND CLOSED DOORS**

**Moved Acting Mayor Young      Seconded Cr Harkins**

**In accordance with Standing Orders 15.10 that the meeting be re-opened to members of the public and media, and motions passed behind closed doors be read out if there are any public present.**

**Carried 7/0**

*The meeting was re-opened to the public at 8:50pm, however no members of the public or media were in attendance.*

**13.2 PUBLIC READING OF RESOLUTIONS THAT MAY BE MADE PUBLIC****13.1.1 WAPC DECISION REVIEW**

As no members of the public returned to the meeting the resolution for item 13.1.1 was not read out.

**13.1.2 LOTS 64 & 65 (176) LITTLE MARINE PARADE - TWO-STOREY DWELLING - DEVELOPMENT APPLICATION SAT SECTION 31 RECONSIDERATION**

As no members of the public returned to the meeting the resolution for item 13.1.2 was not read out.

**13.1.3 CEO PERFORMANCE REVIEW 2021**

As no members of the public returned to the meeting the resolution for item 13.1.3 was not read out.

**13.1.4 ELECTED MEMBERS CODE OF CONDUCT COMPLAINT INVESTIGATION OUTCOME**

As no members of the public returned to the meeting the resolution for item 13.1.4 was not read out.

**14 MEETING CLOSURE**

The Mayor announced the closure of the meeting at 8:50pm.