

TOWN OF COTTESLOE



FULL COUNCIL MEETING MINUTES

**ORDINARY MEETING OF COUNCIL
HELD IN THE
COUNCIL CHAMBERS, COTTESLOE CIVIC CENTRE
109 BROOME STREET, COTTESLOE
7.00 PM, MONDAY, 24 JULY, 2006**

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1 DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS

The Mayor announced the meeting opened at 7.00pm.

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

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

Officers in Attendance

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

Apologies

Cr Jack Walsh

Leave of Absence (previously approved)

Nil

3 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

4 PUBLIC QUESTION TIME

Nil

5 APPLICATIONS FOR LEAVE OF ABSENCE

Moved Cr Utting, seconded Cr Furlong

That Cr Carmichael's application for leave of absence for the August 2006 Council meeting be approved.

Carried 10/0

6 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

Moved Cr Strzina, seconded Cr Furlong

The Minutes of the Ordinary Meeting of Council held on Monday, 26 June, 2006 be confirmed.

Carried 10/0

7 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

7.1 Correspondence from the Minister of Local Government advises that two amendments to the Local Government Act are currently progressing through Parliament.

One amendment is to facilitate the change of the Local Government Election date to Saturday, 20 October, 2007.

8 PUBLIC STATEMENT TIME

Mr G Broad, 7 Drabble Road, Scarborough – Item 11.1.3, 174 Little Marine Parade - Portico

Mr Broad is representing the owner of 174 Little Marine Parade (Mr Phillip Jackson). The owner has no objections and requests that the report and recommendation be supported. The portico structure is below the ground level of the house and is not visible from Marine Parade. Other nearby residences have similar structures. Mr Broad advised that there are no intentions to enclose either the structure or the garage.

Ms E Cunningham, 55 Grant Street – Item 11.1.6, 55 Grant Street Amendment to Front Fence

Ms Cunningham spoke in relation to her request for an amendment to the infill panels on the front masonry fence on the property. The proposal is that the open aspect be changed from 50% to 28%. The house is sited on the rear of the block for solar passive sustainability reasons. Ms Cunningham stated that their privacy is being compromised, as the house is on a busy corner at a roundabout with lots of vehicle and pedestrian traffic which impacts on the amenity. Vehicle lights shine into their living area. Ms Cunningham also stated that the nearby properties are elevated over this property and people can see over the fence into the living area.

Mr R Camp, 222 Broome Street – Item 12.3.1, Broome Street Speed Control Plateaux

Mr Camp thanked the Works & Corporate Services Committee for responding quickly to resident concerns about the noise impact caused by the installation of the speed plateaux on Broome Street. Mr Camp stated that he has not been aware of accidents in the street and that the verge widths are sufficient as a defence against speeding and safety. Mr Camp appreciates the efforts of Council regarding the noise impact.

Mr B Simpson, 207 Broome Street – Item 12.3.1, Broome Street Speed Control Plateaux

Mr Simpson thanked the Mayor and the Works & Corporate Services Committee for listening to residents in relation to concerns of the installation of the speed plateaux and for taking immediate action in restoring the road to its original condition. He stated that his family can now sleep better at night, can leave their windows and doors open and spend time in the garden with no noise impact. Mr Simpson asked Council not to ruin a beautiful street, when considering alternative options, any installations need to be aesthetically pleasing.

Mr M Maloney, 154 Broome Street – Item 12.3.1, Broome Street Speed Control Plateaux

Mr Maloney objected to the original proposal on the grounds that it is not necessary. The area where he lives has a roundabout at each end. The 102 bus also travels this part of the street. Broome Street is an important north-south link in Cottesloe. Mr Maloney thanked the Works & Corporate Services Committee for the early action that was undertaken and requested Council support for the removal of the remaining speed plateau.

Ms S Lee, 4 Seaview Terrace - Street Trees in Seaview Terrace

Ms Lee provided a document to each Councillor containing photographs and correspondence. She stated that the mature tree outside their house has been removed and another tree on the opposite verge has to be removed too. After removal of their street tree she spoke with the Works Supervisor and their neighbour in relation to planting a Chinese Tallow. She was advised that the designated street tree was a Norfolk Island pine. Council did not reply to her in relation to a replacement tree, so she planted her own Chinese Tallow. Ms Lee then received a telephone call from Works Supervisor in relation to removing the tree and on 11 July she received a letter from the Assistant Works Supervisor providing her with three days notice to remove the tree. On 14 July the Chinese Tallow was removed and replaced with a Norfolk Island pine by the Works Depot. Ms Lee stated that the Norfolk Island pine trees in Seaview Terrace are out of proportion to the street and are causing root damage to footpaths and driveways and are dropping leaves and pine cones. Ms Lee requested Council consideration in removing the Norfolk Island pine tree and to reconsider the *Street Tree* policy.

9 PETITIONS/DEPUTATIONS/PRESENTATIONS

Nil

Items 12.3.1 and 12.3.2 were brought forward and dealt with first.

10 REPORTS OF COMMITTEES AND OFFICERS**10.1 REPORT OF MANAGER DEVELOPMENT SERVICES**

This item was dealt with after consideration of Development Services Committee recommendations.

10.1.1 DRAFT TOWN PLANNING SCHEME NO. 3 – COMPLETION OF SCHEDULE 13 AS PART OF SCHEME TEXT FOR ADOPTION BY COUNCIL

File No:	D2.5.3
Author:	Mr Andrew Jackson
Author Disclosure of Interest:	Nil
Report Date:	20 July 2006
Senior Officer:	Mr Stephen Tindale

SUMMARY

- Schedule 13 of draft Town Planning Scheme No. 3 (TPS3) requires refinement, which has been addressed given legal advice.
- This additional item to Council is necessary for adoption of the improved version so it can be forwarded to the State authorities for consideration as part of the proposed Scheme.

BACKGROUND

- This report presents for adoption by Council a particular part of the draft TPS3 Scheme Text for draft which requires refinement.
- It relates specifically to clause 5.5 and under that clause 5.5.4(a), which govern some limited and guided discretion for development requirements.
- The focus is on the Schedule referred to in clause 5.5.4(a), which was formerly number 11 and has been re-numbered 13.
- While Council has previously adopted these enabling clauses and the framework for the Schedule as part of the overall Scheme Text, the detail of the Schedule required more work at the time of lodgement of the draft Scheme.
- Following further review and advice from the solicitors the detailed content has subsequently been completed whereby adoption by Council is now in order.
- The Department for Planning and Infrastructure has been briefed that the intent is as contained in the draft Scheme Text and that the detail is to be endorsed by Council then submitted as an update.
- It is emphasised that while Council has not yet adopted the refined Schedule 13 as is, Council has adopted the principle of this approach, the structure of the Scheme Text, the relevant clauses and the associated scope for discretion.
- In other words, what Schedule 13 does is supplement the clauses and the purpose of this report is solely to confirm its detailed content – the basic direction and arrangement of the Scheme already adopted by Council will not be altered.

CLAUSES 5.5 & 5.5.4(a)

- For convenience of understanding these clauses are quoted below.
- Key points are shaded to draw attention to those aspects.
- In summary, the discretion available to Council to vary development standards and requirements under these clauses:
 - Excludes residential development;
 - Is a choice available to Council but does not have to be exercised, and there is no compulsion or guarantee that a variation will be granted;
 - Entails advertising of the proposed variation and consideration of any submissions;
 - Is both proscribed and prescribed by Schedule 13 – ie, rather than being vague, arbitrary or open-ended;
 - Is required to have regard to the general assessment criteria set out in the Scheme and to consideration of amenity impacts.
- Through this process the operation of the discretionary power is clearly defined, closely guided and can be effectively managed.

EXTRACT OF SCHEME TEXT – ALREADY ADOPTED

5.5 Variations to site and development standards and requirements

- 5.5.1. Except for residential development, if a development is the subject of an application for planning approval and does not comply with a standard or requirement prescribed under the Scheme with respect to that development, the local government may, despite the non-compliance, approve the application unconditionally or subject to such conditions as the local government thinks fit.
- 5.5.2. An application for planning approval requiring the exercise of the discretion under clause 5.5.1 above is to be advertised in accordance with clause 9.4 and the notice of the application is to include such reference to the variation sought to any standard or requirement as the local government thinks fit.
- 5.5.3. In considering an application for planning approval under this clause, the local government is to have regard to any submissions received in accordance with the advertising of the application under clause 9.4.
- 5.5.4. The power conferred by this clause may only be exercised —
- (a) subject to the exclusions, limitations, maximums and other provisions set out in Schedule 13;
 - (b) if the local government is satisfied that approval of the proposed development would be appropriate having regard to the matters set out in clause 10.2; and
 - (c) if the local government is satisfied that the non-compliance will not have an adverse effect upon the occupiers or users of the development, the inhabitants of the locality or the likely future development of the locality.

SCHEDULE 13

- The proposed Schedule is quoted in full below.
- It stems directly from the above clauses.
- It is confined to the aspects listed.
- A feature of the Schedule is that it deliberately stipulates which aspects are included and which aspects are excluded, for the avoidance of doubt.
- In each case the extent of any discretion, which is limited, is defined.
- It is reiterated that the clauses apply only to non-residential development.
- It is noted that only a few standards or requirements where some variation may occasionally be warranted are the subject of the Schedule.
- The degrees of discretion are small rather than large and would not make a great difference, but may facilitate flexibility where considered desirable and reasonable.
- Once again, the way in which the clauses work is that Council is obliged to follow a set procedure to canvass and determine any proposed variation.
- The shaded boxes below are not part of the Schedule but are comments incorporated to explain it as part of this report.

PROPOSED SCHEDULE 13 – FOR ADOPTION**Schedule 13****Variations to site and development standards and requirements**

[clause 5.5.4.]

Pursuant to clause 5.5.4(a) of the Scheme the discretion provided in clause 5.5.1 to vary any non-residential development standard or requirement prescribed under the Scheme is subject to the exclusions, limitations, maximums or other provisions set out in this Schedule.

1. Residential development

As set out in clause 5.5.1, the discretion provided in clause 5.5.1 does not apply to any residential development. To avoid any uncertainty, if the discretion provided in clause 5.5.1 is applied to any form of residential development, then subject to clause 5.3, the discretion may only be exercised to the extent permitted by, and in accordance with, the provisions of the Residential Design Codes dealing with the type of development standard or requirement sought to be varied.

Explanation:

- Clause 5.3 is *Special Application of the Residential Design Codes*.
- That clause and the R-Codes themselves cover variations and discretion within the Codes for residential development, which is not otherwise varied.

2. Matters provided for as part of the Land Use definitions (Part 2 of Schedule 1)

Matters provided for as part of the Land Use definitions contained in Part 2 of Schedule 1 are not development standards or requirements for the purpose of the discretion provided in clause 5.5.1. To avoid any uncertainty, if matters provided for as part of the Land Use definitions contained in Part 2 of Schedule 1 are treated as development standards or requirements, those matters are excluded from the operation of the discretion provided for in clause 5.5.1.

Explanation:

- This is straightforward and serves to distinguish definitions from development standards and requirements.
- The definitions cannot be varied.

3. Height (clause 5.7, Table 2 Development Requirements)

- 3.1 To avoid any uncertainty, the provisions of clause 5.7 are excluded from the operation of the discretion provided in clause 5.5.1.
- 3.2 To avoid any uncertainty, for residential development in the Residential Zone, the maximum height set out in Table 2 may only be varied in accordance with clause 5.7.4, and the provisions of clause 5.7.4 are excluded from the operation of the discretion provided in clause 5.5.1.
- 3.3 To avoid any uncertainty, the provisions of clause 5.7.5 are excluded from the operation of the discretion provided in clause 5.5.1.
- 3.4 To avoid any uncertainty, the maximum height provisions set out in Table 2 for development in the Town Centre Zone, the Restricted Foreshore Centre Zone and the Special Development Zone “B” – Council Depot are excluded from the operation of the discretion in clause 5.5.1.

Explanation:

- Clause 5.7 is about height.
- It firstly contains definitions to avoid doubt. Secondly, it requires all buildings to comply with the wall and building height specifications. Thirdly, it requires all development to comply with the height standards in Table 2 (unless otherwise provided for in the Scheme) which are mainly fixed with some limited flexibility stipulated for particular areas (Town Centre Zone, Restricted Foreshore Centre Zone and Special Development Zone “B” as referred to above).
- Clause 5.7.4 is the discretion for a possible third level within the roof space of a dwelling.
- Clause 5.7.5 controls height of development on specified land on Marine Parade north of Eric Street.
- The overall effect of these provisions and this Schedule is that building height cannot be otherwise varied, which the Schedule makes clear.

4. Plot ratio (Table 2)

- 4.1 Subject only to the following, a provision of Table 2 referring to plot ratio may be varied to allow an increase in plot ratio of up to 20% of the ratio set out in Table 2.
- 4.2 The plot ratio provisions set out in Table 2 for development in the Local Centre Zone are excluded from the operation of the discretion in clause 5.5.1.
- 4.3 Where the provisions of Table 2 require plot ratio to be in accordance with the Residential Design Codes, subject to clause 5.3 of the Scheme, the discretion provided in clause 5.5.1 may only be exercised to the extent permitted by, and in accordance with, the provisions of the Residential Design Codes dealing with the plot ratio.

Explanation:

- The variation is up to 20% of (not 20% more), so it is a marginal increase.
- The Local Centre Zone is excluded because it already has discretion for variation prescribed in Table 2, ie: *"0.5, or as determined by the local government up to 0.8, subject to appropriate upper-floor setbacks, building design and landscaping"*.
- The qualification re the R-Codes is as above.

5. Site coverage (Table 2)

- 5.1 Subject to the following the provisions of Table 2 referring to site cover are excluded from the operation of the discretion in clause 5.5.1.
- 5.2 The site cover provisions in Table 2 for non-residential development in the Residential Zone may be varied to allow a site cover of up to 60%.
- 5.3 Where the provisions of Table 2 require site cover to be in accordance with the Residential Design Codes, subject to clause 5.3 of the Scheme, the discretion provided in clause 5.5.1 may only be exercised to the extent permitted by, and in accordance with, the provisions of the Residential Design Codes dealing with site cover.

Explanation:

- The site cover potential increase is from 50%, so is an actual increase of only 10% and a proportional increase of one-fifth (or 20%) of the standard.
- The qualification re the R-Codes is as above.

6. Boundary setbacks (Table 2)

Where the provisions of Table 2 require boundary setbacks to be in accordance with the Residential Design Codes, subject to clause 5.3 of the Scheme, the discretion provided in clause 5.5.1 may only be exercised to the extent permitted by, and in accordance with, the provisions of the Residential Design Codes dealing with boundary setbacks.

Explanation:

- The qualification re the R-Codes is as above.

7. Parking (clause 5.8, Table 3 Vehicle Parking Requirements)

- 7.1 Subject to the following, the parking requirements set out in Table 3 may be varied, so as to reduce the number of parking spaces required in respect of a particular development by up to 20% of the number of parking spaces that would otherwise be required by the application of the provisions of Table 3, subject to the provision of a traffic impact assessment, to the satisfaction of the Council, addressing the matters referred to in clause 5.5.4(c).
- 7.2 Where Table 3 requires parking spaces to be provided in accordance with the Residential Design Codes, subject to clause 5.3 of the Scheme, the discretion provided in clause 5.5.1 may only be exercised to the extent permitted by, and in accordance with, the provisions of the Residential Design Codes dealing with parking.
- 7.3 The provisions of Table 3 that require the number of parking spaces to be determined by the Local Government are excluded from the operation of the discretion provided in clause 5.5.1.

Explanation:

- Other, specific, discretions in relation to the provision of parking spaces are contained in clauses 5.8.2, 5.8.3, 5.8.4 and 5.8.5.
- The above firstly provides additional general discretion to reduce parking by up to one-fifth, if Council is satisfied with a traffic study and the effect on the locality as clause 5.5.4(c) covers.
- Secondly, it qualifies that the operation of the R-Codes is excluded, and cross-references this with clause 5.3 which is the variations provisions for the Codes (where only 5.3.5 has a connection to parking).
- Thirdly, it properly excludes the discretion already expressed in Table 3.

**8. FILLING OF LAND AND HEIGHT OF RETAINING WALLS
(CLAUSE 5.10)**

The provisions of clause 5.10 are excluded from the operation of the discretion provided for in clause 5.5.1.

Explanation:

- This is clear.
- Clause 5.10 contains express principles with limited and defined discretion which does not involve any stipulated measurement that may be altered.

9. Local Centre zone – Mixed-use development (clause 5.11)

The provisions of clause 5.11 are excluded from the operation of the discretion provided for in clause 5.5.1.

Explanation:

- This is clear.
- Clause 5.11 contains express principles with limited and defined discretion which does not involve any stipulated measurement that may be altered.

CONCLUSION

- Schedule 13 is useful in that it initially conveys what is intentionally excluded from the discretion within the enabling clauses.
- It then provides for a limited amount of variation to be considered for a few selected aspects and with relatively small increases possible, stemming from clauses in the Scheme providing for such, and confined to non-residential development.
- In this way the Schedule ensures that the discretion available is defined and controlled.
- The completed Schedule does not change the adopted structure or content of the Scheme or introduce any new discretion – it merely rounds-out the framework agreed to by Council.

CONSULTATION

Technical detail based on legal advice.

POLICY IMPLICATIONS

Part of statutory Scheme Text.

STRATEGIC IMPLICATIONS

Consistent with adopted draft TPS3.

FINANCIAL IMPLICATIONS

Nil

VOTING

Absolute Majority

OFFICER RECOMMENDATION

That Council notes the advice in this report and adopts proposed Schedule 13 as part of draft Town Planning Scheme No. 3, as set out above but deleting the explanatory comments, for lodgement with the Department of Planning and Infrastructure.

OFFICER COMMENT

Point 3.4 emphasises that particular zones are excluded from the discretion, being those where there is some inherent flexibility contained in Table 2. This is not meant to suggest that the other zones are *not* excluded from the discretion; however, any ambiguity would be better removed. Rather than list all zones as being excluded it is recommended that point 3.4 be re-worded to simply say:

3.4 To avoid any uncertainty, the maximum height provisions set out in Table 2 for development in the zones listed are excluded from the operation of the discretion in clause 5.5.1.

This would avoid doubt and be consistent with clause 5.7.3 to that effect. This improvement would reinforce points 3.1 to 3.3 in that part of Schedule 13 regarding the important height control provisions of the Scheme. It is recommended that point 3.4 be amended accordingly.

10.1.1 AMENDED OFFICER RECOMMENDATION & COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Strzina

That Council notes the advice in this report and adopts proposed Schedule 13 as part of draft Town Planning Scheme No. 3, as set out above but deleting the explanatory comments, for lodgement with the Department of Planning and Infrastructure, subject to the officer proposed amendment to point 3.4 of the schedule.

Carried by Absolute Majority 9/1

11 DEVELOPMENT SERVICES COMMITTEE MEETING HELD ON 17 JULY 2006**11.1 PLANNING**

All items were dealt with enbloc.

11.1.1 NO 1/23 (LOT 23A) SALVADO STREET – ADDITIONS & ALTERATIONS TO EXISTING RESIDENCE

File No:	23A Salvado Street
Attachments:	Location plan Photos Plans
Author:	Stacey Towne
Author Disclosure of Interest:	Nil
Report Date:	26 June, 2006
Senior Officer:	Andrew Jackson
Property Owner:	JA & MM Kendal
Applicant:	JA Kendal
Date of Application:	26 June, 2006
Zoning:	Residential
Use:	P - A use that is permitted under this Scheme
Density:	R30
Lot Area:	289.53m² (unit 1 site only, excluding common areas) 902m² (total lot for the 3 grouped dwellings)
M.R.S. Reservation:	N/A

SUMMARY

It is proposed to construct additions to the existing single storey grouped dwelling at No. 1/23 Salvado Street, including a new garage partially forward of the 6m front setback line with a new bedroom and balcony above (only the garage and balcony being forward of the front setback).

It is also proposed to alter the existing building by changing the roof from a hip and gable configuration to flat/skillion configuration. Minor internal alterations are also proposed. New pedestrian access to the front of the dwelling improves surveillance by the installation of an open aspect gate within the currently existing solid front wall.

The proposal seeks variations to the side setback requirements of the Residential Design Codes and to Council's general 6m front setback preference, which can be supported in terms of meeting performance criteria.

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

BACKGROUND

No. 1/ 23 Salvado Street is zoned Residential R30 and is part of a three grouped-dwelling complex. It is located at the front of the lot, with direct vehicular access to Salvado Street. Units 2 and 3 are located towards the rear of the lot. Units 1 and 2 are single storey, whilst Unit 3 is two storeys.

Unit 1 faces north and has a generous existing front setback of 8m and is slightly elevated above the street level. The existing double width driveway leads to a double garage. The eastern side wall of the garage is 5.5m long and 3.2 - 4.5m high. This wall is set back approximately 0.8m from the side boundary.

An approximately 1.6 – 1.8m high solid brick side boundary fence extends along the eastern side boundary. Pedestrian access to the dwelling is from the side (west) and a solid brick fence of approximately 1.8m extends across the front of the property.

The property to the east at No. 19 Broome Street (corner of Broome Street) is a large 2975m² lot which accommodates a seven storey block of 14 multiple dwellings. This development is well set back from Salvado Street and the western lot boundary. An access driveway to the ground level garages is located near the western boundary, separated from Unit 1/23 Salvado Street by a 2m wide landscaping strip comprising of two large frangipani trees and several smaller shrubs.

The property to the west at No. 21 Salvado Street is a two storey single residential development.

The applicant met with Officers prior to submitting this application where the aspects of setback and streetscape were discussed at length. In addition, the initial plans were amended upon the advice of Officers to ensure that the proposed garage could function adequately.

PROPOSAL

This application proposes to:

- Extend the garage forward to be set back 2.6m from the front boundary and provide for storage behind the garage area.
- Construct a second level over the existing and new garage structures to contain a bedroom set back at 6m from the street, with uncovered balcony in front (directly above the new garage) set back 2.6m. This will create a parapet wall on the eastern boundary varying in length from 4.2m to 9.975m, and change the height of the existing wall to between 3.1-6.3m.
- Remove the existing tiled roof and re-configure from hip and gable to flat and skillion and cover with metal sheeting.
- Remodel internal living space and kitchen and upgrade wet areas.
- Remodel the front elevation to the street.
- Install a new front open aspect gate directly to the street front.

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

N/A.

HERITAGE LISTING

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

APPLICATION ASSESSMENT**AREAS OF NON-COMPLIANCE****Town Planning Scheme Policy/Policies**

Policy	Required	Provided
TPSP 003 – Garages & Carports in the Front Setback Area	Garages may be set back 4.5m where vehicles are parked at right angles to the street.	2.6m

Residential Design Codes

Design Element	Acceptable Standards	Provided	Performance Criteria Clause
No 3 – Building Setbacks	Garage/storage wall being set back 1.5m from the east side boundary	Nil	Clause 3.3.1 – P1
No 3 – Building Setbacks	Bedroom wall being set back 1.5m from the east side boundary	Nil	Clause 3.3.1 – P1
No 3 – Building Setbacks	Balcony being set back 2.5m from the east side boundary	0.3m	Clause 3.3.1 – P1
No 8 – Visual Privacy	Balcony being set back 7.5m from east side boundary	0.3m	Clause 3.8.1 – P1

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

CONSULTATION

REFERRAL

Internal

- Building
- Engineering

External

N/A.

ADVERTISING OF PROPOSAL

The Application was advertised as per Town of Cottesloe Town Planning Scheme No 2 and Residential Design Codes.

The advertising consisted of:

- Letter to Adjoining Property Owners

Submissions

Three submissions were received at the end of the advertising period. None of the submissions expressed concern or objection to the proposal.

In support of the proposal, the applicant has written as follows (summarised):

- *The overall objective is to provide more accommodation and living space, to modernise the unit and to provide more amenity and connection with the streetscape.*
- *Although possibly a simpler solution, a two storey addition would not be respectful to the wishes of the other owners in the complex.*
- *To comply with a 6m front setback the garage would need to be excavated requiring expensive earthworks and underpinning making the proposal unviable.*
- *The new gate and garden walls will provide better connection to and surveillance of the street.*
- *The garage will not detract from the streetscape or appearance of dwellings, nor obstruct views of dwellings.*
- *The natural elevation of the site would ameliorate the impact of the garage from the streetscape and the neighbour to the east. No impact is made on the neighbour to the west.*
- *The new bedroom is set back at 6m.*
- *The balcony in front of the bedroom will provide better connection with the street and neighbour amenity.*
- *The balance of the house will maintain its 8m front setback.*
- *Consideration has been given to preliminary work on possible redevelopment of all units on the parent lot to ensure this proposal will blend in with future plans.*

STAFF COMMENT**Front Setback**

The applicant proposes a front boundary setback of 2.6 metres. At its meeting of 28 October 2002, Council resolved:

- “(1) When assessing applications for Development Approval, Council will:*
- (a) Generally insist on:*
- (i) A 6.0m setback for residential developments in the District, which does not include averaging.”*

Acceptable Development Standard 3.2.1 A1 of the Residential Design Codes also prescribes a minimum 6.0m front setback in an R20 coded area, however, this can be reduced to 3.0m with averaging. Where proposals do not comply with this Acceptable Development Standard (the proposal involves a 2.6m front setback), the following Performance Criteria are required to be met:

“Buildings set back an appropriate distance to ensure they:

- Contribute to the desired streetscape;*
- Provide adequate privacy and open space for dwellings; and*
- Allow safety clearances for easements for essential services corridors.”*

Council’s Policy TPSP 003 – Garages and Carports in the Front Setback Area may allow for the construction of garages and carports up to 4.5m of the street alignment where vehicles are parked at right angles to the street and 1.5m where vehicles are parked parallel to the street.

The performance criteria specified in Council’s Policy for garages and carports in the front setback area is as follows:

- Materials, design and appearance to be in character with the residence on the site and in harmony with the surrounding streetscape.*
- The location of the building shall not significantly affect view lines of adjacent properties.*
- Adequate manoeuvring space shall be maintained for safe ingress and egress of motor vehicles.*
- Consideration should be given to setback objectives of the Codes.*
- Regard to the amenity of any adjoining lot.*
- Consideration of existing and potential future use and development of any adjoining lots.*
- Consideration of existing front setbacks in the immediate locality.*

The applicant has provided the following points in support of the proposed front setback variation:

- This variation is offset by increased connection to the streetscape and neighbour amenity.*
- It allows the opportunity for a balcony above the bedroom increasing the open space amenity from the proposed bedroom.*

Although the proposed variation to the front setback does not comply with the averaging provisions of the Residential Design Codes, it is considered that the proposal meets the required Performance Criteria for front setbacks.

The proposal falls 1.9m short of the 4.5m reduced setback that may be allowed under Council’s Policy 003 – Garages and Carports in the Front Setback Area. However, the proposal is still considered to meet the performance criteria for a reduced setback as specified in the Policy.

The new building materials and design will improve the appearance of the existing dwelling and streetscape and will not affect view lines of adjoining properties. Adequate space is provided for safe vehicle ingress and egress and due to the

nature of existing adjoining development, amenity is not adversely affected. In close proximity of the subject site, development is setback a variety of distances and the proposal will not adversely dominate the streetscape.

It is assessed that the proposal will contribute to the streetscape by reflecting a contemporary style of development similar to that constructed on the opposite side of the street and the modernist lines of flats. In addition, the concept of a front garage addressing the street with a dwelling and balcony above is already present in the street – the grouped dwelling at No. 19A Salvado Street just two lots west of the proposal has this built form.

It is noted that there were no neighbour objections to the front setback variation.

Given the above assessment the proposed setback variation is supported by Planning Staff.

Side Setback

The following variations are being sought to the setback requirements for the building on the east side:

Wall ID	Wall Name	Wall Height	Wall Length	Major Openings	Required Setback	Proposed Setback
East Lower	Garage	1.8 – 3.1m	9.975m	Nil	1.5m	0m
East Upper	Bedroom	5.8 – 6.3m	9.875m (for purposes of measuring setbacks, however, actual length only 6.575m)	Nil	1.5m	0m
East Upper	Balcony	5.2 – 5.5m (for purposes of measuring setbacks, however, actual height only 1.8 – 3.1m, being the top of the garage)	5.4m (for the purposes of measuring setbacks, however, actual length only 3.4m)	Yes	2.5m	0.3m

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

“P1 Buildings set back from boundaries other than street boundaries so as to:

- Provide adequate direct sun and ventilation to the building;*
- Ensure adequate direct sun and ventilation being available to adjoining properties;*
- Provide adequate direct sun to the building and appurtenant open spaces;*

- *Assist with the protection of access to direct sun for adjoining properties;*
- *Assist in ameliorating the impacts of building bulk on adjoining properties; and*
- *Assist in protecting privacy between adjoining properties.”*

In all instances, the above variations meet the performance criteria of the Codes. The shadow from any addition building and roof area will only occur over the subject property and will not affect adjoining properties at all in this regard. Building bulk and privacy will not be adversely affected.

In support of the reduced side setback the applicant writes:

- *This is an extension of an existing parapet wall.*
- *This can be justified as the wall exists at a lower height and it joins a vehicle access way to the adjacent property at Lot 16).*

As the proposed reduced side setbacks meet performance criteria of the Codes and in the absence of any objections from neighbours to the east of the development, the variations to the east side setbacks are supported.

The situation of existing development on the adjoining property to the east and the presence of a vehicular driveway and mature landscaping provide a sufficient interface for this proposal.

Privacy

The following privacy (cone of vision) setback of the proposal seeks variation from the Acceptable Development standards of the Codes.

Room	Required	Provided
Balcony	7.5m cone of vision from east side boundary, behind the front setback line	0.3m behind the front setback line

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

- “P1 Avoid direct overlooking between active habitable spaces and outdoor living areas of the development site and the habitable rooms and outdoor living areas within adjoining residential properties taking account of:*
- *The positioning of windows to habitable rooms on the development site and the adjoining property.*
 - *The provision of effective screening.*
 - *The lesser need to prevent overlooking of extensive back gardens, front gardens or*
 - *areas visible from the street.”*

The non-compliance in this regard is not as significant as it appears in the table above. The balcony is built entirely forward of the 6m front setback line of the adjoining property to the east and, therefore, most of the balcony complies with the Acceptable Development Standards for privacy. A small portion of the cone of vision falls behind the front setback, however, overlooking only occurs over a driveway.

The balcony complies with the privacy performance criteria of the Codes and is supported.

New Front Entrance and Modification to Front Garden Area

The existing entrance to the unit is via a side entry on the west from the common area and has no direct connection with the street.

The proposed new open aspect front gate and entrance will provide connection between the dwelling and the street and will improve surveillance both to and from the dwelling. It is recommended that a condition be imposed to ensure that this gate remains as “open aspect”.

Open Space

The proposal complies with Acceptable Development Standards of the Codes in relation to open space.

It is noted that the garage roof space, which is proposed as the balcony for the new bedroom, is classified as open space. This form of open space has no amenity impact on the adjoining property, especially as it would actually be overlooked by the adjacent flats, rather than the reverse situation, and as it addresses the front yard and street as many balconies do.

Height

The proposal complies with Council’s height requirements.

Sustainability

The alterations to the existing residence employ sustainable measures to make the best possible use of the northern aspect.

The works proposed to the existing built form include opening up the front courtyard to more sunlight and provision of addition glazing on the northern elevation. By moving the garage forward on the site and extending the building over, further opportunity is created to take advantage of the northern aspect of the site by allowing for the unroofed balcony to be placed above.

The changes to the roof line also allow for greater exposure to the northern sun with the reduction of eaves and increased walls and glazing.

CONCLUSION

The proposal involves the consideration of two setback variations:

- a reduction of the front building setback to the garage (4.5m permissible under Council’s Policy, only 2.6m proposed); and

- a reduction of the east side boundary setback to the garage/bedroom wall (1.5 – 2.5m required under the RDCs, nil setback proposed).

Although these proposed variations could generally be considered generous, it is necessary to view the proposal in terms of surrounding land use and development and the individual circumstance that exists at the subject property.

In this instance, the reduced front and side setbacks can be supported for the following reasons:

- Time is ripe for the upgrading and renovation of housing developments built in the 1970s and 1980s and the proposal will improve the appearance of the existing development, as well as encourage similar upgrading of the other dwellings on the parent lot.
- The high parapet wall on the eastern side boundary will not adversely affect the neighbouring property at No. 19 Broome Street as the building block is set back a considerable distance from this side. In addition there are no adverse affects on privacy or sunlight provision so performance criteria of the Codes are met.
- The reduced front setback for the garage will not adversely affect the streetscape because of the positioning between two existing high solid fences and the side where the variation occurs is adjacent to a multiple dwellings development which is well set back from the street and side boundaries.

While the proposal involves variations to standard setback requirements, it is a concerted effort to provide attractive contemporary redevelopment whilst designing for sustainability.

VOTING

Simple Majority

11.1.1 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Furlong, seconded Cr Strzina

That Council:

- (1) GRANT its Approval to Commence Development for the Alterations and Additions to the Existing Residence at No 1/23 Salvado Street, Cottesloe, in accordance with the revised plans submitted on 5 July 2006, subject to the following conditions:**
 - (a) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 – Construction Sites.**
 - (b) Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve, rights of way or adjoining properties and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the working drawings.**

- (c) The external profile of the development as shown on the approved plans, not being changed whether by the addition of any service plant, fitting, fixture, or otherwise, except with the written consent of Council.
 - (d) The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining or nearby neighbours following completion of the development.
 - (e) The applicant applying to the Town of Cottesloe for approval by the Manager Engineering Services to construct a new crossover, where required, in accordance with the Local Law.
 - (f) The new front gate being of an “Open Aspect” design as indicated on the plans.
 - (g) Air conditioning plant and equipment is to be installed as far as practicable from the boundary of adjoining properties or in such a manner as to ensure that sound levels emitted from equipment shall not exceed those outlined in the Environmental Protection (Noise) Regulations 1997.
 - (h) The finish and colour of the eastern boundary wall facing the being to the satisfaction of the Manager Development Services.
- (2) Advise the submitters of this decision.

Carried 9/1

11.1.2 NO. 102 (LOTS 26 & 27) BROOME STREET – PROPOSED PARTIALLY SOLID FRONT FENCE, GATE, DECK EXTENSION AND RETAINING WALLS

File No:	102 Broome Street
Attachments:	Location plan Correspondence from owner Photos Plans
Author:	Mr Lance Collison
Author Disclosure of Interest:	Nil
Report Date:	29 June, 2006
Senior Officer:	Mr Andrew Jackson
Property Owner:	Mr M Hulme
Applicant:	as above
Date of Application:	31 May, 2006
Zoning:	Residential
Use:	P - A use that is permitted under this Scheme
Density:	R20
Lot Area:	617m2 & 617m2
M.R.S. Reservation:	N/A

SUMMARY

Council is in receipt of an application for a front and side boundary fence. Retaining walls, a gate and an extension to the timber deck are also proposed. Given the assessment that has been undertaken, the recommendation is to approve the application with conditions.

The property is listed in Schedule 1 of Town of Cottesloe Town Planning Scheme No. 2; yet is a Category 3 on the Municipal Inventory.

While the property is heritage-classified by Council, over the decades the dwelling has been extensively altered and renovated internally and the current grounds are not original save for a some of the vegetation, the best examples of which are to be kept – the existing stacked-limestone walling, brick-paving and other landscaping is understood to date from the 1980s rather than be original, hence is not part of the historical fabric or value of the place. Moreover, the proposed traditionally-built walling and formalised landscaping will be in keeping with the era of the dwelling and compliment its heritage significance.

The applicant has expertise in sustainability and intends to create a garden including water-wise native plants such as traditional banksias reflective of the coastal environment.

PROPOSAL

The proposed fencing is over two lots to the property's front and side boundaries. Whilst the property has its address to Broome Street, the primary setback is to John Street. This is where the larger setback to the street can be found as well as its garage and front entrance to the residence. The proposed gate to the car bay is also located on the front boundary to John Street.

The proposed retaining walls are to a height of 600mm and can be located within the gardens of the property. Also a deck extension is proposed on the Broome Street elevation. The deck and retaining walls are in compliance with the Residential Design Codes and Town Planning Scheme No. 2.

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

N/A.

HERITAGE LISTING

- | | |
|-------------------------------------|------------|
| • State Register of Heritage Places | N/A |
| • TPS No 2 | Schedule 1 |
| • Town Planning Scheme Policy No 12 | N/A |
| • Draft Heritage Strategy Report | N/A |
| • Municipal Inventory | Category 3 |
| • National Trust | Listed |

APPLICATION ASSESSMENT

AREAS OF NON-COMPLIANCE

Town Planning Scheme Policy/Policies

Policy	Required	Provided
Fencing Local Law	Open aspect front fence	Partially solid front fence

STRATEGIC IMPLICATIONS

N/A

FINANCIAL IMPLICATIONS

N/A.

CONSULTATION

REFERRAL

Internal

- Building

External

- Heritage Council – for any advice only, as not State-listed so not required.

ADVERTISING OF PROPOSAL

The Application was advertised as per Residential Design Codes.

The advertising consisted of:

- Letter to Adjoining Property Owners

Submissions

There were 3 letters sent out. The neighbouring properties signed off on the plans in support of the proposal.

BACKGROUND

The dwelling is named “Laxey Glen” and was referred to the Heritage Council for any heritage guidance comment as it on the Scheme’s Schedule 1 Places of Natural Beauty and Historic Buildings of Historical or Scientific Interest; however, the Heritage Council advised that as the property is not on the State Register of Heritage Places it could not offer a comment.

The existing front garden area comprises of retaining walls, paving and some overgrown plants, most of which are more recent works and rustic rather than reflective of the original dwelling. This open space is in need of rejuvenation as it is not conducive to use as well as presents some privacy and security concerns.

STAFF COMMENTContext

Part 6 of TPS2 refers to Conservation and Preservation of Places of Natural Beauty and Historic Buildings and Objects of Historic or Scientific Interest. It states “*The Council considers that the places of natural beauty, and historic buildings, and objects of historic or scientific interest listed in Schedule 1 should be conserved and preserved*”

In addition, Town Planning Scheme Policy 12: Places of Cultural Heritage Significance, requires any development on heritage sites to “*protect existing places of cultural heritage significance, and to maintain the character, amenity and ‘sense of place’ of the suburb*”.

Under this framework development assessment needs to take into account:

- (i) the cultural heritage significance of the place;
- (ii) the materials of construction, design and appearance of additions/renovations to listed places shall be in character with the residence of the site; and be in harmony with the surrounding streetscape;
- (iii) any provisions of a conservation plan for the property;
- (iv) the provisions contained within the Council’s draft Conservation and Development Guidelines [note: not in force]; and

- (v) the effect of any variation of development standards on the amenity of any adjoining lots.

While these requirements are especially applicable to works involving actual buildings, they also provide some useful guidance in relation to grounds and ancillary features. In the subject case, as reported and assessed, given the heritage and streetscape context of the dwelling the proposed fencing and landscaping are considered to be worthwhile works contributing to the enhancement of the amenity of the place and character of the locality.

Front Fence

On the Broome Street elevation, the fence is solid to a height between RL 8.42m and RL 9.00m, or 1.8m. The fence is required to be open aspect as per the Fencing Local Law only within the front setback area of the property. As Broome Street is the secondary street, the front setback is considered to be the first 6m on the Broome Street elevation from the front boundary on John Street. The applicant has provided an open aspect fence above 1500mm on the side boundary for 17m of its length. This length is a longer than required, which is commended.

However, the Fencing Local Law requires fences within the front setback to be open aspect between 900mm and 1800mm in height above NGL. On the Broome Street elevation, a non-compliant area of the fence is within the 6m setback from the John Street boundary. The fence here is solid to 1500mm and open aspect to 2m in height.

This variation is recommended for approval as the levels in the area require fencing/retaining. The levels at the footpath adjacent to the fence are RL 6.92m whilst the property's land is at RL 8.2m. The ground level found at this area is at RL 8.0m, thus 200mm of fill is proposed. It appears that ground levels on the property have been modified over time and an existing retaining wall can be found on the boundary at the corner of Broome and John Streets. This wall is similar to the proposed fence in this location.

On the John Street elevation, the solid section of fence ranges in heights due to the slope of the land. The solid section of fencing ranges from RL 8.4m to RL 10.43m. In relation to natural ground levels, the fence elevation is solid to heights varying from 900mm to 1500mm, and open aspect above to a maximum height varying from 1400mm in some sections to 2000mm. The section of the fence which does not comply on this elevation is toward the Broome Street corner, west of the main entrance gate.

This variation is recommended for approval as the levels in the area require fencing/retaining. The levels at the footpath adjacent to the fence are RL 7.42m whilst the property's land is at RL 8.2m. The ground level found at this area is at RL 8.0m, thus 200mm of fill is proposed as the garden is to be at RL 8.2m. The solid section of fence is to a height of RL 8.4m to RL 9.43m. Therefore, the height of the proposed fence would act as a retaining wall whilst the additional height above proposed ground level should ensure the security concerns of the owners.

The fill proposed on site allows a level lawn and garden area which enhances the practical nature of the front yard.

The section of fence to the east of the main entrance gate (not the sliding gate for the car bay) is compliant with the requirements.

The fence also has to be assessed against criteria of The Fencing Local Law, which asks whether the fence will facilitate:

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

The fence will provide for the safe and convenient use of land and of persons as the lot is exposed to two streets at present and it will provide the owners with security. The impact of the fence on the street is discussed below.

Heritage & Streetscape

The residence “Laxey Glen” is noted in the Town’s Heritage Inventory to be of *historic and architectural importance in a prominent location in a heritage precinct*. Town Planning Scheme No. 2 in Schedule 1 states that the property is a *Large brick and Iron home with wooden verandah constructed circa 1900*.

In relation to heritage values, the proposed front fence is complimentary to the residence. The proposed fence is to be built of limestone which will match the limestone used for the external walls of the dwelling.

Furthermore, the proposed solid section fence height will be of a maximum of RL9.00m on the Broome Street elevation and RL 10.43m on the John Street elevation. Much of this fence is below the height of the ground floor of the residence which is RL 9.13m, whereas the highest point of the ridge is approximately at RL 16m. The front fence therefore will not dominate the streetscape and the dwelling’s wrap-around deck will still provide adequate surveillance to the street.

Also, the proposed wrought iron pillars used for the open aspect areas of the fence and the gate will be consistent with the heritage values of the dwelling.

Given the fall of the land and the enhancement and restoration that has taken place at the residence, the variation allowing the proposed fencing at the dimensions given on the plans are recommended for approval.

Gate

The proposed wrought iron sliding gate is to be located on the front boundary of the John Street elevation adjacent to the garage. This will provide extra security to any cars parked in the existing car bay. The wrought iron gate complies with the Fencing Local Law and is recommended for approval.

Retaining Walls

The proposed retaining walls are generally located in the front setback away from the boundaries. These walls are generally 600mm or less in height and allow level lawn areas. The amount of cut or fill is acceptable under the RDC.

Please note that the boundary fences which also act as retaining walls in some circumstances are mentioned previously in this report.

Deck

The proposed deck extension on the Broome Street side is compliant with the Residential Design Codes. The deck is also complimentary and does not detract from the heritage value of the residence.

Fish Pond & Well

These items are not part of this planning assessment or approval.

CONCLUSION

The applicant of 102 Broome Street can be supported for preserving a heritage listed dwelling and enhancing its associated values. The applicant is seeking a variation to the Fencing Local Law and due to the slope of the land and the prominence of the residence the variation at street level would not be too significant.

These works proposed in conjunction with the landscaping and tree planting in the front setback area will improve the streetscape appearance of the front yard/garden of the property from its current overgrown condition. It will also enhance security to a dwelling which is exposed to two streets. Therefore, variation of the Town of Cottesloe Fencing Local Law is seen as acceptable in the circumstances. It is recommended that the application be approved subject to conditions.

Overall, the design and standard of the walling will suit the dwelling and read as a sensitive endeavour to restore the grandeur of the place. The Broome Street solid flank will link with the similar wall to the northern neighbour, there is a strong pattern of masonry and railing front walls/fences to the streetscape (both old and newer), and of course the Civic Centre presents the main statement in this respect. The corner position and elevation of the dwelling will mean that the walling will still allow exposure to view of the residence and grounds, as well as surveillance outwards, while contributing attractively to the streetscape.

VOTING

Simple Majority

11.1.2 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Furlong, seconded Cr Strzina

That Council GRANT its Approval to Commence Development for the Front Fence, Gate, Retaining Walls and Deck at No. 102 (Lot 26 & 27) Broome Street, Cottesloe, in accordance with the plans submitted on 31 May 2006 subject to:

- (1) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13. – Construction sites.**
- (2) Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve, right-of-way or adjoining properties and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the Building Licence plans.**
- (3) The external profile of the development as shown on the approved plans not being changed whether by the addition of any service plant, fitting, fixture or otherwise, except with the written consent of Council.**

Carried 9/1

11.1.3 NO 174 (LOT 63) LITTLE MARINE PARADE – PORTICO

File No:	174 Little Marine
Attachments:	Location plan Photos Plans
Author:	Stacey Towne
Author Disclosure of Interest:	Nil
Report Date:	29 June, 2006
Senior Officer:	Andrew Jackson
Property Owner:	Phillip Jackson
Applicant:	Broad Planning Consultants
Date of Application:	29 June, 2006
Zoning:	Residential
Use:	P - A use that is permitted under this Scheme
Density:	R20
Lot Area:	438m²
M.R.S. Reservation:	N/A

SUMMARY

It is proposed to construct a portico within the front setback area of the existing residence at No. 174 Little Marine Parade.

Council generally requires a front setback of 6 metres, however, Council's Policy TPSP 003 allows for the construction of garages and carports within the front setback area, provided certain performance criteria are met. Although Council does not have a policy that addresses the construction of porticos within the front setback area, the proposed structure is similar to an open carport and therefore Council's Policy TPSP 003 has been used for guidance in consideration of this application.

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

PROPOSAL

The portico is to be 6.9m x 4m, open on all sides, with a slate tile roof to match the existing residence. The portico roof has also been designed with a similar pitch and style to reflect the roof of the residence, which has a unique architectural style in this locality. The supporting piers are to be rendered and located mainly on existing retaining walls.

The floor level for the portico is to be at the same level as the basement /garage, which is below street level and below adjacent ground levels. Only part of the roof structure is higher than the main lower floor level of the house.

The portico is proposed to be set back 3m – 3.7m from the street. The purpose of the portico in the front setback area is to provide a covered shelter between the garage underneath the house and the entrance to the house. It is not a patio

structure which would usually be located in a rear yard setting, nor is it an outbuilding as defined in the Residential Design Codes or Council's Town Planning Scheme and Policy Manual. Hence it needs to be assessed as a special case on merit, with guidance and in context.

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

- Garages and Carports in the Front Setback Area Policy No 003

HERITAGE LISTING

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

APPLICATION ASSESSMENT

AREAS OF NON-COMPLIANCE

Town of Cottesloe– Council Resolution

Clause	Required	Provided
Front Setbacks	6m setback	3 - 3.7m

Town Planning Scheme Policy/Policies

Policy	Required	Provided
Garages & Carports in Front Setback Area, TPSP 003	4.5m setback if vehicles are at right angles to street alignment; 1.5m setback if vehicles are parked parallel to street alignment; 0m for carports.	3 – 3.7m

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

CONSULTATION

REFERRAL

Internal

- Building
- Engineering

External

N/A.

ADVERTISING OF PROPOSAL

The Application was advertised as per Town of Cottesloe Town Planning Scheme No 2 and Residential Design Codes.

The advertising consisted of:

- Letter to Adjoining Property Owners

Submissions

There were 2 letters sent out. There was 1 submission received, which was an objection. Details of the submission received are summarised as follows:

176 Little Marine Parade – S. Treasure

- *The proposal is grander than a portico (i.e. more than a structure on the front of a building highlighting the entry), more like a carport. Incidentally, the entrance to the house is on the northern side, well away from the portico.*
- *Concerned that it will later be enclosed.*
- *Concerns that parking will be reduced on the site which could cause problems in the small street.*
- *It appears that there is proposed filling and retaining of the block.*

In response to the matters raised in the submission, the applicant writes:

- *The portico is to be used as a shade structure and entry to the garage. A portico is defined as “a structure with a roof supported by columns often (but not always) leading to an entry”. The term portico is used as the structure is providing a front statement for the building and has a roof supported by columns.*
- *It is not intended to enclose the structure as this would prohibit access to the garage. The 4m depth is too short to act as a carport.*
- *There is no intention to reduce on site parking.*
- *No land fill is proposed. All retaining walls are existing.*

BACKGROUND

The Residential R20 zoned property at No 174 Little Marine Parade slopes upwards from north to south by at least 1.5m. The existing driveway is cut into the front of the property, leading to a double garage at the lowest level of the residence.

The existing residence is a three level ‘French Urban’ house with a Mansard roof structure. A swimming pool, pergola and shed are located at the rear of the house. The residence is set back some 7.8m – 8.7m from the street.

Little Marine Parade is a cul-de-sac and is positioned east of, and parallel to, Marine Parade behind a sand dune. The level of the road at this section of Little Marine Parade is considerably lower than the road level at Marine Parade. This means that only the upper floor of the residence at No 174 Little Marine Parade can be viewed from Marine Parade.

STAFF COMMENT

Framework of Assessment

The Residential Design Codes do not define portico structures or mention them specifically in terms of development standards, nor has Council developed a policy to address the construction of structures within the front setback area other than garages and carports.

In assessing this application, it is considered that the primary factors to be taken into account are neighbours' amenity and streetscape. The Residential Design Codes in this regard address building setbacks and streetscape, whilst Clause 5.1.2 of Town Planning Scheme No. 2 also addresses general amenity aspects, to which development should have due regard.

In addition, Council's Policy TPSP 003 – Garages and Carports in the Front Setback Area provides some guidance. Although the proposed portico structure is not a carport, it has similar characteristics due to its open sides and general appearance and would have similar impacts on neighbours and the streetscape.

Front Boundary Setback

The application proposes a front boundary setback of between 3 – 3.7 metres. At its meeting of 28 October 2002, Council resolved:

- “(1) When assessing applications for Development Approval, Council will:*
- (a) Generally insist on:*
 - (i) A 6.0m setback for residential developments in the District, which does not include averaging.”*

Acceptable Development Standard 3.2.1 A1 of the Residential Design Codes also prescribes a minimum 6.0m front setback in an R20 coded area, however, this can be reduced to 3.0m with averaging.

In addition, Acceptable Development Standard 3.2.3 A3.4 of the Codes allows carports to be located within the street setback area (no minimum setback prescribed), provided the width of the carport does not exceed 50% of the frontage and views are not obscured between the dwelling and the street.

Council's Policy TPSP 003 – Garages and Carports in the Front Setback Area may allow for the construction of garages and carports up to 4.5m of the street alignment where vehicles are parked at right angles to the street and 1.5m where vehicles are parked parallel to the street. Council's Policy may even allow carports to be built up to the front boundary in certain circumstances.

The performance criteria specified in Council's Policy for garages and carports in the front setback area is as follows:

- *Materials, design and appearance to be in character with the residence on the site and in harmony with the surrounding streetscape.*
- *The location of the building shall not significantly affect view lines of adjacent properties.*
- *Adequate manoeuvring space shall be maintained for safe ingress and egress of motor vehicles.*
- *Consideration should be given to setback objectives of the Codes.*
- *Regard to the amenity of any adjoining lot.*
- *Consideration of existing and potential future use and development of any adjoining lots.*
- *Consideration of existing front setbacks in the immediate locality.*

The applicant has provided the following points in support of the proposed front setback variation:

- *The setback complies with the averaging provisions of Acceptable Development Standard A1 of the Codes (i.e. a minimum setback of 3m is provided and the building area forward of the 6m line similar to the vacant area behind the 6m line).*
- *The portico as a structure is similar to a carport and Acceptable Development Standard 3.2.3 of the Codes allows for carports within the front setback area.*
- *The portico is predominantly below street level and its visual impact is significantly diminished. The open design of the structure only marginally blocks views of the residence. The ground floor of the residence is above the roof of the portico, as are the upper floors. The portico does not limit views to the street.*
- *The roof structure will be behind and below the level of the front fence and therefore partially obscured.*
- *Generally there are structures within the setback of adjacent houses.*
- *The portico will enhance the overall appearance of the dwelling by providing an alternative focus, better depth and articulation to the existing building.*
- *The portico is set back from the side boundaries in excess of the RDC requirements.*
- *The proposal meets open space requirements on the site.*
- *On site parking will not be affected (a minimum of two car bays provided).*
- *The portico will not be an intrusive element in the streetscape due to its low profile and being partially obscured by other structures on site and on adjacent sites.*

The points put forward by the applicant are supported. The proposal does comply with the Residential Codes in terms of averaging for a front setback in general and, if the proposal was for a carport, the application would comply with the Acceptable Development Standards of the Codes as well as meet the performance criteria of Council's Policy 003.

In close proximity of the subject site, development is setback a variety of distances and there is another property in the street with a carport structure within the front setback (at No 180 Little Marine Parade).

The proposed portico structure will not be highly visible from Marine Parade and will not adversely affect neighbours in terms of overshadowing or privacy, which are both

matters identified within the Codes and Council's amenity clause for which due regard must be taken.

Given the above assessment the proposed setback variation is supported by Planning Staff.

Roof Design

It is not considered that the proposed portico structure would have any greater affect on neighbours or the streetscape than would a carport.

It is possible that the profile of the portico could be reduced by altering the roof to have a lower pitch and height, and as a single rather than stepped form. While this would be a simpler structure, the appearance would not be in harmony with the dwelling, whereby it would tend to look utilitarian rather than tailor-made. As the proposal is not over-height, the site is in a valley and the aesthetic of the buildings should match, the proposal is considered architecturally appropriate.

Other Standards

All other standards including side setbacks, overshadowing and open space have been complied with.

CONCLUSION

Although a proposed portico would usually be subject to the 6m front setback requirement generally required by Council, this proposal is considered to be similar to a carport structure and has been assessed having regard to Council's Policy 003 – Garages and Carports in the Front Setback Area.

The proposed portico will not adversely affect neighbouring properties or the streetscape and will perform the desired functions of shelter and an entry statement. Given the location of the property hidden below the level of Marine Parade, together with the existing pattern of development in the street, it is concluded that the proposal suits the context of the existing dwelling, street and environs.

It is considered that approval would not create an undesirable precedent, as this is a particular (porticos are not often proposed), and because were a carport proposed here or in a similar situation it would most likely be approved. Conditions are nonetheless recommended to ensure that the portico is not enclosed in the future and that the existing garage continues to provide permanent parking for two vehicles.

VOTING

Simple Majority

11.1.3 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Furlong, seconded Cr Strzina

That Council:

- (1) GRANT its Approval to Commence Development for the Portico at No 174 (Lot 63) Little Marine Parade, Cottesloe, in accordance with the plans submitted on 29 June, 2006, subject to the following conditions:**
 - (a) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 – Construction Sites.**
 - (b) Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve, rights of way or adjoining properties and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the working drawings.**
 - (c) The external profile of the development as shown on the approved plans not being changed whether by the addition of any service plant, fitting, fixture, or otherwise, except with the written consent of Council.**
 - (d) The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining or nearby neighbours following completion of the development.**
 - (e) The applicant providing adequate storage disposal on site to contain stormwater in accordance with the Local Laws.**
 - (f) The applicant complying with the Town of Cottesloe – Policies and Procedures for Street Trees, February 2000, where development requires the removal, replacement, protection or pruning of street trees for development.**
 - (g) The portico shall remain as an open structure on all sides and shall not be enclosed.**
 - (h) The existing garage forming part of the dwelling shall be maintained as the approved parking accommodation for two cars on site, and shall not be converted to any other use.**
- (2) Advise the submitters of this decision.**

Carried 9/1

11.1.4 NO. 202 (LOT 37) BROOME STREET – NEW TWO-STOREY RESIDENCE

File No:	202 Broome Street
Attachment(s):	Location Plan Correspondence from applicant (1) Submissions (1) Plans
Author:	Mr Lance Collison
Author Disclosure of Interest:	Nil
Report Date:	5 July 2006
Senior Officer:	Mr Andrew Jackson
Property Owner:	G M Parfitt
Applicant:	Richard Szklarz Architects
Date of Application:	5 July, 2006
Zoning:	Residential
Use:	P - A use that is permitted under this Scheme
Density:	R20
Lot Area:	622m²
M.R.S. Reservation:	N/A

SUMMARY

Council is in receipt of an application for a proposed two storey residence.

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

PROPOSAL

The proposal will demolish the existing dwelling which is not heritage-listed.

On the ground floor of the two storey dwelling a study, family, meals, kitchen, scullery, pantry, laundry, bath 1, gym and boat store is proposed. Externally to the main dwelling, a carport setback approximately 1.5m from the front boundary, a pond and deck is also proposed.

On the upper floor two WIRs, bed 1, bed 2, bed 3, bed 4, ensuites 1 and 2, bath 2 and a powder room is proposed.

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

- | | |
|--|---------------|
| • Building Heights | Policy No 005 |
| • Garages and Carports in the Front Setback Area | Policy No 003 |

HERITAGE LISTING

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

APPLICATION ASSESSMENT

AREAS OF NON-COMPLIANCE

Town of Cottesloe Town Planning Scheme No 2 - Text

Clause	Required	Provided
5.1.1 Building Heights	6m maximum wall height 8.5m max. building height	8.07m maximum wall/ building height

Residential Design Codes

Design Element	Acceptable Standards	Provided	Performance Criteria Clause
3.3.1 Boundary Setbacks	Upper South wall 2.6m setback	2.3m setback	Clause 3.3.1 – P1

STRATEGIC IMPLICATIONS

N/A.

FINANCIAL IMPLICATIONS

N/A.

CONSULTATION

REFERRAL

Internal

- Building
- Engineering

External

N/A.

ADVERTISING OF PROPOSAL

The Application was advertised as per Town of Cottesloe Town Planning Scheme No 2 and Residential Design Codes.

The advertising consisted of:

- Letter to Adjoining Property Owners

Submissions

There were 5 letters sent out. There was 1 submission received, which was an objection. Details of the submission received is set out below:

George & Evelyn Weston of 15 Brighton Street

- *Does not want any windows to overlook their property.*
- *Does not want the proposal to block out natural light to their property.*

BACKGROUND

The neighbouring property at 200 Broome Street has recently been constructed and is also of a modern design.

STAFF COMMENT

Design appreciation

The design approach achieves a relatively high degree of compliance overall, with few direct impacts and limited variations, which are assessed as supportable in context. The details are presented below, but in summary the design achieves this outcome by:

- Avoiding boundary walls; except for the rear garaging at single storey height set below the neighbour's dividing fence brick wall, whereby it has no impact.
- Otherwise setting-back the building from all boundaries, including the upper level indented from the lower level; to minimise the affect on privacy, shadow and bulk.
- In this way the dwelling sits within the lot in a traditional manner consistent with the dwellings either side and to the streetscape.
- An articulated building on all four elevations, which breaks up its mass, affords the privacy separation distances, achieves solar access and creates visual interest.
- The combination of single and two storey height roof levels also helps to articulate the appearance of the dwelling.
- The flat and skillion roof planes avoid parapet-edged walls which further reduces their sense of scale – instead of solid wall sections extending beyond the roof level, the flat roofs “float” on windows atop the walls, so that they look more lightweight and the actual wall structure is generally less than 6m high.
- The upper-level “box” roof-form is set well back from the street (10m) and inset from both sides, so that it is recedes and represents building volume centralised along the lot.
- Its 7m height is the lower edge to the nearest neighbour and its highest point is set furthest in from the side boundary.
- Such geometric or “hanger”-style roofs are fairly typical of contemporary architecture in Cottesloe, echoing historical beach-shack construction and responding to coastal weather.
- The topography stepping down the street means that the dwelling is partially cut into the site to sit lower than the southern neighbour and to partially sink / conceal the front carport and rear garage.
- A low front garden retaining wall for only half the width of the frontage (ie, no high fencing or wall), on open hardstand reversing area, a single width

crossover and retention of the two large established verge trees also contribute to the streetscape suitability of the proposal – the trees would screen the dwelling considerably.

- Overall, the form and scale of the proposal is consistent with the emerging pattern of two storey redevelopment in the street and the contemporary style is essentially restrained and designed to relate to the site and surrounds.

Building Height

The dwelling easily complies with the maximum 8.5m building height requirement of TPS 2 as a key measure.

However, as the dwelling features a combination of flat and skillion-style roof forms the wall heights do not satisfy the conventional requirement of 6m. As this style of design is not addressed in TPS2 the RDC are referred to, which allow a 7m wall height for walls with concealed roofs and a median to be used in the calculation.

The proposal has on the north elevation an 8.07m maximum wall height from NGL. This is setback 5m from the northern boundary and rooms along this wall are generally bedrooms. The roof behind this wall slopes gently downwards towards the southern boundary. This wall is seen to be of less bulk than a wall with a pitched roof and therefore less of a concern. This variation is supported for approval as it is of no real consequence to neighbouring properties.

To the southern elevation the wall height is 6.9m from NGL and setback 2.3m from the boundary. The neighbouring property on the southern side has a floor level 0.97m above this dwelling, which lessens overshadowing to that southern neighbour.

It should be noted that the “hanger” element is a hybrid between a wall and roof structure – while practically its sides function as walls, visually it constitutes a roof form defined by sloping cladding. On that basis the roof / building height complies, but when treated as a wall it represents a variation. Regardless of how it is viewed, as assessed the form and heights are supported.

While it is discerned that in themselves the wall heights could be reduced, this would alter the design approach to the dwelling for good ceiling heights, natural light, air circulation and the aesthetics. From a streetscape perspective, the roof form and its cladding will create visual interest in the dwelling and the overall building heights will compliment those approved to the new dwelling next door at 200 Broome Street.

The objection regarding loss of natural light due to the building height is not sustained as that neighbour is setback 10m from the height of the wall and the loss of sunlight is minimal; while the southern neighbour has no objection.

The cladding material, however, could be a concern, as this amount of zinc-finished sheeting to the faces of the box-roof may cause undue reflection and glare, although that has not been raised in submissions. This matter has been taken up with the architect who is conscious of this issue and advises that the soft zinc will actually be in a matt finish. The architect has used this walling on numerous projects and has

had no adverse comments regarding reflectivity of this product. Notwithstanding, a standard condition is recommended in this respect.

Carport

The proposed carport is to be setback 1.5m from the front boundary. The Town's Garages & Carports in the Front Setback Area Policy says that variations shall include but not be limited to the following:

- (a) a garage or carport may, with the approval of Council, be constructed up to 4.5 metres of a primary street alignment where vehicles are parked at right angles to the street alignment and 1.5 metres where vehicles are parked parallel to the street alignment; and*
- (b) a carport may, with the approval of Council, be constructed up to the street alignment*

These variations are subject to the following primary criteria:

- (a) shall not significantly affect view lines of adjacent properties; and*
- (b) shall maintain adequate manoeuvre space for the safe ingress and egress of motor vehicles.*

The Policy goes on to refer to the objectives of the R-Codes, amenity, streetscape and future use/development all in relation to the locality. The proposed carport is assessed as satisfying these criteria. Whilst the front setback to the carport is less than neighbouring properties, it does not detract from the streetscape as it is a lightweight looking structure and partially sunken, parking is parallel to the street and the verge is approximately 15m wide. The carport is therefore supported for approval.

Boundary Setbacks

The following side boundary setback does not meet the Acceptable Development standards of the RDC and hence are required to be assessed under the Performance Criteria of Clause 3.3.1 (P1) of the RDC, which are:

Wall ID	Wall Name	Wall Height	Wall Length	Major Openings	Required Setback	Actual Setback
Upper south wall	Linen to Bed 1	7.5m	20m	No	2.6m	2.3m

3.3.1 – Buildings Set back from the Boundary

P1 Buildings set back from boundaries other than street boundaries so as to:

- Provide adequate direct sun and ventilation to the building;*
- Ensure adequate direct sun and ventilation being available to adjoining properties;*
- Provide adequate direct sun to the building and appurtenant open spaces;*
- Assist in ameliorating the impacts of building bulk on adjoining properties; and*
- Assist in protecting privacy between adjoining properties.*

The upper south wall is setback 2.3m from the linen area to bedroom 1 where it should be setback 2.6m as per the Acceptable Development provisions of the RDC. However, the variation meets the Performance Criteria of the RDC as it will still provide adequate direct sun and ventilation to the building and adjoining properties. Whilst reduced, the proposal will still provide sun to appurtenant open space. The bulk proposed is similar to what is being built at 200 Broome Street and with no major openings on this wall it will assist in protecting privacy between adjoining properties. The relaxation of only 0.3m is marginal and considered allowable.

Retaining Wall & Fill

The proposed retaining wall on the northern boundary varies in height up to 700mm towards the rear garden. A proposed 1800mm high boundary fence will be built on top of this retaining wall. These are proposed to be at the applicant's cost. Whilst proposed fill in the north-eastern corner is above 500mm, the site will provide a level rear yard and the fill is not of concern to adjoining properties as 204 Broome Street is at a higher level and a new fence will protect privacy, whilst to the eastern boundary is a ROW.

Pond Feature

This item is not part of this planning assessment or approval.

Privacy

The proposal meets the Acceptable Development Provisions of the RDC for privacy.

Overshadowing

The proposal meets the Acceptable Development Provisions of the RDC for overshadowing.

Open Space

The proposal meets the Acceptable Development Provisions of the RDC for open space.

CONCLUSION

The proposal meets all open space, privacy and overshadowing requirements. The proposal meets most setback requirements. Only one objection was received which, with respect, is not considered to be sustained. It is considered that the wall height variations can be supported.

The result of the proposal is a residence which enhances the streetscape with limited variations and little impact. On this basis it is recommended that the application be granted conditional approval.

VOTING

Simple Majority

11.1.4 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Furlong, seconded Cr Strzina

That Council:

- (1) **GRANT its Approval to Commence Development the proposed Two-Storey Residence at No. 202 (Lot 37) Broome Street, Cottesloe, in accordance with the plans submitted on the 26 May 2006, subject to the following conditions:**
- (a) **All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.**
 - (b) **Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve, rights of way or adjoining properties, and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the working drawings.**
 - (c) **The external profile of the development as shown on the approved plans not being changed whether by the addition of any service plant, fitting, fixture, or otherwise, except with the written consent of Council.**
 - (d) **The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining or nearby neighbours following completion of the development.**
 - (e) **Air conditioning plant and equipment is to be installed as far as practicable from the boundary of adjoining properties or in such a manner as to ensure that sound levels emitted from equipment shall not exceed those outlined in the Environmental Protection (Noise) Regulations 1997.**
 - (f) **Any front boundary fencing to the site being of an “Open Aspect” design in accordance with Council’s Fencing Local Law and the subject of a separate application to Council.**
 - (g) **The applicant applying to the Town of Cottesloe for approval to construct a crossover, in accordance with Council specifications, as approved by the Manager Engineering Services or an authorised officer.**
 - (h) **The proposed parking in the verge shown on the plans is excluded from this planning approval and would require separate application to and determination by the Manager Engineering Services, and may not necessarily be approved.**
 - (i) **The existing redundant crossover in Broome Street being removed and the verge, kerb and all surfaces made good at the applicant’s expense to the satisfaction of the Manager Engineering Services.**
 - (j) **The finish and colour of the boundary wall facing the neighbour being to the satisfaction of the Manager Development Services.**

- (k) The applicant complying with the Town of Cottesloe – Policies and Procedures for Street Trees, February 2000, where development requires the removal, replacement, protection or pruning of street trees for development.**
- (2) Advise submitters of Council decision.**

Carried 9/1

11.1.5 NO. 51 (LOT 39) MARGARET STREET – TWO STOREY RESIDENCE

File No:	51 Margaret Street
Attachments:	Location plan Correspondence from applicant Submissions (3) Photos Plans
Author:	Mr Lance Collison
Author Disclosure of Interest:	Nil
Report Date:	27 June, 2006
Senior Officer:	Mr Andrew Jackson
Property Owner:	Geoffrey & Tina Arthur
Applicant:	Barbara Schenk
Date of Application:	3 April, 2006
Zoning:	Residential
Use:	P - A use that is permitted under this Scheme
Density:	R20
Lot Area:	365m²
M.R.S. Reservation:	N/A

SUMMARY

Council is in receipt of an application for a two storey residence on a 10m wide, 365m² lot. The proposal will demolish the existing basic dwelling which is not heritage-listed.

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

PROPOSAL

The proposal is to demolish the existing residence and build a new two storey residence. The residence is of a split-level design and features two parapet walls.

On the ground floor is a garage and store room. From the hallway outside the store, downstairs leads to a cellar in one direction. A laundry, bath, lounge, guest room and alfresco is in the other direction.

On the upper floor, a foyer and office is located above the cellar, this foyer is the main entrance to the house. Upstairs from these rooms is Bed 1, ensuite, WIR, a WC, two balconies, a kitchen and a lounge room.

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

- Building Heights

Policy No 005

HERITAGE LISTING

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

APPLICATION ASSESSMENT

AREAS OF NON-COMPLIANCE

Town of Cottesloe Town Planning Scheme No 2 - Text

Clause	Required	Provided
5.1.1 Building Height	Maximum 6m wall height and 8.5m building height from NGL at the centre of the site	6.346m wall height

Town Planning Scheme Policy/Policies

Policy	Required	Provided
N/A	N/A	N/A

Residential Design Codes

Design Element	Acceptable Standards	Provided	Performance Criteria Clause
Element 3 Boundary Setbacks	Garage wall 1m setback	0.03m setback	Clause 3.3.2 – P2
Element 3 Boundary Setbacks	Ground South wall 4.5m setback	2.6m setback	Clause 3.3.1 – P1
Element 3 Boundary Setbacks	Cellar Wall 1m setback	0.03m to 1.5m setback	Clause 3.3.2 – P2
Element 3 Boundary Setbacks	Kitchen to balcony wall 1.5m setback	1.47m setback	Clause 3.3.1 – P1
Element 3 Boundary Setbacks	Office 1.1m setback	0.03m setback	Clause 3.3.2 – P2
Element 3 Boundary Setbacks	Guest room / bathroom wall 1.1m setback	0.97m setback	Clause 3.3.1 – P1
Element 3 Boundary Setbacks	Upper South wall 2.7m setback	2.56m setback	Clause 3.3.1 – P1
Element 3 Boundary Setbacks	Balcony 2.8m setback	1.2m setback	Clause 3.3.1 - P1
Element 8 Privacy	Balcony 7.5m setback	2.2m setback	Clause 3.8.1 – P1

Design Element	Acceptable Standards	Provided	Performance Criteria Clause
Element 8 Privacy	Balcony 7.5m setback	1.47m setback	Clause 3.8.1 – P1
Element 9 Design for Climate	Maximum of 25% overshadowing	30.1% overshadowing	Clause 3.9.1 – P1

STRATEGIC IMPLICATIONS

N/A.

FINANCIAL IMPLICATIONS

N/A.

CONSULTATION**REFERRAL****Internal**

- Building
- Engineering

External

N/A.

ADVERTISING OF PROPOSAL

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

The advertising consisted of:

- Letter to Adjoining Property Owners

Submissions

There were 3 letters sent out. There were 3 submissions received, of which 3 were objections. Details of the submissions received are set out below:

Maureen Nelson of 224 Marine Parade

- Concerned with three level building and height.
- Concerned with overlooking.

Gregory Muir & Kathleen Anderson of 49 Margaret Street

- House appears to be very bulky and overpowering.
- Concerned with parapet wall on boundary as they may build a new house in the future.

Paul & Sally Nelson of 228 Marine Parade

- Concerned with overlooking.

In addition, the neighbours at 53 Margaret Street have signed the plans in support of the proposal.

BACKGROUND

An existing two storey dwelling is proposed to be demolished to make way for a new dwelling. The original proposal featured a dwelling with two levels plus a mezzanine level above. After consultation with the owners and the applicant, this third level has been removed from the proposal.

STAFF COMMENT

Design context

- The area is typified by narrow, elongated lots and older beach cottages, some with pop-top second storeys.
- Much of this dwelling stock is outmoded and weathered and is being picked-over for redevelopment.
- The lot configurations generate modern two-storey proposals with larger second storeys to provide more floor space and capture ocean views.
- This closer pattern of housing and jostling can be accommodated by the codes subject to appropriate control over privacy and so on to ensure adequate amenity.
- In the subject case existing bigger dwellings towards the ocean tend to block views and hem in these smaller lots having modest older houses.
- Hence the design response is to follow suit (as in suburban locales) whereby everyone is entitled to two storeys, an opportunity for upper level open space and a sharing of views, subject to design treatments.
- The greater density in terms of actual lot size means that while setbacks and other standards in accordance with the coding must be taken as allowable if meeting Acceptable Development, approval on a Performance Criteria basis is more likely to be called for.
- In other words, a degree of flexibility is necessary in such localities which invite this type of proposal, and the urban form and amenity expectations cannot be guaranteed to create a built character or lifestyle environment the same as a conventional street.
- This particular proposal represents a style similar to other recent dwellings approved in this popular part of Cottesloe.

Wall Heights

The wall heights have been significantly reduced in the revised plans. The original proposal featured a mezzanine level above the second floor, which has been deleted.

The revised plans now show a wall height of 6.346m above natural ground level at the centre of the site. The total building height is in compliance with the Town Planning Scheme. It is recommended that this fairly minor wall height variation be approved due to the slope of the block as described below.

The block slopes steeply from the front down to the rear and the development is stepped down in accordance. The proposed wall heights are well sunken from the street and the floor to ceiling heights are not excessive. Therefore the additional wall

height of 0.346m in excess of the Scheme requirements is not seen as a negative impact or significant departure.

Privacy

The following privacy (cone of vision) setbacks of the proposed residence don't comply with the Acceptable Development standards of the RDC. The setback variations are required to be assessed under the Performance Criteria of Clause 3.8.1 (P1) of the RDC, which are:

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

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

Room	Required	Provided
Rear Balcony	7.5m	2.25m
Front Balcony	7.5m	1.47m

It is noted that there is an existing upper level rear balcony which is completely open, and although comparatively small does not comply with today's privacy requirements, whereas the proposed balcony must be assessed against current standards. The proposal asks for a variation to the rear balcony's cone of vision setbacks, given the narrow lot. It can be argued the proposal does not comply with the Performance Criteria of the RDC. This balcony on the upper floor has screening on both its northern and southern boundaries. This screening has eliminated some overlooking to the neighbour. The balcony overlooks both the southern and northern neighbours with the same 2.25m setback on a 45 degree angle. At this angle the neighbour's rear gardens can be overlooked.

It is recommended that screening from the balcony be increased so that overlooking is not possible within a 7.5m cone of vision to both boundaries.

The proposal asks for a variation to the front balcony's cone of vision setbacks. The proposal does comply with the Performance Criteria of the RDC. The balcony will overlook the neighbouring properties' front gardens. The front gardens of both the neighbouring properties on the southern and northern sides are open to the street and the cone of vision from the balcony would be similar to a person driving down the street. Therefore additional screening is not recommended.

Overshadowing

The proposal does not meet the RDC Acceptable Development provisions for overshadowing. The proposed dwelling will overshadow approximately 30.1% of the dwelling (49 Margaret Street) to the south as at noon on winter solstice whereas a maximum of 25% is recommended as per the RDC.

The setback variations are required to be assessed under the Performance Criteria of Clause 3.9.1 (P1) of the RDC, which are:

P1 Development designed with regard for solar access for neighbouring properties taking account the potential to overshadow:

- *outdoor living areas;*
- *major openings to habitable rooms;*
- *solar heating devices; or*
- *balconies or verandahs*

It can be argued the proposal does not meet the Performance Criteria of the RDC. Whilst the dwelling will overshadow some non-habitable rooms and there is overshadowing generated from the existing dwelling, the proposal will overshadow three of the windows of the neighbouring property.

Whilst this is generally not acceptable, discretion could be applied here as all two storey developments on the western side of Margaret Street are unlikely to meet the Performance Criteria. This is because of small lot sizes and the east-west orientation. This lot has a 10m width and having a second storey on a lot of this size results in overshadowing to the southern neighbour.

Boundary Setbacks

The garage is asking for a 4.5 metre setback to the front boundary. This is a variation to the requirements of the Garages & Carports in Front Setback Area Policy. The policy asks that the variation can be given if it meets the following criteria:

- (a) shall not significantly affect view lines of adjacent properties; and*
 - (b) shall maintain adequate manoeuvre space for the safe ingress and egress of motor vehicles.*
- The Council shall also have regard to:*
- (a) the objectives of the RDC;*
 - (b) the effect of such variation on the amenity of any adjoining lot;*
 - (c) the existing and potential future use and development of any adjoining lots;*
 - and*
 - (d) existing setbacks from the street alignment in the immediate locality, in the case of the setback from the principal street alignment.*

The proposal does not significantly affect view lines of adjacent properties. It will also improve the ingress and egress of motor vehicles. This is due to the proposed reduced slope of the driveway.

The garage meets the objectives of the RDC, and should not affect the amenity of the adjoining lot or deter future development on adjoining lots.

The proposal will create some additional overshadowing to the neighbour's front yard, however, this is unlikely to be used as a primary active habitable space due to the small size of the area. The existing setbacks in the locality are approximately 6m, however, the lot sizes are generally less than 400m² and future redevelopment of neighbouring properties may be expected. It is recommended this setback variation be supported.

Whilst, the following side boundary setbacks don't comply with the acceptable development standards of the RDC. The above setback variations are required to be assessed under the Performance Criteria of Clause 3.3.1 (P1) & 3.3.2 (P2) of the RDC which are:

Wall ID	Wall Name	Wall Height	Wall Length	Major Openings	Required Setback	Actual Setback
GROUND SOUTH	Garage	2.6-3.5m	6.29m	no	1m	0.03m
GROUND SOUTH	Guest Room/Bath	4m	9m	no	1.1m	0.970m
GROUND SOUTH	All	2.6m-4m	24m	yes	4.5m	2.6m
GROUND NORTH	Cellar	3m	7m	no	1m	0.03 to 1.5m
UPPER SOUTH	Kitchen to rear balcony	6.5m	11m	no	1.5m	1.47m
UPPER SOUTH	All	6.5m	24m	no	2.7m	2.56m
UPPER SOUTH	Balcony	6m	4m	yes	2.8m	1.2m
UPPER NORTH	Office	5m	4m	no	1.1m	0.03m

3.3.1 – Buildings Set back from the Boundary

P1 Buildings set back from boundaries other than street boundaries so as to:

- *Provide adequate direct sun and ventilation to the building*
- *Ensure adequate direct sun and ventilation being available to adjoining properties;*
- *Provide adequate direct sun to the building an appurtenant open spaces;*
- *Assist in ameliorating the impacts of building bulk on adjoining properties; and*
- *Assist in protecting privacy between adjoining properties.*

3.3.2 – Buildings on the Boundary

P2 Buildings built up to boundaries other than the street boundary where it is desirable to do so in order to:

- *make effective use of space; or*
- *enhance privacy; or*
- *otherwise enhance the amenity of the development; and*
- *not have any significant adverse effect on the amenity of the adjoining property; and*
- *ensure that direct sun to major openings to habitable rooms and outdoor living areas of adjoining properties is not restricted.*

The ground south garage wall is proposed to be setback 30mm. The RDC allows one parapet wall per dwelling in a R20 coded area. This application proposes two parapet walls, therefore the garage could be asked to be setback 1m. However, the wall meets the Performance Criteria of the RDC because it enhances privacy between neighbours as overlooking is not possible. It also makes effective use of space. The garage itself does not block sun to habitable rooms of the adjoining properties;

however, it will overshadow some of the southern neighbour's front garden. As the lot is narrow and two car bays are required, it is recommended that the garage be allowed on this boundary.

The length of the ground south wall which extends from the guest room to bathroom is proposed to be setback 0.97m where the required setback is 1.1m. The setback partially meets the Performance Criteria of the RDC as privacy is not an issue as there are no major openings from this wall. It can be argued that the proposal will still provide direct sun and ventilation to this property and the adjoining neighbour. It is recommended that this minor variation be granted.

The length of the entire ground south wall is required to be assessed in accordance with Figure 2D of the RDC as there are two or more portions of this wall without a major opening. The proposal has its greatest setback at 2.56m as opposed to the RDC requirement of 4.5m. It can be argued that the wall is punished by the RDC as a majority of the length of wall is 3.5m in height or less from NGL. A 3.5m wall height and 24m wall length would require a 1.5m setback. It is recommended that this variation be granted as the wall will not adversely affect the sun and ventilation to this property and the southern adjoining property. The setbacks also do vary along this elevation which ameliorates any bulk impacts.

The ground north cellar wall is proposed to be setback 30mm to 1.5m. The RDC allows one parapet wall per dwelling in a R20 coded area. This application proposes two parapet walls, therefore, the cellar could be asked to be setback 1m. It is not important that the wall will provide adequate sun and ventilation to the building as it is a partially sunken cellar being only 1.5m above NGL at the boundary. Because the wall is on the northern elevation it will not affect the sun penetration or the amenity of the neighboring property to the north. Therefore, the wall meets the Performance Criteria of the RDC.

The upper south kitchen to rear balcony wall is setback 1.47m where 1.5m is required by the Acceptable Development Provisions of the RDC. It is recommended that this minor variation be granted on performance as the wall will still provide privacy and ventilation to this property and adjoining properties.

The length of the entire upper south wall is required to be assessed in accordance with Figure 2D of the RDC as there are two or more portions of this wall without a major opening. The proposal has its greatest setback of 2.56m as opposed to the RDC requirement of 2.7m. This wall enhances privacy between neighbours as there are no major openings, ventilation is still provided to this property and adjoining properties and it can be argued that the changing setbacks along this length of wall assists to ameliorate building bulk on adjoining properties. It is recommended that this variation be granted.

The front balcony should be setback 2.8m from the southern boundary in accordance with this Clause of the RDC. It is proposed to be setback 1.2m. However, it meets the Performance Criteria of the RDC except for privacy. This is discussed in the privacy section of this report.

The upper north office wall is located above the cellar. It is a parapet wall proposed 0.03m off the boundary; the Acceptable Development Provisions of the RDC require

it to be setback 1m. This wall whilst being on the upper floor is only 4m above NGL at the boundary. This is because of the split level design of the home. Because the wall is on the northern elevation it will not affect the sun penetration or the amenity of the neighboring property to the north. Therefore, the wall meets the Performance Criteria of the RDC. The northern neighbour did not object to this wall.

CONCLUSION

The issues of building bulk and privacy have been raised by neighbouring properties and the application does comply with open space requirements. The split level design of the home reduces the cut and fill required on site and this is recommended in our 'Building Heights' policy. The proposal has also been redesigned to reduce amenity concerns to the southern neighbour.

Apart from the two parapet walls proposed, it is considered that the proposed dwelling has been well designed in harmony with the small, sloping lot. It is recommended that the application be approved subject to conditions

VOTING

Simple Majority

11.1.5 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Furlong, seconded Cr Strzina

That Council:

- (1) GRANT its Approval to Commence Development of a two-storey dwelling at No. 51 Margaret Street, Cottesloe, in accordance with the revised plans received on 12 June 2006, subject to the following conditions:**
 - (a) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13. - Construction Sites.**
 - (b) The external profile of the development as shown on the approved plans not being changed whether by the addition of any service plant, fitting, fixture or otherwise, except with the written consent of Council.**
 - (c) Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve, rights-of-way or adjoining properties and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the Building Licence plans.**
 - (d) The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining or nearby neighbours following completion of the development.**
 - (e) The finish and colour of the boundary walls facing the neighbours being to the satisfaction of the Manager Development Services.**

- (f) Air conditioning plant and equipment is to be installed as far as practicable from the boundary of adjoining properties or in such a manner as to ensure that sound levels emitted from equipment shall not exceed those outlined in the Environmental Protection (Noise) Regulations 1997.
 - (g) The applicant applying to the Town of Cottesloe for approval to construct a crossover, in accordance with Council specifications, as approved by the Manager Engineering Services or an authorised officer.
 - (h) The existing redundant crossover in Margaret Street being removed and the verge, kerb and all surfaces made good at the applicant's expense to the satisfaction of the Manager Engineering Services.
 - (i) Revised plans are to be submitted to the satisfaction of the Manager Development Services showing the rear balcony provided with additional screening in accordance with the Residential Design Codes requirements to prevent overlooking to neighbouring properties within a 7.5m cone of vision.
- (2) Advise submitters of the decision.

Carried 9/1

11.1.6 NO. 55 (LOT 74) GRANT STREET – AMENDMENT TO FRONT FENCE

File No:	55 Grant Street
Attachments:	Location plan Correspondence from owner Correspondence to owner Plans Photos
Author:	Mr Lance Collison
Author Disclosure of Interest:	Nil
Report Date:	12 July 2006
Senior Officer:	Mr Andrew Jackson
Property Owner:	Mrs E Cunningham
Applicant:	As above
Date of Application:	12 July, 2006
Zoning:	Residential
Use:	P - A use that is permitted under this Scheme
Density:	R20
Lot Area:	593m2m²
M.R.S. Reservation:	N/A

SUMMARY

Council is in receipt of an application for an amendment to an existing front and side boundary fence.

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

STATUTORY ENVIRONMENT

- Town of Cottesloe Town Planning Scheme No 2
- Residential Design Codes
- Fencing Local Law

POLICY IMPLICATIONS

N/A

HERITAGE LISTING

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

APPLICATION ASSESSMENT

AREAS OF NON-COMPLIANCE

Town Planning Scheme Policy/Policies

Policy	Required	Provided
Fencing Local Law	Open aspect front fence	Reduced open aspect

STRATEGIC IMPLICATIONS

N/A.

FINANCIAL IMPLICATIONS

N/A.

CONSULTATION

REFERRAL

Internal

- Building

External

N/A.

ADVERTISING OF PROPOSAL

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

The advertising consisted of:

- Letter to Adjoining Property Owner

Submissions

There was 1 letter sent out. No submission was received.

BACKGROUND

The site is on the south-eastern corner of Grant and Marmion Streets adjacent to the new roundabout and opposite a drainage sump and Daisies deli. A new single-storey dwelling was approved on 20 December 2004 and is now built.

A planning approval for combined solid and open aspect front and side fencing was granted on 9 November 2005 with the following condition:

To more fully comply with the Fencing Local Law, the open aspect section of the fence to Marmion Street shall extend to the built setback line of the northern face of the al fresco area.

It also contained the following footnote:

In the interest of streetscape, the applicant is encouraged to consider continuing the open aspect section of the fence along Marmion Street, such as to the northern face of the living room or even further, and to introduce pillars that are more slender, ie 400-450mm wide rather than 600mm wide, to both street elevations.

After liaising with Officers, the owner by letter dated 5 December 2005 requested minor amendments to the approval in accordance with the objectives of the above footnote. The Manager Development Services agreed to this, which included gaining an open-aspect section along the Marmion Street side fence to break-up its mass and improve the streetscape – refer attached reply.

A section of solid front fence which exists from the original house has been retained and is located on the Grant Street (front) elevation towards the eastern side. The December 2005 approval was for the remaining front fence as well as side fencing facing Marmion Street. The side fencing behind the setback line to Grant Street is exempt from the Local Law open-aspect requirement, however, the applicant agreed to make a section of this fence open-aspect.

The approved fencing is under construction and the open-aspect sections remain to be completed. This current application is an amendment only to the proposed infill panels. It seeks to install horizontal slats in the open-aspect sections of the fence with a reduced degree of open-ness (gaps). The owners recently moving into the property and have found that the Local Law specification for open-aspect to infill panels is unlikely to provide privacy and amenity adequate to their needs. Their letter is attached.

STAFF COMMENT

Details of proposal and Local Law

The proposal is for 50mm high horizontal slats with 20mm gaps, to the five open-aspect sections between 900mm and 1800mm above NGL at the boundary.

The Fencing Local Law specifies:

(c) the infill panel above 900mm shall be open timber, wrought iron, steel or aluminum palings, or a material approved by the Building Surveyor, spaced to ensure the width between each paling is at least equal to the width of the paling, with a minimum space of 50mm and a minimum open aspect of 50% of the infill panel ...

The proposal does not satisfy this specification and seeks a variation. This is able to be assessed against criteria for discretion under the Local Law, which asks whether the proposal would have an adverse effect on:

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

Assessment

- The amenity of the property is constrained due to being at a busy location with the distributor roads, roundabout and local businesses opposite, whereby it is exposed to associated impacts.
- The outlook, while generally pleasant, is also impacted by the sump to the median in Grant Street and parking for the deli and realtor.
- The new dwelling is a low-key single-storey structure which blends into the area effectively.
- It appropriately takes advantage of the front yard for good northern exposure, uses the ROW for vehicular access and even addresses the side street as the main entrance.
- There is a pattern of a fair number of solid, high walls and front fences in the vicinity, partly historical and partly for amenity purposes, hence the form of the subject fencing is consistent with the locality.
- In this context there is obviously a need to strike a balance between the amenity of the residence and urban design.
- On the one hand the property requires reasonable privacy, security and useable outdoor space, as well as buffering from traffic, activity and noise.
- On the other hand it is expected to make a positive contribution to the streetscape, with an attractive interface.
- The applicant has provided a plausible rationale to justify the variation, based on their experience so far.
- However, it is apparent that the Local Law extent of open-aspect has not even been trialled, that landscaping may provide screening and that window treatments are an option, whereby the Local Law standard may actually be sufficient.
- It is also conceivable that vertical slats would perform better in terms of blocking lights from vehicles, as they may deflect light from the sideways movement, whereas a horizontal opening would allow glare to penetrate as a continuous line.
- The more solid infill panels may restrict surveillance somewhat, although there would be a view over the fence.
- Architecturally, horizontal slat fencing tends to have closer gaps, as demonstrated in contemporary homes around Cottesloe, and the look of this style can be appreciated.
- While strictly-speaking not in compliance with the Local Law, such fencing does provide relief from truly solid fencing, affording texture, colour differentiation and materiality, which ameliorate mass and assist streetscape appearance.
- On this basis the proposal would read as logical and aesthetic.

CONCLUSION

Given the above assessment it is concluded that, overall, the proposed amended infill-panels may be supported as a reasonable compromise in the circumstances and recognising the needs as well as urban design positives of this residential development.

VOTING

Simple Majority

11.1.6 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Furlong, seconded Cr Strzina

That Council GRANT its Approval to Commence Development for the amended open aspect infill panels to the approved front and side fences at No. 55 (Lot 74) Grant Street, Cottesloe, in accordance with the plans submitted on 21 April 2006.

Carried 9/1

11.1.7 NO. 9 (LOT 107) CHAMBERLAIN STREET – ALTERATIONS & ADDITIONS TO EXISTING RESIDENCE

File No: 9 Chamberlain
Attachments: Location plan
Photos
Plans
Author: Stacey Towne
Author Disclosure of Interest: Nil
Report Date: 10 July, 2006
Senior Officer: Andrew Jackson

Property Owner: Kerry Tudori

Applicant: James Edwards
Date of Application: 10 July, 2006

Zoning: Residential
Use: P - A use that is permitted under this Scheme
Density: R20
Lot Area: 506m²
M.R.S. Reservation: N/A

SUMMARY

It is proposed to extend and enclose a verandah at the rear of the existing two storey residence at No. 9 Chamberlain Street. It is also proposed to carry out minor alterations to the family room and kitchen and construct a built-in barbeque on the south side boundary line.

Current development on the site overshadows the adjoining property to the south by 30%, which is already 5% greater than the Acceptable Development Standard for overshadowing under the Residential Design Codes.

The proposed verandah enclosure will further overshadow the adjoining property by 0.3% (1.6m²) which is considered negligible; however, the design of the roof line has been amended to ensure a minimal shadow impact.

The proposed barbeque includes the construction of a brick wall on the southern side boundary with returns.

An objection has been received from the adjoining property owner in relation to the overshadowing and the location of the barbeque area.

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

PROPOSAL

It is proposed to enclose the existing 3.16m x 7.5m verandah at the rear of the residence by building a new limestone wall on the northern side, cedar bi-fold doors on the northern side, and bi-fold doors and louvres on the western side.

The existing pergola beams over the verandah are to be replaced by metal roof sheeting at a single pitch of 5 degrees. The original application showed a roof pitch of 8 degrees with a longer overhang. The roof pitch and overhang were later reduced, following liaison with the applicant in response to a submission received from the adjoining neighbour.

It is also proposed to remove existing windows and doors from the family room and kitchen to provide a connection with the newly enclosed area.

A 3.51m long brick wall is proposed on the southern common boundary adjacent to the enclosed area, with returns at right angles at each end. The wall is proposed at 1.8m high on the side of the subject property (ie, standard dividing fence height), however, the height from the side of the adjoining neighbour's property is 2-2.1m. The wall is to form an area for the installation of a built-in barbeque.

No changes are proposed to the existing finished floor levels of the enclosed area or the barbeque area, which are already raised to match the floor level of the existing residence. The property slopes downwards from the front to the rear and the ground floor level of the existing residence involves equal amounts of cut and fill, with raised levels being the result at the rear.

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

N/A.

HERITAGE LISTING

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

APPLICATION ASSESSMENT

AREAS OF NON-COMPLIANCE

Residential Design Codes

Design Element	Acceptable Standards	Provided	Performance Criteria Clause
No 3 – Boundary Setbacks	North side wall to be set back 1.5m from the northern side boundary	1m (to match existing setback)	Clause 3.3.1 – P1

Design Element	Acceptable Standards	Provided	Performance Criteria Clause
No 9 – Design for Climate	25% maximum overshadow of adjoining property at midday, 21 June	30.3% (30% existing prior to proposed development)	Clause 3.9.1 – P1

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

CONSULTATION**REFERRAL****Internal**

- Building

External

N/A.

ADVERTISING OF PROPOSAL

The Application was advertised as per Town of Cottesloe Town Planning Scheme No 2 and Residential Design Codes.

The advertising consisted of:

- Letter to Adjoining Property Owners

Submissions

There were 2 letters sent out. There was 1 submission received, which was an objection. Details of the submission received are set out below:

7 Chamberlain Street – Donna Dean

- *The existing building overshadows my property by 30% and the proposed new development would make that 31%. The existing overshadowing is already unacceptable, an additional 1% loss of my north sun would be intolerable.*
- *Concerned that the south wall of the proposed new patio addition is glass and that a BBQ is to be built against my boundary wall. The applicant has previously expressed concern that from some parts of the top floor of my house I can see into this proposed room therefore it may be more sensible for the south wall to be solid and the proposed glass doors and BBQ to be sited on the north side.*

In response to the submission, the applicant writes:

- *The owners have agreed to reduce the roof pitch which means that less shadow will cast on the neighbouring property.*

- *We have reduced the shadow cast by more than 50% of the additional area that was originally proposed and it is now only 0.3% more than existing shadow.*
- *This is a very minor amount and should not cause any loss of amenity for the southern neighbour and does not cast any shadow over the neighbour's house.*
- *We investigated moving the barbeque to the north side, however, available space is much narrower and is further from the kitchen than desired. A mobile barbeque is currently located in the same spot as the proposed built-in one and should not make any difference to the neighbour.*
- *The client is also keen to keep the glazing on the northern side.*
- *The amendments have been carried out in the interest of co-operating with the neighbour comments.*

STAFF COMMENT

Side Setback

The following variations are being sought to the setback requirements for the building on the north side:

Wall ID	Wall Name	Wall Height	Wall Length	Major Openings	Required Setback	Actual Setback
NORTH SIDE	New addition	3.35m average	Entire side of house length – 20m	Yes (in existing part of house, but not in addition)	1.5m	1m (to match existing)

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

“P1 Buildings set back from boundaries other than street boundaries so as to:

- *Provide adequate direct sun and ventilation to the building;*
- *Ensure adequate direct sun and ventilation being available to adjoining properties;*
- *Provide adequate direct sun to the building and appurtenant open spaces;*
- *Assist with the protection of access to direct sun for adjoining properties;*
- *Assist in ameliorating the impacts of building bulk on adjoining properties; and*
- *Assist in protecting privacy between adjoining properties.”*

The above variation meets the Performance Criteria of the Codes. The alignment of the new wall is consistent with the existing wall of the residence and as this wall is located on the northern side of the property, it will have no effect on access to sunlight of the adjoining neighbour.

The building setback on the southern side of the property complies with the Acceptable Development Standards of the Codes.

Overshadowing

The existing two storey residence at No. 9 Chamberlain Street currently overshadows the adjoining property at No. 7 Chamberlain Street by 30%. Under the Acceptable Development Standards of the Residential Design Codes, overshadowing of up to 25% is permitted.

The existing deck currently has a pergola structure, however, the enclosure and roofing of this area will increase the shadow over the adjoining property at No. 7 Chamberlain Street by 0.3%, or 1.6m².

Performance Criteria Clause 3.9.1 of the RDC states the following:

“Development designed with regard for solar access for neighbouring properties taking into account the potential to overshadow:

- *Outdoor living areas;*
- *Major openings to habitable rooms;*
- *Solar heating devices; or*
- *Balconies or verandahs.”*

The additional overshadowing caused by the proposal will fall over the outdoor living area of the neighbouring property, however, the amount of shadow is considered to be very marginal and to have minimal additional effect.

The applicant has made an effort to address the problem of overshadowing by amending the original plans submitted. The roof has been designed with a lower pitch and the roof overhang has been reduced. The proposal as amended is supported.

Barbeque Area

There is no proposal to increase the height of the existing colourbond fence on the southern boundary, however, it is proposed to replace a 3.51m section of this fence with a rendered brick wall for a built-in barbeque area.

The neighbour at No. 7 Chamberlain Street has expressed concern regarding the location of the barbeque area so close to the common boundary. The outdoor living area for the neighbour adjoins this common boundary.

Relocation of the barbeque was discussed with the applicant, however, the preference is to have the barbeque near the kitchen and to formalise the existing location of the portable barbeque which is currently situated there. Further, to the extent that it is accessible from a habitable room, this area is in accordance with the RDC.

It is observed that No. 9 Chamberlain Street is not a particularly small or narrow lot with limited space for outdoor living. Alternative locations for the barbeque in the rear yard could be considered in terms of the amenity of the neighbour to the south, however, the Scheme, RDC and Policy do not expressly regulate barbeques.

The general principles of amenity reflected in the Scheme and RDC indicate that open space should, while on the one hand provide for the needs of the occupants, on the other hand also take into account amenity considerations, such as quiet, fresh air,

solar access and privacy. Also, the trend to closer development on smaller lots and infill housing can force open spaces to be adjacent and today's lifestyle and residential design fashions seek to maximise planned open space with entertainment areas, spas, conversation pits, outdoor kitchens and so on.

The difficulty is that there are no prescriptive standards for this, so domestic open space may have pools, trampolines, cubby houses, barbeques and so on placed almost anywhere, including close to or on a boundary, virtually as of right.

These facilities can, however, be a source of nuisance in terms of noise, visually, etc, and a barbeque may cause problems such as activity, smell and smoke, and would need to be fire-rated. What happens if not carefully designed and utilised is that neighbour impacts can arise which may lead to disputes or complaints, and are essentially a social matter rather than something the local government can enforce through the planning process.

The area proposed to be used for the built-in barbeque is already being used for this activity, with the use of a portable barbeque. The proposal will formalise this activity, which suggests a technical assessment of the area as habitable space, however, this development complies with the visual privacy standards of the RDC which is the focus of such.

The area around the proposed barbeque benchtop has a restricted space of 0.8m x 3.51m (2.91m²) which would not readily allow for more than one or two persons to congregate and would not encourage lengthy periods of social gathering, which could otherwise affect the amenity of the adjoining neighbour.

In conclusion, the built form of the proposed barbeque area will not alter the existing situation currently provided by the common boundary fencing and the level of activity around the barbeque area is unlikely to increase because of the restricted space and the fact that the portable barbeque is already being used in this location. The proposed built-in barbeque is therefore supported.

Open Space

The proposed development complies with the Residential Design Codes Acceptable Development Standards for open space.

CONCLUSION

The proposed alterations and additions comply with the Acceptable Development Standards of the R-Codes in terms of privacy and open space. Variation is being sought to the northern side building setback, which complies with the Performance Criteria.

The existing development currently exceeds the Acceptable Development Standard for overshadowing by 5% and the new development (enclosure of the existing verandah) will increase this by a further 0.3%, and the adjoining neighbour to the south has expressed concerns regarding this. The applicant has amended the plans for the new roof to keep the shadow to a minimum. The marginal increase of shadow is not considered to adversely affect the neighbour and this aspect of the application is supported.

Neighbour concerns regarding the location of a built-in barbeque adjoining the common boundary have been duly considered, however, there is no statutory or policy requirement to restrict the siting of the barbeque as proposed, which does not seem unreasonable in itself. In any event, the area is already being used for this activity (portable barbeque) and the small space available around the barbeque bench top will be prohibitive to intensive social activity, hence the built-in barbeque as proposed is supported.

VOTING

Simple Majority

11.1.7 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Furlong, seconded Cr Strzina

That Council:

- (1) GRANT its Approval to Commence Development for the Alterations & Additions to Existing Residence at No 9 (Lot 107) Chamberlain Street, Cottesloe. In accordance with the plans submitted on 26 June 2006, subject to the following conditions:**
 - (a) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 – Construction Sites.**
 - (b) Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve, rights of way or adjoining properties and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the Building Licence plans.**
 - © The external profile of the development as shown on the approved plans not being changed whether by the addition of any service plant, fitting, fixture, or otherwise, except with the written consent of Council.**
 - (d) The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining or nearby neighbours following completion of the development.**
 - (e) The pitch of the roof over the verandah enclosure being a maximum of 5 degrees and this detail being shown on the Building Licence plans.**
- (2) Advise the submitter of this decision.**

Carried 9/1

11.1.8 31 BOREHAM STREET - REQUEST FOR DENSITY INCREASE

File No:	31 Boreham Street
Attachments:	Location plan
	Correspondence from owner
	Tax map plan
	Photos
Author:	Ms Delia Neglie
Author Disclosure of Interest:	Nil
Report Date:	14 June 2006
Senior Officer:	Mr Andrew Jackson

SUMMARY

The subject property is zoned Residential R20 under Town Planning Scheme No. 2 (TPS) and is proposed to remain so under draft Town Planning Scheme No. 3 (TPS3).

The landowner is requesting that Council consider an amendment to Town Planning Scheme No. 2 and increase the density of the property to R25 on the basis of its shape, size and location.

The proposal is not recommended at this stage and would be better dealt with under the scheme review process.

STATUTORY ENVIRONMENT

- Town Planning Scheme No. 2.
- Draft Town Planning Scheme No. 3.

POLICY IMPLICATIONS

While the proposal has no specific connection to existing policy, the notions of character area and streetscape policies suggests that density increases and closer developments should not occur out of context.

STRATEGIC IMPLICATIONS

Council has viewed draft TPS3 as the vehicle for consideration of density changes, being on a wider basis and providing for public consultation – usually as a new scheme is advanced the decision-making authorities are less inclined to entertain amendment of the current scheme if the proposal involves more strategic aspects.

Generally, one-off or spot re-zonings or re-codings are not contemplated outside a broader review and they also tend to raise considerations of efficiency and equity in making such changes.

FINANCIAL IMPLICATIONS

Nil.

BACKGROUND

The landowner wrote to Council on 23 March 2006 requesting that the density of 31 Boreham Street be increased to R25. A reply was forwarded dated 5 April 2006 advising:

Draft Town Planning Scheme No. 3 proposes to retain the density of 31 Boreham Street, and the surrounding area, as Residential R20. The Scheme proposes to increase densities in only a few limited areas and Council was reluctant to pursue any further increases at this time.

You could further pursue your proposal by making comment during the forthcoming formal advertising period of draft Town Planning Scheme No. 3.

Alternatively, you could request Council to consider an amendment to existing Town Planning Scheme No. 2 on the basis of your consideration that the shape and location of the property may lend itself to subdivision. Council however does not generally support the rezoning of individual lots (spot zoning).

Overall, in view of the recent considerable thought Council has given to the question of residential densities in the area and district generally, and the adoption of draft Town Planning Scheme No. 3, it would seem unlikely that Council would support your request at this time.

The landowner now asks that his request be reconsidered. The reasons put forward in support of the proposal are:

Our property being a corner block lends itself very well for a north/south subdivision. When you consider the street pattern, this subdivision would provide two lots that continue the rhythm of the street pattern, i.e. approximately 15m frontages and the development of two houses facing Boreham Street would reinforce this pattern and it would not be discernable that two new houses are sitting on small lots. The two residences on Lot 44 are both 350 square meters with frontages of only 7.5m and no doubt they will be sold and demolished in the very near future, especially number 27 which is in a very bad state of repair. It is interesting to note that those houses are numbered 25 and 27, and our house is numbered 31, so it appears many years ago that our property was destined to be subdivided, but this did not occur and consequently number 29 did not happen.

As long-term residents of Cottesloe, we do not wish to move and as our property is large for our stage of life we now wish to downsize and actively seek your support to have our property rezoned to R25. If successful with rezoning of our property we intend to build two quality homes one of which my wife and I will live in.

COMMUNITY CONSULTATION

Consultation would occur if an amendment was initiated. However, the consultation undertaken for draft TPS3 did canvass such proposal with both the community and Council. The outcome was that there was insufficient support at present for any density increase for the locality.

OFFICER COMMENT**Residential Design Codes**

The R-Codes require an average/minimum site area of 500sqm per dwelling in an R20 area and 350sqm per dwelling in R25. The subject site has a land area of 715sqm which would require a density of R25 in order to allow two dwellings.

Location and Street Pattern

The requester's rationale that the corner location and shape of the lot lend themselves to a higher density has merit. The adjacent street corner of Gordon and Edward Streets has recently been subdivided and was the subject of a Scheme amendment resulting in a small pocket of R25 to facilitate conservation of the old church building, although this was seen as a special case and necessary technicality to facilitate the heritage objective rather than a deliberate density increase. Subdividing the subject lot with frontages to Boreham Street would continue this street pattern.

Draft TPS3

Council's consideration of densities as part of the scheme review process so far resolved that the density coding for this area should remain at R20.

Within the Cottesloe community there is a general view that increased densities may prejudice the amenity and lifestyle of the suburb. Under the review the location and extent of increased densities was selected on a very specific basis to reflect lot sizes and the character of areas where the local community has largely been supportive of an increase.

This was not the case for this existing R20 location. The precinct forum held in May 2005 for Precinct Six resulted in an equal number of those who disagreed to those who agreed to the question of higher densities. Both groups were concerned about public open space – those opposed felt there was not enough to support a higher density and those in favour wanted to ensure that more would be created.

In this part of Cottesloe some further sites were also raised by owners for consideration for density increases but these did not proceed, one because it was another spot-coding and one because other owners in the vicinity did not agree.

However, TPS3 will undergo a full public comment period following consent to advertise. It also may well be that the WAPC and Minister seek some density increases to be explored and advertised for certain areas.

Conclusion

The aspirations of the requester can be appreciated and the density increase may have some merit in itself, however, the proposition demands a more detailed and thorough examination in order to be justified and density increases are usually intrinsically applied to wider areas such as development areas or definable precincts.

In light of the process for and content of TPS3 to date, it would be premature to consider an amendment to TPS2 to increase the density of the subject land in isolation. Furthermore, such a proposal should appropriately be considered as part of a wider review in a strategic context and in accordance with the associated public consultation process.

VOTING

Simple Majority

11.1.8 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Furlong, seconded Cr Strzina

That Council ADVISE the landowner of 31 Boreham Street, Cottesloe, that Council is not prepared to consider an amendment to Town Planning Scheme No. 2 to increase the density of that property at this time, and there will be the opportunity to pursue such a proposal during the future public advertising period for draft Town Planning Scheme No 3.

Carried 9/1

11.1.9 NO. 305 MARMION STREET - DAISIES - CAR PARKING SOLUTION

File No:	303 & 305 Marmion Street
Attachments:	Location plan
Author:	Ms Delia Neglie
Author Disclosure of Interest:	Nil
Report Date:	14 June 2006
Senior Officer:	Mr Andrew Jackson

SUMMARY

In May 2006 Council resolved that the history of parking requirements for *Daisies* delicatessen at 305 Marmion Street, particularly any unmet planning condition, be investigated given concern regarding changes to on-street parking resulting from the installation of a roundabout at the intersection of Grant and Marmion Streets.

Under Town Planning Scheme No 2 *Daisies* has a non-conforming use right as a shop. There was no requirement to provide on-site parking until 1994, when an application to extend the floor area of the shop was approved with a condition that 5 on-site car bays be provided. This condition was never met owing to various negotiations over several years between Council and the proprietors to provide alternative parking on the Grant Street median.

It is recommended that Council revive liaison and consider works to improve parking in the interests of the amenity of the locality and to foster the aim of the retention of such local shops as *Daisies* which provide a community focus.

STATUTORY ENVIRONMENT

Town Planning Scheme No. 2

POLICY IMPLICATIONS

Council's *Parking – Residential* Policy, which mainly controls verge parking, is partially applicable to this case, as follows:

PARKING – RESIDENTIAL

OBJECTIVE

To encourage property owners to provide sufficient on-site parking.

To minimise vehicle damage to road verges.

To provide guidelines for temporary parking areas on road verges where conventional on-site parking cannot be achieved.

PRINCIPLE

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

The thrust of this policy is applicable to *Daisies* although the site is not residential *per se*. The gist is that parking provision and management is desirable and responsible.

STRATEGIC IMPLICATIONS

Parking is a basic consideration of land use and development control, for reasons of traffic management and safety, convenience and amenity, as well as supporting local businesses both economically and socially.

Sufficient and efficient parking is desirable for activities to function effectively. Council's strategic outlook, planning instruments and policy measures all seek to achieve this end.

FINANCIAL IMPLICATIONS

There would be a cost should Council choose to improve the Grant Street median.

BACKGROUND

On 22 May 2006 Council considered a complaint regarding changes to verge parking arrangements at Marmion Street, corner of Grant Street (adjacent to *Daisies*), following the installation of the roundabout at this corner. It was resolved:

That Council:

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

The property file for *Daisies* establishes clearly that this shop has non-conforming use rights and may continue. The development history regarding parking arrangements is as follows:

December 1994

Alterations to existing shop granted planning approved subject to conditions, including:

- (d) Revised plans shall be submitted for approval by the Development Control Officer, such plans shall show:*
 - (i) the provision of on-site car parking spaces;*
 - (ii) following discussions with the abutting property owners in Grant Street, a detailed layout of the proposed car parking design; and*
 - (iii) details of proposed paving and drainage.*

- (f) *The hours of operation of the shop are restricted to 6:00am to 10:00pm.*

The retail floor area was to be increased from 53sqm to 109sqm. It was noted that 21 car bays were required for both shops (the adjoining shop at 303 Marmion Street was then used as a butcher shop) and the increase in floor space required an additional 5 bays. No on-site parking was available.

23 August 1995

Council resolved to advise the proprietors of a number of outstanding obligations including that they must comply with condition (d) of the abovementioned planning approval. A memo notes as follows:

- *This reminder was prompted by a complaint regarding an unauthorised refrigerated container. It had been negotiated that the building licence subsequent to the above planning approval be issued in two stages. Stage 1 for the cool room and retail areas was issued. Work for the kitchen, office and storeroom, including fulfilling the car parking condition was to be part of Stage 2 and was still pending (this was also necessary to fulfil Health requirements).*
- *The applicants had discussed with Council Officers the possibility of contributing towards the cost of upgrading the car parking areas located in the Grant Street median strip (then occupied by recycling bins) but this went no further. The Works Committee had resolved to investigate upgrading this area.*
- *Also, the issue of using the rear yard of 305 Marmion Street for on-site car parking was suggested by the applicant on the original plan, dated 18 November 1994. This also went no further.*

October 1995

Council wrote to the business owner on 3 October 1995 requesting a response to the requirement for conditions to be fulfilled in accordance with the 23 August 1995 resolution.

A response was received dated 18 October 1995 and with regard to the parking condition the proprietor responded as follows:

...it was inappropriate for us to go to the time and expense of submitting plans for what we see as inappropriate parking for the following reasons:

- (a) *there are four bays in Marmion Street in front of the property, and four bays on the side of Daises in Grant Street;*
- (b) *we consider the current arrangements as ample for the area zoned residential non-conforming use;*

- (c) *we have already spent in excess of \$60,000 on renovating and beautifying. The business simply cannot afford the expense of employing draftsmen and alike let alone new car bays.*

If you wish to have more parking we consider that the median strip adjacent to Daisies is ideal for this purpose. The median strip could be cleared and paved with angle parking bays. We consider that it is appropriate for the Council to provide these parking bays, for the following reasons:

- (a) the median strip is Council land, and is in poor condition;*
- (b) it is the perfect position for further parking, if any is required; and*
- (c) we have already expended considerable money which has benefited the community and its needs. We submit that the Council to date has not spent any monies in assisting us to beautify this area of its jurisdiction and this is an ideal opportunity for both us and Council to work towards our common goal.*

We refer to point 2 in your planning consent dated 22 December 1994 and enquire as to the progress of the Works and Special Projects Committee in their consideration of the "poor condition" of the Grant Street median strip.

This reply was considered by Council on 22 November 1995. It was resolved to invite the business owners of *Daisies* to attend a special meeting of the Development Services Committee and interested Councillors to discuss the various issues with the operation of *Daisies*.

March 1996

- A subsequent meeting was arranged for 2 February 1996 (delay due to a Councillor being overseas). A resultant letter to the business owners dated 1 March 1996 referred to outstanding matters discussed at the meeting and included:

Providing details to Council further to your Development Consent in respect of:

- *a detailed layout of the provision of on-site car parking spaces;*
 - and*
 - *details of proposed paving and drainage.*
- Details were required to be submitted by 15 March 1996, otherwise notice would be served.
- Plans with that date were submitted and showed four on-site parking bays with access from Grant Street.
- There is no follow-up information of approvals to this on file, although there is an Officer note regarding a site inspection carried out which observed that the rear yard was fenced off and no on-site parking had as yet been provided.

1999

- Letter from business owners dated 11 April 1999 received in which reference is made to letters sent to Council dated 15 March 1996, 10 August 1998 and subsequent conversations and meetings with Officers regarding parking in the Grant Street median. The business owners proposed that *if the Town of Cottesloe were to seal this area as per other car-park areas in the municipality, we at Daisies of Cottesloe would landscape, beautify reticulate and maintain this facility, at our own expense.*
- Council considered this at its April meeting and resolved that:
 - (1) *Subject to Mr Torre agreeing to pay the full cost, Council engage consulting engineers to investigate design concepts and cost estimates for the construction of five parking bays on the Grant Street median; and*
 - (2) *Council advise Mr Torre that on receipt of the design concept and estimates, Council would be willing to enter into negotiations for a contribution toward the capital cost of constructing the additional car park.*
- The business owner was advised of this (letter 4 June 1999) and that a concept plan would cost \$400, and requested to advise if they agree to pay that, which they did (letter also dated 4 June 1999). The money was paid and a receipt provided.
- An estimated construction cost of \$13,000 for the car parking was advised. Officers recommended to the Works Committee that the concept plan be received and the proprietors of *Daisies* be invited to comment on the design and requested to advise the amount they are prepared to contribute.
- The Committee recommended referring the matter to the Development Services Committee because other Cottesloe businesses have had cash in lieu of parking requirement imposed on them.
- At its July meeting Council resolved:
 - *That the matter be referred to the Development Services Committee for consideration of the appropriateness of a cash in lieu parking payment; and*
 - *That all residents on the south side of Grant Street, between Broome and Kathleen Streets, be advised of the proposed parking area in Grant Street.*
- The matter was advertised and a number of objections were received. After consideration Council's resolution made on 23 August was to adopt the following:

- *The Development Services Committee supports the recommendation of W78 of the August MINUTES of the Works and Corporate Services Committee.*
- This was that:
 - *Council invite Mr Torre to resubmit his proposal for reconsideration by Council as suggested in his verbal presentation at the 17 August Works & Corporate Services Committee Meeting.*
- A letter dated 2 September was sent to the business owner advising of the above resolution and advising that *if he wishes to progress the matter further, it will be necessary to confirm in writing your willingness to pay for the full cost of construction to Council specification, submit full details of the proposed landscaping and advise how the area will be maintained in the future.*
- A follow-up letter requesting a response was sent on 17 November and a response received advising that the owner was awaiting quotes. An update report was given to Council at its 13 December meeting.

There was a change of business ownership in April 2000. Council provided the new owners with a copy of above. There is no further relevant information on file.

COMMUNITY CONSULTATION

Apart from the above-mentioned there has been no wider community consultation about this matter. However, the Scheme Review has broadly addressed the future of corner shops and parking management is an overall ongoing task.

Parking at *Daisies* is a site-specific issue that does not demand any statutory consultation, although Council may wish to undertake general consultation where works are proposed which relate to community use and neighbourhood amenity.

In this case, with such a long and unfruitful background, it is apparent that Council ought to take decisive action to address the matter.

OFFICER COMMENT

- The matter of providing parking on site or in the Grant Street median has never been concluded. The requirement for on-site parking was a condition of an original planning approval which has never been met. Attempts to enforce the condition had resulted in negotiations towards an alternative arrangement of providing parking in the Grant Street median.
- The file history indicates that Council seems to have consistently preferred to have the Grant Street median developed for parking rather than require on-site parking (despite some community objection to this).
- A recent site inspection showed that the rear yard of 305 Marmion Street is still fenced-off and in parts is in a dilapidated condition. The rear yard to 303 Marmion Street is unfenced and is a cleared grassed area with access from the abutting right of way, although no cars were parked and it is uncertain if it is used for such.

Part of the Grant Street median has been laid with loose blue-metal and is used for informal parking.

- The butcher shop is now used as a real estate office, but there is no record on file regarding when this change occurred (there is no record of an approval for such). An office has a reduced parking requirement compared to a shop, although no on-site parking is provided at all.
- The land ownership of the site has not changed over time. There have, however, been a number of changes to the business ownership of *Daisies*. The requirement for on-site car parking and/or development of the Grant Street median has been negotiated with the business owners rather than the land owners and this has obviously contributed to the matter remaining incomplete. As planning approvals run with the land, Council should negotiate with the land owner, rather than the business owner alone, in taking the matter further.
- Draft Town Planning Scheme No. 3 proposes to classify *Daisies* (and other current non-conforming uses) as an Additional Use, to acknowledge the contribution they make to the community and encourage their retention. Preserving the uses however, needs to be balanced against their impact on the amenity of the locality. Making reasonable parking provision is a facet of amenity.

Issues

- It may be difficult to enforce the planning condition now given the time elapsed since the approval in 1994 and the alternatives that have been pursued – it is recommended that legal advice be first sought should Council wish to engage in enforcement.
- Car parking for *Daisies* will continue to be an issue. The subject properties have the capacity to provide on-site parking, but it is inevitable that short-term street parking will be preferred by most customers given the nature of a delicatessen. It would, however, be feasible to expect long-term parking on-site for staff, possibly some deliveries and service vehicles.
- The Grant Street median is currently in poor condition and the Works Committee may wish to reconsider how this could be improved and also any other street parking issues.

CONCLUSION

- The drawn-out background has failed to achieve a parking solution, and both parties have an obligation to address the matter. The problem will not go away and action is required to overcome the concerns. Small businesses often find it difficult to provide extensive or expensive parking, or cash in lieu, yet physical provision is required to support the uses. At the same time Council's interest on behalf of the community is to facilitate parking as well as protect amenity. On this basis it is appropriate to not necessarily insist on the full provision (which is typically constrained anyway) or the highest standard, so long as practical and aesthetic parking is supplied to enable businesses to operate and the locality to function. In this particular case the passage of time, departure from the original

requirement and other variables suggest that a compromise solution should be agreed to and implemented as a priority.

- Specifically, the Town needs to liaise with the landowner for a mutually beneficial solution. The owner (and operator) should be requested to improve the rear yards of 303-305 Marmion Street and provide on-site parking at least for staff. The construction standard can be fairly basic and not too costly – a fully bituminised and drained public car park is unnecessary.
- To serve the local community, Council could undertake to:
 - Continue to provide the on-street parking on Marmion Street;
 - Add on-street parking to Grant Street, subject to assessment of its feasibility; and
 - Improve the Grant Street median to include informal parking with an attractive and practical treatment such as BG pavers.

VOTING

Simple Majority

COMMITTEE COMMENT

Committee requests the on-site parking be for staff as well as patrons. Request Manager, Development Services to report back to Council once he has liaised with the landowner.

Add the words “*on the west side*” to the condition (2)(a).

OFFICER RECOMMENDATION

That Council:

- (1) Request the landowner of 303-305 Marmion Street to provide on-site parking and to meet with Officers to discuss the arrangements for implementation.
- (2) Request the Manager Engineering Services to report to Council via the Works & Corporate Services Committee on undertaking measures to improve street parking at *Daisies* by:
 - (a) Maintaining the parking bays in the Marmion Street verge;
 - (b) Adding parking bays to the Grant Street verge, subject to examining that feasibility; and
 - (c) Improving the Grant Street median to include attractive and sustainable informal parking.

11.1.9 COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Furlong, seconded Cr Strzina

That Council:

- (1) Request the landowner of 303-305 Marmion Street to provide on-site parking, particularly for staff, and to meet with Officers to discuss the arrangements for implementation, and the Manager Development Services to report back to Council on the outcome of this matter.**
- (2) Request the Manager Engineering Services to report to Council via the Works & Corporate Services Committee on undertaking measures to improve street parking at *Daisies* by:**
 - (a) Maintaining the parking bays in the Marmion Street verge on the west side (ie, in front of the shops);**
 - (b) Adding parking bays to the Grant Street verge, subject to examining that feasibility; and**
 - (c) Improving the Grant Street median to include attractive and sustainable informal parking.**

Carried 9/1

12 WORKS AND CORPORATE SERVICES COMMITTEE MEETING HELD ON 18 JULY 2006

Moved Cr Miller, seconded Cr Furlong

That items 12.1.1 – 12.1.4 and 12.2.3 be withdrawn from en-bloc voting.

Carried 10/0

The above items were dealt with first before items 12.1.5, 12.2.1, 12.2.2, 12.2.4 were dealt with en-bloc.

12.1 ADMINISTRATION**12.1.1 SUBMISSION TO THE LOCAL GOVERNMENT ADVISORY BOARD**

File No:	X11.9
Author:	Mr Stephen Tindale
Author Disclosure of Interest:	Nil
Report Date:	13 July, 2006

SUMMARY

Recommendations are made to Council to:

- Reaffirm to the Minister for Local Government, Council's opposition to any forced amalgamation of local governments in the western suburbs.
- Advise the Minister that the LGAB's report on legislative impediments to structural reform is seriously underdone and in particular, fails to make an objective assessment of the advantages and disadvantages of the current poll provisions.
- Advise the Minister that in the absence of an objective assessment, the report is obviously open to accusations of bias.
- Suggest to the Minister that the LGAB be instructed to revisit the term of reference relating to legislative impediments to structural reform with a view to presenting an objective assessment to the Minister of the current poll provisions together with a properly argued and reasoned recommendation.

STATUTORY ENVIRONMENT

The Local Government Advisory Board is constituted under the following provisions of the *Local Government Act 1995*.

2.44. Establishment of Advisory Board

(1) There is established a body to be known as the Local Government Advisory Board.

(2) Schedule 2.5 (which contains provisions about the Local Government Advisory Board) has effect.

2.45. Functions of Advisory Board

(1) The functions of the Advisory Board include -

(a) considering and, if required by this Act, inquiring into any proposal made to it under this Act that an order be made to do any or all of the matters in section 2.1, 2.2, 2.3, 2.18(1) or 2.18(3);

(b) making recommendations to the Minister on those proposals;

(c) carrying out any other inquiries the Minister may direct; and

(d) considering whether as a consequence of any recommendation the Board proposes to make to the Minister, the making of an order to do any or any other of the matters in section 2.1, 2.2, 2.3, 2.18(1) or 2.18(3) in respect of a relevant district is or may be necessary.

(2) In subsection (1)(d) -

“**relevant district**” means a district to which the proposed recommendation relates or an adjoining district.

(3) If the Advisory Board considers that the making of an order referred to in subsection (1)(d) is or may be necessary, the Board is to consider or inquire into the making of any such order as if it had received a proposal that such an order be made.

The poll provisions found in Schedule 2.1 of the *Local Government Act 1995* are as follows.

8. Electors may demand a poll on a recommended amalgamation

(1) Where the Advisory Board recommends to the Minister the making of an order to abolish 2 or more districts (**the districts**) and amalgamate them into one or more districts, the Board is to give notice to affected local governments, affected electors and the other electors of districts directly affected by the recommendation about the recommendation.

(2) The notice to affected electors has to notify them of their right to request a poll about the recommendation under subclause (3).

(3) If, within one month after the notice is given, the Minister receives a request made in accordance with regulations and signed by at least 250, or at least 10%, of the electors of one of the districts asking for the recommendation to be put to a poll of electors of that district, the Minister is to require that the Board's recommendation be put to a poll accordingly.

(4) This clause does not limit the Minister's power under clause 7 to require a recommendation to be put to a poll in any case.

9. Procedure for holding poll

(1) Where, under clause 7 or 8, the Minister requires that a recommendation be put to a poll -

(a) the Advisory Board is to -

(i) determine the question or questions to be answered by electors;
and

(ii) prepare a summary of the case for each way of answering the question or questions;

and

(b) any local government directed by the Minister to do so is to -

(i) in accordance with directions by the Minister, make the summary available to the electors before the poll is conducted; and

(ii) subject to subclause (2), declare* the Electoral Commissioner, or a person approved by the Electoral Commissioner, to be responsible for the conduct of the poll under Part 4, and return the results to the Minister.

** Absolute majority required.*

(2) Before making a declaration under subclause (1)(b)(ii), the local government is to obtain the written agreement of the Electoral Commissioner.

10. Minister may accept or reject recommendation

(1) Subject to subclause (2), the Minister may accept or reject a recommendation of the Advisory Board made under clause 3 or 6.

(2) If at a poll held as required by clause 8 -

(a) at least 50% of the electors of one of the districts vote; and

(b) of those electors of that district who vote, a majority vote against the recommendation,

the Minister is to reject the recommendation.

(3) If the recommendation is that an order be made and it is accepted, the Minister can make an appropriate recommendation to the Governor under section 2.1.

POLICY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

BACKGROUND

In November, 2005 the Town of Cottesloe made its first submission to the current enquiry by way of a response to a pro forma list of questions posed by the Local Government Advisory Board (LGAB) in relation to electoral and structural reform. The minutes of the November 2005 meeting of Council provide the detail of that response.

Following the receipt of 233 submissions and 10 public hearings, in April, 2006 the Local Government Advisory Board's published its report entitled 'Ensuring the Future Sustainability of Communities'.

The report made 37 recommendations on structural reform and 12 recommendations on electoral reform.

Those recommendations of direct concern to the Town of Cottesloe are:

- 1.1 That the Minister legislate for the amalgamation of the local governments of Cambridge (part), Claremont, Cottesloe, Mosman Park, Nedlands, Peppermint Grove and Subiaco to form a new western suburbs local government (in conjunction with the transfer of a part of Cambridge to Stirling and a part of Stirling to the new western suburbs local government) as soon as possible.
- 1.19 That Schedule 2.1 of the *Local Government Act 1995* be amended to remove the poll provisions.

In June 2006 the Minister for Local Government and Regional Development wrote to the Town of Cottesloe as follows.

The Local Government Advisory Board's recent report, *Local Government Structural and Electoral Reform in Western Australia – Ensuring the Future Sustainability of Communities*, has been made available for public comment. The Board's investigations led it to conclude that amalgamating local governments is one way of enhancing the delivery of services in certain areas and, among its many recommendations, it proposed that the Government should legislate for the amalgamation of local governments.

The publication of the Report has led to concern by some local governments that the recommendations concerning legislated amalgamations will be accepted by the Government. I would like to make it clear that the Carpenter Government has no intention to force amalgamations.

The Government is supportive of amalgamations where the local governments concerned agree to do so. I encourage you to read the report of the local Government Advisory Board and examine your local government's operations in light of its recommendations. The Government is keen to advance structural reform initiatives and has committed to funding requests for feasibility studies and implementation through a \$3m grants program over the next two years. The Department of Local Government and Regional Development will be providing information to you about this grant program shortly.

Submissions on the report close at the end of this month.

CONSULTATION

The report of the Local Government Advisory Board has been considered by WESROC and a submission has been dispatched to the Minister on behalf of the constituent local governments of Subiaco, Nedlands, Claremont, Peppermint Grove, Cottesloe and Mosman Park.

Also referred to in the WESROC submission is the Centre for Local Government at the University of New England (UNE) report.

STAFF COMMENT

Amalgamation

While the Town of Cottesloe might take some comfort in the advice of the Minister for Local Government and Regional Development that there will be no forced

amalgamations, it would nonetheless be appropriate for the Town of Cottesloe to reaffirm its formal opposition to the amalgamation of local governments in the western suburbs.

Such opposition needs to be articulated in order to avoid any interpretation of silence as being a tacit endorsement of the recommendations of the Local Government Advisory Board.

The arguments for opposing the amalgamation of local governments in the western suburbs can be found in the WESROC submission and the University of New England report.

Poll Provisions

Nothing that the Minister has said to date suggests that he has ruled out any removal of (or amendment to) the poll provisions found in Schedule 2.1 of the *Local Government Act 1995* as recommended by the LGAB.

In fact the Minister has said that rather than him deciding which amalgamations should take place or not, it should be the local communities themselves that drive any amalgamation proposal. How local communities are enfranchised to determine what amalgamation proposal goes ahead (or not) is obviously up for debate.

The current poll provisions (sometimes referred to as the Dadour amendment) effectively prevent larger local government populations absorbing smaller local government populations where 50% of electors in the smaller local government turn out for a poll and a majority of those turning out, vote against any proposed amalgamation.

One of the LGAB's terms of reference for the review was to identify "...the impediments to structural reform including but not limited to legislation impediments and options to overcome these impediments, which should include but not be limited to legislative changes and provision of financial and non-financial support by the State Government."

This is discussed at pages 93 to 99 of the LGAB report as follows:

9.2 ISSUES RAISED IN SUBMISSIONS

Impediments and possible solutions raised are as follows:

- The poll provisions in the Act and the State Government's current policy of 'no forced amalgamations' are seen as impediments to amalgamation.
- Finance is also identified as a major impediment. This is expressed in a number of ways such as the initial costs of establishing an amalgamated local government or regional council; lack of financial assistance or incentives from the State Government to either amalgamate or establish a regional council; and the perception that an amalgamated local government would receive less funding from the Commonwealth through the Local Government Grants Commission than the total that the local governments received prior to amalgamation.
- The perceived negative social impacts to the smaller of the amalgamating local governments. There is a fear that, if a smaller local government were to amalgamate with a larger one, the community of the smaller local

government would suffer irreparable damage, including loss of services, loss of jobs, loss of community identity and loss of community assets.

- The current inability to conduct elections of a new local government early in the amalgamation process, so that the amalgamation can be 'guided' by a council, and/or allowing the community to vote for regional council members.
- The setting up of community boards, one board for each local government area as it was prior to an amalgamation. The boards to meet two to three times a year and report to the new council.
- There are no 'models' for local governments to use to assist with the amalgamation process, the development of regional councils or the provision of non-financial assistance. However, the Department is currently preparing a document to assist with the implementation of amalgamations and it is expected to be available through the Department's website in the near future.
- An amalgamation process may result in duplication of senior staff and consequent redundancy costs.
- Excessive compliance costs in relation to operation of regional local government.
- Retention of staff for two years following an amalgamation, as required by the Act, is costly and inefficient.
- The City of Perth submitted that the Act provides relatively little guidance on structural reform, mainly on boundary changes only, which is considered insufficient to deal with the extensive range of reform issues intended to be raised.

9.3 ISSUES FROM THE BOARD'S EXPERIENCE OF UNDERTAKING INQUIRIES

There are two issues that the Board has found to be impediments to structural reform that have arisen from its work in undertaking inquiries over a ten year period.

- The lack of flexibility to make significant amendments to a proposal without having to proceed with an additional public submission process.
- The lack of ability to create a consequential proposal arising from a proposal.

9.4 ADDRESSING THE ISSUES

The issues raised are discussed in detail under the following headings.

- 1) Legislation
 - i. Amending proposals
 - ii. Consequential proposals
- 2) Assistance: financial and non-financial
- 3) Impacts on the community
- 4) Regional local governments
- 5) Conduct of early elections in the amalgamation process
- 6) Retention of staff for two years following an amalgamation

9.4.1 Legislation

The Department has identified two broad legislative approaches that can be taken. The Act can be amended or new legislation can be introduced and these options are discussed below.

Amendments to *Local Government Act 1995*

Schedule 2.1 of the Act includes provisions about creating, changing the boundaries of, and abolishing districts. Clause 8 provides the ability for electors affected by an amalgamation to demand that a poll be held.

For a poll to be held, clause 8 prescribes that the following process should be followed:

- a) Where the Local Government Advisory Board (the Board) recommends to the Minister the making of an order to abolish two or more districts (the districts) and amalgamate them into one or more districts, the Board is to give notice to affected local governments, affected electors and the other electors of districts directly affected by the recommendation about the recommendation.
- b) The notice to affected electors has to notify them of their right to request a poll about the recommendation under subclause (3).
- c) If, within one month after the notice is given, the Minister receives a request made in accordance with regulations and signed by at least 250, or at least 10%, of the electors of one of the districts asking for the recommendation to be put to a poll of electors of that district, the Minister is to require that the Board's recommendation be put to a poll accordingly.

In relation to determining the result of a poll, clause 10 (2) prescribes that if at a poll:

- at least 50% of the electors of one of the districts vote; and
- of those electors of that district who vote, a majority vote against the recommendation,

the Minister is to reject the recommendation to amalgamate or change boundaries.

The practical operation of the 'poll provisions' has been that previous Ministers have been required to reject a number of amalgamation proposals due to the results of polls conducted. These include the proposals to amalgamate the Towns and Shires of Northam and Narrogin respectively, and the Shire of Greenough and the City of Geraldton. In all cases, the polls were called for and held in the districts with the smaller populations.

It is worthwhile noting that Schedule 2.1 of the Act has been recently amended as part of *Local Government Amendment Act 2004*. Previously, the CEO of the affected local government was responsible for conducting a poll regarding amalgamation. Given the potential impact of an amalgamation on the employment status of a CEO, it was considered inappropriate for the CEO to be involved in the conduct of the poll.

The amendments will require polls to be conducted by the WA Electoral Commission. The questions to be asked in the poll and the arguments for and against an amalgamation proposal will be prepared by the Board. Information distributed during the poll process must not breach any of the electoral provisions in the Act. This includes the requirements in relation to the printing and publication of electoral material and the making of misleading, false or defamatory statements.

It is anticipated that the new provisions will help to ensure that voters have access to more comprehensive and factual information of the advantages and disadvantages of an amalgamation proposal. However, whether this will result in change to the outcome of a poll is untested.

Option 1 – Remove poll provisions

Clearly, one option is to amend Schedule 2.1 of the Act to remove the poll provisions. If this amendment was made, amalgamations could be implemented once the Minister had approved a Board recommendation to amalgamate. The power for the Minister to request an indicative poll of electors would still remain.

Advantage

The advantage of this approach is that the risk of amalgamation proposals being prevented due to the result of elector polls would be removed. As stated above, without the poll provisions, a number of amalgamations would have taken place in recent years.

Disadvantage

The major disadvantage is that the removal of the poll provisions could be perceived as removing a democratic 'right' from the public. This may be criticised by local governments and the community. In addition, it may also be contrary to previous Government decisions in relation to community involvement in decisions that affect them.

In 2003, when the Town of Vincent council proposed to change the method for electing their Mayor from elected by the electors, to elected by the council, there was significant concern raised by the then Minister for Local Government and Regional Development. As a consequence, amendments to the Act were subsequently made so that decisions of this nature would require a rigorous consultation process before being implemented. The justification for making this amendment was that the removal of the democratic right of a community to elect their own Mayor or President should not be taken away without community approval.

Option 2 – All affected districts polled and votes combined

Given the potential disadvantages with option 1, another option is to amend the poll provisions of Schedule 2.1 so that when a poll is conducted, the electors of all districts affected by a proposal are polled. This proposal was previously requested by the Board during the development of *Local Government Amendment Act 2004*. However, the then Minister was not supportive of the proposal. It should be noted that the South Australian legislation includes provisions of this nature.

In this option, a poll is held in each local government affected, but that when determining the outcome of the poll, the votes cast are combined. The current provisions where the number of votes cast must exceed 50%, for the poll result to be binding, will remain. An example using an amalgamation proposal with two local governments will help to demonstrate the method proposed.

Local government A – majority of electors favour amalgamation. 2,000 electors vote and 60% (1,200) vote in favour of the amalgamation.

Local government B - majority of electors oppose amalgamation. 500 electors vote and 20% (100) vote in favour of the amalgamation.

When the polls are combined, 1,300 out of 2,500 (52%) electors that voted support the amalgamation proposal. In this case, the proposal would proceed even though there is strong opposition in the smaller local government.

Advantage

Experience has demonstrated that, with the current legislative provisions, the electors of a small local government, threatened by amalgamation, can thwart change by

voting 'no' and, as such, a small number of electors have a considerable influence over the much wider poll.

Based on the experience of previous amalgamation attempts, the views of a small local government, which strongly opposes amalgamation, will be given less weight when combined with votes from a more populous local government. The effective ability of a small local government to veto change will be lost and, as such, it would be expected that a greater number of amalgamations would take place.

Disadvantage

Similar to option 1, the disadvantage of this option is that it could be perceived as taking away a democratic right from the community. However, given that under this option there will still be a poll conducted seeking the views of the community, this criticism is not as strong as it is for option 1.

Nonetheless, it reinforces any negative perception that the amalgamated local government will be dominated by the larger of the two local governments.

If the intention of amending the legislation is to facilitate a greater number of amalgamations, there is still the possibility that, under this option, amalgamations could be prevented by the outcome of a poll. That is, there is no guarantee that the electors in the larger local government will always vote in favour of a proposal.

Option 2a – All affected districts polled and results averaged

This proposal is similar to option 2, however, when deciding the outcome of a poll, the results from each poll are averaged. Using the same example as used in option 2, the impact that this can have on the result of a poll can be indicated.

Local government A - 60% (1,200 out of 2,000 electors) vote in favour of the amalgamation.

Local government B – 20% (100 out of 500) vote in favour of the amalgamation.

The average of 60% and 20% is 40%. As such, in contrast to option 2, the proposal would be rejected using this method of counting.

The advantage of this option is that it treats each local government equally irrespective of the population. Unfortunately, the Department does not have any statistics that would indicate the outcome of polls using this method in recent amalgamation proposals.

Option 3 – Introduce specific restructuring legislation

Another option is that specific legislation could be introduced to effect amalgamations. The *City of Perth Restructuring Act 1993* is an example of legislation specifically introduced to address a Government decision to restructure local government boundaries. This Act allowed for the former Perth City Council to be split into four local governments, the City of Perth and Towns of Cambridge, Victoria Park and Vincent.

Similar legislation could be introduced to deal with specific amalgamation proposals once they have been identified.

In addition to the description of the amalgamation, the 1993 Restructuring Act included provisions about commissioners, elected member representation, wards, timing of the first elections, asset distribution and the application of town planning schemes.

Other matters that could be included in restructuring legislation include the following.

- To offset some of the negative aspects arising from 'forced' amalgamations, provisions that require the Mayors/Presidents and possibly other elected members from the pre-amalgamated councils to be commissioners.
- A requirement to also appoint elected members or members of the community as commissioners. Alternatively, the method by which commissioners seek the views of the community could also be detailed in legislation. For example, it may be appropriate for a community reference group or community board to be established which would be asked to provide views on certain matters.
- Another option is for provisions that require the State Government, or commissioners, to make certain information about the amalgamation process publicly available. Involvement of the community, through a formal communication strategy, will demonstrate a degree of openness and reduce concerns that the community is being excluded from the amalgamation process. In turn, this will assist with minimising the potential for a negative influence of the community.

It is considered that consultation/communication with the community is a key component in ensuring the success of any amalgamation proposal. As such, this matter should be the subject of a detailed strategy if this option is agreed to.

Advantages

Given the processes that the Board is normally required to undertake in relation to consideration of amalgamation proposals, the timeframe for the development of amalgamation proposals under this option would be reduced.

Once legislation is passed by Parliament, there is 100% certainty that amalgamations will take place.

Disadvantages

Again, the removal of the poll provisions will remove a democratic right from the community. Offsetting this, however, is that given amalgamation legislation will be required to be passed by Parliament, there will be the opportunity for the views of affected parties to be raised with and considered by Members of Parliament.

As discussed above, to offset the removal of the poll provisions, any new legislation developed could include provisions that ensure the community is formally involved in the implementation of amalgamation proposals. This involvement is not proposed to enable the community to prevent amalgamations.

Discussion

If the objective for making legislative amendment is to increase the likelihood that amalgamation proposals are implemented, Options 1 and 3 will both equally achieve this goal.

However, the adoption of Option 3 could result in opposition from key stakeholders (local government and some sections of the community), as it would indicate a change of Government policy to one of 'forced' amalgamations. The adoption of Option 1 could also result in similar criticism, as it may be construed as an underhanded mechanism to force amalgamations.

To minimise this opposition, a public communication and consultation strategy could be developed and implemented. This strategy would include a wide range of

initiatives including the rationale for the benefit of structural reform and the future activities that are planned by the State Government.

The Department of the Premier and Cabinet's Citizens and Civics Unit publishes a manual "Consulting Citizens: A Resource Guide". The Guide sets out very clearly how all Government Agencies should conduct public consultation. In each case of amalgamation the local communities should be consulted in accordance with the Guide, so that the process of change for the community can be managed well and the fear in the community minimised. A central tenet to community consultation is to target all the different community groups, eg indigenous, youth and non indigenous, so that the consultation process is inclusive and thorough.

The poll provisions have stifled attempts at amalgamation in recent years. In addition, the Government's 'no forced amalgamation' policy has not encouraged widespread consideration by local governments of possible amalgamation options.

As a consequence, it is recommended that a combination of both specific legislation for amalgamation proposals, and an amendment to the Act to remove the poll provisions (options 1 and 3), be introduced to implement the amalgamation and other structural reform proposals agreed to by the Board. The specific legislation required to give effect to amalgamation proposals is covered in a later section of the report.

Given the potential for criticism that this approach may cause, the Government should consider undertaking a comprehensive public communication and consultation program prior to the legislation being introduced into Parliament. The economic, social and environmental benefits to both local communities and the State as a whole should be clearly articulated and promoted.

RECOMMENDATIONS

1.19 That Schedule 2.1 of the *Local Government Act 1995* be amended to remove the poll provisions.

1.20 That the Government undertake a comprehensive public communication program prior to the legislation and boundary changes occurring.

In its own words, the LGAB's argument for removal of the poll provisions rests entirely on the argument that "The poll provisions have stifled attempts at amalgamation in recent years. In addition, the Government's 'no forced amalgamation' policy has not encouraged widespread consideration by local governments of possible amalgamation options."

No explanation is made by the LGAB as to why "stifled attempts at amalgamation" has been a bad or a good thing. The language used by the LGAB certainly suggests that it is a bad thing but no evidence is advanced to support this.

Certainly the submissions made to the LGAB (as summarised at page 93 of the report) do not give any indication of widespread dissatisfaction with current arrangements.

Furthermore, the LGAB argues that "...the Government's 'no forced amalgamation' policy has not encouraged widespread consideration by local governments of possible amalgamation options."

Again no explanation is provided as to why the Government's policy is such a bad thing.

It would have helped the report considerably if there had been some discussion as to why the Dadour amendment was introduced into the draft Local Government Act. This omission of important historical background and the lack of justification of the need for change only serves to reinforce a widespread view that LGAB's report is blatantly biased towards a pro-amalgamation agenda.

VOTING

Simple Majority

12.1.1 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Strzina

That Council:

- (1) Reaffirm to the Minister its opposition to any forced amalgamation of local governments in the western suburbs;**
- (2) Advise the Minister that the LGAB's report on legislative impediments to structural reform is seriously underdone and in particular, fails to make an objective assessment of the advantages and disadvantages of the current poll provisions;**
- (3) Advise the Minister that in the absence of an objective assessment, the report is obviously open to accusations of bias;**
- (4) Suggest to the Minister that the LGAB be instructed to revisit the term of reference relating to legislative impediments to structural reform with a view to presenting an objective assessment to the Minister of the current poll provisions together with a properly argued and reasoned recommendation; and**
- (5) Copy the correspondence to the Minister to the Department of Local Government and Regional Development requesting that it be treated as a submission on the LGAB's report.**

Carried 8/2

12.1.2 DECLARATIONS OF IMPARTIALITY

File No: X 4.11
Author: Mr Stephen Tindale
Author Disclosure of Interest: Nil
Report Date: 12 July, 2006

SUMMARY

A recommendation is made to seek legal advice on a proposed amendment to Council's *Code of Conduct* that would allow elected members to declare that they are less than impartial on a matter then before Council and constrain their involvement in the debate or vote thereon.

STATUTORY ENVIRONMENT

Section 5.103 of the Local Government Act 1995 provides as follows:

5.103. Codes of conduct

- (1) Every local government is to prepare or adopt a code of conduct to be observed by council members, committee members and employees.
- (2) A local government is to review its code of conduct within 12 months after each ordinary elections day and make such changes to the code as it considers appropriate.
- (3) Regulations may prescribe codes of conduct or the content of, and matters in relation to, codes of conduct and any code of conduct or provision of a code of conduct applying to a local government under subsection (1) is of effect only to the extent to which it is not inconsistent with regulations.

Regulation 34C of the *Local Government (Administration) Regulations 1996* provides:

34C. Codes of conduct (disclosure of interests affecting impartiality) s. 5.103(3)

- (1) In this regulation -

employee ~ has the meaning given by section 5.70;

interest ~ means an interest that would give rise to a reasonable belief that the impartiality of the person having the interest would be adversely affected but does not include an interest as referred to in section 5.60.

- (2) A code of conduct is to contain a requirement that a council member or an employee is to disclose any interest that he or she has in any matter to be discussed at a council or committee meeting that will be attended by the member or employee.
- (3) A code of conduct is to contain a requirement that a council member or an employee is to disclose any interest that he or she has in any matter to be discussed at a council or committee meeting in respect of which the member or employee has given, or will give, advice.
- (4) A code of conduct is to contain a requirement that disclosure of an interest under subregulation (2) or (3) is to be made at the meeting immediately before the matter is discussed or at the time the advice is given, and is to be recorded in the minutes of the relevant meeting.

Section 5.21 of the *Local Government Act 1995* provides the following:

5.21. Voting

- (1) Each council member and each member of a committee who is present at a meeting of the council or committee is entitled to one vote.
- (2) Subject to section 5.67, each council member and each member of a committee to which a local government power or duty has been delegated who is present at a meeting of the council or committee is to vote.
- (3) If the votes of members present at a council or a committee meeting are equally divided, the person presiding is to cast a second vote.
- (4) If a member of a council or a committee specifically requests that there be recorded -
 - (a) his or her vote; or
 - (b) the vote of all members present,on a matter voted on at a meeting of the council or the committee, the person presiding is to cause the vote or votes, as the case may be, to be recorded in the minutes.
- (5) A person who fails to comply with subsection (2) or (3) commits an offence.

POLICY IMPLICATIONS

A change to Council's *Code of Conduct* policy is proposed.

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Additional legal advice is expected to be obtained for less than the sum of \$1,000.

BACKGROUND

Following a notice of motion at the last meeting of Council, it was resolved that legal advice be sought on the practicality of inserting a clause into Councils *Code of Conduct* or *Standing Orders* local law that would allow an elected member to absent himself/herself from the debate and/or vote on any matter where there might be a perceived element of bias.

As advised at the last meeting of Council, *Local Government (Administration) Regulation 34C* and the Council's own *Code of Conduct* require an elected member to declare an impartiality interest where it is reasonable to believe that the impartiality of the elected member would be adversely affected in any matter being discussed at a Council or committee meeting. Such declarations are to be made in writing to the CEO prior to the meeting or declared immediately prior to the discussion of the item in a Council or committee meeting.

A recent amendment to the *Local Government Act 1995* (Sec 5.21) places a clear legal obligation on all elected members who are present at a meeting to vote in all but

very limited circumstances (i.e. to vote in all circumstances except in those instances where financial, indirect or proximity interests are involved).

For those elected members who make declarations relating to impartiality, *Local Government Operational Guidelines - Disclosure of Interests Affecting Impartiality* promote the active participation of elected members in the debate and vote on a matter regardless of whether there is a reasonable belief that the impartiality of the person having the interest would be adversely affected.

In other words the clear expectation contained within the guidelines is that affected members will rise above any selfish interest and consider the matter on its merits and vote accordingly.

However the *Local Government Act 1995*, associated regulations and guidelines are silent on how an elected member should behave in those circumstances where an elected member believes that he or she lacks impartiality in a matter before the Council or a committee and wants to absent themselves from either the debate or discussion on the matter.

A legal opinion has now been obtained (see attachment) and it confirms that there are some practical difficulties in complying with the Local Government Department's operational guidelines.

Our legal adviser, Denis McLeod, has summarised the situation as follows:

1. There is presently no statutory obligation for Councillors who disclose an impartiality interest to leave the meeting while the matter is discussed and determined. The *Local Government Act 1995* ("LG Act") does not require a member to do so, but nor does it preclude a member from doing so.
2. The LG Act in s 5.21(2) does require a Council member who is present at a Council meeting to vote. In fact since 2004, s 5.21(5) has made it an offence for a Council member present at a meeting to fail to vote.
3. The Department of Local Government and Regional Development ("the Department") has made clear through its *Local Government Operational Guidelines - Number 01 May 2000* ("the Guidelines") that it considers a Council member who has disclosed an impartiality interest should remain at the meeting and should vote.
4. With the greatest respect, I do not agree with the Guidelines, in that in my opinion a Council member who has disclosed an impartiality interest should at least have a discretion to decide whether or not to remain at the meeting during the discussion and determination of the matter on which the member has the interest, and in my opinion the Code of Conduct of a local government should give guidance on that issue, and the Standing Orders Local Law should permit, if not require, a Council member disclosing an impartiality interest, to leave the meeting unless the circumstances giving rise to the disclosure are such as would allow a member disclosing a financial interest to remain present and/or participate.

I recognise this matter to be controversial, and one which is of concern to many Councils and Council members. I am aware that some local governments have Codes of Conduct and/or Standing Orders Local Laws which deal with the matter in a manner which differs from the Guidelines. However I have over a period of more than 10 years given considerable thought to this issue and believe there are strong arguments to support my advice in this letter.

The conclusion made by Denis McLeod is as follows.

- (a) While the Department's Guidelines should be given proper respect and consideration, in my opinion the overriding consideration of the possibility of bias, particularly in a situation where the Council is exercising quasi judicial powers such as in determining applications for planning approval, there is a good reason for Council members to avoid being present at a meeting where they might be seen to be participating in deliberation on or determination of a matter in which the Council member recognises a risk of partiality, or even a perception of partiality in the minds of others.
- (b) The Department has understandably (considering the focus of the LG Act) been pre-occupied with the local government legislative and executive functions, and I am not confident that the Department gave full consideration to the function of a Council in exercising quasi judicial powers in the preparation of the Guidelines.
- (c) Furthermore, I am not confident that the Department has fairly evaluated the position of Council members who would be expected, if they followed the Guidelines implicitly, to place their own personal reputations at risk by participating in the determination of a matter in which they have a palpable conflict of interest, falling short of a financial interest requiring disclosure under s 5.65 of the LG Act.
- (d) In my opinion it would be appropriate for the Council to reflect the concerns I have expressed, to the extent the Council considers proper, in its Code of Conduct, and perhaps also in its Standing Orders Local Law.

The legal advice has in fact highlighted two issues to be considered by Council in relation to this matter.

The first issue relates to the question of bias. At pages 4 and 6 of the legal opinion we are informed that:

The LG Act clearly recognizes that a local government performs legislative and executive functions (see s 3.4). However the LG Act does not recognize that a local government regularly performs functions which can fairly be regarded as quite different from either legislative or executive functions in that local governments regularly determine applications which are required to be dealt with in accordance with the principles of natural justice, and which have a quasi judicial character. A common example is the decisions made by local governments regularly on applications for planning approval under a local planning scheme and/or under a region scheme. In my opinion a strong case can be made out for the proposition that a local government when making determinations on applications for licenses, consents, or approvals should endeavour to act in the same manner as a body or Tribunal charged with judicial functions, and amongst other things should be and appear to be free of bias. The same considerations do not necessarily apply to the local government's decision-making processes when exercising its legislative or executive functions.

A decision made by a local government in the exercise of a quasi judicial power is liable to be set aside if bias can be demonstrated. Bias which may affect the validity of a local government decision could be the bias of a minority, and could perhaps even be the bias of one member of a Council...

I believe that the circumstances of law still remain in WA where it is possible for the decision of a local government Council, particularly when it exercises quasi judicial powers such as in the determination of planning applications, to be challenged for validity on the basis of the bias of one or more of the Council members.

It is also apparent ... that even the appearance of bias may call into question the legitimacy of a decision-making process where the decision-maker is obliged to act without bias. As I have indicated above, in my opinion a local government Council in determining certain matters, and particularly when determining applications for approval, consent or permission, are required to

act without bias, and I believe that there is a risk of decisions being challenged where there is an appearance of bias on the part of one or more Council members.

The second issue relates to that of good reputation. At pages 6 and 7 of the legal opinion we are informed that:

Even leaving aside the possibility of a Council decision being challenged on the basis of bias, in my opinion Council members are entitled to have regard to their good reputation when performing their functions as Council members. In my opinion, a Council member who discloses an impartiality interest in a matter, which is such that an impartial observer may consider gives rise to a possibility of conflict or bias, runs the risk of damaging his or her reputation if he or she continues to participate in the deliberative process and voting, as the Guidelines suggest should occur...

In my opinion, it is a matter of great importance for Council members to protect their reputation. Since they are not exercising their functions as Council members in a professional paid capacity, but are doing so as ostensibly public-spirited volunteers, they should not be seen, and should not be compelled to be participating in the decision-making process on matters in which they have a clear potential for bias. In my opinion it is not fair to the applicant to compel the Council member to participate in the deliberation and voting in those circumstances, as it is likely that a highly principled Council member would be tempted to vote against the application so as to demonstrate for his or her own satisfaction at least, that he or she is not affected by bias in favour of the closely related applicant.

In my opinion, there is good reason at law and in principle why Council members who have disclosed an impartiality interest should have at least an option, if not an obligation, to depart the Chamber while the relevant subject matter is under consideration. It would be reasonable for an exception to that rule to be made in circumstances where a Council member having disclosed a financial interest would be permitted to remain for the deliberation and/or voting, such as where the interest is shared in common with a significant number of electors or ratepayers, or where the interest is considered to be trivial or insignificant.

CONSULTATION

A copy of the legal advice and a draft of this agenda item was provided to the Acting Manager – Local Government Support and Development, Jenni Law, at the Department of Local Government and Regional Development.

Her preliminary response was as follows:

I have discussed the issues raised in McLeods advice very briefly with Tim Fowler. The Department has previously considered some of the issues raised and I will need to re-visit the previous correspondence and liaise further with the Legislation Branch prior to giving you a full response.

I note your report recommends engaging McLeods to draft amendments to the Code of Conduct. The Official Conduct Bill, currently before parliament, if passed, will see the introduction of a Uniform Code of Conduct via regulation. Therefore I am of the view that amending your Code of Conduct at this point may be counter productive.

The DLGRD is expecting the bill to be enacted in September/October and is already drafting regulations for the uniform code. Although I will refer your emailed request to the legislation branch prior to responding, you may also wish to formally refer McLeods advice to the DLGRD for consideration when drafting the regulations.

The CEO queried whether the proposed Uniform Code of Conduct would constrain the Council from adopting a policy regarding impartiality interests (notwithstanding

the fact that any policy we adopted could not run contrary to the Uniform Code of Conduct).

The response was that the Department could not "... give a definitive answer at this time, the most recent draft is silent on the matter. It adopts a similar approach to most local governments code of conduct in regard to impartiality disclosures."

In other words, it appears that there is no move afoot to amend or introduce new regulations governing the way declarations of impartiality are handled.

STAFF COMMENT

Assuming Council concurs with the legal advice and desires greater certainty in the way declarations of impartiality are handled, then two options would seem to present themselves.

The first is to amend Council's *Standing Orders* local laws. These local laws govern the proceedings and business of Council and in particular, the conduct of Council and committee meetings.

The second is to amend Council's *Code of Conduct* which is a policy required to be prepared or adopted under the Local Government Act (1995). The *Code of Conduct* is to be observed by council members, committee members and employees. It currently has no sanctions attached to it although this is likely to change in the near future.

The amendment of Council's *Standing Orders* local laws is not supported as it may be a long and convoluted business and ultimately delay the application of timely and good decision making in the Town of Cottesloe.

There is a distinct possibility that any proposed change to the local law will subject to close and protracted scrutiny by the State Government's Joint Standing Committee on Delegated Legislation. This is because the change will be essentially at odds with the views of the Department of Local Government and Regional Development (as espoused in the *Local Government Operational Guidelines - Disclosure of Interests Affecting Impartiality*).

At a staff level, there is very little enthusiasm to engage in a battle of wits and costly legal advice for what is a ground breaking matter for the local government industry. If extensive and widespread debate is required on proposed changes to local government standing orders in general, then this is a matter for the WA Local Government Association and the Department of Local Government and Regional Development to take up. Cottesloe should not be made to 'carry the can' as it were.

The second and more pragmatic approach is to amend Council's *Code of Conduct*. This leaves the State Government out of the equation in terms of political and administrative involvement and allows Council to trial a new way of doing things without being bound by an untested local law. It reduces the amount of time required to put something in place and as a result allows Council to get on with the business of good decision making.

In the event that the amended *Code of Conduct* enables better decision making (and there is no reason to doubt that it shouldn't) Council may then turn its attention to amending its Standing Orders if felt necessary and subject no doubt, to input from others.

Council's *Code of Conduct* is a Council policy. Council's *Community Consultation Policy* would ordinarily require community consultation on changes to any policy – except where the policy relates to an internal operating policy.

As Council's *Code of Conduct* is an internal operating policy and as it has not been the subject of community consultation in the past, it is felt that a suitably amended *Code of Conduct* can be prepared and potentially adopted by Council at its August meeting.

While staff could draft a proposed change to Council's *Code of Conduct*, I believe that a general industry interest in the matter demands that we get the best legal advice we can so that we can be confident in the knowledge that the finished product is more likely to withstand close scrutiny.

VOTING

Simple Majority

OFFICER RECOMMENDATION

That Council engage McLeods to prepare a suitable draft amendment to the *Code of Conduct* that contemplates:

- (1) An elected member making a declaration of impartiality and participating in and voting on a matter then before the Council; or
- (2) An elected member making a declaration of partiality and seeking the consent of Council in participating in and/or voting on a matter then before the Council subject to the nature (e.g. legislative, executive or quasi judicial) and extent of the matter; or
- (3) An elected member making a declaration of partiality and refraining from participating in and/or voting on a matter then before the Council by leaving the meeting; or
- (4) Any other appropriate permutation of the above.

AMENDED OFFICER RECOMMENDATION

The CEO tabled copies of a letter from McLeods, received on 18 July, 2006 providing further comment in relation to the matter.

Recommendation where the Code of Conduct will say that a member should depart from a meeting where an impartiality is interest disclosed

That Council engage McLeods to prepare a suitable draft amendment to the Code of Conduct that contemplates:

A provision that an elected member making a disclosure of impartiality should depart the meeting and remain absent while the matter is considered and voted upon unless:

- (a) The member discloses fully to the meeting the circumstances which led the member to disclose an impartiality interest, and
 - (i) the member is satisfied that his or her participation in the consideration and voting on the matter would not be affected by those circumstances;
 - (ii) the matter does not involve the exercise of a quasi judicial power; and
 - (iii) the meeting does not resolve that the member should depart and remain absent.

OR

- (b) The member discloses fully to the meeting the circumstances which led the member to disclose an impartiality interest; and
 - (i) the matter does involve the exercise of a quasi judicial power, but nevertheless;
 - (ii) the member is satisfied that the interest is trivial or insignificant or shared in common with a significant number of residents or ratepayers; or
 - (iii) the meeting on the request of the member resolves that the interest disclosed by the member is trivial or insignificant, or shared in common with a significant number of residents or ratepayers and is not likely to affect the member's participation in the matter.

Recommendation where the Code of Conduct provides that a member disclosing an impartiality interest shall depart the meeting

That Council engage McLeods to prepare a suitable draft amendment to the Code of Conduct that contemplates:

An elected member who makes a disclosure of impartiality in a matter shall depart the meeting and remain absent from the meeting during the consideration and voting on that matter unless:

- (a) The member discloses fully to the meeting the circumstances which led the member to disclose an impartiality interest, and
 - (i) the member is satisfied that his or her participation in the consideration and voting on the matter would not be affected by those circumstances;
 - (ii) the matter does not involve the exercise of a quasi judicial power; and
 - (iii) the meeting does not resolve that the member is to depart and remain absent.

OR

- (b) The member discloses fully to the meeting the circumstances which led the member to disclose an impartiality interest, and
 - (i) the matter does involve the exercise of a quasi judicial power, but nevertheless;
 - (ii) the member is satisfied that the interest is trivial or insignificant or shared in common with a significant number of residents or ratepayers; or
 - (iii) the meeting on the request of the member resolves that the interest disclosed by the member is trivial or insignificant, or shared in common with a significant number of residents or ratepayers and is not likely to affect the member's participation in the matter.

COMMITTEE COMMENT

The Mayor tabled copies of the following email from the A/Manager, Local Government Support & Development – Department of Local Government and Regional Development. The content of the email was discussed by the Committee.

Further to our recent discussions and the exchange of emails between this office and your CEO regarding proposed amendments to your Code of Conduct to address the issues raised by Mr McLeod . I understand that it has been recommended that Council instruct Mr McLeod to draft proposed changes to the Code of Conduct.

I would caution Council against acting with some haste at this time, for a number of reasons - the Official Conduct Bill is currently before the Parliament and when enacted will see the introduction of a Uniform Code of Conduct via regulation LG's The anticipated timetable for enacting of the bill is September/October. Draft regulations are under discussion at present.

The Department has previously considered some of the issues raised by McLeod's and in the short timeframe between Stephen's request and your meeting we have not had sufficient time to re-visit the previous correspondence and liaise further with our Legislation Branch to give the Town a full response prior to your meeting.

May I suggest that instead of proceeding at this time, that the Town advises the Department of the nature of the proposed changes to your code of conduct and seeks to have them incorporated in the proposed Uniform Code of Conduct.

12.1.2 COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Strzina

That Council requests the Department of Local Government and Regional Development to consider incorporating into the uniform *Code of Conduct* that is expected to be prescribed by regulation and made mandatory for all councils following passage of the *Official Conduct Bill*, provisions that contemplate:

- (1) An elected member voluntarily making, without an obligation to do so, a declaration of impartiality on a matter in which there may be a perception by some people that the elected member's impartiality on the matter may be affected, but where there are not reasonable grounds to believe that the elected member's impartiality on the matter would be affected.**

- (2) On a matter in which there are reasonable grounds to believe that the elected member's impartiality on the matter would be affected, the elected member being obliged to either:
- (a) Make a declaration of impartiality and seek the consent of the Council to participate in and/or vote on the matter subject to their prior disclosure of the nature of interest that would otherwise give rise to the reasonable belief that their impartiality would be affected.
 - (b) Make a declaration of partiality and refrain from participating in the discussion or vote on the matter.

Carried 6/4

The vote was recorded:

For:

Mayor Morgan

Cr Carmichael

Cr Furlong

Cr Miller

Cr Strzina

Cr Utting

Against:

Cr Cunningham

Cr Dawkins

Cr Jeanes

Cr Woodhill

12.1.3 TOURISM WESTERN AUSTRALIA - REQUEST FOR THE WAIVER OF FILM AND PHOTO SHOOT FEES

File No: X8.21
Author: Mr Stephen Tindale
Author Disclosure of Interest: Nil
Report Date: 12 July, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

A recommendation is made to advise Tourism Western Australia;

- (1) That while the Town of Cottesloe supports the promotion of Cottesloe Beach as a regional and international tourism destination, it is not inclined to financially support such promotion; and
- (2) That the Town of Cottesloe would appreciate any assistance that the Tourism Western Australia can bring to bear in highlighting at State Government level the operational constraints and financial burden shouldered by ratepayers of the Town of Cottesloe on behalf of the broader community.

STATUTORY ENVIRONMENT

Under Council's *Local Government Property Local Law* it is open to the town of Cottesloe to hire local government property to any person whether or not the hire is for the exclusive use of the local government property.

Local government property is defined as meaning anything except a thoroughfare –

- a) which belongs to the local government;
- b) of which the local government is the management body under the Land Administration Act; or
- c) which is an 'otherwise unvested facility' within section 3.53 of the Local Government Act.

In effect, this means that the Town of Cottesloe can charge hire fees for certain activities on Council property regardless of whether the use of the property is exclusive or not.

POLICY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Any waiver of film and photo shoot fees is likely to result in a loss of income to the Town of Cottesloe of approximately \$1,000 per annum based on the advice of Tourism Western Australia.

BACKGROUND

The Chief Executive Officer of Tourism Western Australia has written to the Town of Cottesloe as follows:

As you will be aware Tourism Western Australia promotes Western Australia as a tourism destination to the eastern states and our key international markets using various marketing activities. One of these key initiatives is through our Media and Trade Awareness Program which brings visiting journalists to experience some of our wonderful tourism product. In return for hosting these key influencers the journalists provide coverage on Western Australia through various mediums, including television, radio and print media.

Increasingly we are supporting visits to Western Australia by key broadcasters which are attracting huge audiences. This is very effective marketing for us and helps to increase visitor numbers to our wonderful State.

Part of our assistance is to support television and film crews when applying for film permits and Cottesloe, being Perth's icon beach area, is a very popular choice for these broadcast media. Our Familiarisation Team at Tourism Western Australia make arrangements supporting these media visits on a full time basis, however this year for the first time, the Town of Cottesloe have charged us for photo and film shoot permits. In addition we have been charged to carry out a film shoot and stills photo shoot for images for our broadcast/print advertising campaign and our image library. These initiatives promote the Town of Cottesloe, bringing additional visitors to the area, who in turn support and directly benefit the local businesses which are your ratepayers.

Charges paid by Tourism Western Australia this financial year are as follows:-

		<u>Charged</u>
November 2005	All Australia Broadcast, Singapore, 5000,000 viewers	\$260
January 2006	Getaway film shoot with Megan Gale, Two million viewers	\$135
January 2006	Good Morning TV, UK, six million viewers	\$135
February 2006	Jetstar magazine photo shoot, Magda Zubanski, One million readers	\$135
February 2006	Tourism Western Australia - stills photo shoot	\$255
February 2006	Tourism Western Australia - film shoot	\$135

In total Tourism Western Australia has paid \$1,055 to the Town of Cottesloe this year.

Other local authorities and the Department of Conservation and Land Management, which manages our major tourism icons such as Ningaloo Reef, Karijini National Park, Purnululu National Park and Shark Bay waive fees for Tourism Western Australia, in order to support our efforts to increase visitation to the State and to the regions, I would like to request that the Council apply an exemption for Tourism Western Australia.

I look forward to hearing from you in due course.

In response to a query from the Town of Cottesloe, the Chief Executive Officer of Tourism Western Australia has advised that:

The only other authority to have charged us is the City of Perth, which has an obstruction permit fee of \$60 per crew, regardless of the time period involved and which applies to film or photography crews greater than 4 people. The majority of crews we handle are made up of 4 people or less and in these cases no charge is made.

The City of Perth is a very popular choice for film crews and filming occurs in the City for the majority of the visits that we organise. In this financial year the City of Perth has charged Tourism Western Australia on three occasions totalling \$180 in permit charges.

All other authorities either waive fees for Tourism Western Australia or have no fees for photography or filming.

CONSULTATION

Nil

STAFF COMMENT

Fees for film and photo shoots along the beachfront were first introduced in 2005/06 as an adjunct to the limited sources of income that Council receives in order to fund the maintenance of the beachfront.

In 2006/07 we anticipate that expenditure on beach maintenance will be approximately \$517,000 which will be offset by operating income of \$220,000 derived mainly from the lease of the Indiana Tea House, the Barchetta and external subsidies associated with the position of the Coastcare Officer.

Nett revenue from parking fines provides a further offset to beach maintenance of \$27,000.

All up, the nett cost to the Town of Cottesloe of maintaining a regional beach facility in 2006/07 is predicted to be \$270,000. This cost is met directly and almost entirely by the ratepayers of the Town of Cottesloe - and would be much more were it not for rental income received.

In addition, the Local Government (Functions and General) Regulations 1996 provide the following:

2A. Matters about which local laws are not to be made - s. 3.5

Local laws are not to be made -

(a) requiring the payment of fees or charges for the parking of vehicles on any land under the care, control or management of a local government in any part of the district of Cottesloe west of Broome Street; or

(b) enabling such a requirement to be imposed.

No other local government is 'blessed' with such a manifestly-unsustainable, State Government-imposed regulation. As a result the Cottesloe beachfront is blighted with overcrowding, anti-social behaviour and vehicular pollution every summer.

Given the present circumstances, there is little to commend further tourism promotion of the Cottesloe beachfront in its present condition.

Requests for State Government assistance to repair the Cottesloe Groyne have languished for want of resources and a coordinated effort at a State Government level.

Given the above, it is recommended that Council advise Tourism Western Australia that while the Town of Cottesloe supports the promotion of Cottesloe Beach as a regional and international tourism destination, it is not inclined to financially support such promotion while the Town of Cottesloe continues to be left with the adverse consequences.

Further that the Town of Cottesloe would appreciate any assistance that the Tourism Western Australia can bring to bear in highlighting at State Government level the operational constraints and financial burden shouldered by ratepayers of the Town of Cottesloe on behalf of the broader community.

VOTING

Simple Majority

OFFICER & COMMITTEE RECOMMENDATION

That Council:

- (1) Advise Tourism Western Australia that while the Town of Cottesloe supports the promotion of Cottesloe Beach as a regional and international tourism destination, it is not inclined to financially support such promotion while the Town of Cottesloe continues to be left with the adverse consequences, and
- (2) Advise Tourism Western Australia that the Town of Cottesloe would appreciate any assistance that the Tourism Western Australia can bring to bear in highlighting at State Government level the operational constraints and financial burden shouldered by ratepayers of the Town of Cottesloe on behalf of the broader community.

AMENDMENT

Moved Mayor Morgan, seconded Cr Utting

That Council:

- (1) Advise Tourism Western Australia that while the Town of Cottesloe supports the promotion of Cottesloe Beach as a regional and international tourism destination, it is not inclined to financially support such promotion while the Town of Cottesloe continues to be left with the adverse consequences;

- (2) Advise Tourism Western Australia that the Town of Cottesloe would appreciate any assistance that the Tourism Western Australia can bring to bear in highlighting at State Government level the operational constraints and financial burden shouldered by ratepayers of the Town of Cottesloe on behalf of the broader community; and
- (3) Advise Tourism WA that the Town of Cottesloe will during the 2006/07 financial year waive fees for film and photo shoot permits sought by Tourism WA for reasonable activities in Cottesloe, but will after that time review the situation.

Carried 6/4

12.1.3 COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Utting

That Council:

- (1) Advise Tourism Western Australia that while the Town of Cottesloe supports the promotion of Cottesloe Beach as a regional and international tourism destination, it is not inclined to financially support such promotion while the Town of Cottesloe continues to be left with the adverse consequences, and
- (2) Advise Tourism Western Australia that the Town of Cottesloe would appreciate any assistance that the Tourism Western Australia can bring to bear in highlighting at State Government level the operational constraints and financial burden shouldered by ratepayers of the Town of Cottesloe on behalf of the broader community.
- (3) Advise Tourism WA that the Town of Cottesloe will during the 2006/07 financial year waive fees for film and photo shoot permits sought by Tourism WA for reasonable activities in Cottesloe, but will after that time review the situation.

Carried 7/3

12.1.4 CEO'S PERFORMANCE REVIEW & CONTRACT RENEWAL

File No: X9.12
Author: Mr Stephen Tindale
Author Disclosure of Interest: The author has an interest in the matter as it directly relates to his employment.
Report Date: 12 July, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

The following recommendations are made:

That Council

- (1) Request the CEO Performance Review Panel to make recommendations to Council on an increase to Mr Tindale's remuneration, in accordance with clause 5.2 of the contract of employment;
- (2) Adopt the revised performance review evaluation document for the CEO; and
- (3) Appoint Mayor Morgan, Cr Miller, Cr Furlong and Cr Walsh to a panel charged with the responsibility of negotiating a new contract with the CEO and reporting back to Council.

STATUTORY ENVIRONMENT

Clause 5.2.1 of the CEO's current contract provides

The Council must, before the expiration of each year during the Term, review the Remuneration Package taking account of:

- (a) the total remuneration of CEOs holding positions similar to the Position of local governments in Western Australia of similar size to Cottesloe; and
- (b) the Council's policy of review from time to time which shall be based on performance, productivity and such other matters as the Council reasonably considers relevant

but there is no obligation on the Council to increase the Remuneration.

The relevant sections of the Local Government Act read, in part, as follows:

5.23. Meetings generally open to the public

- (1) Subject to subsection (2), the following are to be open to members of the public —
 - (a) all council meetings; and
 - (b) all meetings of any committee to which a local government power or duty has been delegated.
- (2) If a meeting is being held by a council or by a committee referred to in subsection (1)(b), the council or committee may close to members of the public the meeting, or part of the meeting, if the meeting or the part of the meeting deals with any of the following —
 - (a) a matter affecting an employee or employees;

- (b) the personal affairs of any person;
 - (c) a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting;...
- (3) A decision to close a meeting or part of a meeting and the reason for the decision are to be recorded in the minutes of the meeting.

5.38. Annual review of certain employees' performances

The performance of each employee who is employed for a term of more than one year, including the CEO and each senior employee, is to be reviewed at least once in relation to every year of the employment.

5.39. Contracts for CEO's and senior employees

(1) Subject to subsection (1a), the employment of a person who is a CEO or a senior employee is to be governed by a written contract in accordance with this section.

(1a) Despite subsection (1) -

- (a) an employee may act in the position of a CEO or a senior employee for a term not exceeding one year without a written contract for the position in which he or she is acting; and
- (b) a person may be employed by a local government as a senior employee for a term not exceeding 3 months, during any 2 year period, without a written contract.

(2) A contract under this section -

- (a) in the case of an acting or temporary position, cannot be for a term exceeding one year;
- (b) in every other case, cannot be for a term exceeding 5 years.

(3) A contract under this section is of no effect unless -

- (a) the expiry date is specified in the contract;
- (b) there are specified in the contract performance criteria for the purpose of reviewing the person's performance; and
- (c) any other matter that has been prescribed as a matter to be included in the contract has been included.

(4) A contract under this section is to be renewable and subject to subsection (5), may be varied.

(5) A provision in, or condition of, an agreement or arrangement has no effect if it purports to affect the application of any provision of this section.

(6) Nothing in subsection (2) or (3)(a) prevents a contract for a period that is within the limits set out in subsection 2(a) or (b) from being terminated within that period on the happening of an event specified in the contract.

(7) A report made by the Salaries and Allowances Tribunal, under section 7A of the Salaries and Allowances Act 1975, containing recommendations as to the remuneration to be paid or provided to a CEO is to be taken into account by the local government before entering into, or renewing, a contract of employment with a CEO.

POLICY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

BACKGROUND**CEO Performance Review Evaluation Document**

At the last meeting of Council it was decided to refine the wording of the CEO performance review evaluation document.

To that end, the CEO Performance Review Panel, the CEO and Mr Simon White from WALGA's Local Government Workplace Solutions met on Tuesday 4 July, 2006 and reached agreement on a revised performance review evaluation document. A copy of the revised document is attached.

New Contract

At the last meeting of Council it was also decided that the CEO Performance Review Panel would provide a report to Council containing a new contract negotiated with the CEO, based on the standard local government version.

The CEO Performance Review Panel has decided that rather than the seven members of the panel negotiating a new contract with the CEO and reporting on same to Council, it would be more effective and efficient if a smaller panel comprised of the Mayor and the three presiding members of Council's standing committees undertook the task.

As a result a recommendation is made to appoint the Mayor, Cr Miller, Cr Furlong and Cr Walsh to a panel charged with the responsibility of negotiating a new contract with the CEO.

Review of Remuneration Package

The CEO's remuneration package was last considered as an issue by Council in July, 2005 when it was resolved that:

The Review Committee obtain data in relation to Chief Executive Officer remuneration relativities, particularly as they relate to local governments in Perth's western suburbs. The Review Committee to make recommendations to Council on an increase to Mr Tindale's remuneration, in accordance with clause 5.2 of the contract of employment.

The Review Committee subsequently made a recommendation to the August, 2005 meeting of Council which was adopted. Mr Tindale's remuneration is now due for review.

CONSULTATION

Nil

STAFF COMMENT

Nil

DECLARATION OF INTEREST

Mr Stephen Tindale made a declaration of interest and left the meeting at 8.21pm.

Mr Graham Pattrick, Mr Geoff Trigg and Mrs Jodie Peers left the meeting at 8.21pm.

VOTING

Simple Majority

12.1.4 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Strzina

That Council:

- (1) Request the CEO Performance Review Panel to make recommendations to Council on an increase to Mr Tindale's remuneration, in accordance with clause 5.2 of the contract of employment;**
- (2) Adopt the revised performance review evaluation document for the CEO; and**
- (3) Appoint Mayor Morgan, Cr Miller, Cr Furlong and Cr Walsh to a panel charged with the responsibility of negotiating a new contract with the CEO and reporting back to Council.**

Carried 10/0

Mr Stephen Tindale, Mr Graham Pattrick, Mr Geoff Trigg and Mrs Jodie Peers returned to the meeting at 8.22pm.

12.1.5 RABBIT CONTROL - SOUTH COTTESLOE

File No:	E2.3
Author:	Ms Christine Lamont
Author Disclosure of Interest:	Nil
Report Date:	11 July, 2006
Senior Officer:	Mr Stephen Tindale

SUMMARY

It is recommended that Council maintain the current rabbit control program and seek outside funding to assist with rabbit population control.

STATUTORY ENVIRONMENT

Nil

POLICY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

BACKGROUND

Rabbits were introduced into Australia during the second half of the 19th century and despite many different control measures being applied, are still prevalent throughout the country. It is recognised by the Department of Agriculture and in the 'Threat Abatement Plan for Competition and Land Degradation by Feral Rabbits' (DEH 1999) that the complete removal of rabbits from Australia is well beyond the capacity of available techniques and resources. Control programs are most effective when they include the greatest number of different methods and cooperation between neighbours (Department of Agriculture Farmnote 92/2001). Most rabbit control programs now aim to achieve long term suppression of the population to reduce the damage that rabbits cause to the environment in a cost efficient manner.

Rabbit populations along the metropolitan coast fluctuate seasonally according to the availability of food and fresh water. Irrigated private lawns and public grassed areas provide excellent habitat for rabbits. Rabbit activity is currently controlled with an integrated baiting, fumigation and habitat removal program.

The former Coastcare Officer, Brett Dal Pozzo, initiated a Rabbit Control program in 2004. This program involved the placement of specially constructed baiting stations containing Pindone impregnated oats around the Cottesloe foreshore area and in particular, the Cottesloe Coastcare project sites. The bait stations were designed on the advice of the Department of Agriculture and a trial was conducted using

alternative designs. As a source of shelter, the bait stations are designed to attract rabbits and prevent the accidental poisoning of domestic pets or native wildlife.

If alternate shelter is available, (e.g. under Victorian tea trees or in underground warrens) then the bait stations can become largely ineffective in poisoning the rabbits.

The Cottesloe baiting program has been adopted by several other coastal councils including Cambridge, Stirling and Joondalup together with several coastal golf courses.

The Principal Environmental Officer at the Town of Mosman Park has advised that there has been very limited rabbit activity detected in Mosman Park/Buckland Hill and thus far they have not seen the need to undertake a rabbit control program.

CONSULTATION

The author has spoken with representatives of other local governments and Cottesloe Coastcare. They do not see the problem as being significant and anecdotally they believe the situation is well under control.

STAFF COMMENT

It is important to understand that the presence of rabbits is a nation wide problem and they will never be completely removed from the Cottesloe area. As baiting alone is insufficient to deal with the rabbit problem, other methods are employed in as recommended by the Department of Agriculture and the DEH.

Large stands of the Victorian tea tree provide shelter for rabbits and where feasible these trees are removed or under-cut to remove dense vegetation close to the ground.

Contractors have also been employed periodically to fumigate warrens.

Fumigation and baiting methods have experienced mixed success depending on the time of year in which either of the methods are applied. No rabbit population census has been completed at any time, so it is difficult to accurately measure any changes in population over time and most reported variations can only be attributed to anecdotal evidence. It is also very difficult to measure the success of either of baiting or fumigation as rabbit carcasses are rarely found out in the open.

The main damage caused by rabbits, other than destabilization of the soil, is the destruction of native vegetation and in particular new seedlings. This problem has been mostly controlled by the use of plastic tree guards when new seedlings are planted.

Other methods that are available to assist in the control of rabbits include the release of biological agents such as myxomatosis and Rabbit Calicivirus Disease (RCD), vertebrate pesticides such as '1080', shooting and trapping programs and destruction of existing warrens. While many of these methods can be used in agricultural areas they tend not to be suitable for the metropolitan area due to the risk of accidental poisoning of domestic animals.

The RCD is due for re-release later in July through the department of Agriculture. If RCD was to be released in the Cottesloe area a public notification of consultation period may be appropriate. While this virus is specific to rabbits and will not harm other domestic or native wildlife, domestic rabbits would be susceptible to its effects. Further information regarding the purchase and release of this biological agent will be available after July 14 through the Department of Agriculture.

I recommend that the current approach to rabbit control be maintained until further information regarding the release of RCD can be obtained.

In addition to the baiting program, fumigation and warren destruction should be undertaken where appropriate. A variety of control methods should be used where appropriate in conjunction with tree guards on all new plantings and all coastal councils are being encouraged to apply the same approach through the Coastcare Officer. A new grant program will be available to local governments in August of this year through the Swan Catchment Council to assist with threat abatement programs such as rabbit control.

VOTING

Simple Majority

12.1.5 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Furlong

That Council:

- (1) Maintain the current rabbit control program subject to revision as further control methods become available; and**
- (2) Seek outside funding as it becomes available to assist with rabbit population control.**

Carried 10/0

12.2 FINANCE**12.2.1 STATUTORY FINANCIAL STATEMENTS FOR THE PERIOD ENDING 30 JUNE, 2006**

File No:	C 7. 4
Author:	Mr Wayne Richards
Author Disclosure of Interest:	Nil
Period Ending:	30 June, 2006
Senior Officer:	Mr Stephen Tindale

SUMMARY

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

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

BACKGROUND

The Financial Statements are presented monthly.

CONSULTATION

Nil

STAFF COMMENT

The Operating Statement on page 17 of the Financial Statements shows an operating surplus of \$1,441,432 as at 30 June, 2006. Operating revenue is ahead of budgeted figures by an amount of \$429,283. A report on the variances in income and expenditure for the period ended 30 June, 2006 is shown on pages 38 & 39. Some of the main factors contributing to this operating revenue surplus include higher than expected funds for the disposal of assets, namely the former sump site at 103 Eric Street, increased revenues from parking fines, and grant income received ahead of schedule.

Operating expenditure is \$553,175 less than budgeted for this time of year. The main factors contributing to this are less than anticipated expenditure on the procurement of a new Business IT System (\$58,810), this project is now expected to take place in the 2006-2007 financial year. Other factors include less than anticipated expenditure

on the Civic Centre (\$54,534), contractors in the area of beaches (\$31,000), and also on contractors in Transport (\$42,379).

The Capital Works Programme is listed on pages 23 to 24 and shows a total under spend of \$348,848 for this time of year. The major projects impacting on this under spend are Railway Street (\$37,741), Marine Parade (\$86,271), Curtin Avenue/Marine Parade Roundabout (\$140,916) and the Civic Centre Restoration (\$39,805).

VOTING

Simple Majority

12.2.1 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Furlong

That Council receive the Operating Statement, Statement of Assets and Liabilities and supporting financial information for the period ending 30 June, 2006, as submitted to the 18 July, 2006 meeting of the Works and Corporate Services Committee.

Carried 10/0

12.2.2 SCHEDULE OF INVESTMENTS AND SCHEDULE OF LOANS FOR THE PERIOD ENDING 30 JUNE, 2006

File No:	C12 and C13
Author:	Mr Wayne Richards
Author Disclosure of Interest:	Nil
Period Ending:	30 June, 2006
Senior Officer:	Mr Stephen Tindale

SUMMARY

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

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

BACKGROUND

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

CONSULTATION

Nil

STAFF COMMENT

The Schedule of Investments on Page 50 of the Financial Statements shows that \$1,746,144.14 was invested as at 30 June, 2006 of which \$684,272.18 was made up of reserved funds. Approximately twelve five per cent of the funds were invested with the Home Building Society, seventy five per cent with National Australia Bank, and thirteen per cent with Bankwest.

The Schedule of Loans on Page 51 shows a balance of \$350,506.90 as at 30 June, 2006. Of this \$179,829.79 relates to self supporting loans

VOTING

Simple Majority

12.2.2 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Furlong

That Council receive the Schedule of Investments and Schedule of Loans for the period ending 30 June, 2006, as submitted to the 18 July, 2006 meeting of the Works and Corporate Services Committee.

Carried 10/0

12.2.3 ACCOUNTS FOR THE PERIOD ENDING 30 JUNE, 2006

File No:	C 7. 8
Author:	Mr Wayne Richards
Author Disclosure of Interest:	Nil
Period Ending:	30 June, 2006
Senior Officer:	Mr Stephen Tindale

SUMMARY

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

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

BACKGROUND

The List of Accounts is presented monthly.

CONSULTATION

Nil

STAFF COMMENT

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

- \$21,028.22, \$11,236.36 & \$11,130.41 to West Australian Local Government Superannuation Plan being for employer contributions to the plan.
- \$28,049.89 to the Australian Taxation Office for the May BAS.
- \$32,635.10 to BCITF for levies collected on their behalf.
- \$19,019.00 & \$14,905.00 to Claremont Asphalt for asphalt works to the Boat Shed carpark etc.
- \$56,940.80 & \$97,055.72 to Roads 2000 being for roadworks to Railway Street.
- \$33,117.39 & \$28,159.20 to Trum for monthly domestic waste collections.
- \$12,611.36 & \$11,768.22 to the Town of Mosman Park for various roadworks.
- \$13,860.00 to Stewie Valentine Painting for painting works at the Civic Centre.
- \$55,264.13 & \$49,937.60 for staff payrolls
- \$18,000.00 to Sculpture by the Sea for a new sculpture.

- \$13,359.84 to Comkerb for various kerbing works.
- \$24,081.42 to B & N Waste for a verge collection.
- \$12,532.30 to Miracle Equipment for playground equipment.
- \$29,930.81 to WMRC for waste transfer fees.
- \$13,774.66 & \$14,065.85 to WA Treasury for loan repayments.
- \$73,627.94 to FESA for Emergency Service Levies collected on their behalf.
- \$19,800.00 to Jaymar Pumps for a new bore on Napier Street.
- \$14,285.70 to The Marley Family Trust for footpath works.
- \$53,083.82 & \$51,054.17 for staff payroll.

VOTING

Simple Majority

12.2.3 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Strzina

That Council receive the List of Accounts for the period ending 30 June, 2006, as submitted to the 18 July, 2006 meeting of the Works and Corporate Services Committee.

Carried 10/0

**12.2.4 PROPERTY AND SUNDRY DEBTORS REPORTS FOR THE PERIOD
ENDING 30 JUNE, 2006**

File No:	C 7. 9
Author:	Mr Wayne Richards
Author Disclosure of Interest:	Nil
Period Ending:	30 June, 2006
Senior Officer:	Mr Stephen Tindale

SUMMARY

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

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

BACKGROUND

The Property and Sundry Debtors Reports are presented monthly.

CONSULTATION

Nil

STAFF COMMENT

The Sundry Debtors Report on pages 46 & 47 of the financial statements shows a balance of \$171,056.42 of which \$87,900.82 relates to the current month. The balance of aged debt greater than 30 days stood at \$83,155.60 of which \$63,645.56 relates to rejected pensioner rebate claims which need are yet to be reconciled.

The Property Debtors Report on page 49 of the financial statements shows a balance of \$319,276.37. Of this amount \$158,204.19 and \$8,394.08 are deferred rates and deferred ESL respectively. As can be seen on the balance sheet on page 18 of the financial statements, rates as a current asset stood at \$144,502 as against \$189,778 at the same time last year.

VOTING

Simple Majority

12.2.4 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Furlong

That Council:

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

Carried 10/0

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

12.3.1 BROOME STREET SPEED CONTROL PLATEAUX

The following residents addressed the Works and Corporate Services Committee meeting held on the 18th of July 2006.

Mr B Simpson, 207 Broome Street

Mr Simpson provided a copy of the letter that he has written to Council in relation to the installation of speed control plateaux. The Council correspondence of 9 May, 2006 stated that discussions will be held with affected residents. He has spoken with the nearby residents and not one has been approached by Council staff. He requested that all work cease immediately. Mr Simpson is having disrupted sleep due to the traffic noise caused by driving over the road works. The staff report to Council did not consider the human ramifications of the speed plateau installation. Mr Simpson stated that he has lived in Broome Street for 44 years, but can no longer enjoy sitting in the front garden or the porch. The noise also reverberates through to the back of the house, so has to keep the doors and windows closed. Mr Simpson stated that his quality of life has been destroyed.

Mr T Cox, 156 Broome Street

Mr Cox stated that he can now hear traffic coming down the street and that he is anticipating the noise that the car will make when it goes over the speed plateau. He is concerned about his health if this traffic noise continues. Traffic in the summer months will increase and therefore so will the noise. Council should not wait for the 12 month trial to finish – it has been proved already.

Mr M Moloney, 154 Broome Street

Mr Moloney has been in Broome Street for approx 8 years and has not seen a serious accident in this location. He questions why the speed plateaux should apply in the lower end of Broome Street. Buses are also affected by the plateau. Cars and buses are continuing to travel at the normal speed and not slowing down for the plateaux. Mr Moloney stated that this impacts him as it is located directly outside his house.

Mr P Martin, 208 Broome Street

Mr Martin suggested that Council could consider alternative traffic calming devices such as half roundabouts. He has lived in Cottlesloe for 35 years and is yet to experience a serious accident. Mr Martin stated that he is experiencing noise disruption.

The Manager Engineering Services responded.

He tabled a copy of the letters sent out, along with an A3 map showing the location of the speed plateaux. One speed plateaux is unfinished and trenches have been dug at the other two sites. The Manager Engineering Services has spoken with the asphalt contractor and has been advised that a

mechanical breakdown has affected the continuation of the installation. The two cut trenches will be filled with fresh asphalt on Wednesday, 19 July and depending on Council advice can remain in the trench or removed at a later date. The speed plateau on the corner of Torrens and Broome Streets is to remain unless otherwise directed by Council.

COMMITTEE RECOMMENDATION

Moved Cr Miller, seconded Cr Utting

That Council restore the road to its original condition and a report be prepared on alternative options to reduce speed on Broome Street.

AMENDMENT

Moved Cr Cunningham, seconded Cr Furlong

That Council restore the road to its original condition.

Carried 6/4

12.3.1 COUNCIL RESOLUTION

Moved Cr Cunningham, seconded Cr Furlong

That Council restore the road to its original condition.

Carried 10/0

12.3.2 STREET TREE POLICY

Cr Cunningham raised a resident's concern in relation to the unauthorised planting of different species of trees that have been planted in a couple of streets in Cottesloe. The trees that have been planted do not comply with the *Street Tree* policy.

Cr Cunningham requested that staff investigate whether it is possible to customise the policy to allow other tree species to be planted in particular streets where suitable.

COMMITTEE RECOMMENDATION

That staff prepare a report on the appropriateness of street trees in Seaview Terrace.

AMENDMENT

Moved Cr Utting, seconded Cr Carmichael

That this item be deferred to allow for Cr Walsh's consideration.

Lost 1/9

12.3.2 COUNCIL RESOLUTION

Moved Cr Cunningham, seconded Cr Strzina

That staff prepare a report on the appropriateness of street trees in Seaview Terrace.

Carried 7/3

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

Nil

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

Nil

15 MEETING CLOSURE

The Mayor announced the closure of the meeting at 8.25pm.

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