

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 September, 2012

28 September 2012

DISCLAIMER

No responsibility whatsoever is implied or accepted by the Town for any act, omission, statement or intimation occurring during council meetings.

The Town of Cottesloe disclaims any liability for any loss whatsoever and howsoever caused arising out of reliance by any person or legal entity on any such act, omission, statement or intimation occurring during council meetings.

Any person or legal entity who acts or fails to act in reliance upon any statement, act or omission made in a council meeting does so at that person's or legal entity's own risk.

In particular and without derogating in any way from the broad disclaimer above, in any discussion regarding any planning application or application for a licence, any statement or intimation of approval made by any member or officer of the Town of Cottesloe during the course of any meeting is not intended to be and is not taken as notice of approval from the Town.

The Town of Cottesloe wishes to advise that any plans or documents contained within the agenda or minutes may be subject to copyright law provisions (*Copyright Act 1968*, as amended) and that the express permission of the copyright owner(s) should be sought prior to their reproduction.

Members of the public should note that no action should be taken on any application or item discussed at a council meeting prior to written advice on the resolution of council being received.

Agenda and minutes are available on the Town's website

www.cottesloe.wa.gov.au

TABLE OF CONTENTS

ITEM	SUBJECT	PAGE NO
1	DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS.....	1
2	DISCLAIMER	1
3	ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION	1
4	PUBLIC QUESTION TIME	1
	4.1 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE	1
	4.2 PUBLIC QUESTIONS.....	1
5	PUBLIC STATEMENT TIME	1
6	ATTENDANCE.....	2
	6.1 APOLOGIES.....	2
	6.2 APPROVED LEAVE OF ABSENCE	3
	6.3 APPLICATIONS FOR LEAVE OF ABSENCE.....	3
7	DECLARATION OF INTERESTS.....	3
8	CONFIRMATION OF MINUTES	3
9	PRESENTATIONS.....	4
	9.1 PETITIONS	4
	9.2 PRESENTATIONS.....	4
	9.3 DEPUTATIONS	4
	9.3.1 MURRAY SLAVIN	4
	9.3.2 MICHAEL SWIFT AND ASSOCIATES	4
10	REPORTS	6
	10.1 REPORTS OF OFFICERS	6
	10.1.1 ALTERNATIVE COTTESLOE DEPOT SITE	6

10.2	REPORTS OF COMMITTEES.....	11
10.3	DEVELOPMENT SERVICES COMMITTEE MINUTES - 17 SEPTEMBER 2012.....	11
10.3.1	NO. 2 DEANE STREET – TWO-STOREY DWELLING WITH UNDERCROFT GARAGE, ROOF-SPACE LEVEL AND ELEVATED POOL	11
10.3.2	NO. 1C WARTON STREET – NEW TWO-STOREY DWELLING	26
10.3.3	NO.7 HAINING AVENUE – RAISED PATIO AT REAR, EXTENSION TO MASTER SUITE, REPLACEMENT OF PORTION OF FRONT DECK, TIMBER SCREEN, DOUBLE CARPORT, POOL AND CHANGES TO EXTERNAL DOORS AND WINDOWS	33
10.3.4	INDIANA RESTAURANT – PROPOSED TAVERN RESTRICTED LIQUOR LICENCE	42
10.3.5	RENEWAL OF ENTRY TO PREMISES UNDER TOWN PLANNING SCHEME NO. 2	47
10.4	WORKS AND CORPORATE SERVICES COMMITTEE MINUTES - 18 SEPTEMBER 2012	49
10.4.1	CURTIN AGED PERSONS HOMES INC (CAPH) – GOVERNANCE AND CONSTITUTION	49
10.4.2	AUSTRALIAN INSTITUTE OF BUILDING SURVEYORS NATIONAL CONFERENCE - MELBOURNE 21-24 OCTOBER 2012	54
10.4.3	REQUESTED UNDERTAKING – STANDING ORDERS LOCAL LAW 2012	57
10.4.4	CONVERSION OF STATION STREET SUMP INTO A SURFACE CAR PARK	63
10.4.5	PROPOSED SUBMISSION - PERTH BICYCLE NETWORK GRANTS 2013-2014	67
10.4.6	STATUTORY FINANCIAL REPORTS FOR THE PERIOD 1 JULY 2012 TO 31 AUGUST 2012	70
10.4.7	LIST OF ACCOUNTS PAID FOR THE MONTH OF AUGUST 2012	72
10.4.8	SCHEDULES OF INVESTMENTS AND LOANS AS AT 31 AUGUST 2012	74

	10.4.9	PROPERTY AND SUNDRY REPORTS AS AT 31 AUGUST 2012	76
11		ELECTED MEMBERS' MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN.....	78
12		NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING BY:	78
	12.1	ELECTED MEMBERS	78
	12.2	OFFICERS	78
13		MEETING CLOSED TO PUBLIC	78
	13.1	MATTERS FOR WHICH THE MEETING MAY BE CLOSED.....	78
		13.1.1 ROW 32B ENCROACHMENT - CONFIDENTIAL	78
	13.2	PUBLIC READING OF RECOMMENDATIONS THAT MAY BE MADE PUBLIC	81
14		MEETING CLOSURE	82

1 DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS

The Presiding Member announced the meeting opened at 7:10 PM.

2 DISCLAIMER

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

3 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

The Mayor opened the meeting and advised members of the public that there will be a public forum convened by the Western Suburbs Alliance held in the War Memorial Town Hall on Thursday 11 October 2012 at 7:30pm. The Mayor will be speaking at the meeting together with current/previous Mayors who will be in attendance. A range of issues will be discussed including State Planning Decisions, DAP's, SHACS, local government amalgamations, etc. Any interested members of the public are welcome to attend.

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

Nil

4.2 PUBLIC QUESTIONS

Nil

5 PUBLIC STATEMENT TIME

Mr David Barr, 21A Lefroy Road, Fremantle– Re. Item 10.3.2: No. 1C Warton Street – New Two-Storey Dwelling

Mr Barr is the architect for the owners of property. He spoke briefly about the proposal and the design approach for a complex site. He supported the officer report and urged Council to endorse the Committee recommendation.

Mr Simon Scott, 7 Haining Avenue, Cottesloe – Re. Item 10.3.3: No.7 Haining Avenue – Raised Patio at Rear, Extension To Master Suite, Replacement of Portion Of Front Deck, Timber Screen, Double Carport, Pool and Changes To External Doors And Windows

Mr Scott is the owner of the property and he outlined the sympathetic design in relation to setbacks and style in order to achieve an outcome that had the support of all neighbours.

Mr Deon White, 217 Marmion Street, Cottesloe – Re. Item 13.1.1 ROW 32B Encroachment - Confidential

Mr White referred to the history of this matter, Council's policy on ROW's, their requirement to upgrade the laneway and the recently reported claim of adverse possession. He also referred to the many reports on this matter in the Post and reiterated the fact that the fence occupies public land in a public laneway which has reduced the width of the laneway. He spoke of the distress that this matter has caused to him, his family and the community as well as the cost to Council to date in time and money. He stated that this has now been ongoing for 5 months and resulted in 3 reports to Council and urged Council to act decisively to address the matter.

Mrs Meaghan White, 217 Marmion Street, Cottesloe – Re. Item 13.1.1 ROW 32B Encroachment - Confidential

Mrs White spoke of the way this matter as escalated and has been handled, including the involvement of the media and the costs to them in their own development which has been impacted by the issues associated with the need to realign the fence. She referred to two surveys of the laneway and a significant number of articles in the Post, 20 complaints from Mr Svanberg including reporting her to the Institute of Architects and involving Channel 9's A Current Affair. Given the length of time and 3 Council meetings she also urged Council to finalise the matter without delay.

6 ATTENDANCE

Elected Members

Mayor Kevin Morgan
Cr Jack Walsh
Cr Greg Boland
Cr Katrina Downes
Cr Yvonne Hart
Cr Sally Pyvis
Cr Rob Rowell
Cr Peter Jeanes

Presiding Member

Officers

Mr Carl Askew
Mr Mat Humfrey
Mr Geoff Trigg
Mr Andrew Jackson
Mrs Lydia Giles

Chief Executive Officer
Manager Corporate & Community Services
Manager Engineering Services
Manager Development Services
Executive Officer

6.1 APOLOGIES

Cr Victor Strzina

Officer Apologies

Nil

6.2 APPROVED LEAVE OF ABSENCE

Nil

6.3 APPLICATIONS FOR LEAVE OF ABSENCE

Nil

7 DECLARATION OF INTERESTS

Cr Walsh declared an impartiality interest in Item 10.3.1 due to knowing the objector of the application.

Cr Boland declared an impartiality interest in Item 10.3.1 due to knowing the objector of the application.

Mayor Morgan declared an impartiality interest in Item 10.3.1 due to knowing the objector of the application.

Cr Rowell declared a financial interest in Item 10.4.1, due to receiving remuneration for being the Chairman of CAPH.

Cr Jeanes declared a financial interest in Item 10.4.1 due to receiving remuneration for being a member of the CAPH Board.

CEO declared an impartiality interest in item 10.4.1 due to being a member of CAPH in accordance with the Constitution.

Cr Jeanes declared a proximity interest in Item 13.1.1 due to owning a property on John Street.

8 CONFIRMATION OF MINUTES

In relation to item 12.1 New Business of an Urgent Nature, Cr Boland noted that item 12.1 was not debated or resolved as it was not endorsed as Urgent Business. The CEO supported this position and agreed to amend the Minutes accordingly.

Moved Cr Walsh, seconded Cr Hart

[Minutes August 27 2012 Council.DOC](#)

The Minutes of the Ordinary meeting of Council held on Monday, 27 August, 2012, as amended, be confirmed.

Carried 8/0

9 PRESENTATIONS**9.1 PETITIONS**

Nil

9.2 PRESENTATIONS

Nil

9.3 DEPUTATIONS**9.3.1 MURRAY SLAVIN**

Slavin Architects (on behalf of the objector Peter Lalor of 82 Marine Parade) – Represented by Mr Murray Slavin, 10 Barnett Street, Fremantle and Mr Stuart Neal, 197 High Street, Fremantle - item 10.3.1 - No. 2 Deane Street – Two-Storey Dwelling with Undercroft Garage, Roof-Space Level and Elevated Pool

Mr Slavin handed-out a document which he referred to in speaking to the matter. He outlined the aspects critiqued as a basis for objection to the proposal, including the third storey element, roof form, wall height, bulk and scale, overlooking and comparative examples. He also suggested there were too many concessions involved. Mr Neal then commented on the design approach, referring to the officer report and suggesting that the Scheme provisions should not be applied as assessed.

9.3.2 MICHAEL SWIFT AND ASSOCIATES

Michael Swift & Associates (on behalf of the owner/applicant), Wannanup, WA 6210 - item 10.3.1 - No. 2 Deane Street – Two-Storey Dwelling with Undercroft Garage, Roof-Space Level and Elevated Pool

Mr Swift challenged the objections in relation to the Scheme provisions and the Residential Design Codes and emphasised that discretion was involved. He referred to the extensive consultation with the concerned neighbour and commented on some of the technical aspects, such as the right of way contributing to setbacks. Mr Swift also referred to the photographs and 3D perspectives with accurate images submitted in support of the proposal. He noted that a number of other similar dwellings have been approved and that there are no specific controls regarding roof form. Mr Swift concluded by pointing out that the design complies with the Scheme and he could not see why it should not be approved.

For the benefit of the members of public present, the Mayor determined to consider the following items first:

The following Items from Development Services Committee Were Withdrawn for Consideration.

- 10.3.1 No. 2 Deane Street – Two-Storey Dwelling with Undercroft Garage, Roof-Space Level And Elevated Pool
- 10.3.2 No. 1C Warton Street – New Two-Storey Dwelling
- 10.3.3 No.7 Haining Avenue – Raised Patio at Rear, Extension To Master Suite, Replacement of Portion Of Front Deck, Timber Screen, Double Carport, Pool and Changes To External Doors And Windows
- 10.3.4 Indiana Restaurant – Proposed Tavern Restricted Liquor Licence

CONFIDENTIAL ITEM

- 13.1.1 ROW 32B Encroachment - Confidential

OFFICER REPORT

- 10.1.1 Alternative Cottesloe Depot Site

The following Item from Development Services Committee was considered.

- 10.3.5 Renewal of Entry to Premises Under Town Planning Scheme No. 2

The following Items From Works & Corporate Services Committee were withdrawn for consideration.

- 10.4.1 Curtin Aged Persons Homes INC (CAPH) – governance and Constitution
- 10.4.4 Conversion of Station Street Sump Into a Surface Car Park
- 10.4.5 Proposed Submission - Perth Bicycle Network Grants 2013-2014

The Remainder of the Officer Reports from Works & Corporate Services Committee Were Dealt with 'En Bloc'.

- 10.4.2 Australian Institute of Building Surveyors National Conference - Melbourne 21-24 October 2012
- 10.4.3 Requested Undertaking – Standing Orders Local Law 2012
- 10.4.6 Statutory Financial Reports for The Period 1 July 2012 To 31 August 2012
- 10.4.7 List of Accounts Paid for the Month of August 2012
- 10.4.8 Schedules of Investments and Loans as at 31 August 2012
- 10.4.9 Property and Sundry Reports as at 31 August 2012

10 REPORTS

10.1 REPORTS OF OFFICERS

10.1.1 ALTERNATIVE COTTESLOE DEPOT SITE

File No: SUB/220
Attachments: [Confidential Draft Lease Proposal](#)
[Confidential advice from the Town of Mosman Park](#)
Responsible Officer: Carl Askew
Chief Executive Officer
Author: Geoff Trigg
Manager Engineering Services
Proposed Meeting Date: 24 September 2012
Author Disclosure of Interest Nil

SUMMARY

At its December 2011 meeting, Council resolved, in regards to the Cottesloe Depot site:

THAT Council:

1. *Subject to agreement by the Town of Mosman Park, endorse in principle the relocation of its depot operations to the Town of Mosman Park depot site on Mc Cabe Street, in accordance with the concept plans provided by consultants GHD as attached to this agenda and subject to:*
 - a) *Officers reviewing the Quantity Surveyor's cost estimates for the concept plan in order to determine final practical cost estimates in preparation for expressions of interest (EOI) and / or tendering of individual aspects of the total project.*
 - b) *Officers working with the Town of Mosman Park to prepare a draft Management / Lease Agreement between the two Councils inclusive of, but not limited to, the following matters:*
 - i) *Time period to be covered by agreement*
 - ii) *Terms covering capital expenditure levels for both Councils to establish the expanded and upgraded facilities*
 - iii) *The Town of Cottesloe's long term payment obligations regarding any lease fee*
 - iv) *Satisfactory dispute, arbitration and exit clauses*
 - v) *The method of proportioning annual maintenance and operating costs between both Councils*

for presentation to, and endorsement by, each respective Council.

2. *Endorse officers proceeding with the gathering of relevant information and options regarding the sale of the existing Cottesloe depot site, with this aspect to be brought back to Council for further consideration in February 2012.*
3. *Investigate and secure interim / short term loan funds against the anticipated sale of the existing depot site in order to finance Council's share of the initial capital works required at the Mosman Park depot site.*
4. *Authorise the CEO to liaise and negotiate with the Town of Mosman Park in order to finalise this project during 2012.*

This item provides an update in relation to ongoing discussions with the Town of Mosman Park, with recommendations on future actions. As these negotiations are ongoing, the related information in the attachments is considered confidential until negotiations are finalised.

BACKGROUND

Council has received a number of reports over the years regarding potential alternative sites for its depot operations. The most recent investigations have involved a consultant company reporting on the capacity of the Mosman Park depot site to be upgraded to cope with the Town of Cottesloe's depot operations also being based at that site.

Staff have spent substantial time with the consultant and Mosman Park staff developing the plan and cost estimates for the upgrading required to allow the Mosman Park depot to be shared by both Councils' depot operations. Whilst negotiations are yet to be finalised, it is clear that the changes required to be made to the McCabe Street site will take some time to finalise and implement. If the Town does not relocate until all works are completed, it will mean that there will be an interim period of between 12 months and 2 years. As a consequence, staff have also investigated potential commercial sites available for immediate occupation on a short to medium term lease, to accommodate its depot operations.

STRATEGIC IMPLICATIONS

In December 2011 Council set, as one of the Key Result Areas of the CEO, to:

- 3.3 *Progress the preferred solution for Council's depot services and redevelopment of the current site.*

Council's Future Plan 2006-2010 states:

Objective 4 – "To Manage Development Pressures." Strategy 4.5 states "Consider undeveloped Government-Owned land for higher density development provided there is both public support and benefit for the Cottesloe Community". This could also apply to Council-owned land.

Objective 5 – "Maintain Infrastructure and Council Buildings in a sustainable way". Strategy 5.1 states "Adopt a policy position on assets that have a realisable value such as the Depot and Sumps". Strategy 5.4 states "Maximise income from non-rates sources".

POLICY IMPLICATIONS

The following Council policies apply to this item:

- Community Consultation
- Occupational Safety & Health
- Regional Cooperation
- Sale of Council Property
- Assets with a Realisable Value.

STATUTORY ENVIRONMENT

Part of the process of the Mosman Park shared depot project will involve a Development Application by the Town of Mosman Park for any new or altered structures at the McCabe Street site or for any area of land reserved under the Metropolitan Region Scheme (MRS).

Legal agreements will also be required between both Councils, to control the long term administration of the site, as well as the funding processes to allow the site to be upgraded and operated as a shared depot.

The Town of Mosman Park will need the approval of the Minister to sub-lease to the Town of Cottesloe over Crown Land vested in the Town of Mosman Park.

FINANCIAL IMPLICATIONS

No funds are specifically included in the 2012/2013 budget to be applied to any form of alternative depot site. However, it is expected that when Council commits to an alternative site, the existing depot site will be sold, with any costs associated with setting up the alternative site being covered by income from the existing depot land sale. A short term loan may be possible and / or required to cover this cost if the land sale process becomes drawn out. A separate report in relation to the disposal of the existing depot site will be presented after the closure of the advertising of the Business Plan.

SUSTAINABILITY IMPLICATIONS

The development of the existing depot site would require the removal of any contamination from the site. All new dwellings on site would need to meet modern sustainability standards, including deep sewer connection.

Light industrial / depot functions would also be removed from the surrounding residential area.

CONSULTATION

Initial consultation has taken place by the Town of Mosman Park with property owners adjacent to the Mosman Park depot. There has also been consultation with several other western suburbs Councils regarding alternative locations for a depot site.

Residents around the existing Cottesloe depot site have been previously informed of Councils intentions to vacate the depot site and that the site will be redeveloped after sale. As this project proceeds consultation and information will be required to be provided to residents close to the Nailsworth Street site, in regards to the type of

development to be approved by Council on the old depot site in accordance with the Town's Planning Scheme.

A Business Plan was previously advertised, as required by the Local Government Act, in 2007. This Business Plan is still applicable to the current intention to sell the existing depot and has been readvertised for further comment with a closing date of Friday 12 October 2012.

STAFF COMMENT

Senior staff have been negotiating with Town of Mosman Park officers for over 12 months, to reach an acceptable agreement on the upgrading of the Mosman Park McCabe Street depot to allow Cottesloe operations to be moved to that site.

These discussions have included staff from GHD consultants, who have completed a feasibility study on the capacity of that depot to carry both Councils' operations, totally funded by the Town of Cottesloe.

Cottesloe senior staff have provided a range of information to Mosman Park staff and councillors, dealing with the detailed issues associated with a potential relocation, including a count of machines, staff functions, officer requirements, storage and accommodation requirements, etc. The latest negotiation meeting took place in late July 2012 and details in relation to the outcomes and proposals are in the confidential attachment.

Given the potential timing of any relocation, the Town of Cottesloe senior staff have also investigated a number of commercial properties for lease in close proximity to Cottesloe. Staff consider that an early move to a commercial venue as a short term solution for its depot functions, would be in the best interest of the Town of Cottesloe, and will allow for the disposal of the current site as soon as practicable.

VOTING

Absolute Majority (budget variation)

MOTION FOR BEHIND CLOSED DOORS

Moved Mayor Morgan, seconded Cr Hart

In accordance with Standing Orders 15.10 *"That the Council Meets Behind Closed Doors - Effect of Motion (1) The circumstances under which a meeting may moved behind closed doors is dealt with in the Act; (2) In accordance with the subclause (1), this motion, if carried, will cause the general public, media and any officers or employees the council determines, to leave the room"*.

Carried 8/0

Members of the public and media were requested to leave the meeting at 8:58 PM.

OFFICER RECOMMENDATION & COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Hart

THAT Council:

- 1) Authorise the Chief Executive Officer to sign a lease agreement as outlined in the Confidential Attachment, to accommodate the relocation of its depot operations, with arrangements to be made for the relocation as soon as possible, once the formal lease agreement is in place.

- 2) Pursuant to section 6.8 of the Local Government Act 1995, authorise the following expenditure: Lease payments for Council's depot, at an estimated cost of \$70,000 in 2012/2013.

Carried 8/0

MOTION FOR BEHIND CLOSED DOORS

Moved Mayor Morgan, seconded Cr Rowell

"That the meeting be re-opened to the staff, members of the public and media"

Carried 8/0

Members of the public and Media returned to the meeting at 9:01 PM.

10.2 REPORTS OF COMMITTEES**10.3 DEVELOPMENT SERVICES COMMITTEE MINUTES - 17 SEPTEMBER 2012**

Cr Walsh declared an impartiality interest in Item 10.3.1 due to knowing the objector of the application.

Cr Boland declared an impartiality interest in Item 10.3.1 due to knowing the objector of the application.

Mayor Morgan declared an impartiality interest in Item 10.3.1 due to knowing the objector of the application.

10.3.1 NO. 2 DEANE STREET – TWO-STOREY DWELLING WITH UNDERCROFT GARAGE, ROOF-SPACE LEVEL AND ELEVATED POOL

File No:	2437
Responsible Officer:	Carl Askew Chief Executive Officer
Author:	Ed Drewett Senior Planning Officer
Proposed Meeting Date:	17 September 2012
Author Disclosure of Interest:	Nil
Property Owner:	H Stewart
Applicant:	Russell Stewart
Date of Application:	19 June 2012
Zoning:	Residential
Use:	P - A use that is permitted under this Scheme
Lot Area:	569.9m²
M.R.S. Reservation:	Not applicable

SUMMARY

This application has been “called-in” following its inclusion on the weekly delegation list. It was also briefly presented to the Development Services Committee in August as a precursor to this report.

The applicant has liaised extensively with the Town and neighbours over a lengthy period, and responded constructively with a series of plan revisions to address the planning parameters and comments of neighbours, in order to achieve an acceptable proposal which still contains the design ingredients desired for the dwelling as the applicant’s residence.

The proposal satisfies the general provisions of Town Planning Scheme No. 2 (TPS 2) and complies with the Acceptable Development standards of the Residential Design Codes (RDC) with the exception of the following:

- Boundary setback
- Visual privacy

- Removal of street tree
- Fencing

Each of these aspects is discussed in this report and refers to amended plans received 31 August 2012. The proposed building height and form is also discussed regarding the interpretation of TPS 2 in respect to use of roof space.

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

PROPOSAL

This application is for a two-storey dwelling with an undercroft garage (in addition to a ground level garage), a roof-space level and an elevated pool.

The dwelling comprises of 5 bedrooms, 1 shared bathroom, 2 WCs, 3 ensuites, family/games room, laundry, lift, cellar, TV room, games/dining/family area, kitchen, WIR, bar, parents retreat, front and rear balconies, elevated lap pool and retention of existing pool at ground level.

STATUTORY ENVIRONMENT

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

PROPOSED LOCAL PLANNING SCHEME NO. 3

No changes are proposed to the zoning of this lot.

APPLICATION ASSESSMENT

AREAS OF NON-COMPLIANCE

Residential Design Codes:

<i>Design Element</i>	<i>Permitted</i>	<i>Provided</i>	<i>Performance Criteria</i>
6.3 – Boundary Setbacks	2.8m from 1 st floor kitchen/pantry/robe from eastern boundary.	1.7m	Clause 6.3.1 - P1
6.8 – Visual Privacy	4.5m cone of vision to bedrooms; 6m cone of vision from habitable rooms other than bedrooms and studies;	Bedrooms - compliant with RDC 4.8m cone-of-vision from 1 st floor (west-facing) dining room; 5.2m cone-of-vision from 1 st floor (north & south-facing) bar	N/A Clause 6.8.1 - P1

	7.5m from unenclosed outdoor active habitable space.	windows; 5.2m cone-of-vision from loft (west-facing) parents retreat. 4m cone-of-vision from 1 st floor (west-facing) front/side balcony; 2.5m cone-of-vision from 1 st floor (north-facing) balcony; 5.45m cone-of-vision from loft (west-facing) rear balcony; 3.4m cone-of-vision from elevated pool.	
6.5 – Vehicular access	Driveways located so as to avoid street trees, or where this is unavoidable, the street tree being replaced by Council at the applicant's expense.	Removal of street tree to allow for additional crossover.	Clause 6.5.4 – P4

Local Law:

	Required	Provided
Fencing Local Law	Open-aspect fencing above 0.9m; Dividing fence to 1.8m high.	Solid wall, partially within front setback; Up to 2.2m high solid wall along western boundary.

ADVERTISING OF PROPOSAL

The application was advertised in accordance with TPS 2. Advertising consisted of a letter to 4 adjoining property owners (Body Corporate for flats at rear). Four submissions were received (3 from/on behalf of same owner). The neighbour on the eastern side signed plans stating no objection to the development.

Copies of the submissions were forwarded to the applicant and various amendments were made to the plans to address concerns raised. The Town also met with Slavin Architects who were representing Mr Lalor (western objector), and amended plans

received 14 August 2012 responding to their concerns were shown to them for information and comment.

The applicant has since made additional amendments to the plans (see plans - 31/8/12) to address comments received from Slavin Architects in their submission of 23 August 2012.

The main comments raised are summarised below:

Stephen & Carol Wall, 84B Marine Parade

- Concerned about damage to western ROW that had occurred during demolition of dwelling;
- Objects to use of ROW for access and parking and to proposed roof-pool for various reasons, including privacy/nuisance.

Slavin Architects (on behalf of Peter Lalor, 82 Marine Parade) in response to plans received 14/8/12 (now superseded). NB: Original comments are included as attachments.

Applicant's response shown in italics:

- Drawings not dated and don't contain revision notes;

Dates and versions have been placed on current drawings (received by TOC 31/8/12).

- Survey drawing from a Licensed Surveyor showing relative levels of the proposal and 82 Marine Parade has not been provided;

Survey plan has been submitted to TOC.

- The section drawings don't show line of sight from clear-glazed games room window on level 2 into rear window and courtyard areas at 82 Marine Parade;

Windows to games room have been amended to have minimum 1.65m sill heights to avoid overlooking.

- The ground floor level has been lowered requiring in excess of 0.5m to be retained against the ROW. The drawings do not show how temporary support to the ROW will be provided whilst new boundary retaining wall is to be constructed (also applies to basement);

Sheet piling will be provided in the first instance to basement and rear yard to avoid any erosion of ROW while construction is undertaken (Note: this is a building licence matter)

- The 3rd floor roof has been notated as metal-deck and has no fall. It requires a fall to be weatherproof. Any fall in the roof will reduce head height of the level 3 rooms to less than the 2.4m minimum for habitable rooms;

This minor alteration would have been dealt with at building licence stage. As per the BCA you need to have 2/3 of ceiling height at 2.4m. The floor has been lowered by 60mm to achieve fall needed for roof sheeting;

- The amended drawings still do not show a roof on the west side of the building. The dotted line that simulates a roof form is disingenuous and contrary to the intent of TPS 2;

This portion was always intended as roof (refer current plans). The roof area has been increased significantly and in turn habitable area reduced.

- The top of the wall that forms the edge of the pool is 6.65m above the site datum of 10.75 – this exceeds the 6m maximum wall height. The maximum wall height noted on the drawing has been measured to the pool water collection channel on the outside of the building – that is not the external wall.

The external wall is at 6m and meets planning guidelines. In any event, this wall to the side of the pool acts as a major privacy screen for the neighbours (Note: This is discussed in more detail below).

- The steps from the rear northern balcony into the pool allow overlooking into the rear of 82 Marine Parade. Also a person cannot physically step from the terrace into the pool without hitting their head on the soffit of the roof;

The steps have been moved to address concerns and the size of the rear balcony has been reduced.

- The front setback of the 3rd floor has not been changed and the building still presents as 3-storeys from Deane Street;

The front setback to the loft has now been increased to 7m so it will not be visible from Deane Street.

- The shutters on the 3rd level are still noted as ‘automatic’ although previously it was agreed that these would be fixed to prevent overlooking of the Marine Parade properties. The shutters also overhang the lap pool resulting in potential impact for swimmers and have not been shown on the floor plan;

The west-facing shutters were placed to alleviate late western sun and help comply with energy efficiency. They are not required to be fixed as there will be no overlooking and they will not impact on swimmers as the shutters will be setback 120mm.

- Noise from the pool and associated equipment will be reflected from the soffit of the roof overhang on the 3rd level and directed towards the properties to the west.

Pool equipment will be housed with a sound-proof lid. This will not have any noise issues to neighbours, but if a problem arises then it will be dealt with.

- The side setbacks to the west boundary do not comply with the setback requirements of the RDC;

The RDC state that ½ the ROW can be included as setback, so it does comply with setback requirements.

- The walls to major openings on the 2nd level do not comply with the RDC. A setback of 2.8m is required from the western boundary. Also the wall on the boundary does not comply with the setback requirements.

The RDC state that ½ the ROW can be included as setback, so it does comply with setback requirements.

- The setback to major openings from the side boundary is not shown;

Dimensions have been added.

- A 1.65m high brick wall to the rear northern balcony on the 3rd floor creates an inaccessible area and its use has not been identified;

The inaccessible area shown as paving has been removed.

- The line of sight into the window of 80A Marine Parade shown on Section AA does not show the correct overlooking from a position against the wall at the end of the kitchenette on the 3rd level;

The bench has been extended to address concerns of overlooking.

- The revised double garage on level 1 does not provide the necessary clearance for vehicles to access and egress the eastern carbay;

THE PROPOSED GARAGING SUITS ITS PURPOSE AND WILL BE IN ADDITION TO BASEMENT PARKING.

- Windows to bathrooms and bedroom 3 do not comply with minimum distances from boundaries for fire protection;

This is not a planning issue. The building surveyor has advised it is compliant.

- The cone of vision to the games room on the 2nd level does not comply with the RDC;

Windows to the games room have been altered to a 1.65m sill height to comply with the RDC.

- There is no cone of vision shown on the floor plan from major openings to habitable rooms on the 3rd level;

As NGL has not been built up over 0.5m there is no necessity to show cone of vision. The ground level has been lowered to remove privacy concerns.

It is noted that a number of the comments made are about technical design or plan detail aspects, rather than planning matters, and which have been readily addressed.

APPLICANT'S JUSTIFICATION

In addition to the above comments (shown in italics), the applicant has also submitted the following comments with the latest drawings:

- The original plans have been changed considerably to achieve a dwelling that complies with the RDC and TPS 2.
- The top floor has been reduced to 67% by significantly increasing setbacks from the front and rear roof space giving the dwelling more of a 2-storey appearance.
- The plans have been altered many times to address concerns raised by Council staff and the neighbour and I have offered to discuss and rectify any situations that may be an issue to Peter Lalor or his wife. This offer still stands.
- Peter Lalor has had independent architects assess the proposal in detail and items raised, even where they may have been compliant, have been addressed to alleviate the neighbour's concerns.

PLANNING CONSIDERATIONS

The following assessment is made in respect to this application and refers to amended plans received 31 August 2012.

Side setback to eastern boundary

The proposed setback to the 1st floor recessed area (kitchen/pantry/robe) will be 1.7m from the eastern boundary, in lieu of 2.8m required under the Acceptable Development standards of the RDC.

This setback concession can be considered under Performance Criteria, which state:

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 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 reduced setback will still provide adequate direct sun and ventilation to the proposed dwelling and adjoining property due to the lot's north-south orientation which ensures that winter sun will not be unduly disrupted and south-westerly breezes will still prevail. The recess in the wall will also assist in ameliorating building

bulk and as it has no major openings it won't impact on visual privacy. The adjoining owner at 4 Deane Street has signed plans stating no objection to the proposed reduced setback.

Visual privacy

The proposed (west-facing) windows to the 1st floor dining room and (north & south-facing) windows to the bar have a 4.8m and 5.2m cone of vision respectively, and the proposed (west-facing) window to the parents retreat has a 5.2m cone of vision, all in lieu of 6m required under the Acceptable Development standards of the RDC. Also the proposed 1st floor (west-facing) front/side balcony, (north-facing) rear balcony, (west-facing) rear balcony and the lap pool at loft level have a 4m, 2.5m, 5.45m and 3.4m cone of vision respectively, in lieu of 7.5m required under the Acceptable Development standards of the RDC.

These setback concessions can be considered under Performance Criteria, which state:

- *Direct overlooking of active habitable spaces and outdoor living areas of other dwellings is minimised by building layout, location and design of major openings and outdoor active habitable spaces, screening devices and landscape, or remoteness.*
- *Effective location of major openings and outdoor active habitable spaces to avoid overlooking is preferred to the use of screening devices or obscured glass.*
- *Where they are used, they should be integrated with the building design and have minimal impact on residents' or neighbours' amenity.*
- *Where opposite windows are offset from the edge of another, the distance of the offset should be sufficient to limit views into adjacent windows.*

Each of the concessions sought are addressed below:

1st floor: (west-facing) windows to dining room, (west-facing) front/side balcony & (north-facing) window to bar.

These windows and balcony potentially overlook the rear courtyard and 1st floor bedroom window of 80A Marine Parade, which fronts Deane Street. However, the applicant proposes to have a 1m high solid screen along the western boundary at 1st floor level adjoining these major openings which, due to the setback of the openings to the screen, will significantly assist in reducing direct overlooking of the adjoining property's outdoor living area. The adjoining courtyard is also located on the other side of the ROW and is covered by a large pergola thereby further restricting potential loss of privacy. The proposed screening will be integrated with the building design.

The neighbouring first floor window is approximately 10.5m from the proposed west-facing dining-room windows and whilst has potential to be overlooked it is only 1m in depth and forms part of a corner window that faces north-east so is not likely to be significantly affected by the proposal.

1st floor: (south-facing) window to bar.

This window will be 1.44m² (0.6m x 2.4m) and could result in some overlooking of the rear outdoor living area of 82 Marine Parade. Although this rear area does not appear well used and the dwelling has its frontage to Marine Parade rather than to the rear ROW, the window has been conditioned to be fixed and obscure glazed to a height of 1.6m to avoid overlooking.

Loft: (west-facing) windows to parents retreat.

Direct overlooking of major openings and outdoor active habitable spaces at 80A Marine Parade (opposite) from this window will be prevented due to its 2.2m setback from the western boundary, angle of glazing, and the proximity of the edge of the proposed lap pool that will prevent overlooking of these areas based on a vertical cone of vision measured from standard eye level (refer drawing No. 5 of 11 - Section AA).

1st floor: (north-facing) rear balcony.

There will be no direct overlooking of major openings and outdoor active habitable spaces from the proposed rear balcony as, although there will be some overlooking over the rear of the eastern lot, the side of the balcony nearest the boundary will be screened to 1.65m, and overlooking will be restricted to the roof of an existing garage on the neighbour's property.

Loft: (west-facing) rear balcony.

Direct overlooking of major openings and outdoor active habitable spaces at 82 Marine Parade (opposite) from this balcony will be prevented due to its 2.45m setback from the western boundary and the proximity of the edge of the proposed lap pool that will prevent overlooking of these areas based on a vertical cone of vision measured from standard eye level (refer drawing No. 5 of 11 - Section BB).

Roof-top pool

The proposed roof-top pool has been modified since the original plans were submitted. In particular, it has been increased in depth to 1.4m and no longer has an infinity edge, except for a 6.5m portion along the western edge (southern end) and a 4.5m section at the front of the proposed dwelling.

The increased depth and proposed 0.4m wide edge along its western side will significantly reduce the likelihood of any direct overlooking of major openings or outdoor active habitable spaces on adjoining western properties based on a vertical cone of vision measured from standard eye level (refer drawing No. 5 of 11 - Section AA & BB).

The Town's Principal Building Surveyor has advised that pool fencing is not required along the western side on top of the proposed edge providing the outer edge remains inaccessible. Details will be required to be submitted at building licence stage.

Vehicular access

The original submitted plans showed access to a double garage from the adjoining western ROW, in addition to an undercroft garage with access from Deane Street. However, the ROW is privately owned and the applicant was unable to obtain approval from the owner to use it for access. As a result, the plans were amended to accommodate a double garage at ground floor level with access from Deane Street, requiring an additional crossover to the lot.

The crossover on the eastern side that will provide access to the undercroft area will necessitate the removal of a street tree. However, this has been supported by the Town's Works Department as the species is not of significance and should be replaced with a Norfolk Island pine. This has been conditioned accordingly.

Side fencing

A small portion of proposed fencing within the front setback area along the western boundary does not comply with Council's Fencing Local law as it is solid and exceeds a height of 0.9m above NGL. It is therefore required to be amended for approximately 0.8m of its length to comply with the Local Law. The remainder of the proposed fence (brick wall) along the western ROW should also be amended where necessary so as to not exceed a height of 1.8m.

Building height and built form

The calculation of building height stems from Council's determination of natural ground level (NGL). Clause 5.5.1 of TPS 2 expresses policy in relation to building height and paragraph (c) provides a basic formula in relation to measurement of such height.

Provision is made for Council to depart from the formula where the natural ground forms indicate that a variation is warranted provided that the amenity of the area is not unreasonably diminished. Such a height variation is not sought in this case.

The NGL at the centre of this lot has been determined to be RL: 10.75, based on a site survey plan submitted by the applicant and drawn by a licensed surveyor.

Given this NGL the maximum permitted external wall height is 6m (RL: 16.75) and the maximum permitted ridge height is 8.5m (RL: 19.25). The proposed development complies with these height requirements; although the proposed, centrally-located, 0.25m high lift shaft has not been included in this calculation as in accordance with the RDC it is considered a minor projection, similar to a chimney or the like.

TPS 2 describes that the maximum building height in the Residential zone shall be two storeys except that Council may permit a third storey to be located within the roof space of a dwelling provided that the development complies with the maximum wall and roof height provisions stipulated in the Scheme and also provided that, in Council's opinion, the dwelling will retain the appearance of a two-storey dwelling and will not adversely affect local amenity.

In this case, the enclosed habitable area of the proposed third storey in the roof form/space will be 128.39m², which represents only 40% of the total roof area. If the area of the balconies and elevated pool is included then that equates to 66.5% of the roof area (refer to calculations on drawing 3 of 11), albeit that these elements are unroofed and do not create enclosed form or bulk.

The setback of the enclosed habitable area of the proposed third storey is 12.7m from the front boundary, which is more than thrice the 4m setback generally required in an R30 density-coded area under the RDC and more than twice Council's preferred 6m front setback. From the rear northern boundary the third level enclosure has a generous 13.3m setback. It also has a 2.2m setback from the western boundary (1.6m to roof) and a 2.6m setback from the eastern boundary (hidden by sloping roof).

The intent of these setbacks is to minimise the visual impression of the third storey within the roof form/space, while utilising an area which would otherwise be roofed. When viewed from the adjacent footpath, or from surrounding properties or in moving along the street, the effect of such setbacks is depending on the vantage point to either conceal the upper level or present it as a recessive element that echoes the form of a two-storey dwelling while ameliorating the sense of bulk and scale. At the same time the design and visual impression can be read as logical and respectful, with proportions in keeping with other two-storey dwellings in the streetscape.

It also demonstrates that a dwelling with a traditional pitched roof (especially one with gabled ends) or a flat roof, may have a greater visual presence to the streetscape and sense of bulk in relation to adjacent dwellings than that proposal (refer to drawings 9, 10 & 11).

Well-designed use of roof form/space as a third storey is not uncommon within the Town and Council has approved both covered and uncovered roof decks, some with elevated pools, such as at 1A Geraldine Street and 10 Grant Street, while a dwelling at 3 Torrens Court has a partially-covered roof deck and elevated pool. There are various other examples of curved or angled roof designs approved to permit a third level within that space, effectively disguising the third storey as an integral part of the building while fostering quality architecture.

This has evolved as architects have experimented with various sites and designs for reasons of space, views, aesthetics and so on, which in turn has invited Council to interpret the essentially broad Scheme provisions to enable acceptable outcomes. As in this instance, usually the initial concepts are refined to achieve a reasonable balance between the design objectives and planning requirements, and where the final proposal complies or performs satisfactorily there is limited basis to not support it as suitable.

The main difference between these designs and the proposal is the extent of usable habitable roof space, but as the total usable area will be less than 70% of the roof area and 37% of the lot area, it is considered satisfactory in terms of the Scheme requirements.

In one instance, the State Administrative Tribunal advised in its decision of 1 December 2006 regarding a proposed two-storey dwelling with roof-top pool and outdoor area at 17 John Street, that:

There is no planning principle why an upper deck level and pool could not be approved on site if appropriately designed.

CONCLUSION

The proposal is compliant with the main height parameters and consistent with the use of partially enclosed roof spaces, while elevated pools are able to be accommodated in designs.

The contemporary design of the dwelling is considered to be in scale and harmony with the streetscape and the approach to privacy variations satisfies the Performance Criteria of the RDC.

The western side setbacks are compliant, taking account of half the width of the western ROW as permitted under the RDC Acceptable Development standards.

Only the western neighbours have raised concerns, including the ROW, privacy and amenity, all of which have been addressed by the applicant.

Overall, the proposal is reflective of similar designs and developments found the district and the revised plans can be supported.

VOTING

Simple Majority

Committee discussed the proposal focusing on the third storey in the roof space and expressed mixed considerations regarding how the design performed in relation to the Scheme provisions. It was acknowledged that the proposal had been scrutinized and privacy concerns addressed. Committee also noted that a raised pool could be contemplated as supported elsewhere by the SAT.

It was queried whether intended LPS3 had a similar provision for a third storey in the roof space, which the MDS confirmed. The MDS elaborated on the approach to design and interpretation of the current Scheme provision in relation to the proposal and other similar applications approved by Council. He pointed-out that there had been no opportunity to examine the written material tabled by the objecting architects although it was apparent that privacy was no longer being raised as a concern for the western neighbour.

There was brief discussion about whether the subject property needed a truncation to the lane; however, as the front fencing is to be open-aspect, as the lane is private with restricted access, and as the property on the western side has no truncation, that is not assessed as necessary.

In a refusal being foreshadowed the MDS advised Committee that he could draft a form of words premised on its consideration of the proposal in the context of the Scheme provision for a third storey in the roof space; but that it would be difficult to

sustain overlooking as a ground for non-support as that was capable of being addressed by design.

OFFICER RECOMMENDATION

Moved Cr Jeanes, seconded Cr Downes

THAT COUNCIL grant its approval to commence development for the proposed two-storey dwelling with undercroft garage, roof-top space and elevated pool at No. 2 (Lot 25) Deane Street, Cottesloe, in accordance with the plans revised on 31 August 2012 (Drawing Nos 1-11 inclusive) subject to the following conditions:

- (1) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13: Construction sites.
- (2) 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.
- (3) Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve 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.
- (4) Air-conditioning plant and equipment shall be located closer to the proposed dwelling than the adjoining dwellings, and suitably housed or treated as may be necessary, so as to ensure that sound levels emitted do not exceed those specified in the Environment Protection (Noise) Regulations 1997.
- (5) The proposed fencing within the front setback area being modified to provide an open-aspect design in accordance with the Town's Fencing Local Law and the remainder of the fence along the western boundary being no higher than 1.8m, with the details to be submitted at building licence stage to the satisfaction of the Manager Development Services.
- (6) The applicant applying to the Town of Cottesloe for approval to construct the two new crossovers, in accordance with the Town's specifications, as approved by the Manager Engineering Services or an authorised officer.
- (7) The existing redundant crossover is to be removed and the verge, kerb and all surfaces made good at the applicant's expense to the satisfaction of the Manager Engineering Services.
- (8) The proposed pool pump and filter shall be located closer to the proposed dwelling than the adjoining dwellings, and suitably housed or treated as may be necessary, so as to ensure that environmental nuisance due to noise or vibration from mechanical equipment is satisfactorily minimised to within permissible levels outlined in the Environmental Protection (Noise) Regulations 1997.

- (9) Wastewater or backwash water from swimming pool filtration systems shall be contained within the boundary of the property on which the swimming pools are located and disposed of into adequate soakwells.
- (10) A soakwell system shall be installed to the satisfaction of the Environmental Health Officer, having a minimum capacity of 763 litres and located a minimum of 1.8metres away from any building or boundary.
- (11) Wastewater or backwash water shall not be disposed of into the Town's street drainage system or the Water Corporation's sewer.
- (12) The proposed first-floor, south-facing window to the bar shall be fixed and obscure-glazed to a minimum height of 1.6m above floor level to the satisfaction of the Manager Development Services.
- (13) The existing street tree shall be removed and replaced with a Norfolk Island pine tree to the satisfaction of the Town's Works Supervisor, at the applicant's cost.

Advice Note:

The applicant/owner is responsible for ensuring that all lot boundaries shown on the approved plans are correct and that the proposed development is constructed entirely within the owner's property.

Lost 2/3

NEW MOTION & COMMITTEE RECOMMENDATION

Moved Cr Walsh, seconded Cr Hart

THAT COUNCIL REFUSE to grant its approval to commence development for the proposed two-storey dwelling with undercroft garage, roof-top space and elevated pool at No. 2 (Lot 25) Deane Street, Cottesloe, in accordance with the plans revised on 31 August 2012 (Drawing Nos 1-11 inclusive), for the following reason:

- **It is considered that the proposal does not sufficiently satisfy the provisions of the Scheme in relation to a third storey within the roof space of a dwelling.**

AMENDMENT

Moved Mayor Morgan, seconded Cr Walsh

That a new dot point 2 be added to read: "It is considered that the proposal does not sufficiently satisfy privacy requirement having regard to the Residential Design Codes".

Carried 5/3

**For: Mayor Morgan, Crs Hart, Boland, Pyvis, and Walsh
Against: Crs Downes, Jeanes, and Rowell**

COUNCIL RESOLUTION

THAT COUNCIL REFUSE to grant its approval to commence development for the proposed two-storey dwelling with undercroft garage, roof-top space and elevated pool at No. 2 (Lot 25) Deane Street, Cottesloe, in accordance with the plans revised on 31 August 2012 (Drawing Nos 1-11 inclusive), for the following reason:

- **It is considered that the proposal does not sufficiently satisfy the provisions of the Scheme in relation to a third storey within the roof space of a dwelling.**
- **It is considered that the proposal does not sufficiently satisfy privacy requirements having regard to the Residential Design Codes”.**

THE AMENDED SUBSTANTIVE MOTION WAS PUT

Carried 5/3

**For: Mayor Morgan, Crs Hart, Boland, Pyvis, and Walsh
Against: Crs Downes, Jeanes, and Rowell**

10.3.2 NO. 1C WARTON STREET – NEW TWO-STOREY DWELLING

File No:	2486
Responsible Officer:	Carl Askew Chief Executive Officer
Author:	Will Schaefer, Planning Officer Andrew Jackson, Manager Development Services
Proposed Meeting Date:	17 September 2012
Author Disclosure of Interest:	Nil
Property Owner:	Colleen Pugh
Applicant:	David Barr, architect
Date of Application:	10 August 2012
Zoning:	Residential R30
Use:	Permitted
Lot Area:	270m²
MRS Reservation:	N/A

SUMMARY

This report presents a development application for a modern single residence within a recent small-lot subdivision at the corner of Marine Parade and Warton Street in south Cottesloe. The subject lot faces Warton Street and as each dwelling is designed it adapts to the lot configuration and adjacent designs.

In liaison with the Town revised plans have been lodged to satisfy compliance and achieve an effective design taking into account the building orientation, interfaces and streetscape.

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

PROPOSAL

The proposal is for a new, architect-designed two-storey dwelling with undercroft garage and storerooms. The ground and upper floors each contain a mixture of living spaces, bedrooms and service rooms. The living areas front the street for a northern aspect, outlooks (ocean vistas) and a streetscape presence.

Owing to the lot constraints boundary walls (ie reduced setbacks) are utilised, which is common in small lot estates. Less than 6m front setbacks are also sought, to form a staggered arrangement whereby successive lots may gain a view corridor. These parameters are assessed below.

A three-dimensional model clearly depicts how the proposed design functions in relation to the context of the site and surrounding lots, and will be displayed at the Development Services Committee meeting.

STATUTORY ENVIRONMENT

Town Planning Scheme No. 2 and Residential Design Codes.

PROPOSED LOCAL PLANNING SCHEME NO. 3

No change is proposed to the zoning or density coding of the lot.

APPLICATION ASSESSMENT

The proposal is compliant in several key respects, including overall building height, privacy, open space, shadowing (minimal), fill (none), parking, garage door width (basement), driveway gradient and various design details. The street pine trees are to be retained by the crossover design.

The design variations entailing discretion are confined to the treatments of setbacks as set out below.

Variations

<i>Design Feature</i>	<i>Permitted</i>	<i>Proposed</i>
Front Setback	6m under Council Resolution TP128a; but 1.5m to balcony and 2.5m to dwelling under Residential Design Codes.	2.5m to balcony and 3.6m to dwelling (ie exceeds RDC).
Walls on boundary	One wall for two-thirds of a single boundary length behind the front setback line and up to 3.5m high.	Three walls along three boundaries, one up to 7m high (two-storey).
Wall setback from boundary	2.5m under RDC.	1.77m

ADVERTISING OF PROPOSAL

The original proposal was first shown to neighbours by the applicant in order to address any concerns raised and to gain indications of support. The owners of the lots to the east and south have raised no objection to the design.

The owners of 38A&B Marine Parade to the west were notified by letter from the Town. Prior to the application they had initially expressed concern about a possible boundary wall or overlooking. In response the architect has excluded any boundary wall abutting their lots and has fully-obscured all western windows at both levels to provide the desired privacy.

The owner of 38C Marine Parade has agreed to a boundary wall and emphasised the need for careful construction techniques (a planning approval advice note and the building licence can cover this).

The owners of 1 Warton Street, an established dwelling one lot removed from the subject lot, have expressed concern that the front setbacks may set a precedent for similar setbacks to the vacant Lot 6 between their property and the subject lot, depriving them of their ocean view.

APPLICANT'S JUSTIFICATION

The architect's explanatory justification for the design is attached and addresses the design variations discussed herein.

Front setback

It is proposed to have a front setback of 2.5m for the upper-floor balcony, 3.6m for the upper-floor wall and 4.6m for the remainder of the dwelling; whereas by Resolution TP128a Council generally prefers front setbacks of 6m with no averaging, although has allowed some lesser setbacks in R30 areas.

The subject lot was created by subdivision of a large site previously developed with units into seven single residential sites, as supported by Council in February 2010. The RDC recognise that small lot infill subdivision may cause unattractive voids in the streetscape, hence Acceptable Development Standard 6.2.1 A1.1(ii) allows for setbacks down to 2.5m:

Buildings other than carports and garages set back from the primary street in accordance with Table 1; but in areas coded R15 or higher, where a single house results from subdivision of an original corner lot and has its frontage to the original secondary street, the street setback may be reduced to 2.5m, or 1.5m to a porch, verandah, balcony or the equivalent.

The RDC explanatory guidelines elaborate:

Different streetscapes usually occur on secondary or side streets, with the street alignments formed by the long side boundaries of corner lots. These are characterised by side fences or walls rather than open gardens, and a small setback to the dwelling.

In many cases these streetscapes are being altered by subdivision of corner lots, creating new frontages to the side street. Where this happens, similar consideration to those for setbacks to frontage streets apply, but with a reduced setback, for practical and streetscape reasons.

The proposed setbacks are premised on this design approach and appear preferable to the standard setback of 6m. They would result in a stepped transition from the 1.5m secondary street (Warton Street) setback for the new corner dwelling at 38C Marine Parade to future setbacks determined for the vacant lot at 1B Warton Street. In this respect the architect's plans include a view corridor diagram to demonstrate that the proposed setbacks would not significantly affect views from 1B and 1 Warton Street, with those primary vistas being along the street corridor rather than looking directly upon the new dwellings.

Design-wise, the ground floor is set back an average of 5m and the upper floor an average of 4m. The balcony with frameless glass balustrade would have a lightweight, floating appearance, while the sense of bulk would be ameliorated by the extensive windows facing the street. The fencing for the setback area is entirely open-aspect. On this basis it is considered that the proposal would perform acceptably.

Council has approved a number of lesser front setbacks where corner lots have been subdivided and frontages to secondary streets created; eg 2A Reginald Street, 1 Princes Street, 13 Florence Street, 43 Hawkstone Street, 18 Grant Street, 22 Grant Street, 48 & 50 North Street and 7 Knowles Street.

Technically the proposed setbacks satisfy the Acceptable Development Standards of the RDC, which were formulated to address such situations.

The alternative of Council's 6m typical R20 setback would in this instance reduce the developable area of the site, place the dwelling in an alcove flanked by a two-storey wall to the west and generate a disjointed streetscape.

Boundary walls

It is proposed to construct three walls on three separate boundaries as follow:

1. A two-storey wall abutting the existing two-storey wall on the western boundary, which is permitted as-of-right under the RDC Acceptable Development Standards.
2. A two-storey wall on the eastern boundary.
3. A single-storey wall on the southern boundary.

It is anticipated that dwellings in this subdivision will seek to maximise walls on boundaries; however, to begin with the RDC contemplate one boundary wall in R30 areas. Therefore it is necessary to consider the additional boundary walls under RDC Performance Criterion 6.3.2 P2, which provides:

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

Eastern boundary wall

The wall is up to 7m high (ie two-storey) and is 18m long, whereas RDC Acceptable Development Standard 6.3.2 A2(ii) contemplates walls up to 3.5m high for up to two-thirds of the boundary length behind the front setback line, or 12m in this instance.

As the adjacent lot is vacant, the Performance Criterion is not wholly assessable. The applicant advises that the RDC have been addressed via consultation with neighbours leading to the design, with construction of this boundary wall enabling the neighbours to follow suit, assisting privacy and avoiding dead space.

The eastern lot owner is the owner of the former unit site, who also owns the southern adjoining vacant lot, and intends to develop each with a dwelling in due

course. That owner has viewed the plans and it is understood that the proposal is compatible with a concept design prepared for the eastern lot.

Southern boundary wall

The wall is single-storey up to 3.3 high and some 7.5m long; with the upper-floor being setback. In itself this wall is considered acceptable, however, the cumulative effect with the eastern boundary wall requires assessment under RDC Performance Criterion 6.3.2 P2.

The impact of this wall is likely to be small, effectively forming a dividing wall with the southern lot. Midwinter overshadowing of the southern lot by both storeys is just 12% compared to the permissible maximum of 35%.

While due to the adjacent lot being vacant and it is not possible to wholly assess this wall against the Performance Criterion, as outlined above that owner is supportive of the proposal.

Wall setback from boundary

The balance of the eastern upper wall is to be setback 1.77m in lieu of 2.5m under RDC Acceptable Development Standard 6.3.1 A1(i), whereby it is necessary to assess the wall under Performance Criterion 6.3.1 P1, which provides:

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 protection of access to direct sun for adjoining properties;*
- *assist in ameliorating the impacts of building bulk on adjoining properties; a*
- *assist in protecting privacy between adjoining properties.*

As noted the adjoining lot is vacant and the owner is in support of the proposal. It is assessed that as only a 3.7m long section of the wall would be visible amenity would not be significantly affected.

CONCLUSION

The lot size and shape as part of the overall subdivision constrains dwelling design and invites performance variations. The boundary walls and front setbacks arrangement are assessed as appropriate in order to produce a practical design with adequate spaces as well as presentation to the street.

VOTING

Simple Majority

COMMITTEE COMMENT

Committee discussed some aspects of the proposal and overall was supportive of the design. It was considered that the front setbacks are acceptable given the side street

setback to the new corner dwelling and taking into account the shared views diagram.

The MDS confirmed that all surrounding subdivision lot owners had been consulted. In He also explained how the boundary walls were assessed as suitable in relation to the design of dwellings for small lots and the performance criteria of the RDC, whereby it was common for dwellings to interface in that fashion.

OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Walsh, seconded Cr Jeanes

THAT COUNCIL grant its approval to commence development for the proposed two-storey dwelling with undercroft at 1C Warton Street, Cottesloe, in accordance with the revised plans received on 16 August 2012, subject to the following conditions:

- 1. All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13: Construction sites.**
- 2. 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 the Town of Cottesloe.**
- 3. The applicant applying to the Town of Cottesloe for approval to construct a crossover, to the specification and satisfaction of the Town, paying particular attention to the design and construction in order to protect the existing pine trees in the verge, as approved by the Manager Engineering Services or an authorised officer.**
- 4. The applicant providing adequate storage disposal on-site to contain site stormwater in accordance with the requirements of the Town of Cottesloe, whereby stormwater runoff from the driveway or any other paved portion of the site shall not be discharged onto the street reserve or adjoining properties and the gutters and downpipes used for the disposal of stormwater runoff from roofed areas shall be included in the building licence plans.**
- 5. The applicant complying with the Town of Cottesloe Policies and Procedures for Street Trees, where the development may require the protection, pruning, removal or replacement of street trees.**
- 6. Air-conditioning plant and equipment shall be located closer to the proposed dwelling than the adjoining dwellings, and suitably housed or treated as may be necessary, so as to ensure that sound levels emitted do not exceed those specified in the Environment Protection (Noise) Regulations 1997.**
- 7. The fencing within the front setback area shall be of an open-aspect design as proposed in accordance with the Town's Fencing Local Law to the satisfaction of the Manager Development Services.**

Advice Notes:

1. The applicant/owner is responsible for ensure that all lot boundaries shown on the approved plans are correct and that the proposed development is constructed entirely within the owner's property.
2. The applicant/builder is responsible for ensuring that pursuant to the building licence any excavation, retaining or underpinning is undertaken in accordance with proper building practices and structural engineering advice.

Carried 8/0

10.3.3 NO.7 HAINING AVENUE – RAISED PATIO AT REAR, EXTENSION TO MASTER SUITE, REPLACEMENT OF PORTION OF FRONT DECK, TIMBER SCREEN, DOUBLE CARPORT, POOL AND CHANGES TO EXTERNAL DOORS AND WINDOWS

File No: 2483
Responsible Officer: Carl Askew
Chief Executive Officer
Author: Ed Drewett
Senior Planning Officer

Proposed Meeting Date: 17 September 2012

Author Disclosure of Interest: Nil
Property Owner: Mr S C Scott & Ms T J Jerrat
Applicant: As above
Date of Application: 9 August 2012
Zoning: Residential
Use: P - A use that is permitted under this Scheme
Lot Area: 814m²
M.R.S. Reservation: Not applicable

SUMMARY

This application has been “called-in” by Councillors’ following its inclusion on the weekly delegation list.

The proposal satisfies the general provisions of Town Planning Scheme No.2 (TPS 2) and complies with the Acceptable Development standards of the Residential Design Codes (RDC). The location of the proposed double carport in the front setback requires assessment under Council’s Policy - *Garages and Carports in Front Setback Area* (TPSP 003).

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

PROPOSAL

The application is for a rear patio, extension to the master suite, replacement of a portion of front deck, a double carport in the front setback area, a pool in the south-west corner of the lot, changes to external doors and windows, and a timber screen to the front entry.

STATUTORY ENVIRONMENT

- Town of Cottesloe Town Planning Scheme No. 2
- Residential Design Codes
- Garages and Carports in Front Setback Area

PROPOSED LOCAL PLANNING SCHEME NO. 3

No changes are proposed to the zoning of this lot.

APPLICATION ASSESSMENT**AREAS OF NON-COMPLIANCE****Town Planning Scheme No. 2 - Policy requirements:**

	Permitted	Provided
Garages & Carports in Front Setback	6m (may be reduced to zero where relevant criteria are satisfied).	2m front setback to carport.

ADVERTISING OF PROPOSAL

The application was not required to be advertised under TPS 2; however, the applicant had obtained the written support of the western neighbour for the proposed carport location.

APPLICANT'S JUSTIFICATION

A detailed submission in support of the proposed carport and addressing Council's Policy - *Garages and Carports in Front Setback Area* was submitted by Algeri Planning & Appeals on behalf of the applicant. The main points made are summarised below:

- The carport will have access from an existing crossover on the western side of the lot. Another crossover exists on the eastern side which provides access to the dwelling's single undercroft garage;
- The carport will be constructed using thin steel columns with a skillion 'solarspan' roof to give it a light-weight appearance that is consistent with contemporary-style carports and in-keeping with the existing house design;
- No issue has been raised by the western neighbour in respect to the proposed location of the carport and it will not affect existing view lines;
- Vehicles will reverse at right-angles to the street across an extensive road reserve of approximately 7.5m. This is considered safe and adequate;
- Parking of vehicles in the front setback area occurs at many residential properties including others within the street. The proposed carport provides cover for the parking of these vehicles and will have no adverse amenity impact on the neighbouring property;
- The current and future use of the area is for low density residential properties. There is no indication that there will be a different range of uses or greater density development occurring in the future that may be effected by this proposal;
- Due to the significant amount of street trees and the use of existing design features the proposed carport will have a restricted presence and only a minor impact on the streetscape.

STAFF COMMENT

The following comments are made in respect to this application.

Rear patio

A 30m² patio is proposed at the rear of the dwelling in an existing recessed area. The deck will be raised approximately 1m above natural ground level to align it with the floor level of the existing dwelling and it is compliant with TPS 2 and the RDC.

Bedroom extension

A 5.1m² single-storey extension is proposed on the western side of the existing master-suite with a new sliding door providing access to the proposed patio. The bedroom extension is located above an existing basement storage area and is compliant with TPS 2 and the RDC.

Front deck

The proposed alterations to the front deck will replace an existing portion of deck with a new suspended concrete slab, roof support, timber/steel balustrade, screen and steps to complement the existing dwelling. It will result in no additional loss of privacy to the eastern neighbour and is compliant with TPS 2 and the RDC.

Pool

A below-ground pool is proposed in the south-west corner of the lot at the rear of the existing dwelling. The pool will be setback approximately 1m from the side boundaries and is compliant with TPS 2.

External windows and doors

Various exterior windows and doors are proposed to enhance the visual appearance of the dwelling and improve its functionality. These changes are compliant with TPS 2 and the RDC.

Setback to garage

A 33m² free-standing, open-sided, double carport is proposed in the front setback area of the existing dwelling. It will have a 2m front setback and 1.37m side setback from the western boundary and has been assessed in accordance with Council's Policy - *Garages and Carports in Front Setback Area*.

Policy requirements:

Council's Policy - *Garages & Carports In Front Setback Area* states that all parking structures should generally be setback 6.0m from the street frontage. However Council may, in a particular case, permit a lesser setback if the following criteria are satisfied:

“The materials of construction, design and appearance of a carport or garage erected within the front setback area shall be in character with the residence upon the site and be in harmony with the surrounding streetscape.

Further, the location of the building:

- (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.*

In consideration of variations to setback, Council shall also have regard to:

- (a) the objectives set out in the Residential Codes;*
- (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.”*

Each of the above criteria is discussed below:

Materials, design and appearance

The proposed carport has been designed as a simple, light-weight structure to harmonise with the existing dwelling and have minimal visual impact on the streetscape or adjoining properties. It will have a skillion ‘solarspan’ roof that will be pitched at 3° and supported on four 75mm diameter steel columns which range in height from 2.55m at the front to 2.25m at the rear.

View lines

The property on the western side of the lot was approved in 2010 and has recently been completed. It is well setback from the street and has its driveway adjoining the eastern boundary. The proposed carport will not adversely affect view lines from this property and the adjoining owner has consented to its location.

Manoeuvring space for safe ingress and egress of vehicles.

There is an existing crossover on the western side of the lot that is currently used by vehicles and is proposed to be modified slightly to allow access to the proposed carport without impacting on the existing street tree. The minor modification to the crossover and driveway required for the proposed carport will not affect the safe ingress and egress of vehicles and is supported by the Manager Engineering Services.

Objectives of the RDC

The Acceptable Development standards of the RDC under Clause 6.2.3 – *Setback of Garages and Carports* permits:

Carports within the street setback area provided that the width of the carport does not exceed 50% of the frontage at the building line and the construction allows unobstructed views between the dwelling and the street or right-of-way.

The proposed carport complies with the above Acceptable Development standard as it will not exceed 26% of the 23.13m wide lot frontage and will be open-sided to allow unobstructed views between the dwelling and the street.

Effect of proposed setback variation on amenity of any adjoining lot

The proposed location of the carport 1.37m from the western boundary will assist in reducing the visual impact of the structure on the amenity of adjoining lots as it will be partially hidden behind an existing mature street tree and will utilise an existing crossover. It will also be 15.7m from the eastern lot boundary and the adjoining western neighbour has consented to its location within the front setback area.

Existing and potential future use and development of adjoining lots

In December 2008, Council approved two grouped dwellings at 8 Haining Avenue, (opposite the site) with a reduced setback of 3m to one of the proposed garages which will be positioned parallel to the street alignment and 4.5m to a proposed garage perpendicular to the street. This is a greater front setback than the minimum 1.5m allowable under Council's Policy for carports and garages where they are positioned parallel to the street and satisfy the relevant criteria. It was considered that this arrangement would satisfy Council Policy as well as the Acceptable Development standards of the RDC without compromising the visual amenity of the locality. The application was subsequently re-approved under delegation on 27 April 2012 whereby a building licence application can be submitted.

Existing setbacks from the street alignment in the locality

Currently, there are no other garages or carports located in the front setback to Haining Avenue and most newer garages are integrated into the dwellings with an upper floor extending over the full width of the garage which reduces the visual impact of the garages on the streetscape. The garage pertaining to 12 Haining Avenue does have a reduced setback although this is to its secondary street boundary as the dwelling is a corner property and is orientated towards Charles Street.

Notwithstanding this, carports are not uncommon in front setback areas, as with increasing affluence car ownership rates have increased, as has the desire to provide a roof over the vehicles on older properties where such structures did not previously exist. In this case, there is no suitable alternative location for a double carport on the lot outside the front setback area and the existing single covered carbay that is located under the front deck is considered too small and low to accommodate a modern vehicle.

The proposed carport will be accessed via an existing crossover and will be partially hidden by a mature street tree. It will also be open-sided and of lightweight design to ensure that there remains a clear view between the street and the dwelling and its visual impact is kept to a minimum.

CONCLUSION

The proposed development, including the location and design of the carport in the front setback area, complies with TPS 2 and the Acceptable Development standards of the RDC, and may be supported under Council's Policy - *Garages and Carports in the Front Setback Area* as no suitable alternative location exists for the double carport behind the front setback area.

VOTING

Simple Majority

COMMITTEE COMMENT

Committee discussed that the proposal could be supported given its compliance with Council's Policy as an open-aspect carport rather than an enclosed garage, whilst noting approval of some forward garages in the vicinity.

OFFICER RECOMMENDATION

Moved Cr Downes, seconded Cr Walsh

THAT Council GRANT its approval to Commence Development for the proposed alterations and additions, including a double carport in the front setback, at 7 Haining Avenue, Cottesloe in accordance with the plans received 9 August 2012, subject to the following conditions:

- (1) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13: Construction sites.
- (2) 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.
- (3) The applicant applying to the Town of Cottesloe for approval to modify the existing crossover in accordance with the Town's specifications, keeping a minimum distance of 1.5m from the base of the existing street tree, as approved by the Manager Engineering Services or an authorised officer.
- (4) Air-conditioning plant and equipment shall be located closer to the proposed dwelling than the adjoining dwellings, and suitably housed or treated as may be necessary, so as to ensure that sound levels emitted do not exceed those specified in the Environment Protection (Noise) Regulations 1997.
- (5) The pool pump and filter shall be located closer to the existing dwelling than the adjoining dwellings, and suitably housed or treated as may be necessary, so as to ensure that environmental nuisance due to noise or vibration from mechanical equipment is satisfactorily minimised to within permissible levels outlined in the Environmental Protection (Noise) Regulations 1997.
- (6) Wastewater or backwash water from swimming pool filtration systems shall be contained within the boundary of the property on which the swimming pool is located and disposed of into adequate soakwells.
- (7) A soakwell system shall be installed to the satisfaction of the Environmental Health Officer, having a minimum capacity of 763 litres and located a minimum of 1.8 metres away from any building or boundary.

- (8) Wastewater or backwash water shall not be disposed of into the Town's street drainage system or the Water Corporation's sewer.

Advice Note:

The applicant/owner is responsible for ensuring that all lot boundaries shown on the approved plans are correct and that the proposed development is constructed entirely within the owner's property.

AMENDMENT

Moved Cr Boland, seconded Cr Hart

That the recommendation be amended in line two by substituting the word "including" with "excluding" and by deleting condition (3).

Lost 2/3

OFFICER & COMMITTEE RECOMMENDATION

Moved Cr Walsh, seconded Cr Downes

THAT Council GRANT its approval to Commence Development for the proposed alterations and additions, including a double carport in the front setback, at 7 Haining Avenue, Cottesloe in accordance with the plans received 9 August 2012, subject to the following conditions:

- (1) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13: Construction sites.**
- (2) 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.**
- (3) The applicant applying to the Town of Cottesloe for approval to modify the existing crossover in accordance with the Town's specifications, keeping a minimum distance of 1.5m from the base of the existing street tree, as approved by the Manager Engineering Services or an authorised officer.**
- (4) Air-conditioning plant and equipment shall be located closer to the proposed dwelling than the adjoining dwellings, and suitably housed or treated as may be necessary, so as to ensure that sound levels emitted do not exceed those specified in the Environment Protection (Noise) Regulations 1997.**
- (5) The pool pump and filter shall be located closer to the existing dwelling than the adjoining dwellings, and suitably housed or treated as may be necessary, so as to ensure that environmental nuisance due to noise or vibration from mechanical equipment is satisfactorily minimised to within permissible levels outlined in the Environmental Protection (Noise) Regulations 1997.**
- (6) Wastewater or backwash water from swimming pool filtration systems shall be contained within the boundary of the property on which the swimming pool is located and disposed of into adequate soakwells.**

- (7) A soakwell system shall be installed to the satisfaction of the Environmental Health Officer, having a minimum capacity of 763 litres and located a minimum of 1.8 metres away from any building or boundary.
- (8) Wastewater or backwash water shall not be disposed of into the Town's street drainage system or the Water Corporation's sewer.

Advice Note:

The applicant/owner is responsible for ensuring that all lot boundaries shown on the approved plans are correct and that the proposed development is constructed entirely within the owner's property.

AMENDMENT

Moved Cr Boland, seconded Cr Pyvis

That the recommendation be amended in line two by substituting the word "including" with "excluding" and by deleting condition (3).

Lost 2/6

OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

THAT Council GRANT its approval to Commence Development for the proposed alterations and additions, including a double carport in the front setback, at 7 Haining Avenue, Cottesloe in accordance with the plans received 9 August 2012, subject to the following conditions:

- (1) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13: Construction sites.
- (2) 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.
- (3) The applicant applying to the Town of Cottesloe for approval to modify the existing crossover in accordance with the Town's specifications, keeping a minimum distance of 1.5m from the base of the existing street tree, as approved by the Manager Engineering Services or an authorised officer.
- (4) Air-conditioning plant and equipment shall be located closer to the proposed dwelling than the adjoining dwellings, and suitably housed or treated as may be necessary, so as to ensure that sound levels emitted do not exceed those specified in the Environment Protection (Noise) Regulations 1997.
- (5) The pool pump and filter shall be located closer to the existing dwelling than the adjoining dwellings, and suitably housed or treated as may be necessary, so as to ensure that environmental nuisance due to noise or vibration from mechanical equipment is satisfactorily minimised to within permissible levels outlined in the Environmental Protection (Noise) Regulations 1997.

- (6) Wastewater or backwash water from swimming pool filtration systems shall be contained within the boundary of the property on which the swimming pool is located and disposed of into adequate soakwells.
- (7) A soakwell system shall be installed to the satisfaction of the Environmental Health Officer, having a minimum capacity of 763 litres and located a minimum of 1.8 metres away from any building or boundary.
- (8) Wastewater or backwash water shall not be disposed of into the Town's street drainage system or the Water Corporation's sewer.

Advice Note:

The applicant/owner is responsible for ensuring that all lot boundaries shown on the approved plans are correct and that the proposed development is constructed entirely within the owner's property.

THE SUBSTANTIVE MOTION WAS PUT

Carried 6/2

**For: Mayor Morgan, Crs Downes, Jeanes, Rowell, Pyvis, and Walsh
Against: Crs Hart, Boland**

10.3.4 INDIANA RESTAURANT – PROPOSED TAVERN RESTRICTED LIQUOR LICENCE

File No: PUB/11
Responsible Officer: Carl Askew
Chief Executive Officer
Author: Andrew Jackson
Manager Development Services

Proposed Meeting Date: 17 September 2012
Author Disclosure of Interest: Nil

SUMMARY

Indiana Tea House (“Indiana”) wishes to change its liquor licence from a Restaurant Licence to a Tavern Restricted Licence (TRL) and, following initial liaison with the Town, seeks Council’s preliminary support prior to making an application to the Department of Racing, Gaming and Liquor (DRGL).

Council’s role in this regard is threefold:

1. Pursuant to the Town’s lease of the premises to Indiana the agreement of Council as landlord is required to a change of liquor licence.
2. Council has adopted a Liquor (Licensed Premises) Policy to guide proposals and assessments.
3. The DRGL application process includes obtaining Section 39 (health compliance) and Section 40 (planning compliance) certificates from the Town.

This report presents the proposal for Council’s consideration and recommends in-principle support.

BACKGROUND

In recent years changes to the Liquor Control Act have introduced Small Bars and other reforms diversifying the styles of licensed premises whilst providing improved social amenity measures. For example, Cottesloe has attracted a specialist wine bar/tapas restaurant (Lamonts in Station Street), a small bar (Elba in Napoleon Street), and remodeling of the Cottesloe Beach Hotel (CBH) former beer garden to become a more sophisticated drinking environment with an emphasis on food service and functions.

Indiana currently operates under a Restaurant Licence as its primary purpose, together with an Extended Trading Permit (ETP) which provides for a proportion of patrons to be served liquor without food. The ETP has worked well since 2003 for a 20% designated area with a maximum of 48 patrons. Consideration in 2010 to make the ETP for 100% of the patron area was conditionally supported by Council but not pursued by Indiana.

ETPs provide flexibility for restaurants to serve just liquor as a lesser proportion of their trade and are in keeping with the recreational/tourism focus of the Cottesloe beachfront. Nearby restaurants with ETPs are Il Lido (open all day with a tapas menu) and Blue Waters (a la carte menu with occasional food/wine nights), and this

style of trading has not caused problems or complaints. The constraints of ETPs entail:

- Table-only service of liquor (no bar service) and consumption only while seated (no standing).
- Restricted area and/or number of patrons.
- The restaurant being the main activity, with drinking-only being the lesser activity.

This is an aspect of liquor licensing that has been criticised by the industry and consumers, as the complicated rules can be difficult to explain to potential clients, especially overseas visitors unfamiliar with such restrictions. Moreover, in reality, these rules may not always be adhered to, usually with little if any effect.

The original planning approval to create the Indiana teahouse building provides for a maximum number of 240 seated patrons covering the restaurant, kiosk and outdoor areas. The lease from the Town limits the restaurant portion to 170 patrons. In 2009 Council approved renovations at Indiana since undertaken that created both casual and formal dining areas, including alfresco, with no change to patron numbers.

PROPOSAL

Indiana is an up-market restaurant offering both casual and formal dining, with a high quality fit-out, professional staff and senior management. It caters to local, regional and tourist clientele, as well as functions, and has seasonal patronage patterns. The restaurant operates as a scenic beachside bistro, being part of a company group of renowned food venues comprising Frasers at Kings Park, The Old Brewery on Mounts Bay Road and Bluewater Grill in Applecross.

In essence the proposal is to continue the restaurant as a higher-end food-based establishment but to overcome the liquor service restrictions inherent in a Restaurant Licence, for flexibility in the use and enjoyment of the facilities for dining, drinking without a meal and functions. There is certainly a demand for what is sought, from both proprietors and clients, and the DRGL has advised Indiana that a TRL would be the most appropriate licence for the desired mode of operation.

A TRL permits drinking without a meal and excludes the sale of liquor to take away. This would provide for people to stand or sit to drink, with bar as well as table service, and where food is not mandatory. It would also allow patrons freedom of movement at functions, to go to the alfresco area or to take in the view.

As a comparison, Lamonts Wine Store in Station Street is a small food-based wine bar operating under a full Tavern Licence, in order to permit the sale of wine to take away (including Lamonts brand). Hence a Tavern Licence or a TRL is sometimes adapted to accommodate hybrid restaurants/bars which by definition are not quite Small Bars or not really Taverns but do not fit another specific licence category.

Indiana has advised as follows:

- No other changes are proposed, whereby the maximum number of patrons, hours of operation and entertainment arrangements will remain the same.
- As a quality establishment which occupies premises well setback from the street it is a low-key and low-risk licenced restaurant and food-orientated functions venue.

- The average number of customers per day is approximately 100.
- No great trend of drinking-only before noon is anticipated.
- It has an adopted Code of Conduct, House Management Policy and Harm Minimisation Plan, addressing the responsible service of alcohol, staff training, complaints-handling and duty managers.
- It understands and accepts the conditions likely to be imposed on a RTL, including the balance between food and liquor sales, having the kitchen open for food service at all times, having the restaurant set up at all times, etc.

ASSESSMENT

Council can be confident that applying a TRL to the premises is appropriate in terms of the Liquor Control Act and administration by the DRGL and Director of Liquor Licensing.

The change of licence type is to a tavern by name rather than to a tavern by nature, given that Indiana intends to continue operating as-is with the benefit of relaxed liquor-only service and consumption rules. This will free-up trading practices as a subtle evolution from the current ETP arrangement. While it may also attract increased patronage, this would be:

- Confined to the current patron limits, being much less than a typical tavern.
- Spread out during the day/week.
- Based on a well-run food and beverage establishment offering a range of eating and/or drinking opportunities.
- Responding to the enhanced attraction of the premises and the precinct, including the renovated CBH with a similar although more casual style of food and beverage service.
- Suited to the location and design of the premises as a spacious and well-appointed stand-alone ocean-front facility forming part of the foreshore entertainment precinct.

On this basis parking demand would not be significantly increased and the profile of patronage would be manageable and consistent with amenity.

The application process to the DRGL is detailed and includes forms, fees, advertising, public interest assessment, licensee integrity checks, training and management plans, and so on. As mentioned this includes obtaining from the Town a S39 Certificate for health compliance (sufficient toilets, kitchen facilities, etc) and a S40 Certificate for planning compliance (use permitted, buildings approved, etc).

Council's Liquor (Licenced Premises) Policy echoes the assessment framework of the DRGL application process, with an emphasis on amenity, safety, operational implications and where relevant parking requirements. The policy is a reference when considering planning applications for licensed premises and dealing with liquor licence applications. Its objectives are to:

- *Provide for facilities and services which are compatible with the aspirations of the Cottesloe residential and business community.*

- *Provide a framework to assist Council with the assessment of liquor licence applications, including when issuing Section 39 and 40 certificates under the Liquor Control Act 1988.*
- *Make liquor licence applicants aware of Council's considerations when dealing with liquor licence applications.*
- *Assist Council in the consideration of applications for planning approval of development which may involve a liquor licence.*
- *Foster an appropriate type and number of licensed premises that will enhance the activity and atmosphere of commercial localities and contribute to an integrated and positive sense of community;*
- *Protect the character and amenity of adjacent residential localities.*
- *Support the objectives of the Community Safety and Crime Prevention Committee.*

Overall, the Town assesses that the proposed TRL satisfies the policy parameters and would be unlikely to be detrimental to the public interest or the amenity of the locality.

Any future change to the liquor licence, such as number of patrons or hours of opening, would require a further application to the DRGL and to Council under the lease, as well as possible planning approval by the Town. Any future land use or development changes proposed would also require planning, building and health approvals by the Town.

Upon receipt of a detailed liquor licence application referred from the DRGL the Town will be able to undertake a comprehensive assessment in order for Council to make formal comments and determinations.

STRATEGIC IMPLICATIONS

Consistent with beachfront activity and development incorporating controlled liquor practices.

POLICY IMPLICATIONS

Correlates with Council's Liquor (Licenced Premises) Policy.

STATUTORY ENVIRONMENT

Liquor Control Act and Regulations 1988.

FINANCIAL IMPLICATIONS

Nil.

SUSTAINABILITY IMPLICATIONS

Nil.

CONSULTATION

Community consultation by the Town additional to the DRGL liquor licensing advertising procedure is not considered necessary.

VOTING

Simple Majority.

COMMITTEE COMMENT

Committee was supportive of the proposal as suitable for the style of the establishment, and sought clarification on some aspects. The MDS confirmed that a Tavern Restricted Licence excludes the sale of take-away liquor and explained that under the lease from the Town agreement to the liquor licence change was required. He also advised that the earlier proposal for a crepe-making business in the northern kiosk was no longer proceeding.

OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Walsh, seconded Mayor Morgan

THAT COUNCIL:

Advise Indiana that it is supportive in-principle of the proposed Tavern Restricted Licence, subject to:

1. Consideration by Council of a formal application referral from the Department of Racing, Gaming and Liquor.
2. Consideration by the Town of the associated Liquor Control Act Sections 39 and 40 Certificates.
3. That application process including adequate public consultation in accordance with the Department's requirements.
4. Appropriate conditions being imposed on the licence in relation to the service of liquor and the availability of food, liquor management strategies and any other relevant aspect.
5. Consideration by Council of any consequential amendment to the Lease between the Town and Indiana, which is to be made to the satisfaction of the Town at the full cost of Indiana, within an agreed timeframe.

Carried 8/0

10.3.5 RENEWAL OF ENTRY TO PREMISES UNDER TOWN PLANNING SCHEME NO. 2

File No: SUB/653
Responsible Officer: Carl Askew
Chief Executive Officer
Author: Andrew Jackson
Manager Development Services

Proposed Meeting Date: 17 September 2012
Author Disclosure of Interest: Nil

SUMMARY

The purpose of this report is to refresh Council's general authorisation for officers to enter premises in relation to Town Planning Scheme No. 2 (TPS2).

BACKGROUND

Clause 7.5 of TPS2 is a standard type clause found in schemes whereby officers are empowered to enter premises by virtue of authorisation from Council, and reads as below:

ENTRY TO PREMISES

An officer of the Council, authorised by the Council for the purpose, may at all reasonable times enter any building or land for the purpose of ascertaining whether the provisions of the Scheme are being observed.

This administrative power functions as follows:

- The authorisation is in perpetuity and as written does not require annual renewal.
- It applies to all instances that may arise over time, rather than requiring authorisation case-by-case, which would clearly be impractical given the Town's daily town planning activities (although if ever necessary a specific authorisation could be made in a particular case).
- It applies to relevant officer positions, rather than individual persons.
- Any building or land means a subject site or adjacent properties, including lanes and institutional or public properties.
- On most occasions entry and inspection is readily gained cooperatively from property owners/occupiers or neighbours involved in a planning matter; however, the power exists as a back-up to cover situations such as an absentee owner or unwilling occupant.
- A Council resolution is an appropriate form of authorisation.

Effectively, officers are to be authorised to make planning inspections in general and on an ongoing basis, rather than having to go to Council periodically. Inspections are undertaken for a range of purposes, including assessment of planning proposals; advice on land use, development, design or heritage matters; compliance management; and so on.

In practice, local government officers tend to continue routine planning inspections on the presumption of past authorisations. In this regard it is uncertain when the last time was that Cottesloe Council granted its authority in this respect.

Therefore, as Council has recently dealt with its annual delegation of various powers to officers, to avoid any doubt it would be prudent to refresh this authorisation. It would also be sensible to consider renewal of the authorisation annually anyway, or under clause 7.10 of the Scheme to delegate the power of authorisation to the CEO for administrative efficiency.

While mostly planning officers attend to inspections, occasionally building, health or other relevant officers (eg, sustainability, works) may have a role in assessing or assisting a town planning matter, so for convenience the authorisation should also cover such positions.

VOTING

Simple Majority

COMMITTEE COMMENT

Committee enquired whether intended LPS3 also has a power of entry provision and the MDS confirmed that it does.

OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Walsh, seconded Cr Hart

THAT COUNCIL:

- 1. In accordance with clause 7.5 of Town Planning Scheme No. 2, authorise its town planning, building, health or other relevant officers to at all reasonable times enter any building or land for the purpose of ascertaining whether the provisions of the Scheme are being observed. Officer positions in this respect include, but are not limited to, the Chief Executive Officer, Manager Development Services, Senior Planning Officer, Planning Officer, Manager Engineering Services, Principal Building Surveyor, Principal Environmental Health Officer, Sustainability Officer and Works Supervisor.**
- 2. Include renewal of this authorisation at the time of undertaking its annual delegation of powers to officers, which may entail delegating the power of authorisation to the Chief Executive Officer for administrative efficiency, pursuant to clause 7.10 of the Scheme enabling such delegation.**

Carried 8/0

**10.4 WORKS AND CORPORATE SERVICES COMMITTEE MINUTES - 18
SEPTEMBER 2012**

Cr Rowell declared a financial interest in Item 10.4.1, due to receiving remuneration for being the Chairman of CAPH and left the Chambers at 9.05PM.

Cr Jeanes declared a financial interest in Item 10.4.1 due to receiving remuneration for being a member of the CAPH board and left the Chambers at 9.05PM.

The CEO declared an impartiality interest in Item 10.4.1 due to being a member of CAPH in accordance with the constitution.

**10.4.1 CURTIN AGED PERSONS HOMES INC (CAPH) – GOVERNANCE AND
CONSTITUTION**

File No: SUB/804
Attachments: [CAPH Report 25 July 2011](#)
[CAPH Constitution](#)
[CONFIDENTIAL CAPH Transitional Plan](#)
[CONFIDENTIAL Grant Thornton CAPH Governance Review July 12](#)
[CONFIDENTIAL Grant Thornton CAPH Development Overview](#)
[CONFIDENTIAL Governance Framework Review CEOs](#)
Responsible Officer: Carl Askew
Chief Executive Officer
Author: Carl Askew
Chief Executive Officer
Proposed Meeting Date: 18 September 2012
Author Disclosure of Interest In accordance with the constitution the CEO is a member of CAPH

SUMMARY

The purpose of this report is to seek Council's endorsement of the new Constitution and Transition Plan for Curtin Aged Persons Homes Inc. (CAPH).

In July/August 2011 the Councils of the Shire of Peppermint Grove, the Town of Mosman Park, the Town of Cottesloe and the Town of Claremont gave 'in principle approval for the establishment of a new Constitution for Curtin Aged Persons Homes Inc. (CAPH) for the purpose of creating an organisation independent of each local government

The Council's also requested the development of a Transition Plan for the implementation of the new Constitution and requested that the four Chief Executive Officers work with CAPH in developing documents for further consideration by each Council

This report provides a summary of activity since August 2011 and seeks endorsement of a new CAPH Constitution and Transition Plan

BACKGROUND

At its Ordinary Meeting on 25 July 2011, Council resolved as follows:

That Council:

- 1 *Note the information provided and defer this matter for further consideration and report on options and models for Council's future involvement with CAPH and the provision of residential Aged Care services within the district.*
- 2 *Request the Board of CAPH to continue to liaise with the Chief Executive Officers of the Towns of Claremont, Cottesloe, Mosman Park and the Shire of Peppermint Grove regarding proposed changes to the CAPH Constitution and procedural steps necessary for the effective implementation of same.*
- 3 *Request the Board of CAPH to provide a draft amended Constitution to the Town for its consideration;*
- 4 *Request that the Board of CAPH provide a transitional plan for the implementation of changes to the Constitution;*

Additional background information is contained in the report considered by Council at its 25 July 2011 meeting, which is attached.

Following Council's decision in July 2011, the Chief Executive Officers of the four local governments have met with representatives of CAPH to revise the Constitution and develop a Plan for the transition from the old to the new Constitution.

The attached Constitution and Transition Plan have been reviewed and approved by the Chief Executive Officers. The Chief Executive Officers have also sought legal advice on the proposed Constitution. The Board of Management of CAPH has reviewed and approved the new Constitution and Transition Plan.

STRATEGIC IMPLICATIONS

The adoption of the new Constitution for Curtin Aged Persons Homes Inc. removes the four local governments from responsibilities associated with the management and governance of CAPH.

POLICY IMPLICATIONS

Nil

STATUTORY ENVIRONMENT

Nil

FINANCIAL IMPLICATIONS

The only cost incurred was for legal advice to review the constitution – a cost has been shared between 4 Member Councils.

SUSTAINABILITY IMPLICATIONS

Nil

CONSULTATION

The recent history associated with the investigation and options for a restructure of CAPH has been as follows:

JULY/AUGUST 2011

Shire of Peppermint Grove, Towns of Mosman Park, Claremont and Cottesloe agreed 'in principle' changes to the structure of CAPH, potentially to remove any local government involvement.

NOVEMBER 2011

CAPH commenced an investigation of all options for a restructure. Investigation was conducted by Mr Cam Ansell, from Grant Thornton Australia Ltd. This investigation included workshops with local government Chief Executive Officers.

JUNE 2012

Completion of consideration of the Grant Thornton work by the Chief Executive Officers with the identification of a preferred governance option.

JULY 2012

Agreement between CAPH Board and the Chief Executive Officer's Group on the preferred option and the associated documentation, including a revised Constitution and Transition Plan. This included review by independent solicitors appointed by the Chief Executive Officers to review the draft Constitution.

AUGUST 2012

Completion of revised Constitution and Transition Plan.

STAFF COMMENT

While there may be some community perception that CAPH Inc. is an organisation managed by the four local governments for the direct benefit of their respective residents, in reality CAPH already functions as an independent organisation.

As a key stakeholder and primary provider of aged accommodation in the region, it is expected that CAPH will continue to work closely with the four local governments for the integrated planning of aged services in the region.

The Chief Executive Officers from the Towns of Claremont, Cottesloe, Mosman Park and the Shire of Peppermint Grove have been working closely with representatives of Curtin Aged Persons Homes Inc., and their management consultant and legal advisor since August 2011. Part of the process included an assessment of governance options for CAPH, undertaken by Grant Thornton, and reviewed by the Chief Executive Officers. This process identified a reconstituted CAPH as the best option for the future.

The Chief Executive Officers also sought independent legal advice on the Constitution. They are now confident that the new Constitution and Transition Plan will ensure the transition of CAPH to an independent not for profit organisation with a Constitution that will provide robust governance. The Constitution was drafted with the intention of being consistent with the *Associations Incorporation Act* and the *Local Government Act*, and being legally effective. The Constitution now provides for an independent Board, the most significant changes being:

- Local governments will no longer provide representatives on the Board
- The CAPH Board will recruit and appoint its own independent Board members who have qualifications and experience appropriate to the activities of CAPH
- Local government Chief Executive Officers will no longer be members of CAPH, or have veto rights over members
- Terms for Board members have been introduced with a maximum term of 9 years
- The Constitution requires the establishment of a Good Governance Charter which will comply with 'best practice' governance and legislative requirements for not for profit organisations
- Establishment of Finance and Audit Committees, including requirements for internal and external audits of governance procedures
- Increased governance and financial reporting to members via the Annual Report and AGM
- Preparation and on-going review of short-term, medium-term and long-term Strategic and Forward Financial Plans.
- The members of the Board of Management must be members and residents of the district
- Establishment of a 'Friends Group' to provide support and assistance to residents
- Expansion of the number and role of members

The Transition Plan provides for the transition from the old to the new Constitution and includes:

- The new Constitution must be adopted by the current members of the Association (which includes Council representatives and Chief Executive Officers) at a Special Meeting following endorsement by each Council in September
- Current Council representatives on the Board of Management may elect to remain on the Board following the adoption of the new Constitution until the next Annual General Meeting, at which time they may choose to nominate as an independent Board member
- Provides a timeline for the development of key strategic documents as required under the new Constitution

This report therefore seeks the endorsement of the Constitution and Transition Plan by the four Councils to enable the Board of CAPH to call a special meeting to adopt the new Constitution and commence the implementation of the Transition Plan.

VOTING

Simple Majority

COMMITTEE DISCUSSION

Committee discussed the report and issues at length with members indicating a desire to retain a level of control over the actions of the Board, including Board appointments, if not considered to be in the best interest of the community. Discussion included clarification over the role and purpose of Association members and the inter-relationship between the appointment of members and appointment of the Board.

Of the 5 options outlined in the Consultants report there was a leaning towards a continuation of the existing governance arrangements, with constitutional amendments, which will achieve the Committee's desired outcomes. Committee also acknowledged that, under the current Constitution, if other members vote in favour of the proposed Constitution and Transition Plan, then the Town of Cottesloe's vote will not have any impact as it only requires a 75% majority. As a consequence, Committee determined to defer the matter to provide sufficient time to obtain advice on how Council can retain residual control over the Board and endorsed a new motion.

OFFICER RECOMMENDATION

THAT Council endorses the new Constitution and Transition Plan for Curtin Aged Persons Home Inc (CAPH).

COUNCIL DISCUSSION

Council discussed the officer report and the reasons for the Committee recommendation. It was acknowledged that it was important for CAPH to have experienced and qualified representatives on its Board, and there was general support for the removal of elected members to the Board. However there was still benefit in having elected members and the CEO's as members of the Association to remain involved and provide leadership as needed, together with priority rights in relation to Board appointments.

NEW MOTION & COMMITTEE RECOMMENDATION

Moved Cr Boland, seconded Mayor Morgan

THAT Council defer this matter to receive advice and consider whether the desired outcomes can be achieved without removing Councils' residual control of the Board, including consideration of alternative structures and governance arrangements.

Carried 4/2

Crs Rowell and Jeanes returned to the meeting at 9:26 PM.

10.4.2 AUSTRALIAN INSTITUTE OF BUILDING SURVEYORS NATIONAL CONFERENCE - MELBOURNE 21-24 OCTOBER 2012

File No: SUB/83
Attachments: [AIBS 2012 Conference](#)
Author: Sam Neale
Principal Building Surveyor
Responsible Officer: Carl Askew
Chief Executive Officer

Proposed Meeting Date: 18 September 2012
Author Disclosure of Interest: Nil

SUMMARY

This report recommends approval for the Principal Building Surveyor to attend the 3 day Australian Institute of Building Surveyors National Conference in Melbourne from 21-24 October, 2012.

BACKGROUND

Every year in Australia a range of building and related conferences occur in various cities, offering ideal opportunities for professional development and benefits to participating organizations. Such conferences cover current issues, overseas experience, new ideas, technical skills, workshops, field trips, networking and consultancies, in an effort to keep abreast of building matters and practices.

The Australian Institute of Building Surveyors National Conference is identified as particularly relevant to all local governments, including Cottesloe, as it will address all current issues associated with building control, with potential benefits from the experience and knowledge of interstate and international building practitioners.

STRATEGIC IMPLICATIONS

Nil

POLICY IMPLICATIONS

Council's Conferences Policy - adopted July 2012 applies.

Employees who wish to attend a conference/seminar/training shall complete a request for training application form and submit it to the Chief Executive Officer through their Supervisor.

The Town will fund attendance at conferences and seminars in order to provide regular opportunities for all employees of the Town to upgrade and enhance their skills and knowledge.

At the recommendation of the relevant Manager and the Chief Executive Officer, Council approval shall be sought prior to employee's attendance at conferences and seminars outside of Western Australia, by referral to the Works and Corporate Services Committee for recommendation to Council.

The following expenses for approved conferences/seminars/training will be met by Council:

- *Registration Fees*
- *Return Air Fares and other necessary transport expenses*
- *Reasonable Accommodation and Living expenses*

All expenditure is to be accounted for prior to reimbursement.

STATUTORY ENVIRONMENT

Nil

FINANCIAL IMPLICATIONS

The estimated cost of registration, accommodation, travel and meals for the conference is \$3,000-\$3,300 and can be met by the current training/conference budget for Building staff.

SUSTAINABILITY IMPLICATIONS

Nil

CONSULTATION

Nil

STAFF COMMENT

The conference is an international event aimed to attract building surveyors, designers, architects, fire engineers, sustainability experts, and allied professionals within the construction industry associated with the built environment.

It concentrates on global trends relating to building materials, changes in urban building control, private certification, alternative solutions in the national construction code, innovation, regulation and governance, building defects and risk management, best practice and international sustainability solutions. The conference entails three days of detailed analysis, leading knowledge, educational workshops and interactive discussion.

The program features a comprehensive array of expert speakers and case studies to provide attendees with the latest information and advice on how to best address the design and build of new homes and additions and the management of the new Building Act. Of particular interest will be the keynote address: The reform of the Victorian Building Permit System.

With local governments losing building staff to private enterprise, following the introduction of the Building Act, discussions on innovation vs regulation and changes in global building control, will potentially provide ways of achieving best practice for building control in Cottesloe.

Speakers include:

The Hon Matthew Guy MLC - Minister for Planning in Victoria and has represented the Northern Metropolitan Region in the Legislative Council since 2006.

Dr Koichi Saito, chairman of the Saito Nippon Corporation which controls more than 30 companies two of which are in Japan's top 100. Saito is also considered an authority on the integration of traditional Japanese culture into western management practices.

Neil Savery - Deputy Commissioner, Victorian Building Commission - Reform of the Victorian Building Permit System.

Peter Johnson - National Director ARUP - Fire Safety Engineering Accreditation Framework. Peter is a Principal of Arup and the former Global Leader of Arup Fire (2005-2009).

Kim Lovegrove - Professor Kim Lovegrove FAIB, is a Conjoint Professor in Building Regulation and Certification at Newcastle University.

David Waldren Managing Director, Grocon Group - Innovation or Regulation

Dr Jeroen Van Der Heijden - Amsterdam University, The Netherlands Global update:
Comparison of International Sustainability Solutions

Mike Gentile - Director, Philip Chun, North America USA T Michael is a leading international code consultant with over 20 years of professional experience in the research, development, and application of Federal, State local design codes, standards, and provisions.

Dan Bailey - President, International Association of Wildland Fire, USA.

VOTING

Simple Majority

OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Rowell, Seconded Cr Boland

THAT Council APPROVE the attendance of the Principal Building Surveyor at the AIBS International Conference in Melbourne, October 21- 23 2012, and request that a report on the conference be provided within two months of attending the event.

Carried 8/0

10.4.3 REQUESTED UNDERTAKING – STANDING ORDERS LOCAL LAW 2012

File No: CLL/5
Attachments: [Letter from Joint Standing Committee On Delegated Legislation Standing Orders Local Law Exert](#)
Responsible Officer: Carl Askew
Chief Executive Officer
Author: Mat Humfrey
Manager Corporate Services
Proposed Meeting Date: 18 September 2012
Author Disclosure of Interest Nil

SUMMARY

Council is being asked to consider an undertaking requested by the Joint Standing Committee on Delegated Legislation with regards to the Town's Standing Orders Local Law 2012.

BACKGROUND

Council resolved to make the Town of Cottesloe Standing Orders Local Law 2012 at its meeting on 28 May 2012. There were many changes from the previous version of the local law, with the majority of these changes made to ensure the local law complied with the drafting standards required by the Joint Standing Committee on Delegated Legislation. There were several operative changes, being the removal of the requirement to stand while speaking, the inclusion of a clause that prevented people recording the meeting without permission and the formalisation of public statement time.

The numerous drafting changes throughout the document were caused by the age of parts of the local law, some of which pre-dated the Local Government Act 1995. References to Mayor and Councillor were replaced with Presiding Member and Member, acronyms were used where defined and any "explanative text" removed. Further any clause that covered subject matter contained within the Act or Regulations was removed (as is now required) and careful examination was made to ensure that all parts of the local law were allowed under s3.5 of the Local Government Act 1995. Administration also ensured that all decisions were subject to appeal (as required) and that text from disallowed local laws (from other local governments) was not repeated in the local law as presented.

One clause that was considered by Administration was clause 11.13. This clause covers the situation where staff or committee members, who are not Councillors, are required to declare any interest they may have in a matter before the meeting. This was included in the previous version of the local law and was edited and included in the version that was adopted. Consideration was given to the fact that in 2007, the *Local Government (Administration) Regulations 1996* were amended to reflect the requirement for the local government to have a Code of Conduct Policy. It was thought that as this was a requirement of the local government, having a clause in

the local law that placed a requirement on an individual was not in conflict with the Regulation, nor was it duplicative of the Regulation.

STRATEGIC IMPLICATIONS

Nil

POLICY IMPLICATIONS

Nil

STATUTORY ENVIRONMENT

S3.5 of the Local Government Act 1995 provides the ability for a local government to create and adopt local laws.

3.5 Legislative power of local governments

- (1) *A local government may make local laws under this Act prescribing all matters that are required or permitted to be prescribed by a local law, or are necessary or convenient to be so prescribed, for it to perform any of its functions under this Act.*
- (2) *A local law made under this Act does not apply outside the local government's district unless it is made to apply outside the district under section 3.6*
- (3) *The power conferred on a local government by subsection (1) is in addition to any power to make local laws conferred on it by any other Act.*
- (4) *Regulations may set out –*
 - (a) *matters about which, or purposes for which, local laws are not to be made; or*
 - (b) *kinds of local laws that are not to be made, and a local government cannot make a local law about such a matter, or for such a purpose or of such a kind.*
- (5) *Regulations may set out such transitional arrangements as are necessary or convenient to deal with a local law ceasing to have effect because the power to make it has been removed by regulations under subsection (4).*

3.12 Procedure for making local laws

- (1) *In making a local law a local government is to follow the procedure described in this section, in the sequence in which it is described.*
- (2) *At a council meeting the person presiding is to give notice to the meeting of the purpose and effect of the proposed local law in the prescribed manner.*
- (3) *The local government is to –*
 - (a) *give State-wide public notice stating that –*
 - (i) *the local government proposes to make a local law the purpose and effect of which is summarised in the notice*
 - (ii) *a copy of the proposed local law may be inspected or obtained at any pace specified in the notice; and*

- (iii) *submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given;*
 - (b) *as soon as the notice is given, give a copy of the proposed local law and a copy of the notice to the Minister and, if another Minister administers the Act under which the local law is proposed to be made, to that other Minister; and*
 - (c) *provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.*
 - (3A) *A notice under subsection (3) is also to be published and exhibited as if it were a local public notice.*
 - (4) *After the last day for submissions, the local government is to consider any submissions made and may make the local law* as proposed or make a local law* that is not significantly different from what was proposed.*
- *Absolute majority required**
- (5) *After making the local law, the local government is to publish it in the Gazette and give a copy of it to the Minister and, if another Minister administers the Act under which the local law is proposed to be made, to that other Minister.*
 - (6) *After the local law has been published in the Gazette the local government is to give local public notice –*
 - (a) *stating the title of the local law;*
 - (b) *summarising the purpose and effect of the local law (specifying the date on which it comes into operation); and*
 - (c) *advising that copies of the local law may be inspected or obtained from the local government's office.*
 - (7) *The Minister may give directions to local governments requiring them to provide to the Parliament copies of local laws they have made and any explanatory or other material relating to them.*
 - (8) *In this section –*
making *in relation to a local law, includes making a local law to amend the text of, or repeal, a local law.*

Regulation 34C of the Local Government (Administration) Regulations 1996 requires all local governments to have a code of conduct policy.

34C. Codes of conduct about disclosing interests affecting impartiality, content of (Act s. 5.103(3))

- (1) *In this regulation —*
interest *means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association.*

-
- (2) *A code of conduct is to contain a requirement that a person who is an employee and who has an interest in any matter to be discussed at a council or committee meeting attended by the person disclose the nature of the interest —*
- (a) *in a written notice given to the CEO before the meeting; or*
 - (b) *at the meeting immediately before the matter is discussed.*
- (3) *A code of conduct is to contain a requirement that a person who is an employee and who has given, or will give, advice in respect of any matter to be discussed at a council or committee meeting not attended by the person disclose the nature of any interest the person has in the matter —*
- (a) *in a written notice given to the CEO before the meeting; or*
 - (b) *at the time the advice is given.*
- (4) *A code of conduct is to exclude from a requirement made under subregulation (2) or (3) an interest referred to in section 5.60.*
- (5) *A code of conduct is to excuse a person from a requirement made under subregulation (2) or (3) to disclose the nature of an interest if —*
- (a) *the person's failure to disclose occurs because the person did not know he or she had an interest in the matter; or*
 - (b) *the person's failure to disclose occurs because the person did not know the matter in which he or she had an interest would be discussed at the meeting and the person discloses the nature of the interest as soon as possible after becoming aware of the discussion of a matter of that kind.*
- (6) *A code of conduct is to require that if, to comply with a requirement made under subregulation (2) or (3), a person who is an employee makes a disclosure in a written notice given to the CEO before a meeting then —*
- (a) *before the meeting the CEO is to cause the notice to be given to the person who is to preside at the meeting; and*
 - (b) *immediately before a matter to which the disclosure relates is discussed at the meeting the person presiding is to bring the notice and its contents to the attention of the persons present.*
- (7) *If —*
- (a) *to comply with a requirement made under subregulation (2), the nature of a person's interest in a matter is disclosed at a meeting; or*
 - (b) *a disclosure is made as described in subregulation (5)(b) at a meeting; or*
 - (c) *to comply with a requirement made under subregulation (6)(b), a notice disclosing the nature of a person's interest in a matter is brought to the attention of the persons present at a meeting, the nature of the interest is to be recorded in the minutes of the meeting.*

[Regulation 34C inserted in Gazette 21 Aug 2007 p. 4192-3.]

FINANCIAL IMPLICATIONS

If the undertaking as requested (and recommended) is adopted by Council, a new local law to amend the Standing Orders Local Law 2012, with all of the associated advertising and notice will be required to be adopted. The approximate cost of this is \$4,000, plus staff time in drafting the required documents.

This cost can be met within current operational budgets.

SUSTAINABILITY IMPLICATIONS

Nil

CONSULTATION

Administration staff have discussed this issue at length with the advisory officer from the Joint Standing Committee's staff.

STAFF COMMENT

The administration spent a great deal of time when drafting the Standing Orders Local Law ensuring that no part of the local law duplicated any Act or Regulation. When clause 11.13 was considered, it was felt that it was not a duplication of the Regulation, as the Regulation required the local government to have a code of conduct, where as the local law required employees and other committee members to undertake a specific action.

Advisory Officers have looked at this clause from another point of view and have come to a different conclusion. Their advice is that given *Regulation 34C* and the *Local Government (Rules of Conduct) Regulations 2007* were legislated at a similar time, the intent of the government of the day was that this requirement was to appear in a Code of Conduct policy, and ONLY in a Code of Conduct policy. They have also conceded that it does not specifically state in any Act or Regulation that a similar requirement could not also be included in a local law.

When the timing of the Regulations is considered, there is a strong argument that the government of the day intended these rules ONLY to be in a code of conduct policy, not a local law. It was probably the intent of the government to separate the rules of disclosure for staff and elected members, and to provide a mechanism that prevented elected members from being able to directly discipline staff. If the requirements remained in the local law, Council would be able to require staff members to make disclosures, where as in a policy, it remains an industrial issue, which is the purview of the CEO.

However, this regime does have a weakness, in that disciplining a staff member who breaches the Code of Conduct, remains an industrial matter only. If a staff member failed to disclose a material interest, the options would be for the CEO (largely at their discretion) to discipline the staff member – or if they believed that the misconduct was significant, refer the matter to the Corruption and Crime Commission, who may choose whether or not to investigate.

Clearly the intention of Regulation 34C is that staff would be required to disclose all matters affecting impartiality in the same way as elected members. It may be that Regulation 34C be amended such that it carries the same powers as a local law (in the same ways as the Uniform Local Provision Regulations) with the power to issue infringement notices limited to the CEO or relevant state government agency (Department of Local Government or CCC).

VOTING

Simple Majority

COMMITTEE DISCUSSION

The Manager Corporate and Community Services advised that the amendments do not significantly change the law and that no other department had suggested the changes, other than the Joint Standing Committee.

Cr Jeanes suggested that officers write to WALGA and the Department of Local Government regarding the process and costs associated with reviewing a local law.

OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Rowell, Seconded Cr Boland

THAT Council give an undertaking to the Joint Standing Committee on Delegated Legislation that:

- 1. A further review of the Standing Orders Local Law 2012 will be initiated within 6 months, with the purpose of removing clause 11.13 of the local law and making any consequential amendments.**
- 2. A notice of this undertaking be published where ever the local law is published.**
- 3. Provide the Joint Standing Committee on Delegated Legislation with a copy of these Minutes as requested.**
- 4. Not enforce clause 11.13 of the Standing Orders Local Law 2012, contrary to the intention of the undertaking in point 1.**

Carried 8/0

10.4.4 CONVERSION OF STATION STREET SUMP INTO A SURFACE CAR PARK

File No: SUB/935
Attachments: [Examples of Alternative Drainage Cell Materials](#)
Responsible Officer: Carl Askew
Chief Executive Officer
Author: Geoff Trigg
Manager Engineering Services

Proposed Meeting Date: 18 September 2012
Author Disclosure of Interest Nil

SUMMARY

At its meeting on the 27 August 2012, Council considered an update report on Planning for the Town Centre. One part of the final resolution was:

“That Council request staff to:

- 1. Undertake detailed design and feasibility assessment, including land assembly and approval procedures, and report-back for Council endorsement to implement:
 - i. Conversion of the Station Street sump site into a surface car park for public shopper parking time-managed using Meter Eye.”**

This item presents details on the proposal and recommends that Council call tenders for the supply of materials for the construction of a large drainage cell in the Station Street sump, capable of carrying all design traffic of a heavy use car park as a surface load, with no tender necessarily being accepted.

BACKGROUND

This matter was included in a Development Services agenda item in August, 2012, as part of an update report on Planning for the Town Centre.

There has been a long term expressed need for more parking in the Cottesloe commercial area. There has been previous Council debate and resolutions regarding the potential of locating a multi storey building, partially for additional car parking, on the large drainage sump area in Station Street to solve this lack of parking spaces.

At the same time, Cash in Lieu funds have accumulated and are currently in the order of \$400,000, as detailed in Councils budget document for 2012/13 under “Reserve Transfers Summary”. These funds must be spent on improved parking facilities within the area of the business locations originally contributing the funds.

Council has therefore requested information on a proposal to equip the Station Street sump with a modern below ground drainage structure, similar to several Cottesloe sumps previously equipped, on which would be installed a street level asphalt surfaced parking area, for public shopper parking, time managed with Meter Eye units. This would be funded from the Parking Reserve.

STRATEGIC IMPLICATIONS

In Council's 2006-2010 Future Plan, Objective 5 is "Maintain Infrastructure and Council Buildings in a Sustainable Way."

Major Strategy 5.3 within this objective states "Develop an Integrated Town Centre Plan to Improve all Aspects of the Infrastructure of the Town Centre." This proposed project is aimed at improving the Town Centre parking provision, as part of that strategy.

POLICY IMPLICATIONS

Council's "Engineering Programs – Long Term" applies.

STATUTORY ENVIRONMENT

Council owns the majority of the sump site and has the vesting control of the eastern end drainage reserve property. The drainage Reserve No. 40348 was originally under Main Roads WA control but was given over for Council vesting on the basis that drainage of Stirling Highway would always be permitted into that site. Council therefore has an obligation to have highway drainage water enter any new drainage installation in the sump. In addition, all cash in lieu funds must go towards the creation or improvement of parking facilities. Both of these requirements will be met in the proposed installation.

FINANCIAL IMPLICATIONS

Council has not budgeted to undertake this work in the 2012/2013 budget. However, the Parking Reserve is available and can be legally allocated to fund the work. The Parking Reserve was \$395,234 in July 2012 and is predicted to rise to \$409,510 by June 2013, with interest earned on the account. The estimated cost of the car park construction still appears adequate, the drainage cell component of cost had increased substantially.

SUSTAINABILITY IMPLICATIONS

The main sustainability objective is to install a system that allows for the removal of pollutants from drainage off Stirling Highway and town centre streets then direct the water into the below ground aquifer in the most efficient way.

CONSULTATION

No formal consultation on this proposal has taken place other than it being discussed with Procott. Debate over the development of this site has occurred for many years, with a variety of Council agenda items on the subject and local newspaper coverage.

STAFF COMMENT

Staff have arranged several conversions of open sumps into below ground soakage systems over four years during the Water Smart program. All such conversions have required heavy machinery to both drop cover soil and spread it over a variety of plastic components which make up the basis of the drainage 'cell'. There are many examples of major roads, car parks and sporting grounds being built and heavily used by traffic over such drainage cells, which are designed to carry such loadings.

It is quite possible to install a drainage cell, to receive drainage water from Stirling Highway and the commercial area streets, within the Station Street sump, then construct a car parking area of approximately 70 bays, with kerbing, line marking and landscaping over the drainage cell. This would be accessible from both the rear lane and Station Street.

The Station Street sump is located within No.'s 18, 20, 22, 24 and 26 Station Street. No. 26 is Reserve 40348 vested in Council for drainage purposes. No. 18 is in two parts, with a smaller rear section being a Water Corporation Sewer Pump Station. The larger portion of No.18, plus No.'s 20, 22 and 24 are owned 'fee simple' by the Town of Cottesloe. An inspection of the site revealed that there is an emergency outlet from the Water Corporation sewer pump station into the rear of No. 20. A letter has been sent to the Water Corporation requesting information on when / if Council ever agreed to this overflow. If possible, the pipe should be removed or relocated to flow into the southern portion of No. 18. This would allow full use of No.'s 20 to 26 as a drainage cell and parking area.

Originally an estimate was calculated for the total installation by using the costs of the most recent sumps converted by Council under the Water Smart program, with allowance for normal cost increases. Whilst the estimated cost of the car park construction still appears adequate, the drainage cell component of cost had increased substantially. Staff have investigated a variety of methods and products available for the construction of a drainage cell, including large concrete segments and purpose designed Gross Pollutant traps, large diameter high density plastic slotted pipes, plastic tunnel systems covered in crushed metal and wrapped in geotextile fabric and the plastic box system wrapped in geotextile fabric capable of being gully-educted to remove any pollutants not removed by Gross Pollutant Trap (GPT) systems.

Recent Indicative costs for material supply of these different systems have shown that the drainage cell, GPT system and connecting pipelines will be in the order of \$250,000 to \$300,000, plus installation costs of approximately \$40,000.

This means that the completed works may total on or above the \$400,000 available from the Car Parking Reserve Account. Given that materials supply will be in excess of \$100,000, a tender for supply would be required. If a tender is called and the successful tender amount is affordable by Council then a decision can be made at that time to proceed. Another alternative is to add to the available funds from the Property or Infrastructure Reserves.

VOTING

Simple Majority

COMMITTEE DISCUSSION

The Manager Engineering Services tabled a letter of concern from a resident regarding the proposed construction of the car park on the Station Street sump, specifically in relation to access, screening and noise.

Cr Pyvis suggested that Council also needed to consider the design and operation of the car park. Committee discussed amending the recommendation to include

community consultation on any car park design and landscape plan, in the event that a tender is accepted.

OFFICER RECOMMENDATION

Moved Cr Rowell, Seconded Mayor Morgan

THAT Council call a tender for the supply of materials for the construction of a large drainage cell in the Station Street sump, capable of carrying all design traffic of a heavy use car park as a surface load, with no tender necessarily being accepted.

AMENDMENT

Moved Cr Pyvis, Seconded Mayor Morgan

That the recommendation be amended to insert a point (1) before the words "call a tender", and create a new point (2) that reads "Conduct community consultation on any car park design and landscape plan, in the event that a tender is accepted".

Carried 5/0

COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Rowell, seconded Mayor Morgan

THAT Council:

- 1) Call a tender for the supply of materials for the construction of a large drainage cell in the Station Street sump, capable of carrying all design traffic of a heavy use car park as a surface load, with no tender necessarily being accepted.**
- 2) Conduct community consultation on any car park design and landscape plan, in the event that a tender is accepted.**

Carried 8/0

10.4.5 PROPOSED SUBMISSION - PERTH BICYCLE NETWORK GRANTS 2013-2014

File No: SUB/725 & SUB/411
Attachments: [Copy of Perth Bicycle Network Grants 2013 2014 Application Guidelines](#)
[Copy of Cottesloe Local Bike Plan Table 6 2 Proposed Major Improvements](#)
[Copy of 2009 2010 Grant Submission](#)

Responsible Officer: Carl Askew
Chief Executive Officer

Author: Geoff Trigg
Manager Engineering Services

Proposed Meeting Date: 18 September 2012

Author Disclosure of Interest Nil

SUMMARY

The Department of Transport call for the annual Perth Bicycle Network Grants for 2013/2014 submissions has now been announced. Applications will close on the 26th October 2012 for a total of \$1.9 million in grant funds in a total of four categories. The Town of Cottesloe Bike Plan Review Working Group has had its first meeting and has recommended that a priority submission be made to convert the Forrest Street footpath from Curtin Avenue to Marine Parade to a dual use path, with a second submission to commence works to widen the Raia Roberts Foreshore dual use path.

BACKGROUND

In January 2009, Council's submission was made under the 2009-2010 Perth Bicycle Network Local Government Grants scheme for the conversion of the Forrest Street footpath to a dual use standard footpath from Curtin Avenue to Marine Parade. At that time, the estimated cost was \$99,000, and a grant of \$49,000 was requested. That application was successful but Council could not allocate the matching \$50,000 due to budget restrictions, so the grant was returned.

One basis for grant submission success is that the submitted projects should be included as priorities in existing Bike Plans. The newly formed Town of Cottesloe Bike Plan Review Working Group has determined that a project to widen a portion of the Raia Roberts Dual Use Path, on the west side of Marine Parade (at one end or the other), should be a second submission for a 50% cost grant. This project is included as a priority in the current Bike Plan. It has also been agreed to by Council for consideration in the draft 2013/2014 budget at a cost of \$50,000 for a section to commence a long term widening project.

STRATEGIC IMPLICATIONS

The Town of Cottesloe Future Plan 2006-2010 provides for bicycle use.

Objective 1 – Protect and enhance the lifestyle of residents and visitors.

Strategy 1.1 states “Develop an integrated transport strategy that includes park and ride, Cott Cat, Travelsmart, limited parking and the needs of pedestrians, cyclists and other non-vehicle traffic”; and in

Objective 3 – Enhance beach access and the foreshore.

Strategy 3.5 states “Improve bicycle and disabled access to beach facilities”.

POLICY IMPLICATIONS

Nil

STATUTORY ENVIRONMENT

Nil

FINANCIAL IMPLICATIONS

A submission for a grant in 2013/2014 for the Forrest Street project would entail a cost of approximately \$140,000, with Council having to fund 50% or \$70,000 (approximately). The Raia Roberts Dual Use Path project has already been accepted by Council for consideration of construction in 2013/14 at \$50,000 cost to Council. An application to undertake a project of \$100,000 cost at a 50/50 cost sharing basis is therefore proposed.

SUSTAINABILITY IMPLICATIONS

Increased dual use path use in the Town of Cottesloe is an acceptable sustainability aim of Council, to increase exercise and health of users and to promote forms of transport other than vehicles.

CONSULTATION

This occurred as part of the process to establish the Bike Plan in 2008, and also is a reason for the creation of the Town of Cottesloe Bike Plan Review Working Group.

STAFF COMMENT

There is only a short time to develop submissions for both of these projects before the submission closure date of 26th October 2012. The original Forrest Street submission from 2009 will form the basis of the new application. The Raia Roberts Dual Use Path submission will be based on the aim of annually completing widening or replacement sections of this path working from each end with an eventual connection onto a future upgraded Main Beach Foreshore Development between Eric Street and the Cottesloe Surf Life Saving Club. The works will also be aimed at removing cycle conflict points with pedestrians, with a new width of 3.0 meters.

VOTING

Simple Majority

OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Rowell, Seconded Cr Boland

THAT Council support staff submitting grant applications for the Perth Bicycle Network Grants Scheme for 2013/2014 for two projects as follows;

- 1. Conversion of the Forrest Street pedestrian path to dual use standards, from Curtin Avenue to Marine Parade, Cottesloe.**
- 2. Widening or replacement of a section of Raia Roberts Dual Use Path to 3.0 meters, as a commencement of a long term project to widen the full length of this path, to eventually connect onto a redeveloped Cottesloe Main Beach foreshore area.**

Carried 8/0

**10.4.6 STATUTORY FINANCIAL REPORTS FOR THE PERIOD 1 JULY 2012 TO
31 AUGUST 2012**

File No: SUB/137
Responsible Officer: Carl Askew
Chief Executive Officer
Author: Wayne Richards
Finance Manager
Proposed Meeting Date: 18 September 2012
Author Disclosure of Interest Nil

SUMMARY

The purpose of this report is to present to Council the Statement of Financial Activity and other supporting information for the period 1 July 2012 to 31 August 2012 as included in the attached Financial Statements.

BACKGROUND

Nil

STRATEGIC IMPLICATIONS

Nil

POLICY IMPLICATIONS

Nil

STATUTORY ENVIRONMENT

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

FINANCIAL IMPLICATIONS

Resource requirements are in accordance with existing budgetary allocations.

SUSTAINABILITY IMPLICATIONS

Nil

CONSULTATION

Nil

STAFF COMMENT

The Statement of Financial Activity on page 1 of the attached Financial Statements shows a year to date operating revenue of \$394,083 against a budgeted year to date figure of \$407,868. Operating expenditure is \$527,564 or 30% less than budgeted year to date, and of this, approximately \$308,984 relates to depreciation charges that have not been processed as the 2012 Annual Financial Statements have not yet been audited. All material variances are outlined in the Variance Analysis Report on pages 7 to 9 of the attached Financial Statements. Capital expenditure is reported in detail on pages 26 to 29 of the attached Financial Statements.

VOTING

Simple Majority

COMMITTEE DISCUSSION

Mayor Morgan questioned why a 3 meter wide path would be installed, rather than having a separate path for bikes and pedestrians. Cr Rowell advised that a line would be painted down the centre of the path to accommodate the different users, with signs to indicate bike and pedestrian use.

OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Rowell, Seconded Cr Boland

THAT Council the Statement of Financial Activity and other supporting information as included in the attached Financial Statements for the period 1 July 2012 to 31 August 2012, as submitted to the 18 September 2012 meeting of the Works and Corporate Services Committee.

Carried 8/0

10.4.7 LIST OF ACCOUNTS PAID FOR THE MONTH OF AUGUST 2012

File No: SUB/137
Responsible Officer: Carl Askew
Chief Executive Officer
Author: Wayne Richards
Finance Manager

Proposed Meeting Date: 18 September 2012
Author Disclosure of Interest Nil

SUMMARY

The purpose of this report is to present the list of accounts paid for the month of August 2012, as included in the attached Financial Statements, to Council.

BACKGROUND

Nil

STRATEGIC IMPLICATIONS

Nil

POLICY IMPLICATIONS

Nil

STATUTORY ENVIRONMENT

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

FINANCIAL IMPLICATIONS

Resource requirements are in accordance with existing budgetary allocations.

SUSTAINABILITY IMPLICATIONS

Nil

CONSULTATION

Nil

STAFF COMMENT

The list of accounts paid in August 2012 is included in the report on pages 11 to 18 of the attached Financial Statements. The following significant payments greater than \$20,000 are brought to Councils attention;

- \$28,190.30 to WA Local Government Superannuation Plan for staff superannuation contributions.
 - \$34,368.12 to Cobblestone Concrete for various footpath works.
 - \$38,453.72 to LGISWA for first fifty per cent instalment of Council's property insurance.
 - \$31,224.94 to LGIS Insurance Broking for Council's plant and equipment insurance etc.
-

- \$156,450.30 to the Shire of Peppermint Grove for Councils first quarter contribution towards the Joint Library operations.
- \$53,916.05 & \$40,002.50 to Transpacific Cleanaway for monthly waste collection services for June and July 2012.
- \$24,057.98 to Jackson Macdonald for legal services in Town Planning.
- \$32,184.03 to the Shire of Peppermint Gove for Council's contribution towards the upgrading of the bore at the Library.
- \$29,802.13 & \$32,905.44 to WMRC for waste collection and disposal fees.
- \$74,029.36, \$74,947.28 & \$71,146.12 for fortnightly staff payroll.
- \$30,000 & \$100,000.00 to Councils Business Investment Account being transfers.
- \$475,000.00 & \$450,000.00 to Westpac Bank being new term deposits.
- \$475,000.00 to the National Australia Bank being a new term deposit.

VOTING

Simple Majority

OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Rowell, Seconded Cr Boland

THAT Council receive the List of Accounts Paid for the month of August 2012 as included in the attached Financial Statements, as submitted to the 18 September 2012 meeting of the Works and Corporate Services Committee.

Carried 8/0

10.4.8 SCHEDULES OF INVESTMENTS AND LOANS AS AT 31 AUGUST 2012

File No: SUB/150 AND SUB/151
Responsible Officer: Carl Askew
Chief Executive Officer
Author: Wayne Richards
Finance Manager
Proposed Meeting Date: 18 September 2012
Author Disclosure of Interest Nil

SUMMARY

The purpose of this report is to present the Schedule of Investments and the Schedule of Loans as at 30 September 2012, as included in the attached Financial Statements, to Council.

BACKGROUND

Nil

STRATEGIC IMPLICATIONS

Nil

POLICY IMPLICATIONS

Nil

STATUTORY ENVIRONMENT

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

FINANCIAL IMPLICATIONS

Resource requirements are in accordance with existing budgetary allocations.

SUSTAINABILITY IMPLICATIONS

Nil

CONSULTATION

Nil

STAFF COMMENT

The Schedule of Investments on page 21 of the attached Financial Statements shows that \$3,330,253.99 was invested as at 31 August 2012. Approximately 45% of these funds were invested with Westpac Bank, 38 % with National Australia Bank, 9% with the Commonwealth Bank and the remaining 8% with Bankwest.

The Schedule of Loans on page 22 of the attached Financial Statements shows a balance of \$6,208,229.62 as at 31 August 2012. included in this balance is \$380,753.94 that relates to self supporting loans.

VOTING

Simple Majority

OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Rowell, Seconded Cr Boland

THAT Council receive the Schedule of Investments and the Schedule of Loans as at 31 August 2012. These schedules are included in the attached Financial Statements as submitted to the 18 September 2012 meeting of the Works and Corporate Services Committee.

Carried 8/0

10.4.9 PROPERTY AND SUNDRY REPORTS AS AT 31 AUGUST 2012

File No: SUB/145
Responsible Officer: Carl Askew
Chief Executive Officer
Author: Wayne Richards
Finance Manager

Proposed Meeting Date: 18 September 2012
Author Disclosure of Interest Nil

SUMMARY

The purpose of this report is to present the Property and Sundry Debtors Reports as included in the attached Financial Statements, to Council.

BACKGROUND

Nil

STRATEGIC IMPLICATIONS

Nil

POLICY IMPLICATIONS

Nil

STATUTORY ENVIRONMENT

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

FINANCIAL IMPLICATIONS

Resource requirements are in

SUSTAINABILITY IMPLICATIONS

Nil

CONSULTATION

Nil

STAFF COMMENT

The Sundry Debtors Report on pages 23 and 24 of the attached Financial Statements shows a balance of \$39,013.46 outstanding as at 31 August 2012. Of this amount, \$32,247.46 is current with the balance of aged debt \$6,766.00. The Rates and Charges Analysis on page 25 of the attached Financial Statements shows a total balance outstanding of \$3,653,912.88. Of this amount, \$205,419.76 and \$530,346.55 are deferred rates and outstanding emergency services levies respectively. The Statement of Financial Position on page 4 shows a balance of \$3,986,154 as compared to \$6,411,637 this time last year. This variance is mainly attributable to the due date being on 28 August 2012 this year whereas last year it was 8 September 2011.

VOTING

Simple Majority

OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Rowell, Seconded Cr Boland

THAT Council receive the Property and Sundry Debtors Reports as at 31 August 2012. These reports are included in the attached Financial Statements as submitted to the 18 September 2012 meeting of the Works and Corporate Services Committee.

Carried 8/0

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

Nil

12 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING BY:**12.1 ELECTED MEMBERS**

Nil

12.2 OFFICERS**13 MEETING CLOSED TO PUBLIC****13.1 MATTERS FOR WHICH THE MEETING MAY BE CLOSED**

Cr Jeanes declared a proximity interest in Item 13.1.1 due to owning a property on John Street and left the Chambers at 8.38PM.

13.1.1 ROW 32B ENCROACHMENT - CONFIDENTIAL

File No: SUB/272
Attachments: [Confidential Officer Report](#)
[Right of Ways – Laneways Policy](#)
Responsible Officer: Carl Askew
Chief Executive Officer
Author: Mat Humfrey
Manager Corporate Services
Proposed Meeting Date: 24 September 2012
Author Disclosure of Interest Nil

SUMMARY

This report recommends that Council note the information contained in the confidential officer report in relation to ROW 32B and endorses the officer recommendation.

BACKGROUND

Refer to the confidential report attached.

STRATEGIC IMPLICATIONS

As there are many right-of-ways, ensuring that encroachments can be properly dealt with is a strategic consideration for the Town.

POLICY IMPLICATIONS

Rights of Way – Laneways Policy

STATUTORY ENVIRONMENT

Local Government Act 1995 – s5.23 – Closing a meeting to the public.

Transfer of Land Act 1893

Limitations Act 1935

Limitations Act 2005

Local Government 1995

FINANCIAL IMPLICATIONS

At this stage, the primary financial costs to Council have been the costs of the legal advice received and officer time. Legal cost can be met within the budgeted operating costs.

SUSTAINABILITY IMPLICATIONS

Nil

CONSULTATION

Refer to the confidential report attached.

STAFF COMMENT

Refer to the confidential report attached.

VOTING

Simple Majority

MOTION FOR BEHIND CLOSED DOORS

Moved Mayor Morgan, seconded Cr Pyvis

In accordance with Standing Orders 15.10 “That the Council Meets Behind Closed Doors - Effect of Motion (1) The circumstances under which a meeting may moved behind closed doors is dealt with in the Act; (2) In accordance with the subclause (1), this motion, if carried, will cause the general public, media and any officers or employees the council determines, to leave the room”.

Carried 7/0

Members of the public and media were requested to leave the meeting at 8:36 PM.

OFFICER RECOMMENDATION & COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Pyvis

THAT Council endorse the officer recommendation contained in the confidential report.

Carried 7/0

MOTION FOR BEHIND CLOSED DOORS

Moved Mayor Morgan, seconded Cr Rowell

“That the meeting be re-opened to the staff, members of the public and media”

Carried 7/0

Cr Jeanes, members of the public and Media returned to the meeting at 8:37 PM.

13.2 PUBLIC READING OF RECOMMENDATIONS THAT MAY BE MADE PUBLIC

The Mayor read aloud the Council resolution for item 13.1.1 to the public:

That Council, noting the advice received from the Town's Solicitors, inform Mr Svanberg that;

1. His position has been considered.
2. Requires the portion of the asbestos sheeting fence which encroaches into the laneway to be removed within 21 days of notice being given by the Town.
3. If the portion of the fence in point 2 is not removed by close of business on that day, the Town will remove the fence and any other encroachment on that asbestos fence portion of the laneway at the Town's cost.

Carried 7/0

The Mayor read aloud the Council resolution for item 10.1.1 to the public:

That Council:

- 1) Authorise the Chief Executive Officer to sign a lease agreement as outlined in the Confidential Attachment, to accommodate the relocation of its depot operations, with arrangements to be made for the relocation as soon as possible, once the formal lease agreement is in place.
- 2) Pursuant to section 6.8 of the Local Government Act 1995, authorise the following expenditure: Lease payments for Council's depot, at an estimated cost of \$70,000 in 2012/2013.

Carried 8/0

14 MEETING CLOSURE

The Mayor announced the closure of the meeting at 9:30 PM

CONFIRMED MINUTES OF 24 September 2012 PAGES 1 – 82 INCLUSIVE.

PRESIDING MEMBER:

POSITION:

.....

DATE: / /