

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, Tuesday 26 April, 2016

MAT HUMFREY
Chief Executive Officer

4 May 2016

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TABLE OF CONTENTS

ITEM	SUBJECT	PAGE NO
1	DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS.....	3
2	DISCLAIMER	3
3	ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION	3
4	PUBLIC QUESTION TIME AND PUBLIC STATEMENT TIME.....	3
4.1	RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE.....	3
4.2	PUBLIC QUESTIONS	6
5	PUBLIC STATEMENT TIME.....	7
6	ATTENDANCE.....	12
6.1	APOLOGIES	12
6.2	APPROVED LEAVE OF ABSENCE	12
6.3	APPLICATIONS FOR LEAVE OF ABSENCE	12
7	DECLARATION OF INTERESTS	12
8	CONFIRMATION OF MINUTES.....	12
9	PRESENTATIONS	13
9.1	PETITIONS.....	13
9.2	PRESENTATIONS	13
9.3	DEPUTATIONS.....	13
10	REPORTS	14
10.1	REPORTS OF OFFICERS	14
	PLANNING.....	14
	10.1.1 126-128 (LOTS 24 & 25) RAILWAY STREET - PROPOSED LOCAL PLANNING SCHEME AMENDMENT NO. 5 AND LOCAL DEVELOPMENT PLAN	14
	10.1.2 LOCAL PLANNING SCHEME NO. 3 - PROPOSED AMENDMENT NO. 6 - CLAUSE 5.7.5 - REFINEMENT OF PARTICULAR HEIGHT PROVISIONS	26
	10.1.3 NO. 5B (LOT 42) OVERTON GARDENS – THREE-STOREY DWELLING	36
	ADMINISTRATION	51

	10.1.4	CURTIN CARE INC. – PROPOSAL FOR NEW 25 YEAR LEASE - LOT 555 COTTESLOE ('WEARNE COTTESLOE')	51
	10.1.5	TOWN OF COTTESLOE CARBON INVENTORY REPORT 2014/2015	59
	10.1.6	REVIEW OF LOCAL GOVERNMENT PROPERTY LOCAL LAW 2001	63
	10.1.7	COUNCIL CHAMBER - VIDEO AND AUDIO EQUIPMENT	68
	FINANCE		70
	10.1.8	FINANCIAL STATEMENTS FOR THE MONTH ENDING 31 MARCH 2016	70
	10.1.9	2016/2017 DIFFERENTIAL RATES	73
	10.2	REPORT OF COMMITTEES	78
11		ELECTED MEMBERS' MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN	78
	11.1	COUNCILLOR MOTION	78
	11.2	COUNCILLOR MOTION	79
	11.3	COUNCILLOR MOTION	81
	11.4	COUNCILLOR MOTION	83
	11.5	COUNCILLOR MOTION	91
12		NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING BY:	95
	12.1	ELECTED MEMBERS	95
	12.1.2	COUNCILLOR MOTION	95
	12.2	OFFICERS	95
	12.2.1	LOCAL PLANNING SCHEME NO. 3 - AMENDMENT NO. 4 - FINALLY APPROVED	95
13		MEETING CLOSED TO PUBLIC	98
	13.1	MATTERS FOR WHICH THE MEETING MAY BE CLOSED	98
	13.2	PUBLIC READING OF RECOMMENDATIONS THAT MAY BE MADE PUBLIC	98
14		MEETING CLOSURE	98

1 DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS

The Presiding Member announced the meeting opened at 07:03 PM.

2 DISCLAIMER

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

3 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

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

The Mayor thanked the Cottesloe Sub-Branch RSL, the Town and in particular the Town's Community Development Officer, Sherilee Macready, for organising the ANZAC Day service held on 25 April 2016. The Mayor also thanked all those who attended the service.

4 PUBLIC QUESTION TIME AND PUBLIC STATEMENT TIME**4.1 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE****QUESTIONS TAKEN ON NOTICE 05 APRIL 2016 SPECIAL COUNCIL MEETING**Chris Wiggins, 50 John Street, Cottesloe - Re. Indiana Tea House - Business Plan - Final Consideration

Q1: Has invasive testing recommended in the Cardno report been completed?

A1: No.

Q2: Has the cost of bringing the building up to current Building Code of Australia standards, as recommended by the Cardno report, been completed?

A2: The costing of this work is underway. The work itself is the tenant's responsibility.

Q3: The Cardno report covered only the next 15 years. Have costs covering the full 25 years of the lease been estimated?

A3: The Cardno costs are formulated on the basis of no change. They were only of use in determining a negotiating position in relation to the Heads of Agreement.

Q4: Has the Council addressed the potential liability to Indiana if the Building becomes un-occupiable?

- A4: Yes.
- Q5: Have cash flow projections and internal rate of return calculations for the life of the lease been prepared and submitted to Councillors?
- A5: No – as the lease was already in place, only the changes to cash flows were assessed.
- Q6: Has a risk assessment by a competent and professional commercial risk assessor been prepared?
- A6: A risk management assessment would have been prepared in conjunction with our insurers at the detailed design phase if the redevelopment had proceeded.

Yvonne Hart, 26 Mann Street, Cottesloe - Re. Indiana Tea House - Business Plan - Final Consideration

- Q1: The staff comment states that “*At the time the Business Plan was developed, a number of assumptions needed to be made*”. Did Council officers assume that the three way funding position would continue with the State Government providing 38% of the cost?
- A1: Yes – as stated in the Business Plan, a contribution from the State was such an assumption. If such a contribution was not received, the project would have halted.
- Q2: Is the State Government still involved in discussion?
- A2: The next time we would have heard from the State would have been when the State budget was announced. The State have been informed of Council’s decision.
- Q3: Did Council Officers assume that the public toilets could not be upgraded within the footprint of the building and therefore provide a real alternative to development?
- A3: No.
- Q4: Did Council Officers assume that the existing lease agreement was not open to challenge?
- A4: No.
- Q5: Did Council Officers assume that there was no Notice of Default that could be served on Indiana for failing to maintain the building?
- A5: No.

- Q6: Was a Notice of Default ever issued? If so, when and for what reason?
- A6: Yes – at this stage the details are not able to be disclosed.
- Q7: The staff comment states that “*officers became aware of events that materially changed one of the assumptions*”. What was the event?
- A7: Council did not receive a notice of exercise of option from the tenant during the time frame stated in the Lease for exercise.
- Q8: Was the event the Cardno report that indicated that \$2,000,000 of maintenance is required over 15 years and urgent work is needed?
- A8: No.
- Q9: In the staff comment it states that “*in order for any redevelopment to proceed, the Town needs to resolve one key issue with the current Lessee*”. What is this one key issue and when will we be told?
- A9: Council did not receive a notice of exercise of option from the tenant during the time frame stated in the Lease for exercise.
- Q10: Will the Mayor issue a public statement outlining advice the lawyers have provided to Council?
- A10: Not at this stage.
- Q11: It appears Council intends to continue with the redevelopment. Why spend ratepayers’ money when the cost of effective alternatives are yet to be explored?
- A11: Redevelopment is on hold for the time being.
- Q12: How much money has been spent so far?
- A12: Difficult to answer the question, but specific answers provided below.
- Q13: What was the cost of the Business Plan, including printing?
- A13: The Business Plan was prepared by staff and printed internally. The costs were a part of normal salaries and wages and administration budgets.
- Q14: What was the cost of the Heads of Agreement, including legal advice?

A14: The Heads of Agreement was developed by the Town's solicitors at a cost of approximately \$6,000.

Q15: What was the cost of the first concept plan drawn by consultants?

A15: The costs of the plans, models, all required measurements and attendance at the public meeting was \$21,450.

Q16: What is the ongoing cost of legal fees surrounding Indiana?

A16: As the matter is ongoing it is difficult to estimate at this stage.

Patricia Carmichael, 14/116 Marine Parade, Cottesloe - Re. Indiana Tea House - Business Plan - Final Consideration

Q1: What is Council's next move?

A1: Await the resolution of the option discussion.

Q2: Will Council be advertising another business plan for public feedback?

A2: Any development on that site will likely require a business plan be advertised for comment.

Q3: Will Council be seeking more legal advice?

A3: Yes.

Q4: If the building is redeveloped, where will the surf club's equipment be stored?

A4: There are no formal plans on foot at the moment. The previous concept plan showed the surf club space improved but the available area remained largely unchanged.

4.2 PUBLIC QUESTIONS

Shayne Carter, 349 Marmion Street, Cottesloe - Re. 10.1.3 No.5B (Lot 42) Overton Gardens - Three-Storey Dwelling

Q1: Can the failure to comply with the West Australian Planning Commission's conditions of subdivision approval be added to the Town of Cottesloe reasons for refusal?

Q2: Can Town of Cottesloe please hire an independent expert planner to accompany staff to any mediation?

Q3: Can Town of Cottesloe please obtain from the State Administrative Tribunal a full transcript of the directions hearing?

A: The Mayor took the questions on notice.

Frank Wright, 3/8 Beach Street, Cottesloe - Re. Street Trees in Princes Street

Q1: Is there an explanation for the lack of trees in Princes Street compared to the surrounding streets in the area and has Council any plans to rectify this situation?

A1: Residents in Princes Street have previously planted trees, there was dissention and the trees were removed.

Last financial year Council inspected Princes Street and identified every verge that did not have a street tree on it. The Town wrote to the property owners, that did not have a street tree, to inform them that the Town was planning to plant a tree on their verge, unless they chose to opt out. A few residents opted out, otherwise the Town planted street trees in Princes Street.

There is a big difference between streets in Cottesloe. Princes Street has a Rottnest Island Tea Tree as the predominant tree and that has been replicated up the street. Overtime, that tree will grow and Princes Street will change. As we cannot plant mature trees, it takes time for the look of the street to change.

5 PUBLIC STATEMENT TIME

Dinah Terry, PO Box 862, Cottesloe - Re. Cottesloe Tennis Club - Request for Self Supporting Loan

- Thanked Councillors and officers for their assistance with the Cottesloe Tennis Club's court expansion program.
- Club members expressed concern about the behaviour of a small group of Club members.
- The Club is a high use facility, that is at capacity.

Penny Oldfield, Swanbourne - Re. Cottesloe Tennis Club - Request for Self Supporting Loan

- The Club's loan repayments are over 10 years at \$51,000 per year, which is far in excess of what Club members were told it was going to be, which was a smaller sum over 15 years.
- The Club will not be able to sustain the higher repayments and ratepayer will have to pick up the burden of a \$420,000 loan.
- Financial information provided by the Club to its members and Council is incorrect.

Ian McCallum, 68A Broome Street, Cottesloe - Re. 11.3 Councillor Motion

- Supported comments made by neighbours.
- A coaches' box is not necessary, as outlined in the AFL guidelines.
- An elevated platform is unnecessary.

R I Viner, 16 Barsden Street, Cottesloe - Re. 11.3 Councillor Motion

- The Roosters have brought about a remarkable increase in attendance at the oval.
- Objections to the coaches' boxes are hard to understand.
- Existing facilities at the oval are more likely to attract vandalism.
- The boxes will not obstruct the views of residents in Broome Street.
- The boxes will be a tremendous amenity to players.

Cathy Feely, 4 Rosser Street, Cottesloe - Re. 11.3 Councillor Motion

- The oval should be protected and preserved.
- Building coaches' boxes on pristine parkland is unnecessary.
- There are better options available that will suit all stakeholders.
- The coaches' boxes are a safety hazard.
- The rugby club managed for years with a tent/gazebo.

John Garland, 230 Broome Street, Cottesloe - Re. 11.3 Councillor Motion

- Cottesloe Junior Football Club cares for 248 children, 90% of which are the children of Cottesloe ratepayers.
- The proposal for coaches' boxes began as a duty of care issue, as members of the public have been struck by golf balls when standing on the western side of the oval.
- The width of land available limits the Club's options and storage issues also prevent alternative options.
- Images published in the local newspaper are conceptual drawings and are not the final working drawings.
- Claims of potential anti-social behaviour are unfounded.
- The coaches' boxes will be for the benefit of local children, enhance their sporting experience and enhance their safety.

Brian Sierakowski, 1/8 Avonmore Terrace, Cottesloe - Re. 11.3 Councillor Motion

- The main issue is safety.
- The Town has a duty of care to all users of Harvey Field.
- Last year a girl was stuck in the head by a golf ball, it was not an isolated occurrence.

Simon Witaker, 70 Broome Street, Cottesloe - Re. 11.3 Councillor Motion

- The oval is used for many purposes, not just football.
- The overall issue is that of safety.

- The proposed platform is too high and is a safety issue.

Ian Brashaw, 1G Norfolk Street, Fremantle - Re. 10.1.1 126-128 (Lots 24 & 25) Railway Street – Proposed Local Planning Scheme Amendment No.5 and Local Development Plan

- The project is well matched with the objectives and aspirations of the Town's Strategic Community Plan.
- The project will provide for community housing needs by providing different price points and enabling aging in place.
- The design will create a community environment.
- Sustainable development principals have been considered.
- There will be no undue overshadowing and the project complies with the R Codes.
- The building is not that high, the southern elevation is 1.5 storeys high.

Brad Osborne, 124 Railway Street, Cottesloe - Re. 10.1.1 126-128 (Lots 24 & 25) Railway Street – Proposed Local Planning Scheme Amendment No.5 and Local Development Plan

- A development proposal should not be confused with a rezoning process.
- Expressed concerns regarding what could be built under the Local Development Plan.
- It would be possible to construct a three-storey building with zero setback.
- The Local Development Plan does permit R60 zoning but it's a R80 type of development.
- The land could possibly be traded on and allow a different type of development in the future.
- Precursor consultation should occur prior to commencing the statutory process to rezone.

Cathy Campbell, 12 Kathleen Street, Cottesloe - Re. 10.1.1 126-128 (Lots 24 & 25) Railway Street – Proposed Local Planning Scheme Amendment No.5 and Local Development Plan

- Council should consult with the community before proceeding to make a scheme amendment.
- The rezoning will set a precedent that will change the character of Cottesloe.

Julia Hayes, 38 Congdon Street, Cottesloe - Re. 10.1.1 126-128 (Lots 24 & 25) Railway Street – Proposed Local Planning Scheme Amendment No.5 and Local Development Plan

- The site previously contained two dilapidated houses that were beyond repair.
- The development will be a village, create an active community and will provide alternative housing options for baby boomers.

Leslie Shaw, 9 Greenville Street, Swanbourne - Re. 10.1.1 126-128 (Lots 24 & 25) Railway Street – Proposed Local Planning Scheme Amendment No.5 and Local Development Plan

- Perth Green Growth Plan is currently out for public comment, the document will prescribe the shape of the city as the population increases.
- The State Government has indicated that infill development is imperative.
- The scheme amendment will allow high quality, environmentally sustainable development.
- Transit orientated design makes the site ideal due to its proximity to the railway line.

Brian Kent, 5C Overton Gardens, Cottesloe - Re. 10.1.3 No.5B (Lot 42) Overton Gardens – Three-Storey Dwelling

- The community, neighbours, the Town's planning department and local media are against the proposal.
- The proposal is out of place amongst the existing houses.
- The owners of 5B Overton Gardens have realised that the plans are not in keeping with the surrounds and have already submitted revised plans.
- The Town should engage a solicitor to attend and oversee all future contact with State Administrative Tribunal.
- Solicitors should defend Council's 1999 ruling for a 6m setback for all future dwellings in the subdivision.

Michael Tucak, 44 Railway Street, Cottesloe - Re. 11.4 Councillor Motion

- Procott's priorities for this year are a signage plan, Christmas decorations plan and increased marketing of the village.
- Procott recognises the importance of trees to the village.
- Procott have commissioned an independent arborist to provide a report on the best possible choice of trees throughout the village.
- If a new tree species was recommended by the arborist, the trees could be purchased as young trees and kept at the Council depot to nurture and grow and planted as mature trees, when they offer a better canopy.

Kevin McCabe, 10 Glyde Street, East Fremantle - Re. 11.4 Councillor Motion

- At the last Procott Board meeting there was a unanimous vote to do something about the trees.
- The arborist report will identify the faults with the existing trees, the planting arrangements and propose a different tree.

Helen Sadler, 39 Griver Street, Cottesloe - Re. 11.4 Councillor Motion

- The Town of Cottesloe should be a leader when developing environmental policies.

- The most liveable cities have large green open spaces and pedestrianised areas, which took foresight and planning to create.
- Subdivision and the building of larger homes in Cottesloe have led to a reduction in trees.
- Increased population density has resulted in increased traffic, which does not make the area more liveable.
- A liveable city should be well connected and with shade provided by trees.

Maryellen Yencheck, 30 Lyons Street, Cottesloe - Re. 11.4 Councillor Motion

- Several years ago an eco group was set up at North Cottesloe Primary School, its purpose was to enhance the sustainability of the school and support environment in the curriculum.
- There is a disparity with what is being taught in schools and what is happening in the community.
- The shade provided by a canopy of trees will reduce temperatures.

Rebecca John, Grant Street, Cottesloe - Re. 11.4 Councillor Motion

- Spoke in support of the Councillor Motion, with the exception of the right of Council to protect trees on private property.
- Community dialogue and education on appropriate trees is preferred to policing.
- Council should focus on replacing existing trees and preservation in public spaces.
- Public consultation should be undertaken regarding appropriate flora and fauna.

Vicki Boxell, Lefroy Street, Beaconsfield - Re. 11.4 Councillor Motion

- Balloons are litter.
- Balloons are a single use plastic that have a long term effect on the environment and can be eaten by marine life.

Mike Dicks, 71 Solomon Street, Fremantle - Re. 11.5 Councillor Motion

- Volunteers removed 25,000 items from South Beach last month and 13,000 items have been removed from Port Beach this month, many of the items were balloons.
- The release of balloons had been banned in many jurisdictions.

Lisa Hills, 25 Hulbert Street, South Fremantle - Re. 11.5 Councillor Motion

- A store next to Ms Hills' home uses balloons for advertising and Ms Hills has cleared up many of the balloons from the pavement.
- A campaign has begun in Fremantle to ban balloons, the campaign currently has over 2,000 supporters from around the world.
- There are sustainable alternatives to balloons, such as paper flags.

Rebecca Prince-Ruiz, 24 Hickory Street, South Fremantle - Re. 11.5
Councillor Motion

- Balloons have a devastating effect on marine life.
- The issue of litter caused by the release of balloons can be treated at a local level and Council should ban the use of balloons.

6 ATTENDANCE

Present

Mayor Jo Dawkins
Cr Philip Angers
Cr Sandra Boulter
Cr Rob Thomas
Cr Helen Burke
Cr Mark Rodda
Cr Jay Birnbrauer
Cr Sally Pyvis

Officers Present

Mr Mat Humfrey	Chief Executive Officer
Mr Garry Bird	Manager Corporate & Community Services
Mr Doug Elkins	Manager Engineering Services
Mr Andrew Jackson	Manager Development Services
Mrs Siobhan French	Administration & Governance Officer

6.1 APOLOGIES

Cr Katrina Downes

Officer Apologies

Nil

6.2 APPROVED LEAVE OF ABSENCE

Nil

6.3 APPLICATIONS FOR LEAVE OF ABSENCE

Nil

7 DECLARATION OF INTERESTS

Cr Boulter declared an impartiality interest in item 11.1 due to having met twice with the Vice-Chair of the National Holiday Rental Industry Association.

8 CONFIRMATION OF MINUTES

Moved Cr Rodda, seconded Cr Burke

[Minutes 29 March 2016 Council.DOCX](#)

The Minutes of the Ordinary meeting of Council held on Tuesday 29 March 2016 be confirmed.

[Minutes 05 April 2016 Council.DOCX](#)

The Minutes of the Special meeting of Council held on Tuesday 05 April 2016 be confirmed.

Carried 8/0

9 PRESENTATIONS

9.1 PETITIONS

Nil

9.2 PRESENTATIONS

Nil

9.3 DEPUTATIONS

Nil

For the benefit of the members of the public present the Mayor advised that items 10.1.1, 10.1.2, 10.1.3, 10.1.5, 10.1.6, 11.1, 11.2, 11.3, 11.4 and 11.5 have been withdrawn for discussion. All other items were dealt with en bloc.

Due to the large number of members of the public present with an interest in item 11.3, the Mayor determined to consider item 11.3 after hearing Public Statements in relation to the item, before returning to the published order of the Agenda.

10 REPORTS

10.1 REPORTS OF OFFICERS

PLANNING

10.1.1 126-128 (LOTS 24 & 25) RAILWAY STREET - PROPOSED LOCAL PLANNING SCHEME AMENDMENT NO. 5 AND LOCAL DEVELOPMENT PLAN

File Ref: SUB/2066
Attachments: [126 128 Railway Aerial Local Development Plan No 1](#)
[LPS3 Proposed Amendment No 5](#)
Responsible Officer: Mat Humfrey
Chief Executive Officer
Author: Andrew Jackson
Manager Development Services
Proposed Meeting Date: 26 April 2016
Author Disclosure of Interest: Nil

SUMMARY

This report presents proposed Amendment No. 5 to Local Planning Scheme No. 3 and an associated Local Development Plan, to facilitate a development proposal for the subject land. Both of these statutory planning mechanisms require public advertising for consideration of submissions before determination.

The proponents' planning consultant has prepared and submitted the proposed statutory documents in accordance with the intended development.

The report assesses the proposals and explains the statutory processes involved. The recommendation is to support the draft Scheme Amendment and Local Development Plan for the purpose of advertising.

BACKGROUND

These two lots contained unoccupied dwellings in dilapidated condition. The properties were purchased by a group of people with local interests with a view to denser residential redevelopment, suitable for their needs as they age and compatible with the adjacent local centre.

The land is zoned Residential R20 and the total area is 1,475sqm.

Following demolition approval the site was cleared and fenced, and the applicant (Swanbourne Village Trust) engaged a planning consultant (Urbanplan) to assist with the necessary planning applications. Draft proposals were provided to the Town for preliminary feedback and guidance in relation to concept design, development compliance and statutory requirements.

In addition, the applicant has made a presentation to Council to outline the proposed concept in the context of the locality, the project evolution and the planning documents prepared.

Council will be familiar with the Scheme Amendment process, having undertaken a number to Local Planning Scheme No. 3 so far, concentrating on particular Scheme provisions. This Scheme Amendment proposal is of another type, which deals with land development parameters.

Council will have some familiarity with the Local Development Plan process, having undertaken one for the old depot site under former Town Planning Scheme No. 2. This Local Development Plan proposal likewise relates to planning requirements for a specific site.

Both of these statutory processes are now governed by the Planning and Development (Local Planning Schemes) Regulations.

STRATEGIC IMPLICATIONS

Relates to the administration of Local Planning Scheme No. 3 and mechanisms to facilitate urban redevelopment.

POLICY IMPLICATIONS

The proposal does not require any new policy, while the proposed Local Development Plan is effectively a planning policy guiding development.

STATUTORY ENVIRONMENT

Planning & Development Act 2005

Planning & Development (Local Planning Schemes) Regulations 2015

Local Planning Scheme No. 3

Residential Design Codes

FINANCIAL IMPLICATIONS

Fees are charged to cover the administrative of costs Scheme Amendments and Local Development Plans.

STAFFING IMPLICATIONS

Assessment and administration of proposals.

SUSTAINABILITY IMPLICATIONS

The proposals relate to sustainability in terms of urban redevelopment, transportation, demographics / housing demands and environmentally-sensitive building design.

CONSULTATION

The Scheme Amendment and Local Development Plan processes include public advertising and consideration of submissions. This enables the Town to gauge community comment as part of assessing and making decisions on each of these instruments.

Following articles in the local papers about the proposal, the Town has received several letters from residents expressing their views at this early stage. The Town has replied advising that formal advertising of the proposed Scheme Amendment and Local Development Plan would provide full information for the public to inspect and make submissions.

SCHEME AMENDMENT PROPOSAL

Need

The purpose of the proposed Scheme Amendment is to seek an appropriate residential density coding and to designate specific development provisions for the subject land. The proposal seeks to amend the Scheme in accordance with the existing framework; ie it relies on current sections of the Scheme intended for such and applies conventional methods, rather than introducing entirely new mechanisms to cater for the proposal.

Details

The proposed Scheme Amendment document submitted (attached) contains the amending text at the beginning; followed by the Scheme Amendment Report explaining the rationale for the development proposal and the particulars of the Amendment; and concludes with the Amendment endorsement pages (including the Amendment Text and Map).

In simple terms, the Scheme Amendment firstly changes the density coding and secondly prescribes key parameters for the site to accommodate the proposed development. In more detail, the Scheme Amendment:

- re-codes the density from R20 to R60 to reflect the number and type of dwellings proposed; and
- in existing *Schedule 12: Special Provisions* of the Scheme, identifies the land, designates uses, incorporates the Local Development Plan, and stipulates a maximum of 13 dwellings and a building height of three storeys with undercroft parking.

Scheme Amendment Report

This is the body of the Scheme Amendment document and provides the planning rationale for the proposal. The underlying ethos is to explain the development concept in the context of sub-regional planning direction, the function and potential of the local centre and an intelligent, environmentally-sensitive design response to the site.

The gist of this comprehensive overview is to demonstrate how land use and development parameters can be formulated to foster innovative yet compatible redevelopment on infill sites and at local centres as urban areas change.

The Report outlines the connections with the Scheme's aims and zone objectives, as well as its land use and built form dimensions. The composition and character of the wider precinct are examined for an understanding of the local activity centre and residential environs.

This leads into the Local Development Plan enshrined in the Scheme Amendment (refer below), the content of which the submitted Report describes and justifies.

Amendment Text and Map

At the end of the Scheme Amendment document is the statutory text with adoption/approval sections and the related change to the Scheme Map, ie retaining the Residential zoning and altering the density coding to R50.

Officer Comment

It can be seen that the planning study undertaken of the area is not merely site-focussed and articulates how the proposal both intends to respond and contribute to the transit-oriented local centre.

The Scheme Amendment Report provides a justification for the development concept seeking the Amendment and related Local Development Plan instruments to facilitate the proposal. This is intended to inform the community with a high degree of detail and invite submissions.

The actual Scheme Amendment changes to the Scheme Map and Text are succinct yet significant in tailoring provisions for the subject land and controls for its intended development.

LOCAL DEVELOPMENT PLAN PROPOSAL

Need

A Local Development Plan guides the development of a subject site, setting-out dedicated standards and requirements in a discrete document which elaborates on the core Scheme provisions. Such a Plan is tied to the Scheme by reference, as in this case via a Schedule. As an example, under former Town Planning Scheme No. 2, Council created a Local Development Plan for the residential subdivision and development of the old depot site, which was established as a Scheme Policy. Since then, the Planning and Development (Local Planning Schemes) Regulations have refined the operation of Local Development Plans in relation to Schemes.

Local Development Plans are also relied upon by the Residential Design Codes to address aspects such as open space and setbacks in dealing with higher density multiple dwelling or mixed use developments.

A Local Development Plan has the advantage of being more definitive than a Scheme Amendment to simply zone land and/or assign a density coding, etc, which leaves the development outcome to be determined by a future development application. A Local Development Plan is written to the envisaged development and is formulated in more detail reflecting what's proposed to be built, giving a higher degree of certainty (pending all necessary approvals). In being advertised for submissions the Plan takes into account Council and community input, as a precursor to another round of consultation upon the development application.

The Local Development Plan process is administered by local governments and a proposed Plan is determined by the relevant council, ie approved, modified or refused – the Western Australian Planning Commission or Minister for Planning are

not involved. An approved Local Development Plan is to be had regard to, but does not bind, the local government (or other decision maker), when considering subsequent development applications. A Local Development Plan can be amended if required. In effect a Local Development Plan has the status of a Local Planning Policy as an adjunct to the Scheme provisions.

Details

The submitted Local Development Plan document (attached) text conveys its intent, identifies the subject land, and lists a suite of development standards – sustainable development criteria, land use, parking provision, residential density, private open space, setbacks, storey, building height, wall height, exclusions and plot ratio area – which spell-out the land use and built form parameters in accordance with the development concept.

The document's diagram shows the site boundaries, dimensions and area, streets, indicative development ground levels (AHD), vehicular access point, and proposed setbacks (including boundary walls), likewise in accordance with the development concept – these are the nuts and bolts components of the development controls for the proposal.

As such, the Plan consolidates the development standards applicable to the site in a single statement of intent – rather than the controls being spread throughout the Scheme provisions – which serves to govern and guide development. A development application will be expected to conform to the Local Development Plan, while Council has discretion to vary from it in considering the finer detail of a development application in order to achieve any enhancements.

Officer Comment

The Local Development Plan comprises the prescriptive controls for the intended development, being the main parameters to shape the layout, form and function of the concept. The document states the Local Development Plan Intent and describes the Subject Land, then specifies the controls.

Overall, the Local Development Plan prescriptive planning standards scope and define the intensity, composition and form of the concept for how the subject land is intended to be used and developed. It demonstrates the approach to create a multiple dwellings village with some ancillary uses in an integrated manner and designed to suit the corner site which is adjacent to the active local centre supporting more sustainable urban environments.

PLANNING PARAMETERS

The Scheme Amendment and Local Development Plan documents state their intent and describe the subject land, then between them specify a range of interrelated planning parameters, which are now commented upon.

Sustainable Development Criteria

These are planning and design principles guiding the concept as formulated in aiming to create a sustainable development premised on denser infill housing and associated facilities, and are acceptable as such.

Land Use

Whilst residential use and multiple dwellings are consistent with the Residential zoning, the proposed (professional) office and private recreation uses would not normally be permitted. Although they could be considered as integral to the development, they could also be seen as spreading non-residential activity into the residential area. Excluding such additional uses may be preferable. The multiple dwellings could still provide communal amenity space for the strata residents, in the same way that apartment or aged housing complexes do.

Parking Provision

The proposed consolidation of parking in a basement provides capacity, security and amenity. The suggested four bays in the Congdon Street verge would provide some convenience for visitors, but without the non-residential uses they may not be necessary. Transport-wise, the adjacent Local Centre and the railway station are within immediate walking distance, which reduces car-dependency hence parking demand. The single point of access for the underground parking via Railway Street would assist traffic flow and safety.

Residential Density and Plot Ratio Area

The proponent's approach to the residential density and associated plot ratio area standards has been to optimise the design sought in terms of number of dwellings and their built form, then to examine how that performs in relation to the Residential Design Codes for the numerical density-code and applicable development requirements. Whilst the formula utilised results in a proposed density figure of R60, it is argued that the expression of the development physically and visually is what matters.

Local Planning Scheme No. 3 has a variety of residential density-codings, whereby the Town has experienced diverse examples of development of housing type, intensity and design. Some R30 sites have been developed with wall-to-wall dwellings that appear quite dense or bulky, while some higher density sites have been developed with more dispersed or broken-up designs with open space. Also within the Town are numerous older residential developments of greater densities and heights.

Whilst on the one hand the numerical density is somewhat a technicality, on the other hand it may be compared with other residential density-codings such as the adjacent Local Centre at R50, the R60 precinct behind the beachfront and the Town Centre at R100. The role of the Scheme Amendment Report and the Local Development Plan are to articulate the proposed controls in support of the detailed design.

Storeys, Building Height and Wall Height

The proposed development height is three storeys (assuming a true basement as defined) and utilises the building and wall height standards of the Residential Design Codes rather than those of the Scheme. This is a function of the intended number of dwellings, site characteristics for design, sustainability aspects and built form context of the surrounds. A three-storey height would depart from the two-storey height limit for the Residential Zone generally. At the same time the Scheme provides discretion to allow the redevelopment of existing over-density grouped or multiple dwellings to

three storeys, a number of older taller apartment blocks exist, the Local Centres may accommodate three storeys within 9 meters, the Town Centre has new three-storey apartment developments and the beachfront area may accommodate multi-storey buildings.

Setbacks and Private Open Space

Similarly, the proposed setbacks and open space standards are a product of the development concept and standards in-keeping with the proposed density and built form. The corner site and sustainability features also influence this spatial arrangement.

CONCLUSION

The development concept can be seen to be essentially consistent and compatible with the neighbourhood as a residential redevelopment in proximity to the local centre. Whilst denser and of innovative design compared to traditional housing, it seeks to have a residential character in harmony with the locality, which may be viewed more favourably than the alternatives of speculative infill housing or apartment blocks.

A Scheme Amendment and a Local Development Plan are required because the proposal involves variations to current development standards, which these mechanisms would manage through special controls to be finalised following community consultation for refinement of the design and planning measures. This is a responsible planning approach as opposed to applying for excessive discretion in a development application and pursuing approval via another decision maker.

The proposed Scheme Amendment and Local Development Plan articulate the development vision and put in place tailored development standards to coordinate and control the land use and built form outcome. The next step is public advertising to evaluate feedback towards completing these instruments as the basis for considering a subsequent fully-detailed development application.

The “standard” type Scheme Amendment process entails initiation and advertising, followed by consideration of submissions and any desirable modifications, all by the Local Government; then proceeds to the Western Australian Planning Commission for further assessment and the Minister for Planning for ultimate determination (which may include required modifications and readvertising).

Once a Local Government has resolved to initiate a Scheme Amendment, after the advertising and consideration of submissions phase it is required to resolve to either: (i) support the Amendment with/without modification; or (ii) not support the Amendment. The Local Government is then required to forward the advertised Amendment, submissions, modifications and its resolution/reasons to the Commission, for consideration and reporting to the Minister. The Local Government is required to give effect to the Commission’s or Minister’s directions and the Minister’s final decision on the Amendment.

The explanation and analysis above and the recommendation below set-out for Council the considerations involved by way of planning, design and statutory processes in deciding-upon the Scheme Amendment and Local Development Plan

proposals. Council may be prepared to initiate advertising of the instruments to gauge community reaction and comments in order to consider modifications and whether or not to support the instruments. If so, the Scheme Amendment and the outcome of Council's consideration of submissions received will be required to proceed to the Western Australian Planning Commission then Minister for Planning for determination. Alternatively, depending on any concerns or queries that Council may have at this point, Council may wish to defer initiation decisions on the Scheme Amendment and Local Development Plan proposals, pending review for revised draft instruments to consider further.

Additional Information Following Council Briefing Session

Elevations – The architects are preparing additional drawings showing the northern and southern elevations, as well as overshadowing of the southern adjacent lot. When received, these will be provided to Councillors ahead of the Council Meeting. It is understood that the amount of overshadow is within the Residential Design Codes' standard of 25% of the affected lot.

Building height – The proposed building heights respond to the sloping site. The basement parking is to satisfy the requirement as an under-croft level. The "earth units" extend below the natural ground level such that the buildings above are in accordance with the prescribed height limits. The roof terraces entail lift shafts or stairwells as minor protrusions under the Residential Design Codes and solar-pergolas, ie they are not enclosed levels.

Private open space – Some 993sqm of private/communal open space is proposed, equating to 69% of the site area. This includes open landscaped areas, private courtyards and the roof terraces as allowable open space. It is significantly greater than the 40% required by the Residential Design Codes, and is expected to be of high quality and well-maintained by the strata body to ensure ongoing amenity.

Uses – The proposed *office* and *private recreation* uses are intended for private purposes by the residents as integral to the development. The term *communal recreation* is considered more apt to connote this in the documents, as well as referring them to "permissible" rather than "permitted" – these refinements are added to the recommendation.

Short-stay types of accommodation are not specifically proposed and are governed by the current or future controls for such. Currently *bed and breakfast* use may be considered in the Residential zone at Council's discretion and subject to advertising. *Serviced apartment* use may similarly be considered in the Residential zone at higher density codes including R60 as proposed; therefore, excluding that use would seem prudent in this instance – this is added to the recommendation.

VOTING

Simple Majority

OFFICER RECOMMENDATION

Moved Mayor Dawkins, seconded Cr Angers

THAT Council, in pursuance of the *Planning and Development Act 2005* and the *Planning and Development (Local Planning Schemes) Regulations 2015*, hereby resolves to:

Proposed Amendment No. 5

1. Amend the Town of Cottesloe Local Planning Scheme No. 3 to introduce particular development controls for Lots 24 and 25 Railway Street on the corner of Congdon Street, Cottesloe, by:
 - a) amending the Scheme Map to change the residential density code from R20 to R60; and
 - b) amending the Scheme Text to insert in Schedule 12: Special Provisions a description of the subject land, a description of land use, and special provisions including reference to Development Plan No. 1 and specification of the maximum number of multiple dwellings, the uses and the building height permitted.
2. Form the opinion that the proposed amendment is a “standard” type amendment for that procedure to be followed, as the proposal broadly reflects the Local Planning Strategy and the Scheme aims and zone objectives in relation to infill and transit-oriented higher density residential development, retains the Residential zoning and involves predominantly residential land use in accordance with prescribed requirements.
3. Request the Chief Executive Officer to arrange preparation of the official amendment documents for the purpose of advertising.
4. Refer the proposed amendment to the Department of Environment for environmental clearance prior to advertising and consult any relevant public authority.
5. Advertise the proposed amendment for submissions for a period of 42 days by:
 - a) notices in a local newspaper, at the Town’s office, on its website, and at the Library;
 - b) a copy of the proposed amendment being available for inspection at the Town’s office, on the Town’s website and at the Library;
 - c) letters to the owners and occupiers of properties in the vicinity; and
 - d) a sign on site.

and

Proposed Development Plan No. 1

1. Consider that a Local Development Plan for the subject land in relation to the proposed Scheme Amendment is required for the purposes of orderly and proper planning.
 2. Request staff to advertise the proposed Local Development Plan in conjunction with and in the same manner as the proposed Scheme Amendment.
-

3. Seek comment in relation to the proposed Local Development Plan from any relevant public authority or utility service.

and

Land uses prescription

Request staff to modify the draft Scheme Amendment and Local Development Plan documents prior to advertising, to refer to land uses as “permissible” rather than “permitted”, to refer to the use *communal recreation* rather than *private recreation*, and to specifically exclude the use *serviced apartments* as permissible for the subject land.

AMENDMENT

Moved Cr Boulter, seconded Cr Pyvis

1. That Proposed Amendment No 5 officer recommendations 1,2,3,4,5 be deferred until the Proposed Development Plan No 1 has been advertised, and the results and recommendations to Council arising from that consultation have been completed.
2. That in the deferred report to Council on the recommended scheme amendment, a table is included in that report showing explicitly which changes are in the scheme amendment and which changes are in the non-binding on Town of Cottesloe Local Development Plan; and amending the proposed scheme amendment in response to those submissions.

Lost 3/5

For: Crs Boulter, Pyvis and Thomas

Against: Mayor Dawkins, Crs Angers, Burke, Rodda and Birnbrauer

OFFICER RECOMMENDATION & COUNCIL RESOLUTION

THAT Council, in pursuance of the *Planning and Development Act 2005* and the *Planning and Development (Local Planning Schemes) Regulations 2015*, hereby resolves to:

Proposed Amendment No. 5

1. Amend the Town of Cottesloe Local Planning Scheme No. 3 to introduce particular development controls for Lots 24 and 25 Railway Street on the corner of Congdon Street, Cottesloe, by:
 - a) amending the Scheme Map to change the residential density code from R20 to R60; and
 - b) amending the Scheme Text to insert in Schedule 12: Special Provisions a description of the subject land, a description of land use, and special provisions including reference to Development Plan No. 1 and specification of the maximum number of multiple dwellings, the uses and the building height permitted.
 2. Form the opinion that the proposed amendment is a “standard” type amendment for that procedure to be followed, as the proposal broadly
-

reflects the Local Planning Strategy and the Scheme aims and zone objectives in relation to infill and transit-oriented higher density residential development, retains the Residential zoning and involves predominantly residential land use in accordance with prescribed requirements.

3. Request the Chief Executive Officer to arrange preparation of the official amendment documents for the purpose of advertising.
4. Refer the proposed amendment to the Department of Environment for environmental clearance prior to advertising and consult any relevant public authority.
5. Advertise the proposed amendment for submissions for a period of 42 days by:
 - a) notices in a local newspaper, at the Town's office, on its website, and at the Library;
 - b) a copy of the proposed amendment being available for inspection at the Town's office, on the Town's website and at the Library;
 - c) letters to the owners and occupiers of properties in the vicinity; and
 - d) a sign on site.

and

Proposed Development Plan No. 1

1. Consider that a Local Development Plan for the subject land in relation to the proposed Scheme Amendment is required for the purposes of orderly and proper planning.
2. Request staff to advertise the proposed Local Development Plan in conjunction with and in the same manner as the proposed Scheme Amendment.
3. Seek comment in relation to the proposed Local Development Plan from any relevant public authority or utility service.

and

Land uses prescription

Request staff to modify the draft Scheme Amendment and Local Development Plan documents prior to advertising, to refer to land uses as "permissible" rather than "permitted", to refer to the use *communal recreation* rather than *private recreation*, and to specifically exclude the use *serviced apartments* as permissible for the subject land.

THE SUBSTANTIVE MOTION WAS PUT

Carried 5/3

**For: Mayor Dawkins, Crs Angers, Burke, Rodda and Birnbrauer
Against: Crs Boulter, Pyvis and Thomas**

Cr Boulter raised a point of order, stating that as Council has not fulfilled its resolution of 23 February 2016 to “*defer initiating a Scheme Amendment until Council has adopted a policy position as to height discretion in Local Planning Scheme No. 3*” the item should not be considered.

The Mayor determined that Council should vote on whether to uphold Cr Boulter’s point of order.

That Cr Boulter’s point of order be upheld.

Lost 3/5

For: Cr Boulter, Thomas and Pyvis

Against: Mayor Dawkins, Crs Angers, Burke, Rodda and Birnbrauer

10.1.2 LOCAL PLANNING SCHEME NO. 3 - PROPOSED AMENDMENT NO. 6 - CLAUSE 5.7.5 - REFINEMENT OF PARTICULAR HEIGHT PROVISIONS

File Ref: SUB/2126
Attachments: [Schedule 11 Wall Height](#)
[Submitter Wall Height Diagram](#)
Responsible Officer: **Mat Humfrey**
Chief Executive Officer
Author: **Andrew Jackson**
Manager Development Services
Proposed Meeting Date: **26 April 2016**
Author Disclosure of Interest: **Nil**

SUMMARY

Council first considered this matter on 23 February 2016 and given a range of aspects raised resolved to defer initiating a Scheme Amendment until:

1. *Council has adopted a policy position as to height discretion in Local Planning Scheme No. 3.*
2. *Council has had an opportunity to properly reflect on the proposed alternative recommendation circulated at 3.09 pm 23 February 2016 by the Manager of Development Services.*

Subsequently Council and staff held a discussion session on the matter to consider the above in relation to the preferred scope and content for the proposed Scheme Amendment.

This report now re-presents the proposed Amendment to Local Planning Scheme No. 3 to introduce some additional discretion in relation to the residential building height controls. As previously reported to Council, Local Planning Scheme No. 3 was formulated and finalised with quite tight height controls and limited discretion.

The Local Planning Scheme No. 3 core height controls were modelled on those of former Town Planning Scheme No. 2, with a number of changes to detail which reduced discretion and constrained wall heights. After Local Planning Scheme No. 3

commenced, Council requested that staff report on the matter and has since undertaken two Scheme Amendments as follows:

- Amendment No. 1, to create discretion to increase height for extensions to existing dwellings, and for heritage buildings, echoing such discretion under Town Planning Scheme No. 2 but more closely guided.
- Amendment No. 3, to restore the maximum wall height limit for single storey buildings of 6m as under Town Planning Scheme No. 2, so that design is not unduly constrained.

This further Amendment is to allow a greater degree of flexibility for residential development by refining specific provisions that have been found to be restrictive. The beachfront Special Control Area 2 and the Development Zone have separate height provisions, which are not affected by this Amendment.

The recommendation is to proceed to prepare and advertise the proposed Scheme Amendment documentation.

BACKGROUND

As did former Town Planning Scheme No. 2, Local Planning Scheme No. 3 has its own height controls as distinct from relying on the Residential Design Codes (for residential development) and the basic limits are absolute with no general discretion to be varied, although there is specific discretion in certain circumstances.

The fundamental height regime for residential and non-residential development in the district (apart from for Special Control Area 2 and the Development Zone areas) is contained in clause 5.7: *Building Height*, related *Schedule 11: Wall Height* and *Table 2: Development Requirements*.

Clause 5.7 defines *Building Height*, *Storey* and *Wall Height*; stipulates heights in metres in relation to number of storeys; and specifies discretion for a third storey in the roof space of a dwelling in the Residential Zone. The Scheme determines wall height as described and shown in the Schedule 11 diagrams (attached).

Clause 5.5: *Variations to Site and Development Requirements* excludes residential development from this provision for general discretion. Related *Schedule 13* makes it clear that this clause does not provide discretion in respect of height; that is, the only discretion for height exists within the height provisions themselves.

Clause 5.7.5 introduced by Amendment No. 1 gives Council discretion to consider over-height extensions to existing dwellings, applicable to the existing number of storeys and subject to the evaluation criteria; but it does not permit an additional storey to exceed the normal height limits. Hence an additional storey is required to comply with the limits as for a new two-storey dwelling.

While this framework for height control remains intact, concern has been raised regarding limits on extensions to existing dwellings, the measurement of wall height, and the method for natural ground level, which this report considers.

STRATEGIC IMPLICATIONS

Nil

POLICY IMPLICATIONS

Nil

STATUTORY ENVIRONMENT

Planning & Development Act 2005

Planning & Development (Local Planning Schemes) Regulations 2015

Local Planning Scheme No. 3

FINANCIAL IMPLICATIONS

Cost of advertising can be met within existing budgets.

STAFFING IMPLICATIONS

Nil

SUSTAINABILITY IMPLICATIONS

Nil

CONSULTATION

The Scheme Amendment process includes public advertising and consideration of submissions.

CURRENT CONSTRAINTS

Despite the abovementioned Scheme Amendments undertaken, in recent months a few development proposals have still been found to be constrained by the current height controls. Discussions with the proponents have generated submissions to Council seeking greater flexibility to accommodate building design considerations. Council and officers have indicated that the requests would be examined towards further refinements, to which this report responds.

The need to consider additional discretion is focused on two main aspects: extensions to existing dwellings and the interpretation of wall height, as explained below.

Clause 5.7.5

At present this clause is as follows:

In the case of proposed alterations, additions or extensions to existing dwellings in the Residential, Residential Office, Town Centre, Local Centre, Foreshore Centre and Restricted Foreshore Centre zones, the local government may vary the maximum heights specified in Table 2 and clause 5.7.2, where in its opinion warranted due the circumstances and merits of the proposal, having regard to:

- (a) The existing heights of the dwelling;*
- (b) Any relevant Local Planning Policy or Design Guidelines;*
- (c) Any heritage considerations relating to the dwelling;*
- (d) Relevant planning considerations identified in clause 10.2;*

- (e) *Adequate direct sun into buildings and appurtenant open spaces;*
- (f) *Adequate daylight to major openings into habitable rooms;*
- (g) *Access to views of significance;*
- (h) *Building design to ameliorate the visual effects of height; and*
- (i) *The amenity of adjoining properties, including road and public open space reserves, and the character of the streetscape;*

and subject to the development:

- (a) *Not exceeding the existing number of storeys;*
- (b) *Not exceeding the height of the existing dwelling, unless the Council is satisfied with the design and its implications having regard to the above criteria; and*
- (c) *In the Foreshore Centre Zone, the development not exceeding the requirements of clause 6.4.3.1 (a) and (b).*

The first part of the clause lists planning criteria against which to assess whether discretion is warranted in a particular case, as applicable. The second part of the clause goes on to specify provisos for such discretion to be exercised – it sets limitations on the extent to which height may be increased beyond the basic standards.

In the second part, the intent of point (a) read in context is that the discretion does not allow:

- A new over-height storey to be added above an existing dwelling (eg over-height second storeys to single-storey dwellings).
- The permitted maximum number of storeys to be exceeded for a dwelling that complies with that limit (eg third storeys to two-storey dwellings).
- Another storey to be added to an existing dwelling already exceeding the maximum number of storeys (eg three or more-storey flats). Note: this is distinct from the discretion regarding number of storeys in clause 5.3.5 for the redevelopment of existing grouped or multiple dwellings.

The intent of point (b) is that an extension to an existing over-height dwelling (which may comprise one, two or more storeys) should not exceed that building height unless the assessment criteria are satisfied.

Some practitioners have suggested that:

- The arrangement of the clause to firstly list assessment criteria and then limit their application is illogical and unfair.

Officer comment: The construction of the clause is sequential and the essence of Scheme provisions is to impose controls. The first and second parts of the clause could be reversed with the same effect. The main issue is that the clause does not allow an over-height second storey to be added atop an existing single storey dwelling (whether or not the single storey component complies with height).

- In the first part of the clause the “and” at the end of (h) means that all of the criteria must be satisfied, but that “or” is implied at the end of each point.

Officer comment: The “and” means that Council is to have regard to the relevant criteria applicable to a case. This is appropriate and should remain.

- The second part of the clause is confusing in terms of whether points (a) to (c) apply altogether or only where applicable.

Officer comment: The “and” means that points (a) to (c) are to be taken into account as applicable to a case. This is the same as in the RDC and should remain.

It is concluded that in the second part of clause 5.7.5, point (a) could be amended to provide discretion for a permitted storey added above an existing dwelling to be over-height, as determined against the assessment criteria. This would cater for a second storey added above an existing single-storey dwelling as the most likely occurrence, as well as for zones where three-storey dwellings may be permitted.

However, it is still considered important that the discretion be applied only where existing over-height dwellings render an added storey infeasible, such as due to the necessary space between the existing ceiling below and the new floor above, or the floor-to-ceiling height of the added storey having to meet the building code, etc, so that the clause is not exploited.

On another matter, it is noted that in the first part of the clause the reference in (d) to clause 10.2 has been superseded by similar clause 67 of the *Planning and Development (Local Planning Schemes) Regulations 2015*. Although this provision of the new Regulations is deemed to apply to Local Planning Scheme No. 3, amending clause 5.7.5 affords the opportunity to update this detail.

Wall height

Clause 5.7.1 defines wall height as follows:

“Wall Height” means the vertical distance between —

- (a) any point of natural ground level; and*
- (b) the level of the roof or the top of a parapet from that point in accordance with Figures 1, 2, 3 or 4 in Schedule 11.*

This is a change from Town Planning Scheme No. 2 which defined Building Height as the difference between the natural ground level at the centre of the site and the uppermost part of the building. The change arose as a modification required by the Minister for Planning, for consistency with the Residential Design Codes, Model Scheme Text and modern schemes. Due to the diverse building and roof forms experienced in Cottesloe, Council devised Schedule 11 to elaborate on the measurement of wall height. The primary definition in this clause is articulated in the Schedule to describe *the level of the roof* as follows:

Wall height shall be measured to the plate height of the wall (ie top of the wall as constructed, upon which the roof structure sits), whether or not there are eaves and whether or not the eaves are open or enclosed.

Some practitioners have suggested that this penalises designs because:

- This wall/plate height specification did not exist under Town Planning Scheme No. 2, which operated satisfactorily in relation to the measurement of wall height.
- The Residential Design Codes do not contain this wall height technique/restriction, relying on wall height being measured to the beginning of an eave, whereby the effective wall height presents below the eave (which may be open or enclosed).
- The detailed construction design of skillion and pitched roofs places the plate height at different points thereby affecting functional design and actual wall heights.

Two diagrams submitted illustrating the plate height/eaves situation are attached.

Officer Comment:

Although in the past there has been debate about the interpretation of wall height in relation to plate height, the Explanatory Guidelines of the Residential Design Codes advise that height is measured to the highest point of the wall or roof of a building (which includes plate height) and this is reflected in the wall height diagrams of the Codes. Therefore, Local Planning Scheme No. 3 is in keeping with the Codes in this respect, which also correlates with the meaning of natural ground level for consistency between the Scheme and the Codes, as mentioned below.

On this basis it is concluded that the Schedule 11 diagrams and reference to plate height as the method of measurement should remain. However, clause 5.7.5 for extensions to existing dwellings enables discretion to allow increased wall height measured in that manner.

Natural Ground Level

The measurement of natural ground level is another height aspect that changed from Town Planning Scheme No. 2 to Local Planning Scheme No. 3 and has also been queried. For building height (for all types of development) Local Planning Scheme No. 3 now relies on natural ground level at the point of measurement, rather than relative to the centre of the site as under Town Planning Scheme No. 2. As mentioned above, this is the same as how natural ground level operates under the Residential Design Codes and arose from a Minister's Modification to Local Planning Scheme No. 3. This Scheme Amendment does not propose to change that.

PROCEDURE

The Scheme Amendment procedure is initiated by a Council resolution, followed by preparation of official documents and gaining any environmental clearance prior to advertising for submissions. After considering any submissions Council resolves whether to support the amendment and any modifications, for forwarding to the Western Australian Planning Commission for assessment then the Minister for Planning for approval. Given approval, upon publication in the Government Gazette the amendment becomes incorporated into the Scheme and those provisions apply.

It is considered that under the Planning & Development (Local Planning Schemes) Regulations the changes contemplated to the height provisions constitute a

“standard” category Scheme Amendment, being technical in nature and warranting advertising, but not being a major or strategic matter requiring a “complex” Scheme Amendment procedure.

BRIEFING AND DISCUSSION SESSIONS

Council at its 16 February 2016 Briefing Session examined the matter and discussed discretion generally.

Officer comment:

In terms of the degree of discretion which may be exercised by Council – ie, how much additional height may be granted – that is to be determined in each case based on the assessment criteria of the clause and any other relevant planning considerations. This approach operated effectively under Town Planning Scheme No. 2 and is similar to how the Residential Design Codes work; entailing the initial specification of height limits in metres, then the ability to allow variation in accordance with guiding parameters.

To set a new limit in the discretion would in that sense defeat the purpose of providing for variation (subject to approval) in anticipation of a range of unforeseen circumstances which may arise. In each instance officers liaise with applicants to ensure that any variation is acceptable, while ultimately Council can condition the amount or not agree to a request it sees as excessive.

At the 29 March 2016 Discussion Session Council further examined the matter, including height-related Scheme Amendments so far, the core height controls, natural ground level, wall height, extent of discretion, upper-level side setbacks, submitter concerns, Councillor concerns and possible additional changes.

Overall, Council was of the view that:

- The Scheme Amendment should be confined to clause 5.7.5.
- The extent of discretion need not necessarily be limited, as it is closely-guided by the assessment criteria.
- Consideration of upper-level setbacks could be incorporated, whilst noting that the Residential Design Codes prescribe increased setbacks as the height of walls/buildings increase in any case.
- Any review of other height control aspects such as natural ground level or wall height should be dealt with separately from the proposed Scheme Amendment.

Consideration might also be given as to whether the discretion ought to be allowed only where it is demonstrated that an extension complying with the height requirements is infeasible; e.g. where the minimum ceiling height, rise of stairs, correct construction, etc, cannot be achieved. However, while that is one test of the need for discretion, a degree of design flexibility for balanced built form, sympathetic proportions, consistent roof pitches, etc, is another consideration, whereby the range of variables which may arise to seek discretion cannot be predicted. Therefore, such a qualification in clause 5.7.5 would seem too constraining and the assessment criteria enable case-by-case determination.

CONCLUSION

Whilst existing over-height dwellings may be extended (most often at the rear) to match their existing wall and roof heights, under Local Planning Scheme No. 3 as it stands a new second storey added above an existing single storey dwelling is required to comply with the basic height standards for such. This constrains design and may inhibit second storey additions to established dwellings, which exhibit streetscape, character or heritage attributes worthy of retention and restoration rather than potential demolition and replacement with a whole new dwelling. Hence the submissions seeking discretion to enable added second storeys to have increased wall and/or roof heights.

In this respect it is concluded that further amendment of the Scheme is desirable to cater for development proposals involving existing dwellings, allowing a reasonable degree of discretion. Whilst only a minor change is necessary, it is significant in facilitating dealing with alterations, additions or extensions to existing dwellings. The recommendation has been evolved to reflect Council's deliberations on the matter. Advertising of a draft amendment and consideration of any submissions will enable Council to finalise and adopt the improved provisions for endorsement by the Western Australian Planning Commission and approval by the Minister for Planning.

The wording of the necessary Council Resolution is in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015* in terms of the statutory administrative procedure. For ease of understanding the full version of how clause 5.7.5 would read is set out below, with the changes indicated – wording to be deleted is shown struck-through and wording to be added is shown shaded.

Proposed amended clause 5.7.5

In the case of proposed alterations, additions or extensions to existing dwellings in the Residential, Residential Office, Town Centre, Local Centre, Foreshore Centre and Restricted Foreshore Centre zones, the local government may vary the maximum heights specified in Table 2 and clause 5.7.2, where in its opinion warranted due the circumstances and merits of the proposal, having regard to:

- (a) The existing heights of the dwelling;*
- (b) Any relevant Local Planning Policy or Design Guidelines;*
- (c) Any heritage considerations relating to the dwelling;*
- (d) Relevant planning considerations identified in ~~clause 10.2~~ Clause 67 of the *Planning and Development (Local Planning Schemes) Regulations 2015*;*
- (e) Adequate direct sun into buildings and appurtenant open spaces;*
- (f) Adequate daylight to major openings into habitable rooms;*
- (g) Access to views of significance;*
- (h) Building design to ameliorate the visual effects of height, including consideration of setting-back the side walls of added storeys from the side walls of existing building; and*
- (i) The amenity of adjoining properties, including road and public open space reserves, and the character of the streetscape;*

and subject to the development:

- (a) ~~Not exceeding the existing number of storeys;~~ *Not exceeding the permitted maximum number of storeys; or, where that is already exceeded, not exceeding the existing number of storeys;*
- (b) *Not exceeding the height of the existing dwelling, unless the Council is satisfied with the design and its implications having regard to the above criteria; and*
- (c) *In the Foreshore Centre Zone, the development not exceeding the requirements of clause 6.4.3.1 (a) and (b).*

VOTING

Simple Majority

OFFICER RECOMMENDATION & COUNCIL RESOLUTION

Moved Mayor Dawkins, seconded Cr Rodda

THAT Council in pursuance of the *Planning and Development Act 2005* and the *Planning and Development (Local Planning Schemes) Regulations 2015*, hereby resolves to:

1. Amend the Town of Cottesloe Local Planning Scheme No. 3, to refine particular residential height provisions, by amending the Scheme Text clause 5.7.5 as follows:
 - a. In the first part, amend point (d) to read:

Relevant planning considerations identified in Clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015;
 - b. In the first part, amend point (h) by adding the words below shown underlined:

Building design to ameliorate the visual effects of height, including consideration of setting-back the side walls of added storeys from the side walls of existing buildings; and
 - c. In the second part, amend point (a) to read:

Not exceeding the permitted maximum number of storeys; or, where that is already exceeded, not exceeding the existing number of storeys;
2. Form the opinion that the proposed amendment is a “standard” type amendment for that procedure to be followed, as the proposal is confined to existing residential development and involves desirable yet relatively minor technical adjustments only.
3. Request the Chief Executive Officer to prepare the amendment documents for the purpose of advertising.
4. Refer the proposed amendment to the Department of Environment for environmental clearance prior to advertising.
5. Advertise the proposed amendment for submissions for a period of 42 days by:

- a. A notice in local newspapers, on the Town's noticeboard, on its website, and at the Library; and
- b. Placing a copy of the proposed amendment for inspection at the Town's Office, on the Town's website and at the Library.

Carried 5/3

**For: Mayor Dawkins, Crs Angers, Burke, Rodda and Birnbrauer
Against: Crs Boulter, Thomas and Pyvis**

10.1.3 NO. 5B (LOT 42) OVERTON GARDENS – THREE-STOREY DWELLING

File Ref:	3268
Attachments:	Aerial Photographic Report Property Photos Neighbour Submissions Applicant Submission Plans
Responsible Officer:	Andrew Jackson Manager Development Services
Author:	Ed Drewett Senior Planning Officer
Proposed Meeting Date:	26 April 2016
Author Disclosure of Interest:	Nil
Property Owner:	Mr S Litas
Applicant:	Plan Design Build Pty Ltd
Date of Application:	24 September 2015
Zoning:	Residential R60
Use:	P - A use that is permitted under this Scheme
Lot Area:	265m²
M.R.S. Reservation:	Not applicable

REASON FOR LATE ITEM

This report was previously in the Agenda for the 23 February 2016 Council Briefing, but in response to the recommendation for refusal the consultant requested that the application be withdrawn from consideration at the Briefing. The Town advised the consultant that the application would need to be withdrawn altogether (ie cancelled) in order to avoid being considered. Council was also advised accordingly, and on that presumption at the Briefing the item was excluded from consideration.

However, the applicant (owner) or the consultant did not act to cancel the application and the consultant subsequently continued to liaise with the Town towards revised plans for further consideration. It is apparent that Council was under the impression that the application had or would be cancelled, which did not eventuate, and was not informed otherwise.

A planning consultant then became involved for the applicant and following further liaison with the Town preliminary revised plans were submitted for feedback. The Town provided advice on certain aspects, which did not satisfy the consultants. The consultants then lodged an application for review (appeal) with the State Administrative Tribunal on the basis of a deemed refusal. The Town has written to the Tribunal contending that the appeal appears unreasonable given that the consultants had requested withdrawal of the proposal from Council consideration and liaised with the Town towards revised plans.

Therefore, in view of these process issues the purpose of this late item is to clarify to Council the status of the application and to enable Council to determine the application because the applicant/consultant did not cancel it, whereby the item should have proceeded to the February Council Meeting for determination. In

addition, an actual decision by Council would inform the application for review if it proceeds.

SUMMARY

This proposed development exceeds the permitted building heights and storeys under Local Planning Scheme No. 3 ('LPS 3'), its driveway gradient does not satisfy Australian Standards, it will detract from the prevailing streetscape, and it does not address the design principles of the Residential Design Codes ('RDC') for Council to exercise its judgement in determining the application where it does not satisfy deemed-to-comply requirements. The recommendation is therefore to refuse the application.

BACKGROUND

Nil

PROPOSAL

This application is for a three-storey dwelling on a vacant lot which comprises the following:

Basement	Garage, two storerooms, cellar, lift, pool equipment store and stairs.
Ground level	3 bedrooms, living room, 2 bathrooms, lift, stairs, laundry and pool.
Level 1	Kitchen/dining/living room, lift, powder room, WC, stairs, side deck and front balcony.
Level 2	Master bedroom, ensuite, WIR, lift, stairs and front balcony.

STRATEGIC IMPLICATIONS

Nil

POLICY IMPLICATIONS

Nil

STATUTORY ENVIRONMENT

- Local Planning Scheme No. 3
- Residential Design Codes
- Planning and Development (Local Planning Schemes) Regulations 2015 (*P & D Regs*)
- Planning and Development Act 2005
- Fencing Local Law

FINANCIAL IMPLICATIONS

Nil

STAFFING IMPLICATIONS

Nil

SUSTAINABILITY IMPLICATIONS

Nil

CONSULTATION

The application was advertised for 14 days to 8 adjoining owners. Four letters of objection were received (see summary below).

STAFF COMMENT

This lot is located on the northern side of Overton Gardens and is one of two lots that have remained vacant since being created as part of a ten lots subdivision located between Overton Gardens and Napier Street that was approved by the Western Australia Planning Commission in 1999.

The table below is a summary of the planning assessment of the proposal against the provisions of Local Planning Scheme No.3, the Planning & Development Regulations, and the Residential Design Codes.

Where the proposal requires further consideration or the exercise of judgement by Council, the relevant planning element is discussed in the section of the report following this table.

Planning assessment	Complies	Requires exercise of judgement (where applicable)
Use - single dwelling	✓	
Building height		Non-discretionary
Number of storeys		✓
Street setback		✓
Lot boundary setbacks		✓
Open space	✓	
Parking	✓	
Outdoor living areas	✓	
Street Surveillance	✓	
Sightlines		✓
Street walls and fences		✓
Vehicle access	✓ (excluding gradient)	
Visual privacy		✓
Solar access	✓	
Site works	✓	
Retaining walls	✓	
External fixtures	✓	
Matters to be considered by local government		✓

Summary of issues received during public consultation**Olive Maxine and Brian Kent**

Object to proposed development:

- Not in keeping with LPS objectives;
- Will result in loss of general amenity and vistas;
- Will have a negative impact and devalue surrounding properties;
- Natural ground levels, rather than historical levels, should be used for assessment;
- Proposed walls exceed height requirements as are not part of roof;
- The roof is contrived in which to build a third storey;
- The proposed front balconies, with 1m high solid balustrades, will block views from neighbouring properties. Balconies and side fences should not be solid; and
- There will be overshadowing, we will be blocked in, and be unable to see down the street to drive out.

Edward and Jacqueline Hodgkinson

Object to proposed development:

- The nominated ground level is not the natural ground level;
- The wall heights exceeds 7m;
- The roof is not curved;
- No screening is provided (to balconies);
- There will be a loss of privacy from the proposed pool;
- The building height will be 1.2m higher than all other residences; and
- The proposal will impact negatively on the street, affect vistas, general amenity and personal privacy.

Shayne Carter

Objects to proposed development:

- The front setback will have a major adverse impact on adjoining residents;
- Historical ground levels have been used rather than Natural Ground Levels for calculation of heights, which is not in keeping with the Codes;
- The location of the front balconies will obstruct other residents' views; and
- The unique character of Cottesloe should be preserved for future generations.

Bradley W Moffat

Objects to proposed development:

- The proposed balconies would be in conflict with existing balconies which are setback 6m from the front boundary;
- The proposed building is based on historical ground levels which is not in keeping with the Codes;
- The roof is not curved;
- By approving the height the property will be the only three-storey house in the street;

- It would look out of place and completely obstruct views; and
- Balconies should have see-through railings.

LPS 3	Building height
Permitted	<p>Maximum 6m wall height and 8.5m building height (7m maximum height to top of parapet).</p> <p><i>Wall height for a curved roof is measured to the median height between the lowest and highest points of the wall in accordance with Schedule 11 of LPS 3.</i></p>
Applicant's proposal	<ul style="list-style-type: none"> • Median wall height of curved roof: 6.36m (RL: 19.18 - south elevation); • Median wall height of curved roof: 5.74m (RL: 18.56 - north elevation); • Building height: 8.5m (RL: 21.32) • Top of lift shaft: 8.9m (minor projection) <p><i>These measurements have been calculated using the interpolated NGL (RL: 12.82) supplied by the applicant for the purposes of providing some height calculations, rather than as required under LPS 3.</i></p>

Comment

- Building Height is defined in LPS 3 (clause 5.7.1) as follows:
Means the maximum vertical distance between any point of natural ground level and the uppermost part of the building directly above that point (roof ridge, parapet, or wall), excluding minor projections above that point.
- Natural ground level is defined in the RDC as:
The levels on a site which precede the proposed development, excluding any site works unless approved by the decision-maker or established as part of a subdivision of the land preceding the development.
- Schedule 13 of LPS 3 excludes clause 5.7.1 from the operation of discretion to exceed the absolute height limits for new residential dwellings.
- In 1999, the Development Services Committee in considering a request to vary building heights in this location as part of the new subdivision proposal resolved, inter alia:
 - to permit the filling of the site from the Napier Street footpath level to the Overton Gardens footpath level...and*
 - to use the revised levels as the basis for the calculation of the height restriction for each of the individual development sites.*
- The spot levels at the corners of the lot shown on the building approvals for the adjoining dwellings at 5A (approved 2004) and 5C (approved 2000) have been researched by the Town, and are as follows:

NW – 11.79	NE – 12.38
SW – 12.27	SE – 12.71

- The levels at the corners of 5B (Lot 42) which were used in the assessment of a new dwelling approved in 1999 but not constructed were as follows:

NW – 10.04	NE – 10.56
SW – 10.17	SE – 10.70

- The overall building height of the dwelling at 5B approved in 1999 was 8.5m (RL: 18.87), above the calculated average NGL of RL: 10.37 at the centre of the lot.
- The site survey plan submitted with the current application for 5B has the following levels at the corners:

NW – 12.09	NE – 12.50
SW – 12.25	SE – 12.70

- The spot levels at the corners of the lot shown on the applicant's site survey plan appear closest to those shown on the building plans that were approved for 5A and 5C Overton Gardens and therefore may be a reasonable indication of NGL, rather than using the flat interpolated level supplied by the applicant which does not comply with LPS 3. On this basis, the average RL at the centre of the lot will be approximately 0.44m lower than that currently proposed (ie: RL: 12.38, rather than RL: 12.82).
- However, to satisfy LPS 3 requirements, the applicant should submit a contour survey plan from a licensed surveyor showing the natural ground level across the lot, either based on the spot levels used on the adjoining lots (Lots 41 & 43), or the existing footpath level between Napier Street and Overton Gardens (as resolved by the Development Services Committee in 1999) as a basis of determining NGL, and building height.
- The neighbouring properties were all granted wall height concessions by Council because of the small lot sizes. However, unlike the applications assessed under the previous Town Planning Scheme No. 2, LPS 3 does not allow discretion with respect to building height for new residential development and the calculation method for determining building height has changed.

Conclusion

The proposed development exceeds the maximum permitted building height under LPS 3.

LPS 3	Number of storeys
Permitted	Maximum two storeys, although this may be increased to three storeys where the development satisfies clause 5.7.4 of LPS 3 (see comment below).
Applicant's proposal	Three storeys (excludes the basement as this constitutes an undercroft under LPS 3).

Comment

- Clause 5.7.4 of LPS 3 states:
In a residential zone the local government 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 requirements stipulated in clause 5.7.2 and also provided that, in the opinion of the local government, the dwelling will retain the appearance of a two-storey dwelling and will not unduly adversely affect local amenity.
- The proposed development partly exceeds the maximum permitted wall heights and would adversely affect local amenity due to its protruding front balconies which are inconsistent with the prevailing streetscape. It therefore does not satisfy Clause 5.7.4;
- Although the proposed master bedroom on the third floor would be setback 7m from the front boundary, its width represents 60% of the width of the lot which appears excessive and exceeds the width that would otherwise be achieved with a standard pitched roof design. Also, the proposed third storey balcony would project to 3m from the front boundary and be partially covered with the curved roof. This element would appear prominent on the streetscape and have an adverse affect on the amenity of the adjoining residents (as discussed separately in this report);

Conclusion

The proposed dwelling does not satisfy clause 5.7.4 of LPS 3 for a third storey to be approved within the roof space.

RDC/LPS 3 – Street setback	Deemed-to-comply provision	Design principle
Requirement	2m	N/A
Applicant's proposal	<ul style="list-style-type: none"> • 7m (basement); • 7m (ground floor); 3m (supporting columns); • 4.46m (1st floor); 2.1m (balcony); • 7m (2nd floor); 3m (balcony) 	

Comment

- The proposed street setback exceeds the minimum 2m setback of the deemed-to-comply requirements of the RDC for a dwelling in a Residential R60 zone. However, in 1999 Council in considering development on the subdivided lots resolved, inter alia:
Buildings, including balconies and parking structures, to be setback 6.0m from Overton Gardens and Napier Street, in order to provide equity in terms of views from the proposed development.
- This setback requirement has been applied to four of the five subdivided lots that have been developed along Overton Gardens. However, the proposed development will project forward into this setback area due to its 1st floor living room, projecting balconies on the first and second floors, and supporting columns on the ground floor.

- The Explanatory Guidelines of the RDC advise:
Street setback areas are an integral part of the streetscape and are fundamental to the amenity and particular character of residential localities. They may perform a number of different, but complementary roles:
 - (i) continuity of the streetscape;
 - (ii) a visual setting for the dwelling;
 - (iii) a buffer against noise and general activity on the public street;
 - (iv) privacy for the dwelling;
 - (v) visual connection to the street, its users and to neighbours;
 - (vi) space for car parking and access; and
 - (vii) a transition zone between the public street and private dwelling.
- The *Planning and Development (Local Planning Schemes) Regulations 2015* 'Matters to be considered by local government' require, amongst other things, Council to have due regard to:
The compatibility of the development with its setting including the relationship of the development to development on adjoining land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development.
- In view of the established streetscape of the existing dwellings on the subdivided lots in this part of Overton Gardens as a result of Council's previous resolution, the proposal to protrude into this front setback area would disrupt the continuity of the streetscape and detract from the visual setting of the dwellings, as well as impose on the amenity of neighbouring residents. It would also be contrary to the relevant objectives of the RDC which are to ensure that development is sympathetic to the scale of the street and surrounding buildings.

Conclusion

The proposed front setback to the first floor living area, balconies and supporting columns would disrupt the continuity of the streetscape, detract from the visual setting of the existing dwellings, impose on the amenity of neighbouring residents, and not appear sympathetic to the scale of the street and surrounding buildings.

RDC – Lot boundary setback	Deemed-to-comply provision (based on estimated NGL taken from applicant's site survey plan)	Design principles
Requirement	<u>Western setbacks</u> <ul style="list-style-type: none"> • 4m (1st floor living room); • 4.4m (1st floor front balcony); • 5.2m (2nd floor master bedroom); • 3.8m (2nd floor ensuite); 	Buildings set back from lot boundaries so as to: <ul style="list-style-type: none"> • reduce impacts of building bulk on adjoining properties; • provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and • minimise the extent of overlooking and resultant loss

	<ul style="list-style-type: none"> • 5m (2nd floor front balcony). <p><u>Eastern setbacks</u></p> <ul style="list-style-type: none"> • 1m (ground floor front pergola); • 1.5m (ground floor – rear section); • 2.7m (1st floor rear section – NB: window on floor plan not shown on elevation); • 2.8m (1st floor front balcony); • 4m (2nd floor front balcony). 	<p>of privacy on adjoining properties.</p> <p>Buildings built up to boundaries (other than the street boundary) where this:</p> <ul style="list-style-type: none"> • makes more effective use of space for enhanced privacy for the occupant/s or outdoor living areas; • does not compromise the design principle contained in clause 5.1.3 P3.1; • does not have any adverse impact on the amenity of the adjoining property; • ensures direct sun to major openings to habitable rooms and outdoor living areas for adjoining properties is not restricted; and • positively contributes to the prevailing development context and streetscape.
<p>Applicant’s proposal</p>	<p><u>Western setbacks</u></p> <ul style="list-style-type: none"> • 2.4m (1st floor living room); • 3.4m (1st floor front balcony); • 2.4m (2nd floor master bedroom); • 2.4m (2nd floor ensuite); • 2.4m (2nd floor front balcony); • Walls on boundary. <p><u>Eastern setback</u></p> <ul style="list-style-type: none"> • 0.4m (ground floor front pergola); • 1.2m (ground floor – rear section); • 1.2m (1st floor rear section); • 1m (1st floor front balcony); • 1.2m (2nd floor front balcony); • Walls on boundary. 	
<p><u>Comment</u></p> <ul style="list-style-type: none"> • Although the adjoining dwellings either side of Lot 42 have single-storey and two-storey parapet walls these do not extend the full length of the boundaries and the applicant has not demonstrated how the proposed reduced setbacks adjoining and extending beyond these walls satisfy the design principles of the RDC. • In particular, the proposed first-floor, living room wall, on the eastern boundary and front balcony which would project in front of the neighbour’s wall is unlikely to satisfy the design principles due to its adverse impact on amenity. 		

Conclusion

The applicant has not addressed the relevant design principles of the RDC for Council to exercise its judgement with respect to the reduced lot boundary setbacks.

RDC – Sight lines	Deemed-to-comply provision	Design principle
Requirement	Walls, fences and other structures truncated or reduced to no higher than 0.75m within 1.5m of where walls, fences, other structures adjoining vehicle access points where a driveway meets a public street.	Unobstructed sight lines provided at vehicle access points to ensure safety and visibility along vehicle access ways, streets, rights-of-way (ROW), communal streets, crossovers, and footpaths.
Applicant's proposal	Solid walls up to 1.5m in height within the 1.5m truncation area adjoining the proposed driveway.	

Comment

- The applicant has not addressed the relevant design principles of the RDC for Council to exercise its judgement in respect to sightlines.
- The Town does not support the height of the proposed solid walls within the required 1.5m truncation area as they would obstruct vehicle sightlines.

Conclusion

Adequate vehicle sightlines are required to be provided where the proposed driveway joins the street.

RDC – Street walls and fences	Deemed-to-comply provision/Fencing Local law.	Design principle
Requirement	Front fences within the primary street setback area that are visually permeable above 1.2m of NGL, measured from the primary street side of the front fence (up to 1.8m in height).	Front fences are low or restricted in height to permit surveillance (as per clause 5.2.3) and enhance streetscape (as per clause 5.1.2), with appropriate consideration to the need: <ul style="list-style-type: none"> • for attenuation of traffic impacts where the street is designated as a primary or district distributor or integrator arterial; and • for necessary privacy or noise screening for outdoor living areas where the street is

		designated as a primary or district distributor or integrator arterial.
Applicant's proposal	Fencing within the primary street setback that exceeds 1.8m in height above NGL.	
<p><u>Conclusion</u></p> <p>The proposed fencing is not to exceed 1.8m in height within the front setback area in order to comply with Council's Fencing Local Law.</p>		

RDC – Visual privacy	Deemed-to-comply provision	Design principles
Requirement	<p>Major openings and unenclosed outdoor active habitable spaces, which have a floor level of more than 0.5m above natural ground level and overlook any part of any other residential property behind its street setback line are:</p> <p>i. set back, in direct line of sight within the cone of vision, from the lot boundary, a minimum distance as prescribed in the RDC or;</p> <p>ii. are provided with permanent screening to restrict views within the cone of vision from any major opening or an unenclosed outdoor active habitable space.</p> <p>Screening devices such as obscure glazing, timber screens, external blinds, window hoods and shutters are to be at least 1.6m in height, at least 75 per cent obscure, permanently</p>	<p>Minimal direct overlooking of active habitable spaces and outdoor living areas of adjacent dwellings achieved through:</p> <ul style="list-style-type: none"> • building layout and location; • design of major openings; • landscape screening of outdoor active habitable spaces; and/or • location of screening devices. <p>Maximum visual privacy to side and rear boundaries through measures such as:</p> <ul style="list-style-type: none"> • offsetting the location of ground and first floor windows so that viewing is oblique rather than direct; • building to the boundary where appropriate; • setting back the first floor from the side boundary; • providing higher or opaque and fixed windows; and/or • screen devices (including landscaping, fencing, obscure glazing, timber screens, external blinds, window hoods and shutters).

	fixed, made of durable material and restrict view in the direction of overlooking into any adjoining property.	
Applicant's proposal	The proposed front balconies are not screened or setback outside the required cone-of-vision to the eastern and west boundaries, behind the front setback area.	
<p><u>Comment</u></p> <p>The unscreened front balconies would result in a loss of visual privacy to adjoining neighbours.</p> <p><u>Conclusion</u></p> <p>The applicant has not addressed the relevant design principles of the RDC for Council to exercise its judgement with respect to visual privacy.</p>		

Planning and Development (Local Planning Schemes) Regulations 2015

Matters to be considered by local government

In considering an application for development approval the local government is to have due regard to the following relevant matters:

- the aims and provisions of this Scheme...
- the requirements of orderly and proper planning...
- any approved State planning policy;
- any policy of the Commission;
- any policy of the State;
- the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development;
- the amenity of the locality including the following:
 - (i) environmental impacts of the development;
 - (ii) the character of the locality;
 - (iii) social impacts of the development;
- the history of the site where the development is to be located;
- the impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals;
- any submissions received on the application; and
- any other planning consideration the local government considers appropriate.

Comment

- The proposed three-storey dwelling does not satisfy the aims of LPS 3 as it would not sustain the amenity, character and streetscape quality of the locality.
- The proposed development does not comply with LPS 3 with respect to

permitted building heights or storeys.

- The applicant has not satisfactorily addressed the design principles of the RDC where it is necessary for Council to exercise its judgement.
- The proposed driveway gradient is non-compliant with Australian Standards; and
- Neighbour objections have been received on the grounds of loss of amenity, privacy and streetscape, etc.

Conclusion

The proposed development does not satisfy the matters that Council is to have regard to sufficient to allow the development to be approved.

CONCLUSION

The proposed dwelling exceeds the permitted building heights, it does not satisfy clause 5.7.4 of LPS 3 for a third storey to be approved within the roof space, the applicant has not satisfactorily addressed the relevant design principles of the RDC for Council to exercise its judgement with respect to various planning requirements, the driveway gradient exceeds Australian Standards, it does not provide adequate vehicle sightlines, the height of the proposed front fencing does not satisfy the Fencing Local Law, its bulk and scale will detract from the existing streetscape and it will have a detrimental impact on adjoining residents, most of whom have objected to the proposal.

Although Council could resolve to defer the application to enable the applicant to submit revised plans, it is considered that due to the fundamental non-compliance and significance of the changes to the design that would be required to satisfy the matters discussed in this report, a recommendation of refusal is appropriate.

Additional Information Following Council Briefing Session

Owner – It is confirmed that the property has transferred to the new owner as named at the beginning of this report.

Applicant – The current applicant (a designer/builder consultant) representing the new owner is as named at the beginning of this report.

Setbacks – It is confirmed that under former Town Planning Scheme No. 2 the land had a density code of R50 (Foreshore Centre Zone), which had the same 2m minimum front setback and other setback standards as under the current R60 density code. However, as reported, historically Council has applied a 6m front setback requirement, and as assessed the proposed front setbacks are considered inappropriate in that regard.

Open space – The proposal provides 46% private open space, which exceeds the minimum 40% requirement for R60 land under the Residential Design Codes. Amendment No. 4 to Local Planning Scheme No. 3 discounts roof decks from the

open space calculation for dwellings at a density code under R40; therefore, it does not apply to this land.

VOTING

Simple Majority

OFFICER RECOMMENDATION

Moved Mayor Dawkins, seconded Cr Boulter

THAT Council REFUSE the application for a three-storey dwelling at 5B (Lot 42) Overton Gardens, Cottesloe, as shown on the plans submitted on 1 February 2016, for the following reasons:

1. The development does not comply with Local Planning Scheme No. 3 with respect to permitted building heights and storeys.
2. The proposed front setback would significantly disrupt the continuity of the streetscape, detract from the visual setting of the existing dwellings, impose on the amenity of neighbouring residents, and not appear sympathetic to the scale of the street and surrounding buildings.
3. The relevant design principles of the Residential Design Codes have not been satisfactorily addressed to enable Council to exercise its judgement with respect to:
 - (a) Side setbacks;
 - (b) Visual Privacy; and
 - (c) Vehicle sightlines.
4. The proposed driveway does not satisfy Australian Standards.

AMENDMENT

Moved Cr Boulter, seconded Cr Pyvis

That a new point three (3) be added, and subsequent points renumbered, that reads "The application does not comply with the Council resolution of 1999 requiring buildings, including balconies and parking structures, to be setback 6.0m from Overton Gardens and Napier Street, in order to provide equity in terms of views from the proposed development."

Carried 8/0

COUNCIL RESOLUTION

THAT Council REFUSE the application for a three-storey dwelling at 5B (Lot 42) Overton Gardens, Cottesloe, as shown on the plans submitted on 1 February 2016, for the following reasons:

1. The development does not comply with Local Planning Scheme No. 3 with respect to permitted building heights and storeys.

2. The proposed front setback would significantly disrupt the continuity of the streetscape, detract from the visual setting of the existing dwellings, impose on the amenity of neighbouring residents, and not appear sympathetic to the scale of the street and surrounding buildings.
3. The application does not comply with the Council resolution of 1999 requiring buildings, including balconies and parking structures, to be setback 6.0m from Overton Gardens and Napier Street, in order to provide equity in terms of views from the proposed development.
4. The relevant design principles of the Residential Design Codes have not been satisfactorily addressed to enable Council to exercise its judgement with respect to:
 - (a) Side setbacks;
 - (b) Visual Privacy; and
 - (c) Vehicle sightlines.
5. The proposed driveway does not satisfy Australian Standards.

THE AMENDED SUBSTANTIVE MOTION WAS PUT

Carried 8/0

ADMINISTRATION**10.1.4 CURTIN CARE INC. – PROPOSAL FOR NEW 25 YEAR LEASE - LOT 555 COTTESLOE ('WEARNE COTTESLOE')**

File Ref:	SUB/983
Attachments:	Attachment 1 CONFIDENTIAL CAPH Working Group Meeting Notes 27 January 2016 Attachment 2 CONFIDENTIAL Draft Agreement to Lease Attachment 3 CONFIDENTIAL Draft Lease
Responsible Officer:	Mat Humfrey Chief Executive Officer
Author:	Mat Humfrey Chief Executive Officer
Proposed Meeting Date:	26 April 2016
Author Disclosure of Interest:	Nil

SUMMARY

At the Council meeting of 2 November 2015, Council supported a new 25 year lease being granted to Curtin Care Inc. for Lot 555 Cottesloe (Wearne Cottesloe) for the purposes of the provision of care, accommodation and residential facilities for aged persons and all activities relating to the provision of such care, accommodation and residential facilities on a not for profit basis, and authorised the preparation of documentation.

This report presents the Agreement to Lease and new Lease for approval

BACKGROUND

Since the early 1980's Curtin Aged Person's Home Inc. (or CAPH), now trading as Curtin Care, has used the Wearne Site to provide care and accommodation services for aged persons. It now provides accommodation and care for 88 people, mainly with high care needs.

Prior to being owned by the four local governments (Claremont, Cottesloe, Mosman Park and Peppermint Grove), the site was owned by the WA State Government, and administered by the Fremantle Hospital Board. In 1999, work began on having the site transferred to the four local governments, however the site didn't settle until 2009.

A Co-Ownership Agreement was signed on 2 April 2009 for the Owners to guide the ownership arrangements. The Agreement provides for establishment of a Management Committee '*for the determination or approval of matters under the Agreement.....*'. It is not clear if the Management Committee was established, but in any event it has not been active in recent years.

The ownership of the site is a conditional tenure, under section 75 of the *Land Administration Act 1997*. The tenure provides ownership so long as the conditions on the title are met. In this instance, the title limits the use of the land to '*the provision of care, accommodation and residential facilities for aged persons and all activities and*

matters relating to the provision of such care, accommodation and residential facilities'. Letters from the relevant department state that this includes the provision of a facility under the *Retirement Villages Act 1992*.

When the land was transferred to the four local governments in 2009, it was immediately leased to Curtin Care (at that time, CAPH) for a period of 20 years for nominal rent. The lease is registered on the certificate of title. In the second half of 2014, Curtin Care began its approach to the four local governments to have the land transferred to Curtin Care for nominal consideration. The Councils did not support the transfer of ownership but did indicate willingness to consider extending the term of the CAPH lease. Subsequently all owner councils have adopted resolutions to support the approval of a new lease.

The working group established with membership from each of the owner councils has held meetings on 5 August, 9 September and 7 October 2015 and on 27 January 2016. These meetings included one at which representatives of Curtin Care presented to the working group and answered follow up questions.

At the January meeting the working group considered a Draft Agreement to Lease and a Draft Lease. The working group also considered suggestions and requests from Curtin Care. The Claremont Chief Executive Officer was authorised to work with McLeods to finalise the documentation. (refer attachment 1 Meeting Notes).

STRATEGIC IMPLICATIONS

Nil

POLICY IMPLICATIONS

Nil

STATUTORY ENVIRONMENT

Section 3.58 of the *Local Government Act 1995*:

S3.58(1) provides the meaning of disposal of land includes '*to sell, lease, or otherwise dispose of, whether absolutely or not.*'

S3.58(3) permits property to be disposed of other than by public tender or public auction

'A local government can dispose of property other than under subsection (2) if, before agreeing to dispose of the property —

(a) it gives local public notice of the proposed disposition —

(i) describing the property concerned; and

(ii) giving details of the proposed disposition; and

(iii) inviting submissions to be made to the local government before a date to be specified in the notice, being a date not less than 2 weeks after the notice is first given;

and

(b) it considers any submissions made to it before the date specified in the notice and, if its decision is made by the council or a committee,

the decision and the reasons for it are recorded in the minutes of the meeting at which the decision was made.'

Disposal of property may be designated as a major land transaction and if so S3.59 of the Act requires that a business plan providing an assessment of the land transaction is prepared and advertised. Whether this section applies or not is based on the value of the land transaction.

Section 3.59(1) defines major land transaction

'major land transaction means a land transaction other than an exempt land transaction if the total value of —

- (a) the consideration under the transaction; and
- (b) anything done by the local government for achieving the purpose of the transaction,

is more, or is worth more, than the amount prescribed for the purposes of this definition'

Legal advice has been obtained from McLeods which confirms that for the purposes of the definition of 'major land transaction' in section 3.59(1) of the *Local Government Act 1995*, it is necessary to consider the **actual** 'consideration under the transaction' – not, for example, a notional consideration based on a valuation.

Therefore, if the proposed transaction is a lease for a peppercorn rent to a non profit organisation, it would be the peppercorn rent that would be relevant for the purposes of section 3.59, not the rent that could have been charged if the property had been rented to a commercial entity.

If the working group recommendation to lease the land to Curtin Care for a nominal rent (say \$1 per annum payable on demand) there will not be a requirement to prepare and advertise a business plan.

The *Local Government Act 1995* Section 5.42 allows Council to delegate powers to the Chief Executive Officer, other than some powers which are excluded by the legislation (Section 5.43). The Council may delegate the powers and duties proposed by this report.

FINANCIAL IMPLICATIONS

Legal costs have been incurred to prepare the proposed lease and legal agreement. The working group proposed that the Owners accept the legal costs and that they be shared equally by the Owners and this was accepted by Council. Costs for preparation of the Agreement and lease will be in the order of \$10,000.

STAFFING IMPLICATIONS

Nil

SUSTAINABILITY IMPLICATIONS

Nil

CONSULTATION

Various meetings have been held with representatives of Curtin Care during the past 12 months. Meetings between the four affected local governments have also been undertaken.

The working group with membership from each of the owner councils has had meetings on 5 August, 9 September and 7 October 2015, and 29 January 2016. The Chairman for Curtin Care, David Cox and Deputy Chair, Michael Jones, attended the meeting of 9 September and made a presentation to the working group

The Claremont Chief Executive Officer has had several meetings and conversations with Mr David Cox of Curtin Care.

STAFF COMMENT

The range of issues considered by the working group ranged from drafting (proof reading) issues easily remedied to matters of significance.

Table of significant issues Agreement to Lease

Clause	Issue	Outcome
Definitions	Definition of Redevelopment Project to reflect the stated intention of CAPH to undertake staged development to a stated value of \$80million	Redrafted
4.9	Agreed Master Plan to show the entire concept, anticipated scheduling of future stages	Redrafted
Various	Establishing the Lessors' representative so that the process of working together and any approvals are not unnecessarily complex.	Activate the Co-Ownership Management Committee: this is discussed further in the report.
7.1, 7.2 Lease/ 22	Clarifying ownership of the buildings, in particular to make it clear the councils are not directly involved in the development	Redrafted

Table of significant issues Lease

Clause	Issue	Outcome
30.1	To prohibit lodgement of any caveat (by CC) and for registration of lease at Landgate by CC.	Redrafted
17.2	To clarify that Manager will be an incorporated entity.	Redrafted
17.4	'End of Lease' concerns by CC – relates to the lessee having entered into 'lease for life agreements' which may run beyond the lease term.	Discussed in report
New	CC requested an opportunity for a further term after the 25 years of the	Working Group agreed there should be a

Clause	Issue	Outcome
	new lease.	provision to allow a new lease term at the end of the Lease: >conditional upon CAPH having undertaken the redevelopment project within the Term, unless there has been agreement with the Lessor >A clause to provide for a period of notice by the Lessee of its intention to seek an extended term, or not to do so.
New	Lease to exclude any use of the land which will involve the Commercial Tenancy Act.	Discussed in report

The working group approved discussions between the Claremont Chief Executive Officer and CAPH Chairman to finalise the provisions of the Lease subject to confirmation by McLeods that changes do not prejudice the interests of the Owners. Most of the matters recorded in the 27 January 2016 meeting notes have been discussed, reviewed by McLeods and the documentation has been amended by Mcleods. The remaining issues to highlight are:

- End of lease provision
- Commercial (Retail) Tenancy Act
- Co-Ownership Management Committee.

End of Lease

Clause 17.4 of the Lease has provisions requiring approval by the Lessor for any occupancy or tenancy for any term which is longer than the term of the lease. It specifically requires this for 'lease or license for life' agreements. The Lessor may impose conditions if approving any agreement which extends beyond the term of the Lease.

Note also that the Lease now has a provision (Clause 46) which allows for one further term. The clause requires that the Redevelopment Project Works have been completed as a condition of being eligible for the new term.

Commercial Tenancy (retail Shops) Agreements Act 1985

McLeods has assessed the implications of the Act and advised as follows –

In relation to the definition of 'Commercial Facilities' and the operation of the Commercial Tenancy (Retail Shops) Agreements Act 1985 (CTA), if the 'Commercial Facilities' comprise a large portion of the Premises or if the volume of retail sales or income derived from those parts of the Premises are comparatively larger than the use of the Premises for aged care and residential accommodation, the Lease may be caught by the operation of the

CTA. From the information provided, it is our initial view that the Lease would not be caught by the operation of the CTA as the use of the Premises is not wholly or predominantly for the carrying on of a retail business. If this is not the case, please let us know.

The Lease provisions allow commercial uses if the Lessor is reasonably satisfied that they are ancillary to the Permitted Purpose. This will ensure they can be kept to a reasonable extent and not ever be comparatively greater than the primary use of the premises. CAPH has indicated the proposed uses to be pharmacy, cafe, newsagent, hairdresser and similar. All of these are complementary to the permitted use and should not be a concern having regards to McLeods advice.

Co-Ownership Management Committee

There are various matters in the documentation which require the Lessee to satisfy conditions to the satisfaction of the Lessor. The initial proposal by McLeods was that the Chief Executive Officer of one local government be authorised for most purposes and beyond that the councils would have to be involved. Over the term of the Agreement and the Lease there are likely to a number of relatively minor matters which need approvals. Attempting to deal with such matters through the formal process of four councils is potentially time consuming and unwieldy.

The working group recommended that the Councils convene the Co-Ownership Committee. This was based on an Agreement signed on 2 April 2009 for the Owners to guide the ownership arrangements. The Agreement provides for establishment of a Management Committee *'for the determination or approval of matters under the Agreement.....'*. It is not clear if the Management Committee was properly established, but a legal agreement exists between the four councils to form a management committee, appoint a representative from each council and for the committee to make binding decisions on behalf of the owners within the following powers:

- a) control, direct and manage the property;
- b) make and give any determination, approval, direction or order in relation to the Property; monitor compliance with and enforce as necessary the provisions of the CAPH lease; and
- c) delegate to any person (including a Participant) any of the above rights, authorities, powers and discretions.

The Co-ownership Agreement and management committee appeared to offer a formal way for matters to be dealt with efficiently in which the Councils could formally delegate the same powers to be extended to the Agreement to Lease and the New Lease.

Unfortunately the provisions of the Agreement were drafted without proper consideration of the *Local Government Act 1995*. Discussion with Neil Douglas of McLeods confirms that there is no provision which allows four councils to establish a joint committee and no capacity to delegate to a committee which is not a committee of the (individual) council.

After further discussion it was also confirmed that the only mechanism with legal validity to achieve an effective way to manage issues in the Agreement to Lease and

the Lease is through delegation by each Council to its Chief Executive Officer. The delegation can be general or have limitations. The report recommends this delegation to the Chief Executive Officers of the four co-owners with only matters of material importance to be referred to the Councils for decision.

VOTING

Absolute Majority

OFFICER RECOMMENDATION & COUNCIL RESOLUTION

Moved Mayor Dawkins, seconded Cr Burke

THAT Council, subject to the word “shall” being replaced with “may” in section 46 of the Lease document:

- 1. Approves the Agreement to Lease and Lease (Attachment 2 and Attachment 3);**
- 2. Authorises the Mayor and Chief Executive Officer to execute the documents on behalf of Town of Cottesloe following completion of all statutory requirements pursuant to Section 3.58 of the *Local Government Act 1995*;**
- 3. Authorises the Chief Executive Officer in conjunction with the Shire of Peppermint Grove and Towns of Claremont and Mosman Park to give local public notice of the proposal to dispose of Lot 555 in accordance with the Section 3.58 of the *Local Government Act 1995*;**
- 4. (a) Pursuant to Section 5.42 of the *Local Government Act 1995* delegates to the Chief Executive Officer the duty, power and authority to, in consultation with the Chief Executive Officers of the co-owners:**
 - i. make and give any determination required by the Lease of Lot 555 on behalf of the Lessor, approval, direction or order in relation to the Property; monitor compliance with and enforce as necessary the provisions of the CAPH lease (but this power does not include statutory powers of the Town of Cottesloe); and**
 - ii. all matters relating to the Agreement to Lease of Lot 555 to Curtin Care.**
- (b) In exercising this delegation of authority the Chief Executive Officer shall not make a determination if:**
 - i. the Chief Executive Officer believes the matter for decision is a material change to the terms and conditions of the Lease or Agreement to Lease, or**
 - ii. the majority of the other co - owner Chief Executive Officers do not agree to exercise their delegated authority.**

- (c) If the Chief Executive Officer declines to give a determination (for reasons set out in part 4(b)) the Chief Executive Officer must report the matter to the Council for decision.

Carried 8/0

10.1.5 TOWN OF COTTESLOE CARBON INVENTORY REPORT 2014/2015

File Ref: SUB/1161
Attachments: [Town of Cottesloe Carbon Inventory Report 2014/2015](#)
[Draft Carbon Offset Purchasing Policy](#)
Responsible Officer: Mat Humfrey
Chief Executive Officer
Author: Melissa Rachan
Sustainability Officer
Proposed Meeting Date: 26 April 2016
Author Disclosure of Interest Nil

SUMMARY

The Town of Cottesloe Carbon Inventory Report summaries the findings from the most recent greenhouse gas inventory. The inventory calculates emissions released as a result of the Town's operation in the 2014/2015 financial year. The 2014/2015 inventory calculated 299.71 tonnes of carbon dioxide equivalent.

This compares to a baseline greenhouse gas footprint of 806 tonnes of carbon dioxide equivalent, upon the Town commencing voluntary reporting in 2009/2010. The report illustrates the Town's ongoing commitment to sustainability through voluntary emissions reporting for the sixth consecutive year.

Having significantly decreased emissions since baseline reporting, the Town is now well positioned to purchase carbon offsets as part of the final requirement in the four-step process to becoming a carbon neutral council. A copy of the inventory report is attached, as well as the draft Carbon Offset Purchasing Policy, for Council's consideration.

BACKGROUND

In 2010 Council unanimously resolved to follow a four-step process to achieve carbon neutrality as soon as practicable, by 2015 (2014/2015 reporting period), seeking accreditation through Department of the Environment's National Carbon Offset Standard. The process is as outlined:

- Step 1: Measure baseline emissions.
- Step 2: Reduce emissions through the development of a GHG Reduction Plan.
- Step 3: Switch to energy sources that create less GHG emissions.
- Step 4: Offset all remaining emissions.

While researching and implementing appropriate emissions abatement actions forms an ongoing process, opportunities for significant reductions become limited as the Town's footprint become smaller. The Town will continue to produce emissions for the foreseeable future; therefore, purchasing offsets is necessary to gain carbon neutral status.

Carbon offsetting requires Council to invest in projects that reduce greenhouse gas emissions or sequester carbon from the atmosphere in order to cancel all remaining

emissions produced as a consequence of the Town's activities, resulting in zero net emissions.

STRATEGIC IMPLICATIONS

Carbon neutrality is one means of enabling the Town to tangibly meet the overarching priorities as set out in the Strategic Community Plan 2013 to 2023, while concurrently upholding Section 1.3, clause 3, of the Local Government Act in using Council's best endeavours to meet the needs of current and future generations.

POLICY IMPLICATIONS

Climate Change Policy:

The Town has demonstrated a proactive approach to climate change mitigation through its commitment to become carbon neutral. Emissions abatement actions, such as the installation of the solar power system, have the advantage of increasing the Town's resilience to climate change as well as reducing the Town's vulnerability to external factors such as rising energy costs.

STATUTORY ENVIRONMENT

Nil

FINANCIAL IMPLICATIONS

Resource requirements are in accordance with existing budgetary allocation.

STAFFING IMPLICATIONS

Nil

SUSTAINABILITY IMPLICATIONS

The carbon neutral project has positive ongoing sustainability gains through reducing Town-related emissions. Through the process the Town is demonstrating leadership and taking responsibility for its environmental impact, in light of an ever-growing, environmentally conscious community. The Town's proactive approach to sustainability has the advantage of providing example and encouraging behaviour change at the individual level.

CONSULTATION

Activity data for the 2014/2015 inventory was collected from a range of sources including utility bills, monthly reports, directly from service providers as well as the Town's staff. Further details can be found in the 2014/2015 inventory.

STAFF COMMENT

While the 2014/2015 footprint has increased slightly since the previous reporting period, by 5.46 tonnes of carbon dioxide equivalent, the Town has still displayed an encouraging trend of decreasing emissions since baseline reporting.

The attached inventory report outlines calculation methodologies and summarises the Town's consumption over the 2014/2015 reporting period, providing rationale for various increases and decreases in comparison to the previous reporting period. The report also provides a comprehensive account of the process for pursuing carbon

neutral accreditation through the Department of the Environment's National Carbon Offset Standard program, as initially intended by Council.

Carbon offsetting forms part of this process. As such, a draft Carbon Offset Purchasing Policy has been developed to ensure that all carbon offset transactions reflect best-practice standard. The Policy aims to guide Council in purchasing offsets that are credible, ensuring that emissions reductions are verifiable, quantifiable and permanent.

It is recommended that Council adopt the Carbon Offset Purchasing Policy, pursue carbon neutral accreditation through the Department of the Environment's National Carbon Offset Standard program and publish the 2014/2015 inventory report on the Town's website for the purpose of transparency and improved community awareness.

VOTING

Simple Majority

OFFICER RECOMMENDATION

Moved Mayor Dawkins, seconded Cr Boulter

THAT Council:

1. Note the completion of the emissions inventory and report for 2014/2015;
2. Publish the 2014/2015 Carbon Inventory Report on the Town's website by May 2016;
3. Endorse the Carbon Offset Purchasing Policy; and
4. Pursue carbon neutral accreditation through the Department of the Environment's National Carbon Offset Standard Program.

AMENDMENT

Moved Cr Birnbrauer, seconded Mayor Dawkins

That points three (3) and four (4) be deleted and replaced with:

Reserve the funds set aside for Carbon Offset purchases to support actions that can be taken within the Town of Cottesloe and adjoining councils that will further reduce our carbon emissions.

Request staff to pursue means, actions and incentive schemes that will achieve further reductions and/or encourage staff and residents to reduce their carbon emissions.

Carried 8/0

COUNCIL RESOLUTION

THAT Council:

- 1. Note the completion of the emissions inventory and report for 2014/2015;**
- 2. Publish the 2014/2015 Carbon Inventory Report on the Town's website by May 2016;**
- 3. Reserve the funds set aside for Carbon Offset purchases to support actions that can be taken within the Town of Cottesloe and adjoining councils that will further reduce our carbon emissions; and**
- 4. Request staff to pursue means, actions and incentive schemes that will achieve further reductions and/or encourage staff and residents to reduce their carbon emissions.**

THE AMENDED SUBSTANTIVE MOTION WAS PUT

Carried 8/0

10.1.6 REVIEW OF LOCAL GOVERNMENT PROPERTY LOCAL LAW 2001

File Ref:	SUB/2015
Attachments:	Copy of Submissions Received Local Government Property Amendment Local Law 2016 Council Minute Extract March 23 2015
Responsible Officer:	Mat Humfrey Chief Executive Officer
Author:	Garry Bird Manager Corporate & Community Services
Proposed Meeting Date:	26 April 2016
Author Disclosure of Interest	Nil

SUMMARY

To consider submissions received for the review of the Town of Cottesloe *Local Government Property Local Law 2001* ('the Local Law').

BACKGROUND

Council commenced a review of the Local Law in July 2015 and invited public submissions which closed 17 August 2015.

This review was undertaken as a result of a Notice of Motion from Cr Pyvis at the March 2015 Ordinary Meeting that sought to implement a permanent ban on smoking at all Cottesloe beaches. At this meeting it was resolved as follows;

That Council in view of the significant adverse environmental impacts of cigarette butts and in the interest of better community health and amenity that Council support a permanent ban on smoking at all Cottesloe beaches to be implemented by the 2015/2016 summer season and that this be done by amending the Town of Cottesloe's Property Local Law as outlined in staff comment.

Following the closure of the public submission period, two submissions were received which are summarised as follows, with a copy of the full submissions attached to this report for the consideration of Elected Members.

Ms S Boulter

- All delegated powers to staff in regards to determinations made under the Law should be removed with all such matters to be referred to Council.
 - Archery, Golf, Pistol and Rifle Shooting, flying Model Aeroplanes, Hang Gliders, and Boating should not be permitted without an absolute majority of Council.
 - Smoking should be prohibited on all beaches, beach reserves and surrounds.
 - Fees for entry to any public lands should not be charged without the authority of an absolute majority of Council.
 - The register of determinations must include comprehensive information about the conditions applying to the determination and to whom, including how to contact, the determination applies.
 - All determinations should have a timeline after which they lapse, a sunset clause.
-

Ms P Carmichael

- All delegated powers to staff in regards to determinations made under the Law should be removed with all such matters to be referred to Council.
- Increase all penalties – are currently too low.

In order to effect any amendment, statewide public notice is required to inform of Council's intention to amend the Local Law and public submissions invited.

STRATEGIC IMPLICATIONS

Priority Area 3 – Enhancing Beach Access and Foreshore

Major Strategy 3.2 – Continue to improve access to beach facilities

POLICY IMPLICATIONS

The Town of Cottesloe Beach Policy states that a secondary objective of the policy is to:

- (c) to provide a level of essential amenity on the beach reserves which meets the expectations of residents of Cottesloe, the people of Western Australia and visitors to the metropolitan region.*

The banning of smoking on all beaches would be in keeping with this policy objective by ensuring that they were kept relatively free of cigarette butts and beach users are able to enjoy these facilities free of cigarette smoke.

Other proposals contained within the submissions received are not covered by this policy.

STATUTORY ENVIRONMENT

Local Government Act 1995

Local Government (Functions and General) Regulations 1996

Town of Cottesloe Local Government Property Local Law 2001

The *Local Government Act 1995* specifies the process to amend a local law is the same as for which a new local law is introduced. This process is as follows;

3.12. Procedure for Making Local Laws

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

- (iii) *submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given;*
- and*
- (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.*

The above provision requires the presiding officer of the Meeting to give notice to the meeting of the purpose and effect of any proposed amendment. In order to satisfy this requirement for the proposal to ban smoking is as follows;

Purpose *To improve the amenity of beaches in Cottesloe by reducing litter from cigarette butts, eliminating exposure to cigarette smoke by beach users and reducing the risk to marine life of ingesting the cigarette butts.*

Effect Smoking would effectively be prohibited on all beaches and beach reserves as determined by Council.

FINANCIAL IMPLICATIONS

The Local Law prescribes various penalties for non-compliance, with one of the submissions stating that these penalties should be increased.

Council very rarely issues infringements under the powers of this Local law, and any increase to the prescribed penalties will have a negligible impact on Council's revenue.

Depending on the level of policing required by Council of the new ban on smoking, additional staff resources may be required.

STAFFING IMPLICATIONS

Rangers will ensure compliance with the amendment if adopted by Council, which will be done as part of their regular patrols and as such there will be no major staffing implications. Any additional staff required to implement the banning of smoking on beaches and reserves would require additional funding from the Budget.

SUSTAINABILITY IMPLICATIONS

Nil

CONSULTATION

Town of Cottesloe Staff
Department of Local Government and Communities
Western Australian Local Government Association

STAFF COMMENT

In regards to the submissions received and the original proposal from Council to ban smoking on beaches, the following comments are provided.

1. Smoking

To achieve the intent of the Council Resolution it is suggested that a simple amendment be made to the local law to change the definition of “premises” to include all beach foreshore reserves and other recreation reserves in the Town boundary.

2. Delegation of Powers

It is recommended the matter of delegated powers be considered as part of the annual review of the Delegation Register in July 2016, as required by the Local Government Act 1995.

3. Certain Activities not permitted without an absolute majority of Council

Archery, Golf, Pistol and Rifle Shooting, flying Model Aeroplanes, Hang Gliders, and Boating should not be permitted without an absolute majority of Council.

The Local Government Act 1995 stipulates those decisions which require an absolute majority decision of Council, with determinations made under a Local Law not one of these types of decisions.

4. Fees for entry to Public Land

Where fees are set for use of local government property, they are required to be set in the Budget which requires an absolute majority.

5. Sunset Clause

The Local Law gives Council the power to revoke a determination at any time. As all determinations are presented to Council for approval, it is suggested that Council could consider the issue of a sunset clause on any determination on a case by case basis.

6. Increase Penalties

Increasing the penalties could be achieved as part of this Review.

The maximum penalty under the Local law is \$5,000 plus \$500 per day with some of the prescribed offences carrying much smaller penalties of between \$100 and \$200 per offence.

If Council chooses to proceed with the banning of smoking on beaches, a new modified penalty may need to be considered. It is noted that the City of Joondalup have a similar provision in their Property Local Law, the penalty for which is \$50.

Discussions held with staff from the Department of Local Government and Communities in regards to the proposed ban on smoking at beaches and recreation reserves indicates that it may not obtain approval from the State Government’s Joint

Standing Committee on Delegated Legislation, who issue the final approval for any new or amended local law proposal.

VOTING

Simple Majority

OFFICER RECOMMENDATION & COUNCIL RESOLUTION**Moved Mayor Dawkins, seconded Cr Birnbrauer**

Prior to considering the following recommendation, the Presiding Officer is to read the following statement to the Meeting;

The Purpose and Effect of the proposed amendment to the Local Government Property Local Law 2001 is as follows;

Purpose To improve the amenity of beaches in Cottesloe by reducing litter from cigarette butts, eliminating exposure to cigarette smoke by beach users and reducing the risk to marine life of ingesting the cigarette butts.

Effect Smoking would effectively be prohibited on all beaches and beach reserves as determined by Council.

THAT Council, following the advertising of the review of the *Local Government Property Local Law 2001*:

- 1. Advertise the proposed Amendment Local Law (as attached) for a period of not less than 42 days and invite public submissions in regards to the proposed Local Law.**
- 2. Consider all submissions received at a Meeting of Council after the nominated closing date.**

Carried 8/0

10.1.7 COUNCIL CHAMBER - VIDEO AND AUDIO EQUIPMENT

File Ref: SUB/2023
Responsible Officer: Mat Humfrey
Chief Executive Officer
Author: Garry Bird
Manager Corporate & Community Services
Proposed Meeting Date: 26 April 2016
Author Disclosure of Interest: Nil

SUMMARY

To consider an amendment to the 2016/17 Budget to accommodate the purchase of audio and visual display equipment, at a cost of \$10,000.00, as per the resolution of the March 2016 Meeting of Council.

BACKGROUND

At the March 2016 Ordinary Meeting Council, the following resolution was adopted.

THAT Council:

- 1. Introduce the electronic recording of all Council Briefing Sessions and Council Meetings and that such recordings be used for the sole purpose of confirming the correctness of the Minutes of the Briefing Sessions and Meetings, but should not be otherwise published.*
- 2. Introduce the use of a display screen at Ordinary Council Meetings to enable the public and Elected Members to follow more clearly the motions being considered subject to a report to the April Council Meeting on the costs incurred and the heritage impact to the building.*
- 3. Introduce a Public Statement Session at Council Briefing Sessions and Ordinary Council Meetings to allow members of the public to make short statements on any Council related issue.*
- 4. Authorise the Chief Executive Officer upon request of any person, review the electronic recording of a meeting to confirm the accuracy of the meeting.*

STRATEGIC IMPLICATIONS

Priority Area 6 – providing open and accountable local governance

Major Strategy 6.3 – Implement technologies to enhance decision making, communication and service delivery.

The use of audio recording and visual display equipment in the Council Chamber during Council meetings will enhance members of the public's understanding of the matters being debated and voted on. It will also assist Council in moving and amending motions, with the actual motion being voted on being able to be displayed to all present at the meeting. As such, the purchase of this equipment would be in keeping with this strategic initiative.

POLICY IMPLICATIONS

Nil

STATUTORY ENVIRONMENT**Local Government Act 1995****6.8. Expenditure from Municipal Fund Not Included in Annual Budget**

- (1) *A local government is not to incur expenditure from its municipal fund for an additional purpose except where the expenditure —*
- (a) *is incurred in a financial year before the adoption of the annual budget by the local government; or*
 - (b) *is authorised in advance by resolution*;* or
 - (c) *is authorised in advance by the mayor or president in an emergency.*

** Absolute majority required.*

As the estimated expenditure of \$10,000.00 has not been included in the Budget, an absolute majority decision of Council is required to authorise the expenditure.

FINANCIAL IMPLICATIONS

A quote of \$10,000.00 has been obtained to purchase the necessary equipment to record Council Meetings and have a live meeting agenda displayed on one large screen and two smaller screens around the Chamber. This also allows for wireless connections to all equipment to avoid any cabling etc. to the heritage listed facility.

STAFFING IMPLICATIONS

Nil

SUSTAINABILITY IMPLICATIONS

Nil

CONSULTATION

Managed IT (consultants)
Potential Suppliers

STAFF COMMENT

The equipment purchased would be able to be re used in the event Council ever so determined to move the location of Council meetings due to space limitations of the current facility.

VOTING

Absolute Majority

OFFICER RECOMMENDATION & COUNCIL RESOLUTION

Moved Mayor Dawkins, seconded Cr Burke

THAT Council amend the 2016/17 Budget by adding \$10,000.00 of capital expenditure for the purchase of audio and visual display equipment for use in the Council Chamber.

Carried 8/0

FINANCE**10.1.8 FINANCIAL STATEMENTS FOR THE MONTH ENDING 31 MARCH 2016**

File Ref: SUB/1878
Attachments: [Monthly Financial Statements for the Period 1 July 2015 to 31 March 2016](#)
Responsible Officer: Garry Bird
Author: Wayne Richards
Finance Manager
Proposed Meeting Date: 26 April 2016
Author Disclosure of Interest: Nil

SUMMARY

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

The attached financial statements and supporting information are presented for the consideration of Elected Members. Council staff welcome enquiries in regard to the information contained within these reports.

BACKGROUND

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

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

STRATEGIC IMPLICATIONS

Nil

POLICY IMPLICATIONS

Town of Cottesloe Accounting Policy
Town of Cottesloe Investments Policy
Town of Cottesloe Investment of Surplus Funds Policy

STATUTORY ENVIRONMENT

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

FINANCIAL IMPLICATIONS

Resource requirements are in accordance with existing budgetary allocation.

STAFFING IMPLICATIONS

Nil

SUSTAINABILITY IMPLICATIONS

Nil

CONSULTATION

Nil

STAFF COMMENT

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

- The net current funding position as at 31-03-2016 is \$3,224,284 and is in line with previous financial years as shown on pages 6 and 22 of the attached Financial Statements.
- Rates receivable as at 31-03-2016 stood at \$704,290 of which \$169,104 relates to deferred rates. The outstanding balance of rates is \$162,752 more than at the same time last financial year, excluding deferred rates. This is due to the timing of pensioner rebate claims from State Government which have now been processed in April 2016.
- Operating revenue is more than year to date budget by \$365,236 with a more detailed explanation of material variances provided on page 21 of the attached Financial Statements. Operating expenditure is \$351,443 less than year to date budget.
- The Capital Works Program is approximately 32% complete as at 31-03-2016 and a full capital works program listing shown on pages 33 to 36.
- Whilst Salaries and Wages are not reported specifically, they do represent the majority proportion of Employee Costs which are listed on the Statement of Financial Activity (By Nature and Type) on page 7 of the attached Statements. As at 31-03-2016 Employee Costs were \$53,877 less than year to date forecasts.

Various transfers to and from Reserve Funds have not been made for 2015/2016 and are generally undertaken in the latter half of the financial year, depending on the progress of specific projects to which these transfers relate.

List of Accounts for March 2016

The List of Accounts paid during March 2016 is shown on pages 37 to 43 of the attached Financial Statements. The following significant payments are brought to Council's attention:-

- \$53,728.51 & \$69,182.87 to Perthwaste Green Recycling for waste collection/disposal services
- \$58,456.86 to Roads 2000 for various road resurfacing works

- \$433,149.32 to the Department of Fire and Emergency Services for emergency service levies collected by Council on their behalf
- \$31,554.28 to Surf Life Saving Western Australia for the monthly surf life saving service
- \$42,489.57 to Western Metropolitan Regional Council for waste disposal costs
- \$83,139.70 and \$84,209.56 to Town of Cottesloe staff for fortnightly payroll
- \$223,274.72 to WA Treasury Corporation for loan repayments
- \$400,000.00 to the Town of Cottesloe's investment account held with National Australia Bank

Investments and Loans

Cash and investments are shown in Note 4 on page 23 of the attached Financial Statements. Council has approximately 42% of funds invested with National Australia Bank, 32% with Bankwest, 13% with the Commonwealth Bank of Australia and 13% with Westpac Banking Corporation.

Information on borrowings is shown in Note 10 on page 30 of the attached Financial Statements. As at 31-03-2016 the Town had \$4,872,029 of borrowings outstanding.

Rates, Sundry Debtors and Other Receivables

Rating information is shown in Note 9 on page 29 of the attached Financial Statements. As displayed on page 2, rates receivable is trending in line with the previous year.

Sundry debtors are shown on Note 6, pages 25 and 26 of the attached Financial Statements with 16% or \$9,641 older than 90 days. Infringement debtors raised on the new software platform are shown on page 26 and it is anticipated that all infringements from the legacy system will be transferred by May 2016.

VOTING

Simple Majority

OFFICER RECOMMENDATION & COUNCIL RESOLUTION

Moved Mayor Dawkins, seconded Cr Burke

THAT Council receive the Financial Statements for the period ending 31 March 2016 as attached.

Carried 8/0

10.1.9 2016/2017 DIFFERENTIAL RATES

File Ref: POL/5
Responsible Officer: Mat Humfrey
Chief Executive Officer
Author: Garry Bird
Manager Corporate & Community Services
Proposed Meeting Date: 26 April 2016
Author Disclosure of Interest: Nil

SUMMARY

Council is being asked to consider adopting a differential rating structure to allow for Local Public Notice to be given of its intention to raise a differential rate.

BACKGROUND

Council has historically funded the group known as ProCott, through the imposition of a differential rate on commercial properties in the Cottesloe Town Centre. ProCott, through an agreement with the Town are required to submit plans on how these funds will be used in the development and promotion of commercial activity within the Town Centre. To date, no other differential rate has been charged.

STRATEGIC IMPLICATIONS

Nil

POLICY IMPLICATIONS

Nil

STATUTORY ENVIRONMENT**Local Government Act 1995****6.33. Differential general rates**

- (1) *A local government may impose differential general rates according to any, or a combination, of the following characteristics —*
- (a) *the purpose for which the land is zoned, whether or not under a local planning scheme or improvement scheme in force under the Planning and Development Act 2005;*
or
 - (b) *a purpose for which the land is held or used as determined by the local government;*
or
 - (c) *whether or not the land is vacant land;*
or
 - (d) *any other characteristic or combination of characteristics prescribed.*
- (2) *Regulations may —*
- (a) *specify the characteristics under subsection (1) which a local government is to use; or*
-

- (b) *limit the characteristics under subsection (1) which a local government is permitted to use.*
- (3) *In imposing a differential general rate a local government is not to, without the approval of the Minister, impose a differential general rate which is more than twice the lowest differential general rate imposed by it.*
- (4) *If during a financial year, the characteristics of any land which form the basis for the imposition of a differential general rate have changed, the local government is not to, on account of that change, amend the assessment of rates payable on that land in respect of that financial year but this subsection does not apply in any case where section 6.40(1)(a) applies.*

Section 6.36 of the Local Government Act 1995 provides for the requirement to advertise the intention to raise a differential rate.

6.36. Local Government to Give Notice of Certain Rates

- (1) *Before imposing any differential general rates or a minimum payment applying to a differential rate category under section 6.35 (6) (c) a local government is to give local public notice of its intention to do so.*
- (2) *A local government is required to ensure that a notice referred to in subsection (1) is published in sufficient time to allow compliance with the requirements specified in this section and section 6.2 (1).*

[Section 6.2(1) requires a local government to adopt its budget by 31 August each year]

- (3) *A notice referred to in subsection (1) —*
 - (a) *may be published within the period of 2 months preceding the commencement of the financial year to which the proposed rates are to apply on the basis of the local government's estimate of the budget deficiency;*
 - (b) *is to contain —*
 - (i) *details of each rate or minimum payment the local government intends to impose;*
 - (ii) *an invitation for submissions to be made by an elector or a ratepayer in respect of the proposed rate or minimum payment and any related matters within 21 days (or such longer period as is specified in the notice) of the notice; and*
 - (iii) *any further information in relation to the matters specified in subparagraphs (i) and (ii) which may be prescribed; and*
 - (c) *is to advise electors and ratepayers of the time and place where a document describing the objects of, and reasons for, each proposed rate and minimum payment may be inspected.*
- (4) *The local government is required to consider any submissions received before imposing the proposed rate or minimum payment with or without modification.*

6.35. Minimum payment

- (1) *Subject to this section, a local government may impose on any rateable land in its district a minimum payment which is greater than the general rate which would otherwise be payable on that land.*

-
- (2) *A minimum payment is to be a general minimum but, subject to subsection (3), a lesser minimum may be imposed in respect of any portion of the district.*
 - (3) *In applying subsection (2) the local government is to ensure the general minimum is imposed on not less than —*
 - (a) *50% of the total number of separately rated properties in the district; or*
 - (b) *50% of the number of properties in each category referred to in subsection (6),*
on which a minimum payment is imposed.
 - (4) *A minimum payment is not to be imposed on more than the prescribed percentage of —*
 - (a) *the number of separately rated properties in the district; or*
 - (b) *the number of properties in each category referred to in subsection (6), unless the general minimum does not exceed the prescribed amount.*
 - (5) *If a local government imposes a differential general rate on any land on the basis that the land is vacant land it may, with the approval of the Minister, impose a minimum payment in a manner that does not comply with subsections (2), (3) and (4) for that land.*
 - (6) *For the purposes of this section a minimum payment is to be applied separately, in accordance with the principles set forth in subsections (2), (3) and (4) in respect of each of the following categories —*
 - (a) *to land rated on gross rental value; and*
 - (b) *to land rated on unimproved value; and*
 - (c) *to each differential rating category where a differential general rate is imposed*

The Local Government (Financial Management Regulations) at Regulation 52A state;

52A. Characteristics prescribed for differential general rates (Act s. 6.33)

- (1) *In this regulation —*

commencement day means the day on which the Local Government (Financial Management) Amendment Regulations (No. 2) 2012 regulation 5 comes into operation 1;

relevant district means a district that —

 - (a) *is declared to be a district by an order made under section 2.1(1)(a) on or after commencement day; or*
 - (b) *has its boundaries changed by an order made under section 2.1(1)(b) on or after commencement day.*
- (2) *For the purposes of section 6.33(1)(d), the following characteristics are prescribed in relation to land in a relevant district, where not more than 5 years has elapsed since the district last became a relevant district —*
 - (a) *whether or not the land is situated in a townsite as defined in the Land Administration Act 1997 section 3(1);*
 - (b) *whether or not the land is situated in a particular part of the district of the local government.*

[Regulation 52A inserted in Gazette 29 Jun 2012 p. 2953.]

FINANCIAL IMPLICATIONS

The adoption of the indicative differential rate for advertising is a part of adopting the 2016/2017 budget, which has significant financial implications for the Town.

The rate in the dollar recommended for advertising indicates a 3.5% increase in gross rates revenue. While Council is able to adopt the differential rate with modifications, it is generally accepted practice that the differential rate imposed should not be materially different from that which was advertised.

STAFFING IMPLICATIONS

Nil

SUSTAINABILITY IMPLICATIONS

Nil

CONSULTATION

A series of workshops will be held as a part of developing the 2016/2017 budget with staff and Councillors. These workshops will provide feedback that will allow for the development of the budget, although no decisions can be made at these workshops.

STAFF COMMENT**General Differential Rate**

This is in effect the rate that applies to most of the rateable properties in the Town of Cottesloe. The advertised rate in the dollar represents a 3.5% increase in gross rates revenue from the 2015/2016 financial year and continues a long run of modest, but sustainable rate increases.

Commercial Properties – Town Centre

This category comprises all rateable land in the Cottesloe Town Centre, that is zoned Commercial in the Town of Cottesloe Town Planning Scheme. This rate in the dollar represents the general rate, plus the rate that is levied on behalf of ProCott – who use the funds in agreement with the Town – to promote and improve commercial activity within the Town Centre.

The differential rate is levied under the provisions of 6.33(1)(a).

The increase in the proposed differential rate to be advertised of 3.5% consists of two components. The first is as a result of the increase in valuations that have occurred throughout the year. This occurs when a property is subdivided or redeveloped in a way that changes its Gross Rental Valuation. This component is approximately 1.0%. In this way, if the rate in the dollar and minimum rate were not adjusted at all, the Town would receive an additional 1.0% in rates through increased valuations. The second part of the rate increase, 2.5%, is slightly above the current consumer price index.

VOTING

Simple Majority

OFFICER RECOMMENDATION & COUNCIL RESOLUTION**Moved Mayor Dawkins, seconded Cr Burke****THAT Council advertise its intention to raise the following differential general rates and minimum rates for the 2016/2017 financial year;**

Differential Rate Category	Rate in the \$
Differential General Rate (GRV)	0.0551
Differential Rate – Town Centre Commercial (GRV)	0.0639

With the minimum rate for both categories being \$1,069.00.**Carried 8/0**

10.2 REPORT OF COMMITTEES

Nil

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

11.1 COUNCILLOR MOTION

Cr Boulter declared an impartiality interest in item 11.1 due to having met twice with the Vice-Chair of the National Holiday Rental Industry Association and stated that as a consequence there may be a perception that her impartiality may be affected and declared that she could consider the matter on its merits and vote accordingly.

The following motion has been proposed by Cr Boulter:

COUNCILLOR MOTION & COUNCIL RESOLUTION

Moved Cr Boulter, seconded Cr Pyvis

- 1. Any submission received by the Town of Cottesloe administration on the short stay accommodation policy cannot be used during a prosecution or as the basis of a compliance action by the Town of Cottesloe.**
- 2. Submissions to and discussions with the Town of Cottesloe administration on the short stay accommodation policy can be made anonymously.**

Carried 8/0

COUNCILLOR RATIONALE

1. In this way people are free to participate in the upcoming policy discussions about short stay accommodation in the Town of Cottesloe, but if we receive substantiated complaints, we are still able take action as necessary.
2. This policy position will foster and encourage, full and frank discussion about this very important policy debate once the draft policy on short stay accommodation comes to Council for its consideration.

STAFF COMMENT

The Town is developing a policy on Short Stay Accommodation and as a part of that process, we will seek submissions from the public at some stage.

During any advertising period, we would expect to see a large cross section of people submitting comments. This may include people who currently operate short stay accommodation or their neighbours. There may be some reluctance to provide information, if people feel that information may be used to launch a prosecution. For example, a neighbour may be reluctant to make a submission about the short stay accommodation next door to them, if they feel it will cause trouble for their neighbour.

After considering the motion as presented, administration do not feel that the motion will have any adverse effects on operations.

11.2 COUNCILLOR MOTION

The following motion has been proposed by Cr Boulter:

COUNCILLOR MOTION & COUNCIL RESOLUTION

Moved Cr Boulter, seconded Cr Pyvis

THAT the Town of Cottesloe administration produce a report to Council, by or before Council meeting in August 2016, on the effectiveness of the operation of the Town of Cottesloe Briefing Sessions to date and including a draft set of Rules of Procedure for the Town of Cottesloe Briefing Sessions for Council's consideration, having regard to the Department of Local Government Guideline 5 for Council Forums.

Carried 8/0

COUNCILLOR RATIONALE

1. I support the Briefing Session model currently being trialled for the Town of Cottesloe Council, given the small size of the Town of Cottesloe and limited resources available.
2. Council has not adopted a set of rules and procedure for our Briefing Sessions.
3. Procedure at the Briefing Sessions has been a little *ad hoc* and not always clear to the community we serve.
4. Currently, Council Standing Orders do not apply to Briefing Sessions.
5. The rules set out at the beginning of the Briefing Session agendas have not been formally adopted by Council and are less than adequate or clear, and not binding.
6. Council should give the Briefing Session model the greatest chance of success by having clearly articulated, open, accountable and sustainable rules and procedure adopted by Council.
7. The rules for the Briefing Session should be formally adopted, clear and open to everyone, especially to the Town of Cottesloe residents and ratepayers.
8. The rules for the Briefing Session should be known, understood and consistently applied.
9. A record of any questions (with answers), any public statements, deputations, and petitions made to a Briefing Session should be recorded in the upcoming Council agenda; as should all questions by Councillors along with administration responses/answers.
10. Minutes should be produced from the Briefing Session and should be available to Council at the following Council meeting to which they apply.
11. The DLGC have produced a guideline for rules with a sensible rationale, which could be used as a guide for developing the Town of Cottesloe Briefing Session rules and procedure, which Department of Local Government and Communities call Council Forums:
https://www.dlgc.wa.gov.au/Publications/Documents/DLGC_LG_Operational_Guideline_5_CouncilForumGuideline.pdf

STAFF COMMENT

The implementation of the Briefing Session system was done on a trial basis. It was always envisaged that following a period of time, a report would be prepared and presented to Council to either formally adopt the system or set it aside and revert to the committee system. Hence at this stage the committees themselves have not been formally disbanded.

Overall the Briefing Sessions have been well received and operate efficiently. Ideally the trial would be permitted to run at least six months prior to any review, to allow for a broader range of issues to be considered and test the Briefing Session system. As formal adoption will also likely require the disbanding of the standing committees, administration wanted to be certain before recommending the next and final step.

11.3 COUNCILLOR MOTION

The following motion has been proposed by Cr Rodda:

COUNCILLOR MOTION & COUNCIL RESOLUTION

Moved Cr Rodda, seconded Mayor Dawkins

THAT Council advise the Western Australian Planning Commission that it supports the Metropolitan Region Scheme application for planning approval for two coaches boxes on the eastern side of Cottesloe Oval, in accordance with the application plans received on 3 March 2016, subject to the following conditions:

- 1. The detailed design of the coaches boxes, including materials and finishes, shall be determined in liaison with and to the satisfaction of the Town of Cottesloe, and shown in the plans submitted for a Building Permit, which shall include full elevations.**
- 2. Prior to construction, the precise location of the coaches boxes shall be determined in liaison with and to the satisfaction of the Town of Cottesloe.**
- 3. A comprehensive Construction Management Plan to the satisfaction of the Town of Cottesloe shall be submitted to the Town prior to the issue of a Building Permit, and shall address (amongst any other things): construction access; traffic management and safety; worker parking; machinery and materials storage and security; dust and noise control; days and times of construction activity; notification to nearby properties and complaints handling; verge and tree protection and rehabilitation.**
- 4. All construction work shall be carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 – Construction sites.**
- 5. The coaches boxes shall not be altered or added to without further liaison with the Town of Cottesloe and any required applications and approvals.**
- 6. The football club(s) using the coaches boxes shall be responsible for their day-to-day upkeep in terms of litter removal, cleaning, minor repairs and visual inspections. Any structural repairs or surface treatments (including painting) considered required shall be reported to the Town for maintenance arrangements to be agreed.**
- 7. This planning approval excludes any proposed lighting for the oval, which would require a separate application.**

Advice Note:

In liaison with the Town of Cottesloe, a Building Permit application to, and approval by, the Town is required prior to undertaking construction of the development.

Carried 6/2
For: Mayor Dawkins, Crs Angers, Thomas, Burke, Rodda and Birnbrauer
Against: Crs Boulter and Pyvis

COUNCILLOR RATIONALE

1. I incorrectly declared a 'financial interest' in Item 10.1.2 of the Agenda of 29 March meeting. The interest that I should have declared was, at best, an 'impartiality interest'. This was a genuine mistake. It will not happen again.
2. In the interests of fairness to all those affected by the outcome of Item 10.1.2 of the Agenda of the March meeting, and the interests of good governance generally, I put my Motion to the April 2016 Council Meeting for further debate and due consideration of Council.

STAFF COMMENT

Please refer to the report presented on this issue to the March 2016 Ordinary Council Meeting.

11.4 COUNCILLOR MOTION

The following motion has been proposed by Cr Boulter:

1. That an amount be set aside in the Town of Cottesloe 2016/2017 budget for the full costs of the replanting and planting of trees in Napoleon Street for the purpose of establishing a tree canopy that enhances and fosters the amenity and sustainability of the Cottesloe Village.
2. That the Town of Cottesloe administration produce a report and comprehensive draft "Town of Cottesloe Planning and Development Policy: Tree Preservation, Protection and Planting," to Council directed to protecting trees on private property and reserves in the Town of Cottesloe, and fostering Cottesloe tree canopies in public spaces, and in particular over foot and cycle paths, by the July 2016 Briefing Session, having regard to:
 - a. the "WALGA Street Tree Guidance Report"; and
 - b. the WAPC Urban Forest Strategy statistics; and including
 - c. establishing a draft set of development conditions pertaining to tree preservation and planting to be adopted by the Town of Cottesloe in its standard development approval conditions; and recommendations for a scheme amendment to LPS 3 to protect trees on private property in Cottesloe, for Council's consideration.
3. That an amount of \$100,000 be set aside in the Town of Cottesloe Budget for the purpose of developing, commencing and implementing the "Town of Cottesloe Planning and Development Policy: Tree Preservation, Protection and Planting," once it is adopted by Council.

Note: The Mayor determined to consider each point of the Councillor Motion separately.

COUNCILLOR MOTION POINT ONE

Moved Cr Boulter, seconded Cr Burke

That an amount be set aside in the Town of Cottesloe 2016/2017 budget for the full costs of the replanting and planting of trees in Napoleon Street for the purpose of establishing a tree canopy that enhances and fosters the amenity and sustainability of the Cottesloe Village.

AMENDMENT

Moved Mayor Dawkins, seconded Cr Angers

That the words "Subject to: a. the arborist report which has been commissioned by Procott; b. Procott providing Council with a motion that has approved tree replacement; and c. a full explanation of the costs and the disruption is presented to Procott." be added after the words "Napoleon Street" before the words "for the purpose of".

Equality 4/4

For: Mayor Dawkins, Cr Angers, Burke and Rodda

Against: Cr Boulter, Thomas, Birnbrauer and Pyvis

Mayor Dawkins exercised the casting vote to maintain the status quo

Lost 4/5

COUNCILLOR MOTION POINT ONE & COUNCIL RESOLUTION

That an amount be set aside in the Town of Cottesloe 2016/2017 budget for the full costs of the replanting and planting of trees in Napoleon Street for the purpose of establishing a tree canopy that enhances and fosters the amenity and sustainability of the Cottesloe Village.

THE SUBSTANTIVE MOTION WAS PUT

Carried 5/3

**For: Mayor Dawkins, Crs Boulter, Thomas, Burke and Pyvis
Against: Crs Rodda, Birnbrauer and Angers**

COUNCILLOR MOTION POINT TWO

Moved Cr Boulter, seconded Cr Pyvis

That the Town of Cottesloe administration produce a report and comprehensive draft "Town of Cottesloe Planning and Development Policy: Tree Preservation, Protection and Planting," to Council directed to protecting trees on private property and reserves in the Town of Cottesloe, and fostering Cottesloe tree canopies in public spaces, and in particular over foot and cycle paths, by the July 2016 Briefing Session, having regard to:

- a. the "WALGA Street Tree Guidance Report"; and
- b. the WAPC Urban Forest Strategy statistics; and including
- c. establishing a draft set of development conditions pertaining to tree preservation and planting to be adopted by the Town of Cottesloe in its standard development approval conditions; and recommendations for a scheme amendment to LPS 3 to protect trees on private property in Cottesloe, for Council's consideration.

AMENDMENT

Moved Mayor Dawkins, seconded Cr Birnbrauer

That point two (2) be deferred until public comment on the Strategic Community Plan has closed.

Equality 4/4

For: Mayor Dawkins, Cr Angers, Birnbrauer and Rodda

Against: Cr Boulter, Burke, Thomas, and Pyvis

Mayor Dawkins exercised the casting vote to maintain the status quo

Lost 4/5

AMENDMENT

Moved Cr Boulter, seconded Cr Pyvis

That the words "Subject to the Town of Cottesloe recommending to Council against the inclusion of a tree canopy strategy in the Town of Cottesloe Strategic Community Plan as a result of received public submissions" be added before the words "That the Town of Cottesloe administration produce".

Carried 8/0

AMENDMENT

Moved Mayor Dawkins, seconded Cr Rodda

That the words “on private property” be removed after the words “protecting trees” and before the words “and reserves in the Town”.

Lost 2/6

For: Mayor Dawkins and Cr Rodda

Against: Crs Angers, Boulter, Thomas, Burke, Birnbrauer and Pyvis

COUNCIL RESOLUTION

Subject to the Town of Cottesloe recommending to Council against the inclusion of a tree canopy strategy in the Town of Cottesloe Strategic Community Plan as a result of received public submissions that the Town of Cottesloe administration produce a report and comprehensive draft “Town of Cottesloe Planning and Development Policy: Tree Preservation, Protection and Planting,” to Council directed to protecting trees on private property and reserves in the Town of Cottesloe, and fostering Cottesloe tree canopies in public spaces, and in particular over foot and cycle paths, by the July 2016 Briefing Session, having regard to:

- a. the “WALGA Street Tree Guidance Report”; and
- b. the WAPC Urban Forest Strategy statistics; and including
- c. establishing a draft set of development conditions pertaining to tree preservation and planting to be adopted by the Town of Cottesloe in its standard development approval conditions; and recommendations for a scheme amendment to LPS 3 to protect trees on private property in Cottesloe, for Council’s consideration.

THE AMENDED SUBSTANTIVE MOTION WAS PUT

Carried 8/0

COUNCILLOR MOTION POINT THREE & COUNCIL RESOLUTION

Moved Cr Boulter, seconded Cr Burke

That an amount of \$100,000 be set aside in the Town of Cottesloe Budget for the purpose of developing, commencing and implementing the “Town of Cottesloe Planning and Development Policy: Tree Preservation, Protection and Planting,” once it is adopted by Council.

Carried 8/0

COUNCIL RESOLUTION (CONSOLIDATED)

1. That an amount be set aside in the Town of Cottesloe 2016/2017 budget for the full costs of the replanting and planting of trees in Napoleon Street for the purpose of establishing a tree canopy that enhances and fosters the amenity and sustainability of the Cottesloe Village.
2. Subject to the Town of Cottesloe recommending to Council against the inclusion of a tree canopy strategy in the Town of Cottesloe Strategic Community Plan as a result of received public submissions that the Town of Cottesloe administration produce a report and comprehensive draft

“Town of Cottesloe Planning and Development Policy: Tree Preservation, Protection and Planting,” to Council directed to protecting trees on private property and reserves in the Town of Cottesloe, and fostering Cottesloe tree canopies in public spaces, and in particular over foot and cycle paths, by the July 2016 Briefing Session, having regard to:

- a. the “WALGA Street Tree Guidance Report”; and
 - b. the WAPC Urban Forest Strategy statistics; and including
 - c. establishing a draft set of development conditions pertaining to tree preservation and planting to be adopted by the Town of Cottesloe in its standard development approval conditions; and recommendations for a scheme amendment to LPS 3 to protect trees on private property in Cottesloe, for Council’s consideration.
3. That an amount of \$100,000 be set aside in the Town of Cottesloe Budget for the purpose of developing, commencing and implementing the “Town of Cottesloe Planning and Development Policy: Tree Preservation, Protection and Planting,” once it is adopted by Council.

COUNCILLOR RATIONALE

1. Trees enhance our enjoyment of being outside, they improve amenity of outside spaces and add value to properties: just walk along Mann Street, Cottesloe.
 2. Trees make walking, cycling and just being outside on hot days more enjoyable and safer.
 3. Town of Cottesloe is not a tree filled suburb. We are losing cover and do not compare well with our neighbours.
 4. Pro-Cott:
 - a. have resolved that the trees planted in Napoleon St have not had the desired effect of making a tree canopy over Napoleon Street;
 - b. are obtaining a report from an arborist as to the best plantings for Napoleon Street with a view to replacing the current plantings to foster a tree canopy; and
 - c. believe that having welcoming cooling tree canopies are essential to adding to the viability of the Village businesses.
 5. The health and wellbeing aspects of greening Town of Cottesloe are revealed in and are central to the federal government 2020 Vision’s plan for increasing green space by 20 per cent across the nation by 2020: <http://2020vision.com.au/>
 6. Seven years ago, page 9 of the 2009 WAPC Urban Forest Statistical Report shows Cottesloe as having 10-15% urban forest by percentage, with neighbouring Claremont and Peppermint Grove having 15-20% cover: http://www.planning.wa.gov.au/dop_pub_pdf/2.urban_forest_A3pgs_suburbs_Pt_2.pdf
 7. This WAPC Urban Forest Report was developed to assist Local Governments and the community to track trends in the tree canopy within their suburb and allows the further development of strategies to assist managing LG green infrastructure over time. The report raised the profile of tree retention, protection
-

- and enhancement measures among the community, local government and research institutions. Trees and their canopy cover provide multiple environmental, social, psychological and recreational benefits and comprise what is known as the Urban Forest. Urban Forest strategies in Sydney and Melbourne and local examples from the cities of Armadale and Vincent were stated in the report to demonstrate a need to monitor and protect our significant trees and connected canopies in urbanised areas: page 9, http://www.planning.wa.gov.au/dop_pub_pdf/urban_forest_statistical_report.pdf
8. NB: Urban Forest of Perth and Peel is defined by WAPC to be native and exotic tree species, above three metres tall, and growing in the urban environment. Individual trees located on private lots, public streets and in parks and gardens all contribute to an urban tree canopy. While trees in gardens, parks and on streets have always been valued for their aesthetic contribution to neighbourhoods and town centres, the environmental benefits they provide is not always well understood. The City of Melbourne released an Urban Forest Strategy in 2012, which recognised the cumulative benefits of entire tree populations across a town or city. The Melbourne strategy states that “the urban forest and its associated ecosystem services allows for consideration of the broader issues of climate change, urban heat island effects and population growth”: page 1, http://www.planning.wa.gov.au/dop_pub_pdf/urban_forest_statistical_report.pdf
 9. The WALGA Report provides a guide for LGs wanting to improve their tree canopy planning at <file:///C:/Users/user/Downloads/Street%20Tree%20Guidance%20Report%20FINAL.pdf> including as follows:
 - a. Appendix One: Template for communicating the benefits of street trees to the community.....20
 - b. Appendix Two: Street tree policy and plan templates.....21
 - c. Appendix Three: Significant Tree Register Template.....23
 - d. Appendix Four: Species List Template.....24
 10. The ways in which urban greening can improve our health are numerous – including encouraging people to get out and walk or ride a bike. They are simply more likely to do so when the streets are shaded by trees, according to Link Place director and former Major Cities Unit director Sara Stace: <http://www.thefifthestate.com.au/jobs-news/major-cities-units-sara-stace-sets-up-urban-policy-consultancy/67888>
 11. Ms. Stace says that when people use active travel, 80 per cent of the economic benefits for society are the reduction in health costs. These include reduced risk of cardiovascular problems, mental health issues and the likelihood of getting diabetes. “All of that risk is less if people are exercising and getting outdoors and being active,” she says.
 12. Ms Stace says it is also well known that having good quality public space, including streetscapes with trees and planting, and parks that are accessible and feel safe is necessary to encourage people to be out on the streets.
 13. There is abundant research that backs a local government focus on street trees and street tree canopies.
 14. For example: CSIRO researcher Dr Brenda Lin says that vegetation cover mitigates extremes in climate fluctuations, and also protects ecosystem

processes and increases the resilience of communities to heat events:
<http://people.csiro.au/L/B/Brenda-Lin>

15. The research report, Pathways to Climate Adapted and Healthy Low Income Housing shows the relationship between land surface temperature and vegetation across four cities, and highlights that “those members of our community that are the most vulnerable to heat-related health impacts, often live in some of the hottest parts of our cities – exacerbating risk”:
<https://www.nccarf.edu.au/publications/climate-adapted-low-income-housing>
16. CSIRO researcher Dr Dong Chen has looked at the impact of greening in cities in terms of reducing heatwave mortality. Replacing the current CBD vegetation landscape with grass and sparse forest-type vegetation cover reduced maximums by between 1.5°C and 2°C and mortality by nearly 30 per cent, and this reduction held true even if the climate got hotter:
<https://blogs.csiro.au/climate-response/stories/greening-urban-areas-can-help-reduce-future-impacts-of-heatwaves/>
17. The Town of Cottesloe should join the growing list of Councils adopting an Urban Forest Strategy: such as City of Belmont, City of Wanneroo, City of Armadale, City of Perth.
18. The following WALGA text outlines a suggested approach to achieve a high level Urban Forest Strategy, which should be linked to the Council Strategic Plan and Vision and supplemented with an implementation plan to outline how the objectives will be achieved.
19. Town of Cottesloe could adopt the City of Belmont principles. City of Belmont identified that it:
 - a. will “replace lost canopy to a coverage that exceeds that of the baseline year of 2001” in their 2013 Urban Forest Strategy;
 - b. will develop a Canopy Plan to identify how they will achieve this goal
 - c. will use of Australian Standard for the protection of trees on development sites (AS 4970-2009)
 - d. work out how trees should be incorporated into new developments
 - e. will set paved area shading standards (i.e. 30-50% shade over paced areas within 15 years)
 - f. will set minimum (uncompacted-friable) soil volume standards (i.e. 30m³ of soil per tree)
 - g. will work out how its urban forest will be monitored and measured
 - h. will undertake community education and consultation strategy
 - i. will adopt relevant water sensitive urban design techniques.
20. The Town of Cottesloe should and could also outline how it will achieve and maintain its Urban Forest goals in operational /implementation plans including:
 - a. planting new trees, maintaining existing trees and limit circumstances which may warrant tree removal
 - b. minimum size of new street trees to be planted (e.g. 100L);
 - c. which season street tree planting will be carried out (e.g. winter);

- d. locations that street trees should be planted;
 - e. why and when street tree pruning is undertaken and who is responsible;
 - f. circumstances that may warrant street tree removal;
 - g. investment required;
 - h. tree species selection criteria;
 - i. design principles for shade protection (e.g. hierarchy of streets);
 - j. street tree planning; and Information about development applications where street trees are involved (maintenance and bonding mechanisms for street trees in new developments)
 - k. heritage considerations
 - l. neighbourhood character
 - m. adopting a model for assessing the economic value of individual trees
21. There have been various approaches around Australia to tree preservation and this paper by Michelle Lensink was presented to the 13th National Tree Preservation Conference 2012; http://treenetmedia.com/up/pdf/2012/Urban%20Trees_Lensink.pdf
22. For example, the Town of Claremont passed their tree preservation policy in 2010 to provide guidelines on how to preserve trees within the Town: see Town of Claremont Tree Preservation EN306 http://www.claremont.wa.gov.au/Libraries/ContentDocs/Tree_Preservation_EN306.sfl
23. The Cottesloe Enquiry by Design, which is a reference document under the Town of Cottesloe Strategic Plan and contributed to by so many residents, ratepayers and experts found the importance of design for climate and for example that in respect of the Town of Cottesloe foreshore hotel sites and surrounds that that “*Norfolk Island Pines should be preserved as a priority and retention of other vegetation and trees is encouraged*”: page 77.
24. An effective Tree policy could also help the Town of Cottesloe reduce its carbon footprint.

STAFF COMMENT

At present, there is a proposed strategy that has been advertised for inclusion in the Town’s Strategic Community Plan. The proposed strategy states;

That the Town “Implement policies that protect existing trees and that actively seek to increase the tree canopy in Cottesloe”.

The public notice advertising the proposed strategy allows public comments to be received up until 30 May 2016. After this time, the strategy, along with any submissions received, would be presented to Council for final consideration.

With regards to the trees in Napoleon Street – it was envisaged that these trees would take 3 to 5 years to provide an effective canopy within the street. While larger trees could have been purchased at the time, the size was selected for the optimum

long term effect. It is accepted that following this winter, one or two of the trees may need replacing – however this would occur no matter the species selected.

Council should also consider the works that would be involved in removing and replacing the trees at this stage. At the very least, the trees, tree guards and adjacent paving would need to be lifted to facilitate removing the existing trees and planting new trees.

If ProCott report to Council in the future that a large section of the community want these works undertaken, Council will be able to either include the works in the next available budget cycle, or alternatively draw the money from reserves to implement the works

11.5 COUNCILLOR MOTION

The following motion has been proposed by Cr Boulter:

Moved Cr Boulter, seconded Cr Pyvis

1. Use of balloons and balloons inflated with a gas that causes them to rise in the air is prohibited for use by the Town of Cottesloe for its own events.
2. All events approved by the Town of Cottesloe will be conditioned to prohibit the use of balloons and balloons inflated with a gas that causes them to rise in the air.
3. That the Town of Cottesloe administration produce a report to Council about making a by-law to prohibit balloons and the intentional release of balloons inflated with a gas that causes them to rise in the air in the Town of Cottesloe, having regard to NSW Schedule 1 *Amendment of Protection of the Environment Operations Act 1997* (Section 3) and *Local Law No. 3 (Community Health and Environment Management) 2011* by October 2016 Council meeting.

AMENDMENT**Moved Cr Rodda, seconded Mayor Dawkins**

Delete the words “use of balloons” after the words “prohibit the use” and before the words “and balloons inflated with gas” in point two (2).

Lost 6/2

COUNCILLOR MOTION & COUNCIL RESOLUTION

1. Use of balloons and balloons inflated with a gas that causes them to rise in the air is prohibited for use by the Town of Cottesloe for its own events.
2. All events approved by the Town of Cottesloe will be conditioned to prohibit the use of balloons and balloons inflated with a gas that causes them to rise in the air.
3. That the Town of Cottesloe administration produce a report to Council about making a by-law to prohibit balloons and the intentional release of balloons inflated with a gas that causes them to rise in the air in the Town of Cottesloe, having regard to NSW Schedule 1 *Amendment of Protection of the Environment Operations Act 1997* (Section 3) and *Local Law No. 3 (Community Health and Environment Management) 2011* by October 2016 Council meeting.

THE SUBSTANTIVE MOTION WAS PUT

Carried 8/0

COUNCILLOR RATIONALE

1. Balloons float up into the air and disappear from your thoughts, but not from the environment.
2. Balloons released into the environment are a significant pollution risk:
<http://balloonsblow.org/>

3. Balloons and their string make ugly litter in even the most remote and pristine places
4. Balloons can cause dangerous power outages: <http://balloonsblow.org/>
5. 10% of released balloons don't burst, they float back down to earth where they pose a serious threat to wildlife: <http://www.mcsuk.org/downloads/pollution/dont%20let%20go.pdf>
6. Dolphins, whales, turtles, seabirds and other animals have all been killed by balloons: <http://www.mcsuk.org/downloads/pollution/dont%20let%20go.pdf>
7. If swallowed, balloons can block an animal's gut and cause it to starve: <http://www.mcsuk.org/downloads/pollution/dont%20let%20go.pdf>
8. Animals can become entangled in balloon ribbons and string, restricting their movement and their ability to feed: <http://www.mcsuk.org/downloads/pollution/dont%20let%20go.pdf>
9. Even biodegradable latex balloons are a danger as they can take several months or even years to break down: <http://www.mcsuk.org/downloads/pollution/dont%20let%20go.pdf>
10. Claims that balloons are bio-degradable are misleading. While natural latex may be biodegradable, the addition of chemicals and dyes in balloon manufacture can make balloons persist for many months in the environment: <http://www.kabc.wa.gov.au/balloon-releases-and-littering>
11. Beach litter surveys organised by the UK Marine Conservation Society have shown that the number of balloons and balloon pieces found on UK beaches has tripled in the last 10 years: <http://www.mcsuk.org/downloads/pollution/dont%20let%20go.pdf>
12. Turtles are particularly at risk as they can confuse balloons with their jellyfish prey: <http://www.mcsuk.org/downloads/pollution/dont%20let%20go.pdf>
13. Mass balloon releases have already been banned by several local authorities in the UK, USA and Australia: <http://www.mcsuk.org/downloads/pollution/dont%20let%20go.pdf>
14. Balloons are also a waste of Helium, a finite resource: <http://balloonsblow.org/>
15. In NSW Schedule 1 *Amendment of Protection of the Environment Operations Act 1997* (Section 3) [1] Section 146E Insert after section 146D: 146E Restrictions on release of balloons (1) Offence of releasing balloons A person who releases 20 or more balloons at or about the same time is guilty of an offence if the balloons are inflated with a gas that causes them to rise in the air. Maximum penalty (for a corporation or an individual): 10 penalty units. (2) Offence of causing or permitting release of balloons A person who causes or permits the release (whether by one or more than one person) of 20 or more balloons at or about the same time is guilty of an offence if the balloons are inflated with a gas that causes them to rise in the air. Maximum penalty (for a corporation or an individual): 10 penalty units. (3) Aggravated offence A person is guilty of an aggravated offence under this subsection if the person commits an offence under subsection (1) or (2) and the number of balloons released is more than 100. Maximum penalty (instead of any penalty under subsection (1) or (2)): • in the case of a corporation—55 penalty units, or • in the case of an

individual—33 penalty units. (4) Exceptions Subsections (1)–(3) do not apply if: (a) the balloons are released unintentionally and without negligence, or Protection of the Environment Operations Amendment (Balloons) Act 2000 No 82 Schedule 1 Amendment of Protection of the Environment Operations Act 1997 Page 4 (b) the balloons are released inside a building or structure and do not make their way into the open air, or (c) the balloons are hot air balloons that are recovered after landing, or (d) the balloons are released for scientific (including meteorological) purposes. (5) Aggravation not proved If the court is satisfied that a person charged with an offence under subsection (3) is not guilty of that offence but is satisfied on the evidence that the person is guilty of an offence under subsection (1) or (2), the court may find the person guilty of the offence under subsection (1) or (2), and the person is liable to punishment accordingly. (6) Evidence In any proceedings under this section: (a) it is not necessary for the prosecutor to establish the exact number of balloons released, and (b) evidence that a balloon rose in the air after being released is, in the absence of evidence to the contrary, evidence that the balloon was inflated with a gas that caused it to rise in the air.

16. The Sunshine Coast, Queensland have a by-law that the intentional releasing of helium balloons into the atmosphere is prohibited under *Local Law No. 3 (Community Health and Environment Management) 2011*.
17. Under the *Litter Act 1979 (WA)* items become litter when they are deposited on land or waters, so while the action of releasing the balloons is not an offence, littering does occur when they land. This is however, a very difficult situation to prove, as an authorised officer would need to witness the release of the balloon, then follow the balloon and see it fall to land to be able to issue an infringement. There is currently no other legislation in Western Australia addressing the mass release of balloons: <http://www.kabc.wa.gov.au/balloon-releases-and-littering>
18. Keep Australia Beautiful WA does not endorse the releasing of balloons and encourages anyone considering doing so to seek an alternative method of celebration or commemoration: <http://www.kabc.wa.gov.au/balloon-releases-and-littering>
19. Balloons have similar effects to plastic bags and many dead animals have been found with the remnants of balloons inside them. Balloons and balloon fragments are often mistaken for food and swallowed, which can cause injury and death. The string attached to the balloon, can also be dangerous as they can strangle or entrap animals. Birds have been found tangled in the strings of balloons making them unable to fly or search for food: <http://www.kabc.wa.gov.au/balloon-releases-and-littering>

STAFF COMMENT

Council is able to approve any event on local government property with or without conditions. One such condition could very easily be that no balloons are able to be released at the event. A policy requiring such a condition be imposed on all approved events could be drafted and reported to Council for consideration.

Council could also consider an amendment to the property local law that bans such activities. However, in drafting such a local law, Council would need to be mindful that local laws are binding on the Town as well. If balloons were banned under a local law, there would be no exceptions.

Applications requesting the release of balloons as a part of an event are few and it is not normally approved. Events with balloons that are filled with such gas as decoration for the event are more common. The intent at these events though is that the balloons be “taken home” after the event, not released into the atmosphere.

If Council were to resolve as recommended, such a report could be forwarded to the next meeting of the Council

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

Moved Mayor Dawkins, seconded Cr Burke

That Cr Boulter's Councillor Motion be considered as urgent business.

Carried 8/0

12.1.2 COUNCILLOR MOTION

Moved Cr Boulter, Cr Pyvis

THAT Council formally adopt the Council Briefing Session Principals, as published in the Briefing Sessions Agenda, as an interim measure, subject to including:

1. That Councillor Notices of Motion are included in the Briefing Session Agenda, if received in time.
2. That Minutes are taken at Council Briefing Sessions.

Lost 2/6

For: Crs Boulter and Pyvis

Against: Mayor Dawkins, Crs Angers, Burke, Rodda, Birnbrauer and Thomas

12.2 OFFICERS**12.2.1 LOCAL PLANNING SCHEME NO. 3 - AMENDMENT NO. 4 - FINALLY APPROVED**

The Chief Executive Officer tabled a report, *Local Planning Scheme No. 3 - Amendment No. 4 - Finally Approved*.

Moved Mayor Dawkins, seconded Cr Boulter

That the report *Local Planning Scheme No. 3 - Amendment No. 4 - Finally Approved* be considered as urgent business.

Carried 8/0

LOCAL PLANNING SCHEME NO. 3 - AMENDMENT NO. 4 - FINALLY APPROVED

File Ref:	SUB/2035
Responsible Officer:	Mat Humfrey Chief Executive Officer
Author:	Andrew Jackson Manager Development Services
Proposed Meeting Date:	26 April 2016
Author Disclosure of Interest:	Nil

SUMMARY

This report informs Council that this Scheme Amendment has recently been finally approved by the Minister for Planning, subject to modification. The

Town's task is to modify and endorse the amendment documents for gazettal, upon which the Scheme Amendment will apply. The statutory timeline necessitates this late item for return of the modified documents.

BACKGROUND

The Scheme Amendment, as adopted by Council and forwarded to the Western Australian Planning Commission for reporting to the Minister, contained the following core provisions:

In the Residential zone, in areas coded less than R40, the provisions of the Residential Design Codes allowing open areas of accessible and usable flat roofs of dwellings (ie "roof terraces", including roof gardens, roof pools, viewing platforms or other roof-top recreational use and development) to be included towards the provision of open space, for the purposes of the Scheme are excluded from being counted towards the provision of open space, where:

- (a) located on the top storey of a flat-roofed dwelling; or*
- (b) located on the flat roof of the second storey of a dwelling having a third storey within the roof space of the dwelling.*

The Commission has supported the intent of the proposal but recommended simplified wording to be more to the point, which the Minister has approved, as follows:

To add to clause 5.3 – Special Application of Residential Design Codes, new sub-clauses 5.3.8 and 5.3.8.1 as follows:

- a) 5.3.8 – Roof Decks – For the purposes of calculating the open space requirement for a residential development on land coded less than R40, roof decks are excluded; and*
- b) 5.3.8.1 – Roof Deck means an open, accessible and usable flat roof and includes roof gardens, roof pools, viewing platforms and other roof top recreation space.*

The modified Amendment is fundamentally the same as proposed by Council in that it excludes roof terraces as open space for dwellings at less than R40 density coding. There are two incidental differences arising from the streamlined wording.

Firstly, in not referring to the Residential zone, the provision would apply to other zones with a density coding of less than R40, also protecting amenity in this respect. However, as the commercial and foreshore area zones have R40 or greater density coding, that would not arise.

Secondly, in not specifying the levels of dwellings where roof terraces will be discounted as open space, those on the roof of any storey will be excluded. This would cover all situations that may arise involving existing or new dwellings.

Therefore, these slight differences are considered beneficial in applying a little more widely Council's aim of ensuring sufficient open space around dwellings in areas at less than R40 density coding.

STRATEGIC IMPLICATIONS

Nil

POLICY IMPLICATIONS

Nil

STATUTORY ENVIRONMENT

- Planning and Development Act 2005
- Planning and Development (Local Planning Schemes) Regulations 2015
- Local Planning Scheme No. 3

FINANCIAL IMPLICATIONS

Nil

STAFFING IMPLICATIONS

Nil

SUSTAINABILITY IMPLICATIONS

Nil

PROCEDURE

The Minister's grant of final approval requires this wording modification to be made to the documents, so that the Scheme Amendment can be gazetted, whereby it comes into effect.

As a Local Government is required to carry out the Minister's modification, Council does not have a formal decision to make in this regard. As the modification is a change, however, it is brought to Council's attention to note. Because the modification is consistent with the intent of the Scheme Amendment, which has been supported, Council can accept the modification in accordance with the Minister's final approval.

CONCLUSION

Council's desired planning control the purpose of the Scheme Amendment has succeeded in gaining final approval, in modified form. Completion of the Amendment documents and gazettal will enable this new provision to operate.

VOTING

Simple Majority

OFFICER RECOMMENDATION & COUNCIL RESOLUTION

Moved Mayor Dawkins, seconded Cr Rodda

THAT Council:

1. **Note that Scheme Amendment No. 4 has been given final approval by the Minister for Planning, subject to modification as described.**

- 2. Request that staff attend to modification and endorsement of the Amendment documents and their return to the Western Australian Planning Commission for publication in the Government Gazette; as well as arrange a notice in a local newspaper, notify any submitters and make a copy of the finalised Scheme Amendment available for public inspection.

Carried 8/0

13 MEETING CLOSED TO PUBLIC

13.1 MATTERS FOR WHICH THE MEETING MAY BE CLOSED

Nil

13.2 PUBLIC READING OF RECOMMENDATIONS THAT MAY BE MADE PUBLIC

Nil

14 MEETING CLOSURE

The Mayor announced the closure of the meeting at 11:10 PM.

CONFIRMED MINUTES OF 26 April 2016 PAGES 1 – 98 INCLUSIVE.

PRESIDING MEMBER:
POSITION:

.....

DATE: / /