

TOWN OF COTTESLOE



FULL COUNCIL MEETING MINUTES

**ORDINARY MEETING OF COUNCIL
HELD IN THE
COUNCIL CHAMBER, COTTESLOE CIVIC CENTRE
109 BROOME STREET, COTTESLOE
7.00 PM, MONDAY, 27 MARCH, 2006**

TABLE OF CONTENTS

ITEM	SUBJECT	PAGE NO
1	DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS.....	4
2	RECORD OF ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE (PREVIOUSLY APPROVED).....	4
3	RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE.....	4
4	PUBLIC QUESTION TIME.....	4
5	APPLICATIONS FOR LEAVE OF ABSENCE.....	4
6	CONFIRMATION OF MINUTES OF PREVIOUS MEETING.....	5
7	ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION.....	5
8	PUBLIC STATEMENT TIME.....	5
9	PETITIONS/DEPUTATIONS/PRESENTATIONS.....	6
10	REPORTS OF COMMITTEES.....	7
11	DEVELOPMENT SERVICES COMMITTEE MEETING HELD ON 20 MARCH 2006.....	7
11.1	PLANNING.....	7
11.1.1	NOS 14, 16 & 18 (LOTS 13 & 14) OVERTON GARDENS, COTTESLOE - FOUR GROUPED DWELLINGS AND BELOW-GROUND SWIMMING POOL	7
11.1.2	NO. 194 (LOT 73) MARINE PARADE - ADDITIONS TO RESIDENCE	23
11.1.3	NO. 54 (LOT 702) KATHLEEN STREET – FRONT AND SIDE FENCE	26
11.1.4	NO 60 (LOT 8) MARINE PARADE - FRONT FENCE TO FRONT SETBACK	33
11.1.5	NO 60A (LOT 7) MARINE PARADE - FRONT FENCE TO FRONT SETBACK	38

11.1.6	NO 10 (LOT 33) LOMA STREET - TWO STOREY ADDITIONS TO A RESIDENCE	42
11.1.7	NO 41A (LOT 103) ELIZABETH STREET – NEW TWO STOREY RESIDENCE	51
11.1.8	NO. 15 (LOT 45) & NO. 17 (LOT 10) BARSDEN STREET - AMENDMENT TO TOWN PLANNING SCHEME NO. 2 - SCHEDULE 1	57
11.1.9	RIGHT OF WAY NO. 58 – REQUEST FOR CLOSURE OF ROW	60
	NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY ELECTED MEMBERS/OFFICERS BY DECISION OF MEETING	64
11.1.10	NO. 231 BROOME STREET - MUNICIPAL INVENTORY LISTING	64
12	WORKS AND CORPORATE SERVICES COMMITTEE MEETING HELD ON 21 MARCH 2006	70
12.1	ADMINISTRATION	70
12.1.1	PROPOSED VARIATION TO BARCHETTA LEASE AGREEMENT	70
12.1.2	INDIANA TEA HOUSE - ASSIGNMENT OF LEASE	77
12.1.3	LEGAL EXPENSES FOR DOG ATTACK PROSECUTION	81
12.1.4	NORTHERN DOG BEACH - PROPOSED EXTENSION OF HOURS	93
12.1.5	STATUTORY COMPLIANCE AUDIT - 2005 RETURN	98
12.1.6	WA LOCAL GOVERNMENT ASSOCIATION - DAYLIGHT SAVING	100
12.1.7	REVIEW OF OCCUPATIONAL SAFETY AND HEALTH POLICY	102
12.2	ENGINEERING	104
12.2.1	REQUEST FOR SEALING OF ROW NO. 6	104
12.2.2	RIGHT OF WAY NO. 29 - CLOSURE TO VEHICLE ACCESS	111
12.2.3	REQUEST FOR FOOTPATH ON WEST SIDE OF RAILWAY STREET	118

- 12.2.4 RETICULATION BORE WATER REPORT 121
- 12.3 FINANCE..... 128**
- 12.3.1 STATUTORY FINANCIAL STATEMENTS FOR THE PERIOD ENDING 28 FEBRUARY, 2006 128
- 12.3.2 SCHEDULE OF INVESTMENTS AND SCHEDULE OF LOANS FOR THE PERIOD ENDING 28 FEBRUARY, 2006 130
- 12.3.3 ACCOUNTS FOR THE PERIOD ENDING 28 FEBRUARY, 2006 132
- 12.3.4 PROPERTY AND SUNDRY DEBTORS REPORTS FOR THE PERIOD ENDING 28 FEBRUARY, 2006 134
- 12.3.5 BUDGET REVIEW 136
- 13 ELECTED MEMBERS' MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN..... 139**
- 14 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY ELECTED MEMBERS/OFFICERS BY DECISION OF MEETING..... 139**
- 15 MEETING CLOSURE..... 139**

1 DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS

The Mayor announced the meeting opened at 7.00pm.

2 RECORD OF ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE (PREVIOUSLY APPROVED)

Elected Members In Attendance

Mayor Kevin Morgan
Cr Patricia Carmichael
Cr Daniel Cunningham
Cr Jo Dawkins
Cr Arthur Furlong
Cr Peter Jeanes
Cr Jack Walsh

Officers in Attendance

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

Apologies

Cr Bryan Miller
Cr Ian Woodhill

Leave of Absence (previously approved)

Cr John Utting
Cr Victor Strzina

3 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

4 PUBLIC QUESTION TIME

Nil

5 APPLICATIONS FOR LEAVE OF ABSENCE

Nil

6 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

Moved Cr Dawkins, seconded Cr Furlong

The Minutes of the Ordinary Meeting of Council held on Monday, 27 February, 2006 be confirmed subject to:

The vote of item 12.2.6 be amended to 8/1 to reflect that Cr Walsh declared a proximity interest in relation to his ownership of property at 176 Broome Street, that he left the room and did not participate in the debate or vote.

Carried 7/0

7 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

7.1 The Town of Cottesloe has sent condolences to the family of Mr Brad Goddard.

7.2 An article in last week's edition of the Post Newspaper reported that Council proposes to construct asphalt parking areas on Broome Street and Napier Streets adjacent to the tennis courts and replace lawn in an area of Eric Street with native vegetation. The Mayor clarified that these proposals have not been accepted by Council resolution.

7.3 The Mayor welcomed Mr Graham Patrick, Manager Corporate Services to the Town of Cottesloe.

7.4 The Town of Cottesloe will send condolences to the family of Mr Don Morrisson.

8 PUBLIC STATEMENT TIME

Mr J Chindarsi, 17A Alma Road, Mount Lawley - Item 11.1.2, No. 194 (Lot 73) Marine Parade Additions to Residence

Mr Chindarsi stated that condition (g) as originally proposed is unworkable. The setback already complies with the R-Codes. A new setback is being proposed to the northern boundary. The proposal keeps overshadowing to neighbours to a minimum. During the application process Mr Chindarsi has closely consulted with the planning officers. Ozone Parade residences are high enough to see over the upper level and Margaret Street residences views are not affected.

Mr M Bennett, 194 Marine Parade - Item 11.1.2, , No. 194 (Lot 73) Marine Parade Additions to Residence

Mr Bennett stated that the only views from Margaret Street are at the boundary of Numbers 26 and 28.

Mr G Wright, 104A Bindaring Parade, Claremont - Item 11.1.1, No's. 14, 16 & 18 Overton Gardens - Four Grouped Dwellings

Mr Wright advised that the architects have considered the height of the building and the problems associated with putting in four units. It has been redesigned to have the least effect on the neighbours. The roof has been lowered and is flat so that the other residents in Overton Gardens continue to enjoy a clear view. Mr Wright sees this type of structure as being at the forefront for future building in Cottesloe.

Ms Cathy Cocks, Haughty Culture, 106A Cambridge Street, West Leederville - Item 11.1.3, No. 54 Kathleen Street Front and Side Fence

Ms Cocks spoke in relation to the proposed pool to be installed at the front of the property and the application for a solid front fence, to enable privacy for the family. She believes that the fence design and vegetation planted will enhance the streetscape.

Mr M Klvac, 3 Andrews Place, Cottesloe - Item 11.1.7, No. 41A Elizabeth Street New Two Storey Residence

Mr Klvac stated that when he purchased the property he discussed his proposed plans with the neighbours to the south and they were receptive to the proposal. When the draft plans were finalised they were again discussed with the neighbours, who had some concerns about maximising direct access to the sky and the colour of the house. An agreement was reached and the plans changed. A letter has been provided to Council by the neighbours providing their approval of the proposal.

Dr J Salmon, 7 Federal Street, Cottesloe - Item 12.1.3, Legal Expenses for Dog Attack Prosecution

Dr Salmon stated that the report is comprehensive however it almost entirely fails to address the point of this dispute. He has never disputed that the dog growled at the meter reader and he wrote a letter of apology to the meter reader, also has had discussions with Western Power.

Dr Salmon stated that he feels the code of conduct has been breached by the CEO. He also stated his concern that legal advice is sought for minor offences, where a more acceptable process would be an infringement notice.

Dr Salmon has referred his complaint to the Department of Local Government and regional Development and the Ombudsman and stated that if it is the Ombudsman's finding that no breach of conduct has occurred, then he will pay all costs.

In the meantime the seizure order on his house should be lifted.

9 PETITIONS/DEPUTATIONS/PRESENTATIONS

Nil

10 REPORTS OF COMMITTEES**11 DEVELOPMENT SERVICES COMMITTEE MEETING HELD ON 20 MARCH 2006**

Moved Mayor Morgan, seconded Cr Furlong

That items 11.1.1, 11.1.2, 11.1.3, 11.1.4, 11.1.5, 11.1.9 and 11.1.10 be withdrawn from en-bloc voting.

Carried 7/0

The above items were dealt with first before items 11.1.6, 11.1.7 and 11.1.8 were dealt with en-bloc.

11.1 PLANNING**11.1.1 NOS 14, 16 & 18 (LOTS 13 & 14) OVERTON GARDENS, COTTESLOE - FOUR GROUPED DWELLINGS AND BELOW-GROUND SWIMMING POOL**

File No: 14, 16 & 18 Overton Gardens

Author: Stacey Towne

Author Disclosure of Interest: Nil

Report Date: 17 March, 2006

Senior Officer: Andrew Jackson

Property Owner: Gregory Wright

Applicant: Brackenridge Architects

Date of Application: 28 February, 2006

Zoning: Residential

Use: P - A use that is permitted under this Scheme

Density: R40

Lot Area: Lot 13 - 562 m², Lot 14 - 555 m²
(combined 1117m²)

M.R.S. Reservation: N/A

SUMMARY

An application has been received to construct four grouped dwellings at No's 14, 16 & 18 Overton Gardens.

The proposal complies with most of Council's requirements, however, a front setback of 4.09m is being sought where Council's preference is for a 6m front setback.

The development complies with Acceptable Development standards for open space, parking and privacy, and where variations are proposed for site works and side setbacks, performance criteria have been satisfied, taking into consideration the sloping nature of the land and likely impacts on adjoining properties.

The grouped dwellings have been designed to have hidden roof lines behind parapet walls. The dwellings comply with height requirements, with the exception of three minor triangular points (approximately 0.45m² each), which have no adverse impacts and can be supported.

Fencing on the front boundary exceeds Council's height and visual permeability requirements, however, the applicant has agreed to make changes to achieve compliance.

Staff have been working with the applicant to arrive at satisfactory solutions to best-meet Council's requirements. The applicant has agreed to amend drawings to show full compliance with Council's fencing requirements and to lessen the impact of the western side setback variation.

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

PROPOSAL

It is proposed to demolish the two dwellings currently existing on Lots 13 and 14 to make way for four contemporary style grouped dwellings on the property.

The land slopes downwards from east to west and from north to south. The property is flanked by a three storey block of units plus undercroft to the east (No. 20 Overton Gardens) and a two storey block of units plus undercroft to the west (No. 10/12 Overton Gardens).

Three of the proposed grouped dwellings have an east-west orientation, with the fourth having a north-south orientation. All of the dwellings are two storeys, however, an undercroft car park is located below three of them (Units 1, 2 and 3). It is also proposed to utilise the flat roof of one of the dwellings (Unit 4, which is the lowest) as outdoor garden areas for the other three grouped dwellings.

Each dwelling has a lift to service from the basement to the two upper floors. The basement includes storage, car washing facility, rubbish bin area and toilet facilities. Pedestrian access to the dwellings is provided via a landscaped semi-covered walkway.

The dwellings contain living, family and dining areas, kitchen, laundry, four bedrooms and landscaped courtyards. As mentioned, landscaped roofspace is available as private outdoor areas for three dwellings and the fourth has a courtyard containing a swimming pool and outdoor paving.

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

- Nil

HERITAGE LISTING

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

APPLICATION ASSESSMENT

AREAS OF NON-COMPLIANCE

Council Resolution

Resolution of Council – 28 October 2002	Generally Required	Provided
Front Setback	6m setback	4.09m (in accordance with the Acceptable Development standards of the Residential Design Codes).

Town Planning Scheme/Residential Codes

Residential Design Codes	Permitted	Provided
Design Element No. 7 - Building Height	7m for parapet wall/flat roof dwellings.	7m for the majority, however, up to 7.3m in a very minor section.

Local Laws

Local Law	Permitted	Provided
Town of Cottesloe Fencing Local Law – First Schedule Clause 6(2)(a)	Solid to 900mm maximum	Solid to 2m maximum
Town of Cottesloe Fencing Local Law – First Schedule Clause 6(2)(a)	Pier height 2.1m maximum	Pier height 2.4m maximum
Town of Cottesloe Fencing Local Law – First Schedule Clause 6(2)(a)	Infill panels to 1.8m maximum	Infill panels to 2m maximum
Town of Cottesloe Fencing Local Law – 8(4)	Sightlines to be provided where a fence abuts the footpath.	Nil

Residential Design Codes

Design Element	Acceptable Standards	Provided	Performance Criteria Clause
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No. 2 - Street Walls and Fences	Front walls and fences within the primary street setback area that are visually permeable 1.2m above natural ground level.	Solid to 2m maximum	Clause 3.2.5 – P5
No. 3 – Boundary Setbacks	Unit 4 west side level 1 1.5m setback	1.2m setback	Clause 3.2.2 – P1
No. 3 – Boundary Setbacks	Unit 4 west side level 2 (portion of living wall) 2.8m setback	1.2m setback	Clause 3.2.2 – P1
No. 3 – Boundary Setbacks	Unit 4 west side level 2 (portion of living wall) 2.4m setback	1.2m setback	Clause 3.2.2 – P1
No. 3 – Boundary Setbacks	Unit 4 west side level 2 (privacy screen to living) 2.4m setback	0.2m setback	Clause 3.2.2 – P1
No. 3 – Boundary Setbacks	Unit 4 west side level 2 (bedroom 1 ensuite etc) 2.3m setback	1.2m setback	Clause 3.2.2 – P1
No. 6 – Site Works	500mm maximum cut/fill within 3m of street alignment	Approximately 1m cut and fill within the front setback with retaining on front boundary.	Clause 3.6.1 – P1

PLEASE NOTE THAT THE ABOVE NON-COMPLIANCE TABLES REFER TO THE CURRENT PLANS, HOWEVER, THE APPLICANT HAS AGREED TO AMEND PLANS TO ADDRESS A NUMBER OF THE VARIATIONS. AMENDED PLANS ARE TABLED AT THE COMMITTEE MEETING AND/OR ADDRESSED BY RECOMMENDED CONDITIONS OF APPROVAL. FURTHER DETAILS NOTED IN THE FOLLOWING SECTIONS.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Nil

CONSULTATION

REFERRAL

Internal

- Building
- Engineering
- Health

External

N/A.

ADVERTISING OF PROPOSAL

The application was advertised as per the Residential Design Codes.

The advertising consisted of letters to property owners in the street.

Submissions

There were 32 letters sent out. There were four submissions received objecting or expressing concerns with the proposal. Details of the submissions received are set out below:

Unit 6, 10/12 Overton Gardens and Strata Company 10/12 Overton Gardens:

- *Concerns with the front setback which is not in accordance with the Town of Cottesloe Town Planning Scheme;*
- *Side setback (west and south boundaries) and rear setback are not in accordance with the R Codes;*
- *West and southern boundary setbacks are significantly less than required under the R Codes;*
- *Overlooking from habitable areas of all units and roof terraces significantly impinge on privacy of adjoining properties to the south and the west. The overlooking combined with reduced setbacks will greatly reduce the amenity of 10/12 Overton Gardens;*
- *Concern that flat roof construction of Units 1, 2 and 3 might be used as roof terraces.*

Unit 7, 20 Overton Gardens:

- *Object to the 4.09m front setback. The block of units at 20 Overton Gardens is currently set back at 8m and whilst conceding that the new proposal can forward to 6m, the extra 2m will encroach unfairly on views from Unit 7, 20 Overton gardens, and also block out light due to the shadow effect caused by the height of the building.*

Unit 5, 10/12 Overton Gardens:

- *Sightlines from the roof terraces for Unit 1, 2 and 3 do not conform to the privacy requirements of the Codes – overlooking will occur into the rear of 10/12 Overton Gardens.*
- *Sightlines from the kitchen and living room windows in Unit 4 do not conform to the privacy requirements of the Codes – view into 10/12 Overton Gardens.*
- *The front, side and rear setbacks do not comply.*

- *The reduced setbacks and privacy non-compliance area major concern to 10/12 Overton Gardens and it is requested that the concessions are not granted.*

Applicant's Response to Submissions

- *Front setback conforms with the R-codes. The 6m setback is not a mandatory requirement in the scheme.*
- *South boundary setbacks comply with the R-codes.*
- *The west boundary complies except for length of wall adjacent to Unit 4 living area. We requested a variation for this.*
- *The west wall adjacent to main bedroom and kitchen of unit 4 complies-portion of West wall adjacent to the living area of unit 4 does not comply by 300mm. We requested a variation for this.*
- *There is no overlooking from habitable areas and roof gardens onto neighbouring properties. This is demonstrated on the drawings.*
- *All privacy setbacks comply with the R-Codes.*
- *Any possible future use is unsubstantiated and speculative.*
- *The building is not high enough to create any shadow or block out light to 7/20 Overton Gardens. North light (The best light) penetration will not be affected. The only light which could possibly be affected is very late afternoon West Sun, which is the worst kind. The rooflines are lower than the existing home on the site and this improves conditions for units at 20 Overton Gardens.*
- *Privacy site lines from the roof gardens of Units 1,2,3 do comply with the R-codes. See drawings for demonstration. The addition of planting along the west side of terraces, will improve privacy.*
- *Site lines from the kitchen in Unit 4 do comply with the R-codes. See drawings for demonstration of privacy screen.*
- *All the setbacks do comply except a short distance (2.5m) for the wall adjacent to the living area of Unit 4.*
- *The reduced setback of the living area to unit 4 will have no impact whatsoever to 10/12 Overton Gardens. There is major separation between both buildings.*

STAFF COMMENT

In support of the proposal the applicant has provided the additional following information:

- *An amalgamation of title application is in process.*
- *The development has flat roofs all of which are 0.5m lower than the 7m height requirement, with the exception of a portion of the parapet which exceeds the 7m limit.*
- *Due to the considerable fall of the land, it is difficult not to exceed height requirements without providing additional steps within each floor.*
- *This small section of height excess does not impinge on adjoining properties as it is within the centre of the development and or facing the street.*
- *The length of the wall on the western boundary exceeds the 9m wall limit by 2.6m (for a setback of 1.2m). It is only one storey at this section and does not affect the amenity of the adjacent flats.*

- *Four group houses are proposed of two storey each with a basement car park. The units will be of high quality commensurate with the moderate size of each.*
- *The land slopes in two directions, one slope down from the front of the property line and the other towards the rear of the site.*
- *Taking into account this topography, each unit has a different base floor level reflecting the varying height limits. This results in each individual unit stepping down the hillside thus reducing the apparent scale of the building.*
- *The roof levels are significantly below the ground height requirements. A line joining the roof heights of Nos. 10/12 and 20 Overton Gardens illustrates that the proposed development is below this line.”*

Front Boundary Setback

The applicant proposes a front boundary setback of 4.09 metres. At its meeting of 28 October 2002, Council resolved:

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

Acceptable Development Standard 3.2.1 A1 of the Residential Design Codes, however, prescribes a minimum 4.0m front setback in an R40 coded area, essentially the “as of right” setback.

In support of the front setback variation, the applicant has provided the following justification:

- “1. A variety of setbacks will provide a more vital streetscape. Currently, the street consists of a huge variety of building types with varying setbacks, all contributing to the urban character of the street.*
- 2. If forced to a 6 m setback we will have difficulties planning all the units. The units will become tighter, which will affect the architectural quality of the internal spaces.*
- 3. We want to provide units of a high quality. If we are forced to comply with the 6m setback, the building becomes just another “unit development.”*
- 4. The residential Codes provide a variety of zone types which have differing requirements. These requirements are looked at as a whole, therefore a change to the rules on setbacks for instance reduces the density capability established in the code.*
- 5. Overton Gardens is a very wide street having a double carriageway with a wide landscaped nature strip dividing the two. The street does not require the large setbacks of a typical suburban residential street, and indeed could be improved with smaller setbacks to help contain the “space” to a more urban quality.*
- 6. A more urban rather than suburban approach to planning in this area is more appropriate for this locality.*
- 7. Increase in density and rules to achieve this are desirable.*
- 8. A variety of accommodation is useful to provide a balanced community. There is an increasing demand for urban type accommodation and*

apartment living. This change in density increase requires an urban rather than suburban approach to setbacks and height limits.

9. *The low rise design, requires smaller street setbacks to visually confine the urban character of the street.*
10. *The amenity of the adjoining properties will not be affected by the 4m setback."*

The 6m front setback requirement is not a statutory Scheme requirement, therefore, Council has the discretion to relax this. Council has generally, however, consistently recommended that new development within the Town conform to a 6m front setback.

In close proximity of the subject site, development is setback at approximately 8m along Overton Gardens, which is a generous older standard. A setback of 4m will have some impact on the existing streetscape. It is likely, however, that redevelopment of nearby properties will occur some time in the future and these properties are also likely to look at 4m setbacks in order to maximise development potential of their sites.

Due to the topography of the properties at the higher end of Overton Gardens, it is difficult to provide for the permitted site densities without the need for limited setbacks in some way, particularly given Council's height requirements.

It is noted that there were neighbour objections to the front setback. The objections received from the owners of 10/12 Overton Gardens gave no specific reasons for their objection. The owner of Unit 7, 20 Overton Gardens objected on the basis that some views would be affected and sunlight would be diminished. Although views are likely to be affected, the position of the neighbour's window and balcony mean that any new development forward of 8m will have some impact. Northern sunlight will not be affected.

The 4.09m front setback will affect the current streetscape, however, existing developments are set back 2m more than the Council preference of 6m.

The applicant's justifications for a reduced setback are supported and it is recommended that Council grant a relaxation in this instance.

Side Boundary Setbacks

Variations are being sought to the setback requirements for ground and upper floors of portions of the walls on the west side of Unit 4.

Planning staff do not agree with the way the applicant has calculated the side setback requirements for the western side of Unit 4. It seems that the applicant has made calculations based on there being no major openings to the western walls, however, this is not the case. As such, the variation being sought is slightly greater than the applicant has stated in his justifications.

As mentioned in the compliance table above, the setback from the Level 1 western walls of Unit 4 should be a minimum of 1.5m to comply with the Acceptable Development Standards of the Residential Design Codes. A minimum setback of 1.2m has been provided.

Also from the compliance table, it is noted that the setback from two sections of walls on Level 2 of the western side of Unit 4 (bedroom 1 ensuite etc and portion of living) should be set back a minimum of 2.3m and 2.4m (respectively) to comply with the Acceptable Development Standards of the Residential Design Codes. A minimum setback of 1.2m has been provided for each.

The privacy screen for the living room window, also located on Level 2 of Unit 4, extends out to within 0.2m of the western boundary. This screen is required to be included as part of the upper western wall in terms of calculation of setbacks, so should also be setback at 2.4m to satisfy the requirements of the Acceptable Development Standards of the Residential Design Codes.

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

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

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

The proposed reduced setbacks on the west side will not affect solar access of the adjoining properties. In addition, the development involves between 0.8m – 2m of cut on the western boundary, thus reducing the impact of bulk on the adjoining property at 10/12 Overton Gardens. The windows on Level 1 are screened from the adjoining property by the dividing fence line and privacy screening is provided for the Level 2 windows.

It is noted, however, that three objections have been received from the neighbours on the south side of the property. No specific reasons for the objection to the setbacks have been given.

In support of the setback variations, the applicant has provided the following justification:

“All setbacks comply with the Residential Code except for a portion of wall on the North Western part of the site.

The west wall has a setback of 1.2m relating to a 9m wall length. However the wall is 2.5m longer which should therefore be set back 1.5m. This reduction would affect the viability of the not large Living/Dining Room.

It should be noted that 65% of this wall is elevated as a single storey open underneath and therefore does not have the high wall effect of two storeys.

The appearance viewed from the street is of a moderately elevated single storey unit.

Amenity of No. 12 Overton is not affected. The properties are well separated by 6m with an intervening brick wall and its building presenting a blank brick wall towards our Unit 4. It is also well set back from the street boundary."

Further discussions have since taken place with the applicant in relation to the privacy screen and the western side setback for Unit 4. In an effort to reduce possible impacts on the neighbouring property to the west, the applicant has agreed to replace the large solid privacy screen with vertical louvres along the living room window and these are to be set back 0.7m from the boundary. Although the amendment will still not fully comply with Acceptable Development standards, it provides a better solution to meeting performance criteria and is an acceptable technique in such design situations.

Given the above assessments the proposed side setback variations to the west are supported by Planning Staff on a performance basis.

Site Works

Site works proposed within 3m of the front boundary involve cut and fill which exceeds 0.5m (approximately 1m of cut and 1.1m of fill).

As the proposed site works do not comply with the Acceptable Development Standards, consideration under the Performance Criteria is required. Performance Criteria Clause 3.6.1 of the RDC states the following:

"Development that retains the visual impression of the natural level of a site, as seen from the street or other public place, or from an adjoining property."

The land at the front of the site slopes downwards from east to west by approximately 2m. The proposal has been designed to take into consideration the variation of levels at the front of the site by providing approximately equal amount of cut and fill, so that the development nestles into the slope of land.

The amount of excavation and fill proposed within the front setback is not considered to have a negative impact from the street or adjoining properties and is recommended as proposed. Cut and fill is characteristic of development on sites of this type of topography and is what would usually be expected under the circumstance, and in this case the design has adapted to the site and the cut and fill is not extreme.

In order to comply with Council's Fencing Local Law, however, a condition could be imposed to ensure that retaining for fill along the front boundary being limited to a maximum of 0.9m where it abuts the footpath, so that opportunity exists for the fencing above to be of open aspect.

Most of the other site works on the property involve cut, which has a lesser impact on neighbours than fill. No fill elsewhere on the site exceeds 0.5m

Privacy

Following the advertising period, the applicant has provided revised plans showing screening to the kitchen windows of Units 3 and 4, as well as screening to the living room of Unit 4, to address previous privacy issues.

The positioning of the balustrading on the roof gardens provide fro sufficient cone of vision setbacks so that any overlooking that occurs on the property to the west is within the requirements of the Acceptable Development Standards of the Codes.

In relation to privacy, the applicant has written:

“Landscaped roof decks for Units 1, 2 and 3 have balustrades and planter boxes around each deck which are set back from the building edge and high enough o obscure overlooking into each unit and to the adjoining property to the West (No. 10/12 Overton Gardens). The levels of privacy achieved satisfy the constraints set in the R-codes.

In addition, planting will provide further privacy such that the angle of view is approximately parallel with the fall in the land thus privacy is achieved over several lots.”

Whilst the owners have submitted an objection to the proposed development, the applicant has now demonstrated that the proposal complies with privacy requirements.

Pool

A below-ground swimming pool is proposed in the rear courtyard area of Unit 4, on the south west side of the property. This is part of the outdoor living area fir Unit 4.

Fencing

The front fence is to be stepped down along the sloping frontage, however, it is proposed to be built up to 2m high which exceeds the overall height requirement of 1.8m under Council’s Local Law. In addition, the fence is to be mostly of solid, non-visually permeable material. Four separate “see through” panels are proposed to give some surveillance.

The Acceptable Development Standards of the Codes also require front fences to be visually permeable above a height of 1.2m. As the proposed fencing does not comply with the Acceptable Development Standards, consideration under the Performance Criteria is required. Performance Criteria Clause 3.2.5 of the RDC states the following:

“Front walls and fences to promote surveillance and enhance streetscape, taking account of:

- *The need to provide protection from noise and headlight glare where roads are designated as Primary or District or Integrator Arterials; or*
- *The need to provide screening where there is no alternative outdoor living area to the front setback.”*

In relation to the Performance Criteria of the Codes, Overton Gardens is not a major road, so the first dot point does not apply to this proposal. The fencing in front of Units 1 and 4 provides privacy for outdoor living areas, however, these are not the only outdoor living areas for the units. It is, therefore, not considered to comply with the Performance Criteria in this instance.

It is acknowledged that due to the proposed retaining at the front of the site, portions of the front fence will need to be of solid construction to retain the fill, however, there appears to be no substantial reason for the fencing not to comply with the solid/visual permeability ratios required by the Local Law. As previously mentioned under the section dealing with Site Works, the fill adjacent to the footpath could be reduced to 0.9m so that retaining would comply with the Local Law.

Given that no fencing currently exists along the front of the properties on the southern side of Overton Gardens, a high solid fence combined with a reduced front setback is considered to adversely affect the streetscape. As such, it is recommended that any front fencing be provided in accordance with the requirements of the Local Law, i.e. solid to a maximum height of 0.9m, open aspect infill panels above with an overall height of 1.8m maximum (piers can be up to 2.1m).

Further discussions have since taken place with the applicant in relation to the fencing. In an effort to reduce possible impacts on the streetscape, the applicant has agreed to this amended approach.

It is recommended that a condition be applied to ensure that the fence is constructed in accordance with the Local Law.

Height

The development comprises of flat and sloping roof lines hidden behind parapet walls. While the scheme is not specific for such wall heights, the Residential Design Codes are a guide to Council, which provide a 7.0m standard for two-storey parapet walls, and Council has applied this in practice.

For the most part, the proposal complies with Council's wall and overall height requirements. The residence has been designed with a predominantly low pitched hidden roofline, within the 7m parapet wall standard applied from the RD Codes. There are however, small architectural protrusions up to 7.3m on the corner of the walls of Units 1, 2 and 3.

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

"A small triangular area protrudes above the height limit line of the three upper units.

This is within the building area and does not affect the amenity of any of the adjacent properties. Please note that a pitched roof could go much higher (8.5m), and this would certainly affect the views and amenity of flats to the east of the site. The roof height proposed is in fact lower than the height of the existing house on the site.

Taking into account that almost all of the roof line is well within the limits, we consider that this incursion is minor and seek Councils approval."

The Codes provide for variation based on Performance Criteria whereby an Acceptable Development standard may be departed from if there is no amenity impact of consequence. In this respect the codes refer to height consistent with that desired for the locality and protection of solar access and views of significance. In this instance, the 7m height variation is minor and has no impact on solar access or views.

It is also noted that the parapet wall / hidden roof has been designed to have a lesser impact than a pitched roof development, especially where four grouped dwellings are involved.

There is discretion within TPS No. 2 in terms of the height provisions being expressed as a general policy and that Council may consider the circumstances and merits of each case. Variations may be considered in relation to topography and extensions to buildings. Specifically, Clause 5.1.1(c) states that Council can consider granting a variation to building height requirements in particular cases where natural ground forms indicate that a variation is warranted provided that the amenity of neighbouring areas is not unreasonably diminished. The test of height is tied to privacy, views and amenity. The scheme also refers to overshadowing and air flows. None of these aspects are impacted on by the height designed.

The height variations are very minor and will not adversely impact on the streetscape or the amenity of adjoining neighbours. It is recommended that the variations be supported.

Tree Removal

It is noted that a mature date palm at the front of Lot 13 will need to be removed to make way for the development. The tree is not listed as having any particular significance within the Two Planning Scheme.

No street trees will be affected.

A Norfolk Island Pine at the eastern side of the front of the adjoining property at No. 10/12 Overton Gardens will continue to provide some screening between the two properties.

Amalgamation

Amalgamation of Lots 13 and 14 is required to allow the development to occur. An application to amalgamate the lots has been lodged with the Western Australian Planning Commission. Council's advice of support of the amalgamation was forwarded to the Commission on 9 March 2006, under delegated authority.

Should the Committee/Council support the proposed development, a condition relating to the amalgamation of Lots 13 and 14 onto one Certificate of Title prior to the issue of a building licence is recommended.

CONCLUSION

It is apparent that this substantial development has been sensitively designed to take into consideration the topography of the locality and the impact on the streetscape. The proposal is a contemporary development that will assist in setting the standard for inevitable future redevelopment of the area.

Some details of development are proposed on the basis of performance criteria, which is not unusual given the sloping nature of the land and the desire to provide quality dwellings. For the most part, however, the proposal complies with "as of right" Acceptable Development standards for such matters as privacy, open space and parking requirements, which can otherwise affect the amenity of neighbours. It is also noted that 32 letters were sent out to land owners with Overton Gardens and only four submissions received.

Subject to the front fence being amended to comply with Council's Local Law and treatments being made to the upper level western wall for Unit 4 to address privacy and building setbacks, then it is recommended that the proposed four grouped dwelling development be approved.

VOTING

Simple Majority

COUNCIL COMMENT

Discussion was held in relation to the application of a 4 metre (R-Codes) setback and a 6 metre setback as per Council policy.

AMENDMENT

Moved Cr Walsh, seconded Cr Carmichael

That the units comply with the 6 metre setback requirement of Town Planning Scheme No. 2.

Lost 3/4

The vote was recorded:

<i>For:</i>	<i>Against:</i>
<i>Cr Carmichael</i>	<i>Cr Cunningham</i>
<i>Mayor Morgan</i>	<i>Cr Dawkins</i>
<i>Cr Walsh</i>	<i>Cr Furlong</i>
	<i>Cr Jeanes</i>

AMENDMENT

Moved Cr Walsh, seconded Cr Carmichael

That a solid obscure glass screen to a height of 1650mm be installed along the edge of the upper level terrace forming the edge of unit four.

Lost 2/5

The vote was recorded:

<i>For:</i>	<i>Against:</i>
<i>Cr Carmichael</i>	<i>Cr Cunningham</i>
<i>Cr Walsh</i>	<i>Cr Dawkins</i>
	<i>Cr Furlong</i>
	<i>Cr Jeanes</i>
	<i>Mayor Morgan</i>

11.1.1 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Furlong, seconded Cr Dawkins

That Council GRANT its Approval to Commence Development for the Four Grouped Dwellings and below ground swimming pool at No 14, 16 7 18 (Lots 13 & 14) Overton Gardens, Cottesloe, Cottesloe in accordance with the revised plans received on 28 February, 2006, subject to the following conditions:

- (1) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13. - Construction sites;**
- (2) Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve, right-of-way or adjoining properties and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the working drawings;**
- (3) The applicant applying to the Town of Cottesloe for approval to construct a crossover, in accordance with Council Specifications, and be approved by the Manager of Engineering Services or the authorised officer;**
- (4) The applicant providing adequate storage disposal on site to contain site stormwater in accordance with Local Laws;**
- (5) That the existing redundant crossover in Overton Gardens be removed, and the verge kerb and all surfaces made good at the applicant's expense;**
- (6) The applicant complying with the Town of Cottesloe – Policies and Procedures for the Street trees, February 2000, where development requires the removal, replacement, protection or pruning of street trees for development;**
- (7) The external profile of the development as shown on the approved plans, not being changed whether by the addition of any service plant, fitting, fixture or otherwise, except with the written consent of Council;**
- (8) The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining or nearby neighbours following completion of the development;**
- (9) The applicant applying to the Town of Cottesloe for approval by the Manager, Engineering Services, to construct a new crossover, where required, in accordance with the local law;**

- (10) Revised plans being submitted for approval by the Manager, Development Services, showing the front boundary fence to the site being modified to provide an “Open Aspect Fence”;
- (11) Any retaining wall adjacent to the front boundary retaining fill to be a maximum height of 0.9m in accordance with the requirements of Council’s Fencing Local Law;
- (12) Amalgamation Lots 13 and 14 Overton Gardens onto one Certificate of Title prior to the issue of a building licence;
- (13) Air conditioning plant and equipment is to be installed as far as practicable from the boundary of adjoining properties or in such a manner as to ensure that sound levels emitted from equipment shall not exceed those outlined in the Environmental Protection (Noise) Regulations 1997;
- (14) Approval to the new roof excludes approval to any plant or equipment being affixed to the roof, such as air-conditioning plant, satellite dishes, antennae, etc, which shall require separate planning or building applications and approvals as appropriate in accordance with the Scheme, Planning Policy and Building Code of Australia;
- (15) Any pumps and/or filters are to be located as far as practicable from the boundary of adjoining properties or in such a manner as to ensure that environmental nuisance due to noise or vibration from mechanical equipment is satisfactorily minimised to within permissible levels outlined in the Environmental Protection (Noise) Regulations 1997;
- (16) Wastewater or backwash water from swimming pool filtration systems shall be contained within the boundary of the property on which the swimming pool is located and disposed of into adequate soakwells;
- (17) A soakwell system shall be installed to the satisfaction of the Environmental Health Officer, having a minimum capacity of 763 litres and located a minimum of 1.8 metres away from any building or boundary; and
- (18) Wastewater or backwash water shall not be disposed of into the Council's street drainage system or the Water Corporation sewer.

Carried 5/2

11.1.2 NO. 194 (LOT 73) MARINE PARADE - ADDITIONS TO RESIDENCE

File No:	194 Marine Parade
Author:	Lance Collison & Andrew Jackson
Author Disclosure of Interest:	Nil
Report Date:	16 March 2006
Senior Officer:	Andrew Jackson
Property Owner:	Parerg Pty Ltd
Applicant:	Parerg Pty Ltd
Date of Application:	5 January 2006
Zoning:	Residential
Use:	P - A use that is permitted under this Scheme
Density:	R20
Lot Area:	510m²m²
M.R.S. Reservation:	N/A

BACKGROUND

- Council at its meeting on 27 February 2006 resolved to add the following condition to this approval for residential extensions:

(g) The northern setback to be as per Town Planning Scheme No. 2.

- Unfortunately the condition is unclear and open to interpretation, whereby the ambiguity would benefit from clarification.
- At the same time the proponents consider that a setback is undesirable and seek deletion of the condition.
- This report reviews this aspect for a fresh determination by Council.

AMBIGUITY

- The condition in referring to the Scheme links to the Residential Design Codes.
- The Codes are inherently discretionary and include a performance-based approach to assessment, providing for flexibility in applying setbacks and so on.
- This means that the condition in being non-specific is open to interpretation and due to the various criteria involved in assessment the setback is not definitive.
- Open-ended conditions are also difficult to defend on appeal.
- For certainly such a condition should express the actual setback standard intended.

REQUEST TO REMOVE CONDITION

- The proposal as supported by Officers entailed a parapet wall to the northern boundary.
- This was a deliberate design choice by the proponents for reasons of the existing parapet wall of the neighbouring dwelling; the floor space, layout and construction of the extensions; and the streetscape appearance of the proposal in the context of the residential buildings either side.

- Since the Council meeting, the owner and the architect have liaised with Councillors and Officers to respond to the condition and have set out their points for consideration in correspondence, copies attached.
- The owner's letter elaborates on the history of their ownership of the property and intentions for the extensions.
- The architect's letter elaborates on the detailed design approach and the operation of the RD Codes so as to allow a parapet wall or minimal setback.

OFFICER COMMENT

- The original proposal and assessment supported a nil setback to the northern boundary.
- A condition added by Council has an unclear intent and could still result in a nil or minimal setback.
- In response the owner and architect have reiterated the design approach of the proposal and pointed out how it addresses a number of aspects and has already been significantly modified to respond to particular neighbour concerns.
- Overall, it is considered that the parapet wall is an acceptable outcome and that the suggestion of a setback, while appreciated, is difficult to sustain on planning grounds given the discretion available under the RD Codes.
- On this basis it is concluded that the approval to the application ought not to include condition (g).

VOTING

Simple Majority

AMENDMENT

Moved Cr Walsh, seconded Mayor Morgan

That the northern upper level setback be 2.2 metres.

Lost 3/4

The vote was recorded:

<i>For:</i>	<i>Against:</i>
<i>Cr Carmichael</i>	<i>Cr Cunningham</i>
<i>Mayor Morgan</i>	<i>Cr Dawkins</i>
<i>Cr Walsh</i>	<i>Cr Furlong</i>
	<i>Cr Jeanes</i>

11.1.2 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Furlong, seconded Cr Dawkins

That Council:

- (1) **GRANT its Approval to Commence Development for the Development Application - Proposed Additions/Alterations to the existing residence at No. 194, Lot 73 Marine Parade, Cottesloe, in accordance with the amended plans submitted on the 13 February 2006 and 26 February 2006 subject to the following conditions:**

- (a) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.
 - (b) Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve, rights of way or adjoining properties, and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the working drawings.
 - (c) The external profile of the development as shown on the approved plans not being changed, whether by the addition of any service plant, fitting, fixture, or otherwise, except with the written consent of Council.
 - (d) The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining or nearby neighbours following completion of the development.
 - (e) Any front boundary fencing to the site being of an "Open Aspect" design in accordance with the Fencing Local Law and the subject of a separate application to Council.
 - (f) The finish and colour of the boundary walls facing the neighbours being to the satisfaction of the Manager Development Services.
- (2) Advise the submitters of this decision.

Carried 5/2

11.1.3 NO. 54 (LOT 702) KATHLEEN STREET – FRONT AND SIDE FENCE

File No:	54 Kathleen Street
Author:	Stacey Towne
Author Disclosure of Interest:	Nil
Report Date:	23 February, 2006
Senior Officer:	Andrew Jackson
Property Owner:	Tracey Lee McKenna
Applicant:	Haughty Culture Garden Design & Landscaping
Date of Application:	8 February, 2006
Zoning:	Residential
Use:	P - A use that is permitted under this Scheme
Density:	R20
Lot Area:	513m²
M.R.S. Reservation:	N/A

SUMMARY

It is proposed to construct a solid front fence at No. 54 Kathleen Street, which does not comply with Council's requirements in terms of height or visual permeability. A side boundary fence abutting ROW No. 9 to the south also exceeds Council's height limits.

Given the assessment that has been undertaken, the recommendation is to approve the application, subject to a number of modifications including a maximum height of 1.8m (2.1m for the piers), the gates being constructed with an open aspect.

PROPOSAL

The proposed front fence on the western elevation at No. 54 Kathleen Street is to be of solid limestone block and rubble construction. Solid gates to the pedestrian entry were also originally proposed, however, the owner has now advised that open aspect gates will be provided. The wall is to be set back approximately 0.4m from the footpath to allow for border planting and climbing roses to be trained to cover the wall face. A 1.2m long seat is also proposed in front of the wall.

The south side fence adjacent to the ROW is proposed to be of limestone block construction.

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

Nil

HERITAGE LISTING

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

APPLICATION ASSESSMENT

AREAS OF NON-COMPLIANCE

Town of Cottesloe Town Planning Scheme No 2 - Text

Clause	Required	Provided
N/A	N/A	N/A

Town Planning Scheme Policy/Policies/Local Law

Local Law	Required	Provided
Town of Cottesloe Fencing Local Law – First Schedule Clause 6(2)(a)	Solid to 900mm maximum	Solid to 2.25m maximum
Town of Cottesloe Fencing Local Law – First Schedule Clause 6(2)(a)	Pier height 2.1m maximum	Pier height 2.3m maximum
Town of Cottesloe Fencing Local Law – First Schedule Clause 6(2)(a)	Infill panels to 1.8m maximum	Infill panels to 2.25m maximum

Residential Design Codes

Design Element	Acceptable Standards	Provided	Performance Criteria Clause
3.2.5 Street Walls and Fences	Front walls and fences within the primary street setback area that are visually permeable 1.2m above natural ground level.	Solid to 2.25m maximum	Front walls and fences to promote surveillance and enhance streetscape, taking account of:
			<ul style="list-style-type: none"> • The need to provide protection from noise and headlight glare where roads are designated as Primary or District or Integrator Arterials; or

Design Element	Acceptable Standards	Provided	Performance Criteria Clause
			<ul style="list-style-type: none"> The need to provide screening where there is no alternative outdoor living area to the front setback

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

CONSULTATION

REFERRAL

Internal

- Building
- Engineering

External

N/A.

ADVERTISING OF PROPOSAL

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

The advertising consisted of:

- Letter to Adjoining Property Owners

Submissions

There were 2 letters sent out. There was one submission received objecting to the proposal. Details of the submission received are set out below:

56 Kathleen Street

- *Currently do not live at No. 56 Kathleen, however, intend to move there in the next couple of months.*
- *Object to the high solid wall as it will further degrade the Kathleen Street streetscape making it less pedestrian friendly and isolating No. 54 Kathleen Street from the street, reducing normal casual interaction between neighbours.*
- *There is a high solid wall also at No. 56 Kathleen Street, however, it already existed when the neighbours bought the property and if they change the fence in the future, they would aim to introduce open sections.*

Landowner's Response

In summary, the owner of 54 Kathleen Street has responded to the objection as follows:

- *The wall will not degrade the streetscape, rather it will enhance the unsightly block of land that existed prior to my house being built and the wall will give further improvement to the house and streetscape.*
- *Possible changing of the neighbour's fence in the future is not a convincing argument.*
- *The mosaic limestone wall was chosen to compliment the seaside theme of Cottesloe.*
- *The wall is 14m long and is an open "antique" wrought iron design. The open gates will allow the passer-by to visually interact with my garden – an important feature incorporated into the design to allow neighbour interaction.*
- *A solid feature wall will prevent unsavoury characters from observing my children in the pool in the front yard. Of particular concern is the additional pedestrian traffic created by the nearby Kirkwood Delicatessen.*
- *The proposal is a more lovely option that a plain block or brick fence with open sections. More attention to detail is proposed with hand-chosen limestone pieces and built by a recognised stonemason to achieve a beautiful façade to the streetscape.*
- *The wall is a pleasant compromise giving my family privacy yet providing interaction between my property and the street.*

STAFF COMMENT

The main part of the recently constructed residence at No. 54 Kathleen Street is well set back from the street, being approximately 13m from the front boundary. An attached covered alfresco area is located at the front of the dwelling, with a front setback of approximately 6.7m. A double garage at the rear is accessed from the adjoining ROW No. 9 to the south. The position of the house and garage means that most of the outdoor living area is located at the front, which also includes an area for a below ground swimming pool (planning approved has been granted, however, it has not yet been constructed).

In support of the proposal the applicant advised as follows:

- *The front garden is the only outdoor area at the property and the fence needs to provide privacy for the outdoor dining, children's play and pool areas.*
- *There are many existing solid fences in the street (photographs attached).*
- *The fence will not detract from the existing streetscape and will preserve the privacy of the residence.*

Clause 10 of the Town of Cottesloe Fencing Local Law allows Council to approve a fence which does not comply with the requirements of the local law. In making such a determination, Council may consider any other matter that it is authorised to consider, and whether the fence would have an effect on:

- (a) the safe or convenient use of the land;*
- (b) the safety or convenience of any person and;*

(c) the impact of the fence on the streetscape.

Kathleen Street is a cul-de-sac at the point where it meets with North Street. No. 54 Kathleen Street is the second lot back from North Street. The adjacent property to the north (No. 56 Kathleen) has a high solid masonry wall and timber gate facing the street. The property on the other side of Kathleen Street opposite the proposal (No. 38 North Street) also has a high solid fence and gate.

The proposal to continue with a high solid wall at No. 54 Kathleen Street is not considered to be unreasonable.

In terms of streetscape, it would have no significant adverse effect. This is particularly due to the location of the property (i.e. being at the end of the cul-de-sac) and the presence of similar high solid walls on the adjacent and opposite properties. Although most residential properties to the south have low or visually permeable front fences, the streetscape is not considered to be detrimentally affected by the proposed high solid wall at No. 54 Kathleen Street because of the separation from these properties by ROW No. 9.

The points raised in the objection received from the owner of No. 56 Kathleen Street are noted, however, it is unlikely that the proposal will degrade the streetscape. In an effort to provide some relief to the solidity of the wall the proposal shows the wall being stepped back in two places. In addition, a small setback has been provided to allow planting and the construction of a seat. To further address streetscape issues and to encourage more neighbour interaction, however, it is recommended that the gates be conditioned to be open aspect construction.

Notwithstanding the lack of impact on the streetscape, it is recommended that the height of the front and side walls be lowered so that piers do not exceed 2.1m and the infill panels do not exceed 1.8m, in accordance with Council's Local Law. This is to avoid a too massive and dominant structure and achieve a degree of compliance with the local law criteria for consistency.

The proposal shows the fence along the southern boundary being setback 2.9m from the south west corner. This allows for clear vision for vehicles leaving ROW No. 9 going into Kathleen Street.

The proposed fence also functions as a pool fence and there is a strong pattern of solid front walls in Kathleen Street and the locality.

The subject property was created as a rear lot subdivision and the design of the existing dwelling invites this approach to achieve privacy and useably of the sole outdoor open space serving the house.

Given that the proposal provides appropriate sightlines and provided that the fence is lowered and the gate is of open aspect construction, it is considered to satisfy the streetscape and safety considerations of Council's Local Law and can be supported. In addition, the proposed fence is considered to satisfy the performance criteria of the Residential Design Codes as the fence will provide screening where there is no alternative outdoor living area to the front setback.

CONCLUSION

The proposed high solid front fence is not considered to have a detrimental impact on the streetscape in this section of Kathleen Street because the property is located at the end of the cul-de-sac and is similar to existing fencing in the immediate vicinity.

There is no apparent reason for the fence to exceed a height of 1.8m (with 2.1m high piers), however, and it is recommended that the fence be lowered accordingly and that the gates be constructed with an open aspect.

VOTING

Simple Majority

COUNCIL COMMENTS

A memo was distributed to Councillors on 24 March, 2006 in relation to revised plans for the proposed front fence, submitted by the applicant. The memo also provided an amended Officer Recommendation.

OFFICER & COMMITTEE RECOMMENDATION

That Council GRANT its Approval to Commence Development for the Front Fence at No 54 (Lot 3) Kathleen Street, Cottesloe in accordance with the plans submitted on 8 February, 2006, subject to the following conditions:

- (1) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13. - Construction sites.
- (2) The external profile of the development as shown on the approved plans, not being changed whether by the addition of any service plant, fitting, fixture, or otherwise, except with the written consent of Council.
- (3) Revised plans being submitted for a building licence showing the following:
 - a) The infill panels of the walls being constructed to a maximum height of 1.8m with piers to a maximum height of 2.1m;
 - b) The gates being constructed of an open aspect with a minimum visual permeability of 50%.
- (4) The applicant complying with the Town of Cottesloe – Policies and Procedures for the Street Trees, February 2000, where development requires the removal, replacement, protection or pruning of street trees for development.

Footnote to Approval:

Details will be required at the building application stage showing minimum embedment of the blocks as per engineering detail.

11.1.3 AMENDED OFFICER RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Dawkins, seconded Cr Furlong

That Council GRANT its Approval to Commence Development for the Front Fence at No. 54 (Lot 3) Kathleen Street, Cottesloe in accordance with the revised plans submitted on 24 March, 2006, subject to the following conditions:

- (1) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction sites.
- (2) The external profile of the development as shown on the approved plans, not being changed whether by the addition of any service plant, fitting, fixture, or otherwise, except with the written consent of Council.
- (3) The infill panels of the walls being constructed to a maximum height of 1.8m with piers to a maximum height of 2.1m, as measured from natural ground level on the boundary.
- (4) The gates being constructed of an open aspect with a minimum visual permeability of 50%.
- (5) The applicant complying with the Town of Cottesloe - Policies and Procedures for the Street Trees, February 2000, where development requires the removal, replacement, protection or pruning of street trees for development.

Footnote to Approval:

Details will be required at the building application stage showing minimum embedment of the blocks as per engineering detail.

Carried 5/2

11.1.4 NO 60 (LOT 8) MARINE PARADE - FRONT FENCE TO FRONT SETBACK

File No:	60 Marine Parade
Author:	Mr Lance Collison
Author Disclosure of Interest:	Nil
Report Date:	9 March, 2006
Senior Officer:	Mr Andrew Jackson
Property Owner:	P & S Wells
Applicant:	Riverstone Construction
Date of Application:	9 March, 2006
Zoning:	Residential
Use:	P - A use that is permitted under this Scheme
Density:	R30
Lot Area:	246m²
M.R.S. Reservation:	N/A

SUMMARY

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

The proposed front fence is generally of an open aspect design in accordance with the Council's requirements for front fences and therefore is recommended to be approved.

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

N/A.

HERITAGE LISTING

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

APPLICATION ASSESSMENT

AREAS OF NON-COMPLIANCE

Town Planning Scheme Policy/Policies

Policy	Required	Provided
Fencing Local Law	Fence to be "open aspect" within front setback	Fence is open aspect facing the street but has solid walls on both side boundaries

STRATEGIC IMPLICATIONS

N/A.

FINANCIAL IMPLICATIONS

N/A.

CONSULTATION

REFERRAL

Internal

- Building

External

N/A.

ADVERTISING OF PROPOSAL

The application was advertised as per Town Planning Scheme No 2.

The advertising consisted of letter to Adjoining Property Owners

Submissions

There were 8 letters sent out. No submissions were received.

BACKGROUND

The subdivision of 60 Marine Parade was cleared in May 2005. This created 60 & 60a Marine Parade. A two storey residence at 60 Marine Parade was approved under delegated authority on the 5th of May 2005.

A condition stated on the two storey residence approval is that

- (7) *The applicant submitting amended plans for approval by the Manager of Development Services showing the front boundary fence being of an open aspect design in accordance with Council's local law;*

The proposed fence is a variation from Council's local law.

STAFF COMMENT

Assessment of the fence needs to be in accordance with Council's Fencing Local Law, which states (in summary):

'That the fence be of an open aspect design:

- *Lower portion of infill panel may be solid to a height of 900mm;*
- *The remainder of the infill panel above 900mm shall be 50% open aspect, with a minimum gap of 50mm between palings, to a maximum height of 1.8m;*
- *Columns, piers and posts not to be higher than 2.1m, and not to exceed 600mm x 600mm in depth and breadth and shall not be closer than 1.8m from adjoining piers.'*

The section of the proposed fence which faces Marine Parade is of a solid masonry construction to a height of 900mm, with 50% open aspect metal infill paneling with a visually permeable aluminium gate for pedestrian access. The piers range in height from 2.1m to 2.2m from natural ground level on the boundary. These faces of the fence essentially comply with the Fencing Local Law. A condition requiring a maximum of 2.1m piers from natural ground level at the boundary has been recommended.

The non-complying sections of the fence are the faces which do not front Marine Parade. The faces within the front setback which do not comply include the boundary fence between 58 & 60 Marine Parade, the boundary fence between 60&60a Marine Parade and a small section of fence where a meter box is proposed.

The boundary fence between 58 & 60 Marine Parade is proposed to be of solid construction to a height of 1.8m right up to the street boundary. The applicant has argued this is needed to afford the owners privacy as there is no private open space in the rear of the property. All of the private open space at the rear is taken up by a driveway for the garage. The side setbacks for the two storey dwelling are generally 1.5m with a small section of 3m side setback near the garage at the rear.

In regards to testing the amenity of the proposal, the Fencing Local Law may consider how the fence if varied would affect:

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

In regards to the above the area directly behind this proposed solid wall at 58 Marine Parade is vegetation which is sunken and a ramp further setback leads to a unit in the complex. This is not an active space and impact on the neighbouring property will be very minimal. The streetscape will only be marginally affected as the side boundary fences do not face the street.

While, the R CODES performance criteria provide for:

Front walls and fences to promote surveillance and enhance streetscape, taking account of:

- *the need to provide protection from noise and headlight glare where roads are designated as Primary or District Distributors or Integrator Arterials; or,*

- *the need to provide screening where there is no alternative outdoor living area to the front setback*

Given there is no alternative outdoor living area at the rear of the property, having a solid 1.8m side boundary fence in the front setback is a fair compromise as the front aspect is open while satisfying the RCODES performance criteria for fencing.

Similarly a solid fence between 60 & 60A is also proposed to be at 1.8m. The applicant says the fence will provide privacy as there is no private open space at the rear of the property. Like the fence separating 58 & 60 Marine Parade it is seen as a fair compromise as the front aspect is open while satisfying the RCODES performance criteria for fencing.

The section of fence which is solid and not on any side boundary is proposed adjacent to the gate. This is not facing the street but is in the front setback area. It is proposed to be solid to 1.8m. Given the fence will house a meter box and is only 1.1m long it is not seen as a detriment to the streetscape or the amenity of the property.

The boundary fence between 60 & 60a Marine Parade must be considered with the Report for 60a Marine Parade which is in this MINUTES.

CONCLUSION

Given the above assessment, it is recommended to APPROVE the fence subject to conditions. This is a departure from the condition placed on the house approval on May 5, 2005, however the proposed fence is partially open aspect while providing the owners some privacy. It is seen as a reasonable compromise and the Local Law provides for such variation.

Overall, the proposed fencing is a reasonable treatment to the streetscape where the front setback areas of the two narrow-lot dwellings are also important as useable open space where privacy is important between the dwellings, while surveillance of the street and an open aspect will still be considered.

VOTING

Simple Majority

DECLARATION RELATING TO IMPARTIALITY

Cr Jeanes made a declaration relating to impartiality in as much as he is a friend of the family. He left the meeting at 8.06pm and did not participate in the debate or vote for this and the subsequent agenda item.

OFFICER RECOMMENDATION

That Council GRANT its Approval to Commence Development for the Front Fence at No 60 (Lot 8) Marine Parade, Cottesloe in accordance with the plans submitted on 31 January 2006, subject to the following conditions:

- (1) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13. - Construction sites.

- (2) The external profile of the development as shown on the approved plans, not being changed whether by the addition of any service plant, fitting, fixture or otherwise, except with the written consent of Council.
- (3) The finish and colour of the boundary walls facing the neighbours be to the satisfaction of the Manager Development Services.
- (4) In accordance with Council's Fencing Local Law, the piers shall not exceed 2.1m in height from natural ground level at the boundary of the fencing

11.1.4 COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Furlong, seconded Cr Walsh

That Council GRANT its Approval to Commence Development for the Front Fence at No 60 (Lot 8) Marine Parade, Cottesloe in accordance with the plans submitted on 31 January 2006, subject to the following conditions:

- (1) **All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13. - Construction sites.**
- (2) **The external profile of the development as shown on the approved plans, not being changed whether by the addition of any service plant, fitting, fixture or otherwise, except with the written consent of Council.**
- (3) **The finish and colour of the boundary walls facing the neighbours be to the satisfaction of the Manager Development Services.**
- (4) **In accordance with Council's Fencing Local Law, the piers shall not exceed 2.1m in height from natural ground level at the boundary of the fencing.**
- (5) **The fencing to the southern side boundary shall be an open-aspect design and construction in accordance with Council's Fencing Local Law. This shall be shown in revised plans submitted for the purpose of a Building Licence, to the satisfaction of the Manager Development Services.**

Carried 6/0

11.1.5 NO 60A (LOT 7) MARINE PARADE - FRONT FENCE TO FRONT SETBACK

File No:	60A Marine Parade
Author:	Mr Lance Collison
Author Disclosure of Interest:	Nil
Report Date:	9 March, 2006
Senior Officer:	Mr Andrew Jackson
Property Owner:	P & S Wells
Applicant:	Riverstone Construction
Date of Application:	31 January 2006
Zoning:	Residential
Use:	P - A use that is permitted under this Scheme
Density:	R30
Lot Area:	221m²
M.R.S. Reservation:	N/A

SUMMARY

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

The proposed front fence is generally of an open aspect design in accordance with the Council's requirements for front fences and therefore is recommended to be approved.

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

N/A.

HERITAGE LISTING

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

APPLICATION ASSESSMENT

AREAS OF NON-COMPLIANCE

Policy	Required	Provided
Fencing Local Law	Fence to be "open aspect" within front setback	Fence is open aspect facing the street but has solid walls on both side boundaries

STRATEGIC IMPLICATIONS

N/A.

FINANCIAL IMPLICATIONS

N/A.

CONSULTATION

REFERRAL

Internal

- Building

External

N/A.

ADVERTISING OF PROPOSAL

The application was not required to be advertised. This was due to 60 & 60A being the same owner and applicant. The neighbouring property at 62 Marine Parade was not advertised to as a R.O.W separates the properties and any solid non conforming section is well setback from the R.O.W.

BACKGROUND

The subdivision of 60 Marine Parade was cleared in May 2005. This created 60 & 60a Marine Parade. A two storey residence at 60A Marine Parade was approved under delegated authority on the 6th of May 2005.

A condition stated on the two storey residence approval is that:

"(6) The applicant submitting amended plans for approval by the Manager of Development Services showing the front boundary fence being of an open aspect design in accordance with Council's local law;"

The proposed fence is a variation from Council's local law.

STAFF COMMENT

The applicant applied for construction of the front fence. Assessment of the fence needs to be in accordance with Council's Fencing Local Law, which states (in summary):

'That the fence be of an open aspect design:

- Lower portion of infill panel may be solid to a height of 900mm;
- The remainder of the infill panel above 900mm shall be 50% open aspect, with a minimum gap of 50mm between palings, to a maximum height of 1.8m;

- *Columns, piers and posts not to be higher than 2.1m, and not to exceed 600mm x 600mm in depth and breadth and shall not be closer than 1.8m from adjoining piers.'*

The section of the proposed fence which faces Marine Parade is of a solid masonry construction to a height of 900mm, with 50% open aspect metal infill paneling with a visually permeable aluminum gate for pedestrian access. The piers are 2.1m height from natural ground level on the boundary. These faces of the fence essentially comply with the Fencing Local Law.

The non-complying sections of the fence are the faces which do not front Marine Parade. The faces within the front setback which do not comply include the boundary fence between 60&60a Marine Parade and a small section of fence where a meter box is proposed.

The boundary fence between 60 &60a Marine Parade must be considered with the Report for 60 Marine Parade which is in this agenda.

The boundary fence between 60 & 60a Marine Parade is proposed to be of solid construction to a height of 1.8m right up to the street boundary. The applicant has argued this is needed to afford the owners privacy as there is a lack of private open space in the rear of the property. While the neighbouring property (60 Marine) requests a solid wall as there is no private open space at their rear due to a driveway.

In regards to testing the amenity of the proposal, the Fencing Local Law may consider how the fence if varied would affect:

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

In regards to the above the proposed solid wall between 60 & 60a Marine Parade meets this amenity test. The streetscape will only be marginally affected as these side boundary fences do not face the street.

The RCODES performance criteria provides for:

Front walls and fences to promote surveillance and enhance streetscape, taking account of:

- *the need to provide protection from noise and headlight glare where roads are designated as Primary or District Distributors or Integrator Arterials; or,*
- *the need to provide screening where there is no alternative outdoor living area to the front setback*

A solid 1.8m side boundary fence in the front setback is a fair compromise as the front aspect is open while satisfying the RCODES performance criteria for fencing.

The section of fence which is solid and not on any side boundary is proposed adjacent to the gate. This is not facing the street but is in the front setback area. It is proposed to be solid to 1.8m. Given the fence will house a meter box and is only 1.2m long it is not seen as a detriment to the streetscape or the amenity of the property. This solid section of fence is setback 3.1m from the right of way and does not have any perceived impact on the sightlines from the existing the right of way.

The remainder of the fence facing the right of way in the front setback area is proposed to be open aspect apart from the section where the meter box is proposed.

CONCLUSION

Given the above assessment, it is recommended to APPROVE the fence subject to conditions. This is a departure from the condition placed on the house approval on May 6, 2005, however the proposed fence is partially open aspect while providing the owners some privacy. It is seen as a reasonable compromise and the Local Law provides for such variation.

Overall, the proposed fencing is a reasonable treatment to the streetscape where the front setback areas of the two narrow-lot dwellings are also important as useable open space where privacy is important between the dwellings, while surveillance of the street and an open aspect will still be considered.

VOTING

Simple Majority

DECLARATION RELATING TO IMPARTIALITY

Cr Jeanes made a declaration relating to impartiality in as much as he is a friend of the family. He left the meeting at 8.06pm and did not participate in the debate or vote for this and (as noted before) the prior agenda item.

11.1.5 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Walsh, seconded Cr Dawkins

That Council GRANT its Approval to Commence Development for the Proposal at No. 60A Marine Parade, Cottesloe in accordance with the plans submitted on 31 January 2006 and additional front elevation plan received 16 March 2006, subject to the following conditions:

- (1) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13. - Construction sites.**
- (2) The external profile of the development as shown on the approved plans, not being changed whether by the addition of any service plant, fitting, fixture or otherwise, except with the written consent of Council.**
- (3) In accordance with Council's Fencing Local Law, the piers shall not exceed 2.1m in height from natural ground level at the boundary of the fencing.**

Carried 6/0

Cr Jeanes returned to the meeting at 8.07pm.

11.1.6 NO 10 (LOT 33) LOMA STREET - TWO STOREY ADDITIONS TO A RESIDENCE

File No: 10 Loma Street
Author: Lance Collison
Author Disclosure of Interest: Nil
Report Date: 27 February, 2006
Senior Officer: Mr Andrew Jackson

Property Owner: N & F Stephens

Applicant: N & F Stephens
Date of Application: 1 February 2006

Zoning: Residential
Use: P - A use that is permitted under this Scheme
Density: R20
Lot Area: 653m²
M.R.S. Reservation: N/A

SUMMARY

Council is in receipt of an application for additions to a Category 2 residence. These include a new basement, additions on the ground floor, a new upper floor and a new front fence and carport to an existing residence.

The applicant has attempted to maintain the existing streetscape as most of the additions are not visible from the street in accordance with objectives. Given the assessment that has been undertaken the recommendation is to approve the application with conditions.

PROPOSAL

The proposal includes a cellar/store on a new lower level floor.

The ground floor will be reconfigured with the replacement of the sleepout with a verandah extension. The house will be extended to the rear which includes a new deck and family room.

A new first storey is proposed. A balcony, bedroom, W.I.R and a bathroom is proposed.

A new carport and car bay is proposed within the front setback area. This carport will replace an existing carport and be screened from the street by an open aspect front fence and a sliding electronic open grille gate.

Officers observe the proposal would also allow for a more environmentally sustainable building in terms of solar efficiency.

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

- Garages and Carports in the Front Setback Area Policy No 003
- Places of Cultural and Heritage Significance Policy No 012

HERITAGE LISTING

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

APPLICATION ASSESSMENT

AREAS OF NON-COMPLIANCE

Town of Cottesloe Town Planning Scheme No 2 - Text

Clause	Required	Provided
N/A	N/A	N/A

Town Planning Scheme Policy/Policies

Policy	Required	Provided
Garages & Carports In Front Setback Area TPSP 003	4.5m if parked at right angles and 1.5m if parked parallel to street alignment	3.46m

Residential Design Codes

Design Element	Acceptable Standards	Provided	Performance Criteria Clause
No 3 – Boundary Setbacks	Setback to ground east wall boundary 3.6m.	1m	Clause 3.3.1 – P1
No 3 Boundary Setbacks	Setback to ground west wall boundary 4.5m	2.95m	Clause 3.3.1 – P1
No 3 Boundary Setbacks	Setback to upper east wall boundary 3.5m	1m	Clause 3.3.1 – P1
No 8 Privacy	Setback from Bedroom 1- 4.5m	1m	Clause 3.8.1-P1
No 8 Privacy	Setback from Family room 6m	1m	Clause 3.8.1 P1

STRATEGIC IMPLICATIONS

N/A.

FINANCIAL IMPLICATIONS

N/A.

CONSULTATION

REFERRAL

Internal

- Building
- Engineering

External

N/A.

ADVERTISING OF PROPOSAL

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

The advertising consisted of:

- Letter to Adjoining Property Owners

Submissions

There were 5 letters sent out. No submissions were received.

BACKGROUND

The property currently consists of a single storey brick and iron house constructed circa 1910 and is listed in the Town Planning Scheme and by the National Trust. The existing floor plan consists of 3 bedrooms, kitchen, meals/ family, bathroom, living room and sleep out. An outbuilding is at the rear of the property.

Minor alterations have been built including a sleep out where some of the verandah previously existed. A carport has also been added on the lot. Part of the front verandah has previously been enclosed. The floor is cement.

The existing dwelling is comparatively modest in size compared to other dwellings in the street. The additions are generally located toward the rear of the property and have minimal impact on the amenity of neighbouring properties.

The Municipal Inventory describes the place as "An interesting and unusual Victorian bungalow with "Arts and Crafts" overtones built before 1901. Of tuck pointed red brick it has a feature window of roughcast stucco enclosing a bay window featuring leadlight casements below with small stained glass hopper windows above. The verandah to two sides has simple decoration. Arched boards as frieze and incised lines in the square verandah posts. The gabled roof is corrugated iron and steeply

pitched. There are timber slats under the eaves. The chimney shafts are straight and covered with pebbledash. Tall palms balance the tall chimneys..."

STAFF COMMENT

Heritage Listing

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

It is also a Category 2 listing in the Town's Municipal Inventory. Its significance under the Inventory is stated as an "Important integral part of the Loma Street streetscape..." It is next to No. 8 and opposite No. 5 Loma Street (also Category 2 places) which together contribute to the streetscape significance of Loma Street.

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

The review of Category 2 Places in 2005 by Hocking Planning & Architecture (not yet endorsed by the Council) recommends retention of the Category 2 and Schedule 1 listings. This review considers the "place is of aesthetic significance as a fine and striking example of Federation Arts & Crafts style that has a high level of authenticity and integrity to its form, materials and retention of original and characteristic detailing..(The "southeastern corner of the verandah should be restored to its original condition)

The place contributes to a significant streetscape as it is adjacent to, across from, other CAT 2 buildings...It is in proximity with a number of comparatively scaled and designed houses of the same period forming a more or less cohesive precinct grouping. The mature palm trees on the property are also unusual in the streetscape setting and worth conserving."

The applicant has provided a photographic record of the property as encouraged by the Inventory.

The proposal adequately addresses the heritage streetscape significance of the property by generally locating additions to the rear of the property and not visible from the street except for a carport and new front fence. Its significance is to in fact to be enhanced by removing the sleep out and restoring the verandah to its original condition. The applicant is to be commended for this.

The palm tree located in the front setback, is considered by the above heritage reviews to contribute to the heritage significance due to its contribution to the streetscape and enhancement of the building and its retention should therefore be encouraged. (A condition of planning approval is recommended in this regard).

Building Height

All building and wall heights are in compliance with Town Planning Scheme No. 2.

Boundary Setbacks

The following side boundary setbacks of the proposed additions seek variation from the Acceptable Development standards of the RDC and therefore are required to be assessed under the Performance Criteria of Clause 3.3.1 (P1):

Wall ID	Wall Name	Wall Height	Wall Length	Major Openings	Required Setback	Proposed Setback
Ground east Wall	All	4m	19.5m	yes	3.6m	1m
Upper east Wall	All	6m	12.4m	yes	3.5m	1m
Ground west wall	All	4m	23.4m	yes	4.5m	2.95m

The RDC provide:

3.3.1 – Buildings set back from the boundary

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

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

The east ground floor wall has a boundary setback of 1m to the rear extension and 1.7m for the existing part of the wall. It has a wall height at its highest point of 3.7m above ground level and averages 3.5m at the boundary. This wall is penalized by the RDC as it requires walls to be measured to its highest point and rounded up to the nearest 0.5 of a metre (ie 3.7m is rounded up to a wall height of 4.0m) and the new wall has to be considered an extension of the existing wall. If this wall is considered to have a wall height of 3.5m the setback required would be only 1.5m. Also it is considered that the proposed eastern ground side boundary setback variations satisfy the above Performance Criteria of the RDC.

The west ground floor wall has a boundary setback of 1m to the rear extension and 1.7m for the existing part of the wall. It has a wall height at its highest point of 4.0m above ground level and averages less than 3.5m at the boundary. This wall is penalized by the RDC as it requires walls to be measured to its highest point and the proposed new section of wall has to be considered an extension of the existing wall (ie the RDC requires the calculation based on total length of wall). If this wall is considered to have a wall height of 3.5m the setback required would be only 1.5m and would easily comply. Also it is considered that the proposed western ground side boundary setback variations satisfy the above Performance Criteria of the RDC.

The east upper floor wall has a boundary setback of 1m. It has a wall height at its highest point of 6m above ground level and averages 5.5m at the boundary. This wall is penalized by the RDC as it requires walls to be measured to its highest point (not an average height. The impact of the proposed setback variations are softened by the long sections of existing parapet walls up to 4m height along this boundary. Also it is considered that the proposed eastern upper side boundary setback variations satisfy the above Performance Criteria of the RDC.

Privacy

The following privacy (cone of vision) setbacks of the proposed additions seek variation from the Acceptable Development standards of the RDC and therefore are required to be assessed under the Performance Criteria of Clause 3.8.1 (P1) of the RDC, which are:

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

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

Room	Required	Provided
Bedroom 1	4.5m	1m
Family	6m	1m
Kitchen	6m	3.2m
Deck	7.5m	5.5m

The proposal asks for a variation to the bedroom 1, family room, deck and kitchen cone of vision setbacks. For Bedroom 1 it is considered that the proposed cone of vision setback variation satisfies the above Performance Criteria of the RDC. The neighboring property has no windows in that area of wall that can be overlooked. The vision to the neighbour’s backyard garden is also restricted because of a high boundary wall.

The family room complies with the Performance Criteria of the RDC as the major openings are facing a blank screen wall on the neighbouring property. The existing 1.8m boundary fence also assists to screen the family room from the neighbouring property.

The ground floor kitchen is raised and the applicant has stated he is willing to put lattice screening at 600mm height above the existing property boundary fence. After conducting a site inspection, it is likely that this lattice screen is needed due to potential overlooking to the boundary. The kitchen will directly look into the neighbouring property and the additional 600mm high lattice is sufficient in preventing this overlooking. No submissions were received in regards to this variation.

Similarly the deck is raised over 500mm from natural ground level and the applicant has stated he is willing to put screening above the existing property boundary. After conducting a site inspection, it is unlikely that this lattice screen is needed due to a existing high boundary fence and it can be argued that only a small portion of the deck at a 45 degree angle is a cone of vision variation. Furthermore natural screening already provides screening from the neighbour. It should also be noted that no submissions were received in regards to this variation.

Front Fence

Council did not receive a detailed elevation of the fence. However a perspective shows an open aspect fence and electronic movable gate is proposed. It is considered that the front fence does not detract from the heritage influenced streetscape and it compliments the dwelling as it is of a matching colour to the dwelling's front wall. It is an officer's recommendation that a condition stating that the front fence must be open aspect in accordance with the Town of Cottesloe Fencing Local Law be included on a planning approval.

Carport

The proposed single carport is a variation to the front setback. It is setback 3.46m from the front boundary. Council's Garages & Carports in Front Setback Area Policy 003 states *"(b) a carport may, with the approval of Council, be constructed up to the street alignment"*

In this circumstance, a variation is warranted as there is not enough room to relocate the carport without impeding on the dwelling. The design of the carport will blend in with the existing roofline of the dwelling, enhancing the heritage aspect of the streetscape. Furthermore, the carport is replacing an existing unsightly carport in the same location which detracts from the streetscape. The existing carport is also a variation to the front setback.

Car bay

The single car bay is proposed to use the same crossover as the carport and is also located within the front setback. Council has no policy regarding car bays and since there is limited room in the front setback, allowing this car bay is considered a better result than allowing another carport and/ or a second crossover which may detract from the streetscape. The car bay will be partially screened by the proposed front fence.

CONCLUSION

The proposal is a well-considered application which complements the existing building and street. Clause 6.2.3 of Town Planning Scheme No. 2 allows the Council to approve development notwithstanding non-compliance with the Residential Design Codes. It is considered that there are no strong grounds to alter condition or refuse the proposal regarding overshadowing or privacy given that there were no objections and the performance criteria can be satisfied.

The result of the proposal is a better looking building which would be read in harmony with the surrounds and the streetscape, as if it were originally designed like that. On this basis it is recommended that the application be granted conditional approval.

VOTING

Simple Majority

OFFICER RECOMMENDATION

That Council:

- (1) GRANT its Approval to Commence Development for the Development Application for Proposed Additions/Alterations to the existing residence at No. 10, Lot 33 Loma Street, Cottesloe, in accordance with the plans submitted on the 1 February 2006, subject to the following conditions:
 - (a) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.
 - (b) Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve, rights of way or adjoining properties, and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the working drawings.
 - (c) The external profile of the development as shown on the approved plans not being changed, whether by the addition of any service plant, fitting, fixture, or otherwise, except with the written consent of Council.
 - (d) The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining or nearby neighbours following completion of the development.
 - (e) In accordance with Council's Fencing Local Law, the infill panels shall have an "open aspect" in that the palings shall be spaced to ensure the width between each paling is at least equal to the width of the paling, with a minimum space of 50mm and a minimum open aspect of 50% of the infill panel, and the piers shall not exceed 2.1m in height.
 - (f) A privacy screen being erected a minimum of 600mm in height above the existing boundary fence on the western boundary to ensure overlooking is restricted from the kitchen.
 - (g) The palm tree which exceeds 10m in height located in the front setback is to be retained. Should it be found that the proposed car bay impedes on the tree revised plans are to be submitted to the satisfaction of Manager Development Services for approval to a relocated car bay.

11.1.6 COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Furlong, seconded Cr Dawkins

That Council:

- (1) **GRANT its Approval to Commence Development for the Development Application for Proposed Additions/Alterations to the existing residence at No. 10, Lot 33 Loma Street, Cottesloe, in accordance with the plans submitted on the 1 February 2006, subject to the following conditions:**
 - (a) **All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.**

- (b) Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve, rights of way or adjoining properties, and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the working drawings.
- (c) The external profile of the development as shown on the approved plans not being changed, whether by the addition of any service plant, fitting, fixture, or otherwise, except with the written consent of Council.
- (d) The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining or nearby neighbours following completion of the development.
- (e) In accordance with Council's Fencing Local Law, the infill panels shall have an "open aspect" in that the palings shall be spaced to ensure the width between each paling is at least equal to the width of the paling, with a minimum space of 50mm and a minimum open aspect of 50% of the infill panel, and the piers shall not exceed 2.1m in height.
- (f) A privacy screen being erected a minimum of 600mm in height above the existing boundary fence on the western boundary to ensure overlooking is restricted from the kitchen.

Carried 7/0

11.1.7 NO 41A (LOT 103) ELIZABETH STREET – NEW TWO STOREY RESIDENCE

File No: 41A Elizabeth Street
Author: Lance Collison
Author Disclosure of Interest: Nil
Report Date: 17 March, 2006
Senior Officer: Mr Andrew Jackson

Property Owner: Michael & Narelle Klvac

Applicant: APG Homes
Date of Application: 17 March, 2006

Zoning: Residential
Use: P - A use that is permitted under this Scheme
Density: R20
Lot Area: 484m²
M.R.S. Reservation: N/A

SUMMARY

Council is in receipt of an application for a new two storey residence on a newly subdivided narrow east-west orientated lot.

The proposal is generally compliant with the Town Planning Scheme and the Residential Design Codes. The proposal does not comply with the ideal standard for overshadowing, however, the neighbour where the proposed overshadowing is occurring has agreed to the proposal, and on a performance assessment as secondary windows only are affected, the proposal is considered supportable.

Given the assessment that has been undertaken, the recommendation is to Approve the Application.

PROPOSAL

The proposal is for a new two storey residence. The existing garage on site will be demolished. On the ground floor a new garage, guest bedroom, ensuite, powder, laundry, kitchen, meals, living rooms and alfresco area is proposed.

On the second floor three bedrooms, ensuite, bathroom, sitting room, walk in robes and a balcony is proposed.

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

N/A.

HERITAGE LISTING

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

APPLICATION ASSESSMENT

AREAS OF NON-COMPLIANCE

Residential Design Codes

Design Element	Acceptable Standards	Provided	Performance Criteria Clause
3.3 Boundary Setbacks	Setback to southern upper wall boundary 4.9m	1.5 to 2.46m	Clause 3.3.1 – P1
3.9 Solar Access for Adjoining Sites	Overshadowing on adjoining properties coded R25 or lower, 25%.	Approximately 40% to adjoining property.	Clause 3.9.1 – P1

STRATEGIC IMPLICATIONS

N/A.

FINANCIAL IMPLICATIONS

N/A.

CONSULTATION

REFERRAL

Internal

- Building
- Engineering

External

N/A.

ADVERTISING OF PROPOSAL

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

The advertising consisted of letter to Adjoining Property Owners.

Submissions

There were 4 letters sent out. There was 2 submissions received from the same property owner, the first letter was an objection to the overshadowing of the proposal

which was then followed by a non-objection which supersedes the previous submission. Details of the second submission received are set out below:

This was received from 41 Elizabeth Street who is the neighbour to the south.

“The owners of 41A and ourselves have come to an agreement on alterations of the roof/eaves design of the proposed building. We have a copy of the new plans and have no objection for the building to proceed”.

BACKGROUND

In December 1997 the WAPC granted approval for the subdivision of 41 Elizabeth Street into two equal lots. This approval was not acted on 6 May 1999 the Council approved a two storey residence on the southern half of 41 Elizabeth Street, designed this way to allow possible subdivision in the future, and that dwelling has been.

Subdivision approval was reapplied for and 41 Elizabeth Street was granted subdivision approval into 41 (the southern lot) & 41A (the northern lot) Elizabeth Street on 30 November 2000. This created two narrow east-west orientated lots of 484m² each.

Since that time 41A Elizabeth Street has remained vacant apart from the existing garage.

STAFF COMMENT

The proposed two storey residence is compliant in respect of open space, privacy, building heights and most setbacks.

The cone of vision of overlooking from the front balcony on the upper floor is not considered as a variation as it is overlooking a garage on the neighbouring northern property and the southern neighbours' front yard and the street. The neighbouring front yard is not considered a private outdoor living area and is open to the street.

Building Setbacks

The following side boundary setback of the proposed additions seek variation from the Acceptable Development standards of the RDC and therefore is required to be assessed under the Performance Criteria of Clause 3.3.1 (P1):

Wall ID	Wall Name	Wall Height	Wall Length	Major Openings	Required Setback	Proposed Setback
Upper South Wall	All	6m	20m	yes	4.9m	1.5m to 2.46m

The RDC provide:

3.3.1 – Buildings set back from the boundary

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

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

The south upper floor wall has a boundary setback of 1.5m to the Bed 1, Bed 2, ensuite, bathroom and balcony and 2.46m to the sitting room. This wall is penalized by the RDC because the balcony is considered as a component of the wall. The balcony is also a major opening and is the only major opening of the entire length of wall, hence greatly increasing the setback requirement for that wall.

Had the balcony not been considered part of the wall the setback of the wall would comply with Figure 2D of the RDC. It is considered that the proposed upper southern side boundary setback variations satisfy the above Performance Criteria of the RDC apart from the criterion of ensuring adequate direct sun to adjoining properties.

Overshadowing

The original plans proposed 43% overshadowing to the neighbour at the south. The amended plans propose approximately 40% overshadowing. The RDC allows a maximum of 25% overshadowing to any neighbouring lot as the Acceptable Development criterion.

The amended plans are almost identical to the original plans except that the eaves no longer overhang the property.

This overshadowing is caused by building a two storey residence on a lot which has an east-west orientation and is only 9.62m wide. The lot to the south is almost identical and is 9.63m wide with the same east-west orientation.

The neighbours have agreed to the amended plans.

The RDC provide:

3.9.1 Solar Access for Adjoining Sites

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

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

The proposal would overshadow a portion of two of the southern neighbour's bedrooms on the upper floor and a smaller portion of the master bedroom. The windows in these three rooms are highlight-type windows and because they are at a height near the upper floor ceiling the loss of light into these bedrooms would be limited because of the proposed angle of the roof. Further, these windows predominantly do not constitute major openings in terms of size, and functionally they are not the main windows to the bedrooms, whereby they are not used for viewing or

chief access to sunshine, but rather for some secondary light and cross-ventilation. Moreover, the two larger windows (major openings) on this elevation are to the hallway and study nook parts of the upper floor, not to main habitable rooms, whereby the source amount of natural lighting or sunshine is less important; plus as these windows are set back (indented) further from the boundary than the highlight windows, they are likely to capture some sun.

The proposal would overshadow on the ground floor of the southern neighbouring property a small outdoor entertaining area, a hallway, dining and family rooms. This does not meet the Performance Criteria of the RDC. However, it could also be argued that a majority of the outdoor entertaining area and portions of the dining and family rooms may be overshadowed by the existing 2m high limestone boundary fence. Furthermore, the primary outdoor area extends to the rear of the property into the backyard area, not simply the side outdoor spaces. On this basis the neighbour is not being deprived of total solar access or enjoyment.

It should also be noted that the standards for overshadowing are made at winter solstice, midday 21 June, the date recognised by the RDC as providing the most overshadowing (ie the worst case scenario). It should be realised that the amount of overshadowing for the remaining times of the year would be significantly less than 40% on the southern neighbouring property.

The option of increasing the ground floor size to reduce potential overshadowing is limited as the proposal allows for approximately 58% open space on the lot where 50% is the minimum requirement. This would also significantly compromise the existing design.

It should also be noted that the proposed house is of similar size to the southern neighbour at 41 Elizabeth Street and is not considered excessive in bulk.

Following the initial objection of the southern neighbour in regard to the proposed overshadowing, they have reached agreement with the applicant that removing the overhanging eaves was an appropriate solution and have approved the amended plans.

CONCLUSION

The proposal for a two storey residence at 41A Elizabeth Street complies with the Town of Cottesloe TPS2 and generally complies with the RDC. The proposal does not comply with a side setback and overshadowing. No submission was received in regard to the side setback which is considered acceptable. In regard to overshadowing, the neighbour has agreed to the revised plans. Given that no other objections were received and that only two variations are involved it is recommended that the application be granted conditional approval.

Overall, it can be seen that the fact of the subdivision has created two narrow lots, whereby due also to their orientation almost any development is likely to be constrained and affected by overshadowing in particular. In this case it is apparent that the neighbouring dwelling was consciously designed to protect its own privacy and gain a degree of solar access, while recognising that a new dwelling next door would to some extent impact in these respects.

VOTING

Simple Majority

11.1.7 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Furlong, seconded Cr Dawkins

That Council:

- (1) GRANT its Approval to Commence Development for the Development Application for a Proposed Two Storey Residence at No. 41A, Lot 33 Elizabeth Street, Cottesloe, in accordance with the amended plans received on the 23rd February 2006, subject to the following conditions:**
 - (a) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.**
 - (b) Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve, rights of way or adjoining properties, and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the working drawings.**
 - (c) The external profile of the development as shown on the approved plans not being changed, whether by the addition of any service plant, fitting, fixture, or otherwise, except with the written consent of Council.**
 - (d) The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining or nearby neighbours following completion of the development.**
 - (e) Air conditioning plant and equipment is to be installed as far as practicable from the boundary of adjoining properties or in such a manner as to ensure that sound levels emitted from equipment shall not exceed those outlined in the Environmental Protection (Noise) Regulations 1997.**
 - (f) The applicant applying to the Town of Cottesloe for approval to construct a crossover, in accordance with Council specifications, and be approved by the Manager, Engineering Services or the authorised officer.**
 - (g) The applicant complying with the Town of Cottesloe – Policies and Procedures for Street Trees, February 2000, where development requires the removal, replacement, protection or pruning of street trees for development.**

Carried 7/0

11.1.8 NO. 15 (LOT 45) & NO. 17 (LOT 10) BARSDEN STREET - AMENDMENT TO TOWN PLANNING SCHEME NO. 2 - SCHEDULE 1

File No: D2.4 Amendment 42
Author: Stacey Towne
Author Disclosure of Interest: Nil
Report Date: 8 March, 2006
Senior Officer: Mr Andrew Jackson

SUMMARY

It has come to the attention of Council that Schedule 1 of Town Planning Scheme No. 2 (Places of Natural Beauty and Historic Buildings and Objects of Historical or Scientific Interest), mistakenly refers to "No. 17" Barsden Street instead of "No. 15" Barsden Street.

The description of the property in Schedule 1 unquestionably refers to No. 15 Barsden Street and it is obvious from previous heritage assessments that the Schedule should have referred to No. 15, not No. 17.

The situation will be rectified within proposed Town Planning Scheme No. 3, however, in order to remove any such burden over No. 17 Barsden Street without any undue delay, it is recommended that Schedule 1 of Town Planning Scheme No. 2 be amended accordingly.

STATUTORY ENVIRONMENT

- Town Planning and Development Act 1928 (as amended)
- Town Planning Scheme No. 2

POLICY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Administrative staff costs associated with preparation of amending documentation.

BACKGROUND

Following a letter from the owner of 17 Barsden Street in September 2005, it is apparent that there are long-standing inconsistencies regarding the heritage significance of the property which have not been detected or rectified. This situation has also been discussed in a meeting with senior staff and a commitment was given to propose an amendment to overcome the problem.

It seems that 17 Barsden Street has been included in Schedule 1 of Town Planning Scheme No. 2 since the Scheme was gazetted in 1988. It also seems that the description therein refers to 15 Barsden Street.

In addition, the Municipal Heritage Inventory classifies 15 Barsden Street as having Category 1 significance and 17 Barsden Street as having Category 3 significance. The MHI was prepared in 1995 and reviewed in 2003. Only those properties classified as having Category 1 significance within the MHI are listed in Schedule 1 of the Scheme.

Council's Planning Officer has discussed this matter with the owners of No. 15 Barsden Street (Mr and Mrs Bisset). They are aware of the heritage significance of their residence and have no concerns with the proposal to amend Schedule 1 to refer to No. 15 Barsden Street accordingly. In any event, Mr and Mrs Bisset will have further opportunity to make comment on the proposed amendment during the statutory advertising period.

STAFF COMMENT

The matter has been addressed through the Scheme Review process. Proposed Town Planning Scheme No. 3 (recently adopted by Council for public advertising) will refer to No. 15 (rather than No. 17) Barsden Street in the Heritage List.

It will take a significant period of time to rectify the situation by waiting for the finalisation of Town Planning Scheme No. 3. In an effort to deal with the error in the quickest way possible, it is recommended that an amendment to Town Planning Scheme No. 2 be initiated immediately.

Timely action is warranted as the owners wish to sell and apparently at least one potential purchase has fallen through, having regard to the current confirmation over the heritage classification.

VOTING

Simple Majority

11.1.8 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Furlong, seconded Cr Dawkins

That Council:

- (1) In pursuance of Section 7 of the Town Planning and Development Act (as amended) hereby resolves to amend the Town of Cottesloe Town Planning Scheme No. 2 text by:**
 - (a) Deleting the words "No. 17, Lot 10 Barsden Street, Cottesloe" from the "Location" Column of Schedule 1 - Places of Natural Beauty and Historic Buildings and Objects of Historical or Scientific Interest; and**
 - (b) Replacing those words with "No. 15, Lot 45 Barsden Street, Cottesloe".**
 - (i) Authorise the Staff to prepare Scheme Amendment documents incorporating the following:**
 - (a) Amending the Town of Cottesloe Town Planning Scheme No. 2 text by:**

- (i) Deleting the words “No. 17, Lot 10 Barsden Street, Cottesloe” from the “Location” Column of Schedule 1 - Places of Natural Beauty and Historic Buildings and Objects of Historical or Scientific Interest; and
 - (ii) Replacing those words with “No. 15, Lot 45 Barsden Street, Cottesloe”.
- (c) Upon preparation of the Scheme Amendment documents to the satisfaction of the Manager Development Services, the Chief Executive Officer shall adopt and endorse the Scheme Amendment documents on behalf of the Council.
 - (i) Refer the proposed amendment to the Department of Environment for clearance prior to advertising.
 - (ii) Advertise the proposed Town Planning Scheme amendment for public comment by:
- (d) Placing a copy of the notice:
 - (i) In The Post newspaper;
 - (ii) On the Council notice board at the Council Offices and the Town Centre; and
 - (iii) In the Library.
- (e) Placing a copy of the proposed amendment on display at the:
 - (i) Council Offices; and
 - (ii) Library.
- (f) Notifying the landowner of No. 15 (Lot 45) Barsden Street by letter
 - (i) Provide the Western Australian Planning Commission with a copy of proposed Town Planning Scheme Amendment No. 42, with a request for a reduced advertising period of 21 days.
 - (ii) The owner of 17 Barsden Street be advised of Council’s decision accordingly.

Carried 7/0

11.1.9 RIGHT OF WAY NO. 58 – REQUEST FOR CLOSURE OF ROW

File No: E13.58
Author: Mr Andrew Jackson
Author Disclosure of Interest: Nil
Report Date: 16 March, 2006
Senior Officer: Mr Stephen Tindale

BACKGROUND

- Council at its February meeting considered a report on the pros and cons of the requested closure of this ROW and resolved that officers present a recommendation of support.
- Officers had on balance recommended keeping open the ROW, reflecting Council's general policy position and having regard to points raised in submissions from other abutters.
- It was noted that the original requester had been silent in the matter.
- Subsequent correspondence has been received that now needs to be brought to Council's attention for further consideration and determination of the closure proposition.

ORIGINAL REQUESTOR

- Fundamentally, the original requestor has effectively withdrawn the request to purchase the ROW if closed, for financial reasons – apparently the Department of Land Information (DLI) has indicated that the land value would be in the order of \$200,000.
- However, this party has emphasised the importance of privacy to her dwelling and hence demonstrated a preference for closure rather than to allow vehicular access, which would impact on all four bedrooms to her dwelling.
- This party remains interested to be consulted on any changes proposed affecting the ROW (which would occur under the closure procedure).
- A copy of a letter confirming this advice is attached, which was reiterated in a telephone discussion.

OBJECTORS

- Secondly, the main objectors to the suggested closure, the owners of 9 and 11 Webb Street, have reiterated their strong objection to the proposition.
- This party has expressed opinion about equity and process in the matter, although it is appreciated that their central concern is to maintain the potential for future access.
- A copy of the correspondence setting out their objection is attached.

FURTHER ASSESSMENT

The situation relating to the ROW is somewhat complex as follows:

- Legal access is limited by the spite strip and so far physical access has not been exploited.
 - The ROW is unmade and unkempt.
 - It is not conducive to vehicular access due to being narrow and the amenity impact on the close dwellings on either side.
-

- Historically the ROW is forgotten land that serves as a de facto setback.
- It is also constrained by the sewer.
- The ROW constitutes a maintenance burden on the Town.
- Primary street access is available to all properties abutting the ROW, hence it is not critical to access any property.
- It also falls short of desirable standards for easy and safe vehicular movements.
- Closure of the ROW would in itself give no right of purchase or use, which would still have to be resolved via the land administration process separate from the planning process – there is no guarantee who could purchase it or at what cost.
- Procedurally, it is likely that due to objection (lack of unanimous support) the official closure process would fail.
- The dilemma is that the ROW currently provides no practical utility to the abutting properties, so could be considered for closure, yet that would remove development rights and potential; but allowing access would impact on amenity.
- To delete the spite strip would free-up access, despite the deficiencies of the ROW.
- Closure but no disposal / purchase would create a “no-man’s land” undeveloped lot not different in reality to the existing circumstance, but with no prospect of use or development of the land or maintenance by a private owner or the Town – the land would be held by DLI as vacant Crown land for no purpose other than the sewer.

OPTIONS

- Based on the previous reports and the above information the options for the ROW are:
 1. No change – status quo prevails, until access for development may be proposed and upgrading would be required, if supported by Council.
 2. Delete spite strip only – which would increase access potential in conflict with restricted manoeuvrability and impact on amenity.
 3. Pursue closure – on the grounds that the ROW is problematic and essentially surplus; however, this may not succeed.
- All things considered it is concluded that no action to close the ROW or delete the spite strip within the ROW at this stage.
- Therefore the previous recommendation is modified slightly to read as follows.

VOTING

Simple Majority

COUNCIL COMMENT

Cr Cunningham noted that this report does not comply with the resolution of 27 February, 2006 that a report be presented to the March round of meetings recommending the closure of the ROW.

The Manager Development Services advised that the situation has changed due to more information received.

The Mayor suggested that this item not be proceeded with at this point and that it be referred back to the Development Services Committee in April, 2006.

OFFICER RECOMMENDATION

That Council:

- (1) Advise the Department for Planning and Infrastructure and the applicant (owner of No. 46 Pearse Street) that Council is not prepared to initiate the closure of ROW 58, for the following reasons:
 - (a) Objection was received from the owners of two properties abutting the ROW (Nos 9 and 11 Webb Street) as closure of the ROW would deny rear vehicular access to No. 11 Webb Street, which could affect future development of this property.
 - (b) Objection was received from the Water Corporation due to the location of the sewer main in the ROW, which requires access for this agency to be permanently available for service and maintenance.
 - (c) Closure of the ROW, which has potential to be used for vehicular access by the abutting properties, is not in accordance with the thrust of Council's Right of Way and Laneway Policy.
 - (d) Amalgamation of the ROW into the site area of No. 48 Pearse Street would potentially make this property capable of being redeveloped with two grouped dwellings, which is not considered desirable as it would not be in keeping with the established lot sizes in the locality.
 - (e) If ROW 58 is closed it would be equitable that all the property owners abutting ROW are given an opportunity to purchase an equal share of the ROW land to be amalgamated into the areas of their private lots, which would create irregular shaped lots and position boundary fencing in odd locations.
- (2) Request Council's Engineering Department to initiate the procedure for closure of the spite strip across the width of the road reserves for Webb Street and Rosser Street, with the closed area becoming part of the Crown land road reserves.
- (3) Advise all the submitters of Council's decision.

COMMITTEE RECOMMENDATION

That Council:

- (1) Advise the Department for Planning and Infrastructure and the applicant (owner of No. 46 Pearse Street) that Council is not prepared to initiate the closure of ROW 58, for the following reasons:
 - (a) Objection was received from the owners of two properties abutting the ROW (Nos 9 and 11 Webb Street) as closure of the ROW would deny rear vehicular access to No. 11 Webb Street, which could affect future development of this property.

- (b) Objection was received from the Water Corporation due to the location of the sewer main in the ROW, which requires access for this agency to be permanently available for service and maintenance.
 - (c) Closure of the ROW, which has potential to be used for vehicular access by the abutting properties, is not in accordance with the thrust of Council's Right of Way and Laneway Policy.
 - (d) Amalgamation of the ROW into the site area of No. 48 Pearse Street would potentially make this property capable of being redeveloped with two grouped dwellings, which is not considered desirable as it would not be in keeping with the established lot sizes in the locality.
- (2) Request Council's Engineering Department to initiate the procedure for closure of the spite strip across the width of the road reserves for Webb Street and Rosser Street, with the closed area becoming part of the Crown land road reserves.
- (3) Advise all the submitters of Council's decision.

AMENDMENT

Moved Mayor Morgan, seconded Cr Furlong

That this item be referred back to the Development Services Committee in April, 2006 to enable action of Council's February 2006 resolution and the consideration of an alternative recommendation.

Carried 7/0

COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Furlong

That this item be referred back to the Development Services Committee in April, 2006 to enable action of Council's February 2006 resolution and the consideration of an alternative recommendation.

Carried 7/0

NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY ELECTED MEMBERS/OFFICERS BY DECISION OF MEETING**11.1.10 NO. 231 BROOME STREET - MUNICIPAL INVENTORY LISTING**

File No: 231 Broome Street & D3.4
Author: Ms Delia Neglie
Author Disclosure of Interest: Nil
Report Date: 22 March, 2006
Senior Officer: Mr Andrew Jackson

SUMMARY

231 Broome Street was classified Category 3 in the 1995 Municipal Inventory and upgraded to Category 2 in 2004 following a review of the inventory carried out in 2002. The landowner, Mr Peter South, had objected to the upgrade following a public consultation process but received no advice of the Council's decision. A review of Category 2 places carried out in 2005 by Hocking Planning Architecture also recommends a Category 2 listing.

Mr South now has the property on the market and has indirectly learnt of the upgrade of heritage classification. He considers the consultation process to have been inadequate and reiterates his objection to the Category 2 listing. A prospective purchaser of the property has provided a heritage review, undertaken on their behalf by architect Mr R Bodycoat, that recommends that the place be downgraded to Category 3 or removed from the Inventory.

The Council is reliant on independent consultant heritage advice obtained in 2002 and 2005. This is based on the external appearance of the building which is the standard means of such assessments. A Category 2 listing does not preclude demolition, but suggests the level of resources that Council may invest to encourage retention. Council practice requires a planning approval to be obtained for the demolition of a Category 2 building before the issue of a Demolition Licence. This enables a detailed heritage assessment to be carried out at the time.

It is therefore recommended that the Category 2 be retained at this stage and that a detailed heritage assessment be carried out in the event of a planning application for demolition. Alternatively, a decision could be deferred to enable independent advice to be obtained on the Council's behalf to resolve the issue of the level of classification in the short term.

BACKGROUND

The Heritage of Western Australia Act 1990 requires that local governments compile, *with proper public consultation*, and maintain an inventory of buildings which *are, or may become of cultural heritage significance*. The Act requires that this list be updated annually and be reviewed every 4 years.

The Town of Cottesloe Municipal Inventory was compiled for Council in 1995 by Eriksson and Taylor and reviewed in 2002 by McDougall and Vines. The review

recommendations were advertised in early 2003 and a number of objections were received. Two objections were regarding the upgrade in management category from Category 3 to Category 2 (231 Broome St and 1A Clarendon St).

In considering the submissions, officers advised that these places were likely to be further considered as part of a future heritage list for Town Planning Scheme No. 3 and could be further addressed at that time. The review recommendations were subsequently adopted by Council on 25 October 2004. The resolution included that submitters be advised of Council's decision.

A review of Category 2 places was also carried out in 2005 by Hocking Planning Architecture which recommends that 231 Broome Street be retained as a Category 2 place and that it be entered on a Town Planning Scheme Schedule (or heritage list). This review has not yet been endorsed by the Council but is intended to be used in relation to proposed Town Planning Scheme No. 3 (TPS3).

Under TPS3 Council will be required to create a Heritage List drawn from the Municipal Inventory, which will have particular regard to Categories 1 and 2 and to a lesser extent Category 3. Under the provisions of TPS 3 the process of creating a list includes consultation with property owners, whereby they may object to the intended inclusion or categorisation and there is a right of appeal. When TPS3 is in place and this process is carried out Mr South or a new owner would have the further opportunity to object to the heritage recognition of the subject property.

Mr South, the owner of 231 Broome Street, now has the property on the market and has recently indirectly learnt of the upgrade of management category from Category 3 to 2. His enquiries to the Council have uncovered an administrative error in that submitters did not receive advice of the 2004 decision. This error is now to be redressed by correspondence to the affected owners.

Mr South considers the consultation process to have been inadequate and reiterates his objection to the Category 2 listing. He considers that the assessments carried out exaggerate its significance; it may have some architectural or aesthetic significance but has no historic, social or scientific significance and thus fails to meet criteria for inclusion on the Municipal Inventory.

A prospective purchaser of the property has provided a heritage review, undertaken on their behalf by architect Mr R Bodycoat, that recommends that the place be downgraded to Category 3 or removed from the Municipal Inventory. He concludes that the place is not rare and the 2005 *assessment is flawed attributing unacceptable and incorrect values to the place*. Also *mandatory retention of the house is unreasonable; considerable expenditure is required to repair the fabric of the building and improve the amenity of the house to meet modern lifestyle expectations; it is not in a heritage precinct where further heritage considerations could apply* and the context in the streetscape, where there has been substantial change and new residential development does not justify retention of the existing house.

CONSULTATION

N/A.

STAFF COMMENT

In accordance with heritage principles it is considered that the physical condition per se of a place should not determine whether or not to retain a property on the Municipal Inventory or within a certain category. If this were the case many significant buildings throughout Perth would not qualify based on their condition. In Cottesloe, *Le Fanu* is a case in point.

The issue to be determined therefore is whether a place is considered to be of cultural heritage significance worthy of retention based on each individual category.

Heritage Significance

The Council does not have in-house heritage expertise and is reliant on independent consultant heritage advice. Advice both in 2002 and 2005 has been to list 231 Broome Street as Category 2. It is accepted that this is based on the external appearance of the building but this is the standard means of such assessments, rather than a detailed assessment of the whole fabric of the building.

Detailed assessments would generally only be carried out at the time of development to assist the Council in its decision whether or not to approve a development (whether development is demolition or additions/modifications). A detailed assessment could however be carried out to assist the Council decide on a listing, particularly if there is dispute.

The Council is asked to agree with advice provided by either the:

- landowners and prospective purchaser to either downgrade the listing from Category 2 to 3 or to remove from the Inventory completely, or
- heritage assessments carried out in 2002 and 2005 to list the property as a Category 2.

The Council could carry out an independent detailed assessment to assist with this decision. The cost involved may, however, not be warranted. Ordinarily a proponent may be expected to provide and pay for a heritage assessment as part of a demolition or development application.

Demolition Implications

The underlying belief appears to be that the listing would result in a demolition licence being denied and that this possibility discourages potential purchasers who may wish to demolish and redevelop.

A Municipal Inventory category and even Town Planning Scheme provisions do not make retention mandatory, they can only encourage retention by a landowner, and indicate the level of resources that a Council may invest in doing so.

The Municipal Inventory refers to a Category 2 place as deserving *Maximum incentives under the Town Planning Scheme*:

“High level of protection appropriate: provide maximum encouragement to the owner under the Town Planning Scheme to conserve the significance of the

place. Photographically record the place prior to any major redevelopment or demolition”

A Category 3 place is described as *Significant as an Individual Building*:

“Retain and conserve if possible: endeavour to conserve the significance of the place through the provisions of the Town Planning Scheme; photographically record the place prior to any major redevelopment or demolition.”

The above Category 2 description therefore does not preclude demolition, although the Category 3 description suggests that Council may invest fewer resources to encourage retention. In other words, in both categories conservation is preferred to unsympathetic alteration or demolition, however, neither category prevents demolition altogether. At the same time Category 3 should not be interpreted as an automatically easier prescription to demolish, as the proposed alteration or demolition of any heritage classified property invokes evaluation of its heritage significance and justification of any change.

Council practice requires a planning approval to be obtained for the demolition of a Category 2 building (but not a Category 3) before the issue of a Demolition Licence. This enables a detailed planning assessment to be carried out at the time, if warranted. Such demolition approvals have previously been issued for other Category 2 listed places.

Conclusion

The basic issue here is the question of the level of heritage classification, which could arise at any time. The fact of the current sale and purchase of the subject property is a private matter separate from the planning process, and while it is appreciated that the present classification may complicate or encumber this, that is not seen as a reason in itself to necessarily reduce the category or do so quickly or without proper assessment. While the administrative omission to not inform owners is most unfortunate, neither is that seen as sufficient reason in itself to undo the upgraded classification. In other words, any downgrading in category should not be done simply by way of recompense for the process shortcomings, but rather should occur in accordance with accepted practice for the assessment of the heritage significance of properties.

It is regrettable that the consultation process was not fully carried out in late 2004 and it is understandable that Mr South should feel that his previous comments had been ignored. It was, however, reasonable for Council to accept the advice provided by its consultants McDougall and Vines in 2002. This advice has been further supported by Hocking Planning Architecture in 2005. Hence it is considered difficult for Council to agree that the cultural heritage significance has been exaggerated or is erroneous without further independent advice in this regard, given that Council has no in-house heritage expertise.

Alternatively, Council could decide that there is already ample professionally-sound information currently available that is in accordance with acceptable heritage principles that confirms that the subject property ought to be Category 2.

Moreover, the Category 2 listing does not preclude demolition and a detailed assessment could be carried out in the event of a planning application for demolition. In addition, a right of review exists in relation to demolition or development applications and is also proposed under TPS3 in respect of making a Heritage List. This is the preferred course of action and is recommended. Having said that, in the circumstances of the implications for the owner or purchasers of the processes involved and as a gesture of goodwill, it would seem appropriate for Council to request the Administration to attend to the further heritage assessment for determination by Council of the categorisation of the subject property on the Inventory as a matter of priority.

POLICY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Strategy 3.2 - Preserve our Built Heritage.

FINANCIAL IMPLICATIONS

Possible further independent heritage advice to be obtained by Council.

VOTING

Simple Majority

OFFICER RECOMMENDATION

That Council:

- (1) Retain 231 Broome Street as Category 2 on the Municipal Inventory at this stage, pending expeditious further assessment for a recommendation to Council on whether or not the category listing should be altered;
- (2) Request the Administration to advise Mr South that:
 - a. A Category 2 listing does not necessarily preclude demolition;
 - b. There is a right of review (appeal) to the State Administrative Tribunal against a refusal of demolition;
 - c. Under proposed Town Planning Scheme No. 3 there will be a future opportunity to review the heritage significance and classification of the subject property when Council is required to carry out the process to create the Heritage List under the scheme, which entails consultation with property owners and an intended right of review (appeal) to the State Administrative Tribunal; and
- (3) Request the Administration to write to Mr South apologising for the notification error involved in the 2003/4 consultation process.

AMENDMENT

Moved Mayor Morgan, seconded Cr Cunningham

That Council change the classification of 231 Broome Street from category 2 to category 3.

Carried 7/0

AMENDMENT

Moved Cr Walsh, seconded Cr Carmichael

That 231 Broome Street will be considered for the heritage list to be drawn up in Town Planning Scheme No. 3.

Lost 2/5

11.1.10 COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Cunningham

That Council change the classification of 231 Broome Street from category 2 to category 3.

Carried 7/0

12 WORKS AND CORPORATE SERVICES COMMITTEE MEETING HELD ON 21 MARCH 2006

Moved Mayor Morgan, seconded Cr Furlong

That items 12.1.1, 12.1.4, 12.2.1, 12.2.3, 12.2.4 and 12.3.5 be withdrawn from en-bloc voting.

Carried 7/0

The above items were dealt with first before items 12.1.2, 12.1.3, 12.1.5, 12.1.6, 12.2.2, 12.3.1, 12.3.2, 12.3.3 and 12.3.4 were dealt with en-bloc.

12.1 ADMINISTRATION**12.1.1 PROPOSED VARIATION TO BARCHETTA LEASE AGREEMENT**

File No:	149 Marine Parade
Author:	Mr Stephen Tindale
Author Disclosure of Interest:	Nil
Report Date:	8 March, 2006
Senior Officer:	Mr Stephen Tindale

SUMMARY

A recommendation is made to execute a deed of variation to the lease agreement between the Town of Cottesloe and Beachfront Enterprises Pty Ltd.

The variation defines the average minimum opening hours of the kiosk during the beach going season.

The variation also permits the sale of alcohol from the premises while allowing patrons to continue to bring liquor purchased from elsewhere for consumption with a meal.

STATUTORY ENVIRONMENT

Nil

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Nil.

BACKGROUND

This matter was last considered by Council at its February 2006 meeting where it was resolved to refer it back to committee.

To recap, at its August 2005 meeting Council resolved:

That:

- (1) Council maintain the current rental arrangements for the Barchetta until such time as they are due for review in July, 2007 under the terms of the lease agreement; and*
- (2) Administration prepare for Council's further consideration a deed of agreement:*
 - (a) which permits rather than prohibits the sale of alcoholic beverages or refreshments on or from the premises;*
 - (b) guarantees BYO alcohol; and*
 - (c) sets out minimum opening hours of the take-away kiosk.*

A deed of agreement was subsequently prepared by McLeods Barristers and Solicitors and a copy was presented to Council at its November 2005 meeting for further consideration. (Elected members are asked to contact the CEO's Executive Assistant if another copy is required).

At committee level, concerns were raised over:

- the lack of opening hours of the beach kiosk,
- the bin problem, and
- the erosion of the bank on the southern side of the café.

The Environmental Health Officer advised the committee that an architect had been engaged by the lessee to design a bin structure to house the café's bins. The committee reiterated Council's preference for bins not to be kept outside the premises in a visible area.

The CEO requested guidance on the proposed opening hours for the kiosk. It was agreed that they should be trebled.

Council subsequently resolved to defer consideration of the item in order to:

- (1) Renegotiate the opening hours for the kiosk;
- (2) Resolve the bin storage issue; and
- (3) Put in place a strategy to stop the erosion of the sand dune on the southern side of the building.

At the February 2006 meeting of the Works & Corporate Services Committee a number of concerns were raised by the committee.

- The proposed bin enclosure was not supported as it would be odorous and would increase the footprint of the building which would require a rent review. The current lease requires garbage to be contained within the premises and the agreement should be adhered to.

- The proposed kiosk opening hours were considered to be unsuitable and too difficult to police. There were concerns that the café was evolving into an elitist restaurant. The committee agreed that more suitable opening hours would be 10.00am to 3.00pm, 7 days a week, during the months of November to March.
- There was little support for the lessee undertaking the gardening given the history of damage to the tea trees on the seaward side of the café.

As a result the committee recommendation to Council was

That Council:

- (1) *Agree to the opening hours of the kiosk being 10.00am to 3.00pm on every opening day of the Barchetta from November to March inclusive;*
- (2) *Not support the construction of the proposed bin enclosure and require that all bins be contained within the premises;*
- (3) *Support the remediation of the area by Council staff subject to advice and guidance from the North Metro Coastcare officer on a suitable system and appropriate plantings; and*
- (4) *Agree to the execution of the proposed deed of variation to the lease agreement between the Town of Cottesloe and Beachfront Enterprises Pty Ltd relating to minimum kiosk opening hours and the sale of alcohol.*

Given that a mutually satisfactory agreement had yet to be reached with Mr Gamble. Council resolved to refer the matter back to committee.

CONSULTATION

CEO has met with the lessee to discuss the outstanding matters. Mr Gamble has advised that:

- (1) He is prepared to double the minimum opening hours for the period February to November to 12 hours per week and increase the minimum hours for December and January by 50% to 18 hours per week.;
- (2) Resolve the bin storage issue by constructing a new bin enclosure (see attached plans) to the south of the building.
- (3) The proposed bin enclosure will assist in preventing the erosion of the sand dune on the southern side of the building. Furthermore, Mr Gamble seeks Council's permission to reticulate the area "...including the area in front of the toilets and do some planting to beautify and help retain these areas".

Mr Gamble has been asked to attend the Works & Corporate Services Committee Meeting to be held on the 28th March 2006 but unfortunately he will be away.

In response to a fresh proposal being put to him, Mr Gamble advises:

I like everything but I think the Nov to March is unrealistic as to the trade that is around.

I will be opening the kiosk to no one on a mid week day and it will cost me staffing and other costs like energy without diminishing any amenity to the residents as they

can still come inside and get a coffee or bottle of water to take always we always have provided.

I would be happy with say 7 days Dec to Jan and weekends Nov, Feb and March as minimum but realistically we will open all weekends weather and wind permitting

There is no one walking around looking for an icecream on a Tuesday morning in March!

STAFF COMMENT

Opening Hours

The recommendation of the committee requiring opening hours of the kiosk to be 10.00am to 3.00pm on every opening day of the Barchetta from November to March inclusive is seen as a good one subject to the inclusion of the words "weather permitting". It is understood that the continued operation of the kiosk was a primary consideration of Council when awarding rights to the café. A kiosk that opens at odd hours is not going to engender customer confidence and as a result, will hasten its own demise.

However Mr Gamble believes that the new proposal is still too onerous.

Bin Enclosure

While it is understood that Council and the Works & Corporate Services Committee is generally opposed to the extension of the footprint of the Barchetta, an external bin enclosure is seen as the most practical way of overcoming an inherent design flaw in the construction of the original building. By way of explanation, the provision of public toilets on the top floor of the café meant that storage and operating space for the café was severely limited from the outset. With the benefit of hindsight, compromises in these areas have been made in order to maximise the floor space set aside for café patrons.

This lack of foresight and poor planning is not new to the Town of Cottesloe as evidenced by similar problems at Van's Café and the Indiana Tea House. At the Barchetta, deliveries are made to the café through the existing bin enclosure area. The area is generally cluttered with crates and all the other bits and pieces that go along with the operation of a café.

It is open to Council to leave things as they are and insist that bins be stored where they were intended to be but that will only serve to perpetuate existing problems. The existing bin enclosure comprises the overall security and hygiene of the area. Although a key can be provided to the contractor to access the bin area, there are potential problems when the cafe is open. At these times the internal doors must be unlocked to allow staff to access to the bin area and to facilitate deliveries. This means the rubbish bin contractor is then able to access the stores, staff toilet and change room where personal items are kept.

As a general practice, in this and other circumstances, we are trying to avoid the potential for recrimination should an incident occur. Separate bin enclosures that are more easily accessed are much preferred.

As the land on which the proposed bin enclosure is intended to be located forms part of a recreation reserve under the Metropolitan Region Scheme. The approval of the WA Planning Commission will therefore be required.

Surrounds

The construction of a physical barrier (the proposed bin enclosure and a low level barrier behind) on the southern side of the building is seen as a practical response to the dune erosion problem.

The offer to reticulate the area will assist in re-establishing the vegetation in an area that is susceptible to human interference.

It places a responsibility on the lessee to 'own' the solution to the vegetation issue.

VOTING

Simple Majority

COUNCIL COMMENT

Discussion was held in relation to the bin enclosure.

Cr Furlong left the meeting from 8.32pm and returned at 8.35pm.

OFFICER RECOMMENDATION**OPTION 1**

That Council confirms that:

- i. Weather permitting, the minimum opening hours of the kiosk are to be 10.00am to 3.00pm on every opening day of the Barchetta from December to January inclusive and on every weekend during November and March.
- ii. Support the construction of the proposed bin enclosure subject to the approval of all relevant authorities.
- iii. Support the reticulation of the area subject to advice and guidance from the North Metro Coastcare officer on suitable reticulation and appropriate plantings.
- iv. Subject to the above points, agree to the execution of the proposed deed of variation to the lease agreement between the Town of Cottesloe and Beachfront Enterprises Pty Ltd relating to minimum kiosk opening hours and the sale of alcohol.

In the event that Council cannot support OPTION 1, the following Option is recommended;

OPTION 2

That the matter be deferred to the April round of meetings so that Mr Gamble can present his case.

AMENDMENT

That Option 1 (ii) be amended to read:

- ii Not support the construction of the proposed bin enclosure as the current lease requires garbage to be contained within the premises and the agreement should be adhered to.

AMENDMENT

That the following wording be added to Option 1 (i):

A sign shall be displayed stating that when the kiosk is closed, service can be obtained from within the building.

COMMITTEE RECOMMENDATION

That Council confirms that:

- i. Weather permitting, the minimum opening hours of the kiosk are to be 10.00am to 3.00pm on every opening day of the Barchetta from December to January inclusive and on every weekend during November and March. A sign shall be displayed stating that when the kiosk is closed, service can be obtained from within the building.
- ii. Not support the construction of the proposed bin enclosure as the current lease requires garbage to be contained within the premises and the agreement should be adhered to.
- iii. Support the reticulation of the area subject to advice and guidance from the North Metro Coastcare officer on suitable reticulation and appropriate plantings.
- iv. Subject to the above points, agree to the execution of the proposed deed of variation to the lease agreement between the Town of Cottesloe and Beachfront Enterprises Pty Ltd relating to minimum kiosk opening hours and the sale of alcohol.

AMENDMENT

Moved Cr Jeanes, seconded Cr Dawkins

That item (ii) be amended back to the officer recommendation, as follows:

- ii Support the construction of the proposed bin enclosure subject to the approval of all relevant authorities.

Carried 4/3

The vote was recorded:

<i>For:</i>	<i>Against:</i>
<i>Cr Cunningham</i>	<i>Cr Carmichael</i>
<i>Cr Dawkins</i>	<i>Mayor Morgan</i>
<i>Cr Furlong</i>	<i>Cr Walsh</i>
<i>Cr Jeanes</i>	

AMENDMENT

Moved Mayor Morgan, seconded Cr Walsh

That as per Council policy, the need for a bin enclosure be put out for public review and a report provided to Council.

Lost 3/4

The vote was recorded:

<i>For:</i>	<i>Against:</i>
<i>Cr Carmichael</i>	<i>Cr Cunningham</i>
<i>Mayor Morgan</i>	<i>Cr Dawkins</i>
<i>Cr Walsh</i>	<i>Cr Furlong</i>
	<i>Cr Jeanes</i>

12.1.1 COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Furlong

That Council confirms that:

- i. Weather permitting, the minimum opening hours of the kiosk are to be 10.00am to 3.00pm on every opening day of the Barchetta from December to January inclusive and on every weekend during November and March. A sign shall be displayed stating that when the kiosk is closed, service can be obtained from within the building.**
- ii. Support the construction of the proposed bin enclosure subject to the approval of all relevant authorities.**
- iii. Support the reticulation of the area subject to advice and guidance from the North Metro Coastcare officer on suitable reticulation and appropriate plantings.**
- iv. Subject to the above points, agree to the execution of the proposed deed of variation to the lease agreement between the Town of Cottesloe and Beachfront Enterprises Pty Ltd relating to minimum kiosk opening hours and the sale of alcohol.**

Carried 4/3

The vote was recorded:

<i>For:</i>	<i>Against:</i>
<i>Cr Cunningham</i>	<i>Cr Carmichael</i>
<i>Cr Dawkins</i>	<i>Mayor Morgan</i>
<i>Cr Furlong</i>	<i>Cr Walsh</i>
<i>Cr Jeanes</i>	

12.1.2 INDIANA TEA HOUSE - ASSIGNMENT OF LEASE

File No: 91 Marine Parade
Author: Mr Stephen Tindale
Author Disclosure of Interest: Nil
Report Date: 15 March, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

The lessee of the Indiana Tea House has requested Council's approval of a proposed assignment of the lease to Vive Indianas Pty Ltd. A recommendation is made to approve the assignment.

STATUTORY ENVIRONMENT

Clause 38 of the Indiana Tea House lease agreement deals with assignment of the lease.

Clause 38.1 provides that:

The Lessee must not assign, mortgage or charge the leasehold estate in the Premises nor sublet, part with possession, or dispose, of the Premises or any part of the Premises without the consent of the Lessor and the Minister for Lands and except under this clause.

Clause 38.2 provides that:

Sections 80 and 82 of the Property Law Act 1969 are excluded.

Clause 38.3 deals with consent to assignment and provides, amongst other things that;

The Lessor may not unreasonably withhold its consent to an assignment of the leasehold estate created by this Document if:

- (a) the proposed assignee is a respectable and responsible person of good financial standing, the onus of satisfying the Lessor in respect of those criteria being on the Lessee;*

Clause 38.6 requires that;

If the assignee or sublessee is a corporation the shares in which are not quoted on any stock exchange in Australia, ... the directors or the substantial shareholders at the option of the Lessor of that corporation guarantee to the Lessor the observance and performance by the assignee or sublessee of the Lessee's Covenants including payment of all Money Payable.

Clause 38.9 provides that the lessee must pay to the lessor

...all professional and other costs, charges and expenses...incurred by the Lessor of an incidental to the enquiries made ... as to the respectability, responsibility and financial standing of each proposed assignee... and all other matters relating to the proposed assignment.

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Nil as the lease requires the lessee to meet all costs associated with the assignment of the lease.

BACKGROUND

This matter was considered by Council at its December meeting.

To recap Cocks Macnish are acting for Skynova Pty Ltd (current lessee of the Indiana Tea House) and its shareholders for the sale of all the issued shares in Skynova Pty Ltd to Vive Indianas Pty Ltd.

The settlement date for the transaction was to have been the 16th January, 2006 but is now believed to be the 31st March, 2006.

Correspondence from Cocks Macnish was passed to Council's solicitors (McLeods) together with a request for a draft *Assignment of Lease*.

McLeods were also instructed to establish the bona fides of the proposed assignee by obtaining the following from Cocks Macnish in relation to Vive Indianas Pty Ltd.

1. *A recent company search.*
2. *Identification of the change of ownership that has occurred.*
3. *Names of the proposed guarantors.*
4. *Information establishing the financial stability of the assignee and/or the guarantors.*
5. *Information establishing that the assignee, or the parties controlling the assignee, are of good character and have a history that indicates that the premises will be operated in a manner that supports its continuation as a significant asset to the area.*

As Cocks Macnish was not able to provide the requested information in full by the date of Council's December meeting, Council subsequently resolved:

That the matter be referred to the next ordinary meeting of Council in 2006 subject to the lessee providing the information as requested.

Information on all of the five matters listed above has now been received (see attached) and is considered to be sufficient for the purposes of "...establishing the financial stability of the assignee and/or the guarantors."

ADDITIONAL BACKGROUND (Provided to the Committee meeting)

Last Wednesday the question was asked of Nissen Kestel Harford as to why it is proposed that Vive Holdings Limited is to be the guarantor for the Indiana Tea House lease rather than John Kelly as originally advised. At the same time, Nissen Kestel Harford were advised that it was unlikely that the Town would accept Vive Holdings Limited as guarantor.

This is because the lease agreement requires an assignee (if the lessee is not listed on the ASX) guarantor to be a director or substantial shareholder of the company (clause 38.6).

The response from Nissen Kestel Harford was that "Vive Holdings Ltd is the proposed guarantor (as is stated in the contract). This has not changed. This has been confirmed by our client."

After speaking with our legal adviser at McLeod's this morning, the following email message was sent to Nissen Kestel Harford by McLeod's.

"I have been instructed by the CEO of the Town this morning that his recommendation to tonight's Committee meeting will be to refuse to consent to the assignment of the lease on the ground that the Town should only accept a personal guarantor of the lease with either proof of the existence of the assets of that guarantor or a bank guarantee of a minimum of two years rent. If the Committee accepts that recommendation it will become the Committee's recommendation to the Council which will decide its position next Monday night."

CONSULTATION

Nil.

STAFF COMMENT

Council's legal advisers have raised a legitimate concern in that it is now proposed that Vive Holdings Ltd will be the guarantor. We had been previously been advised that it would be John Kelly.

As a consequence our legal advisers have responded to Guy Brandon at Nissen Kestel Harford expressing concern that it is now proposed that a company will be the guarantor and advising that John Kelly has already been proposed as guarantor.

Subject to a satisfactory response and subject to Council being satisfied with the information received to date, there appears to be no good reason to withhold agreement to the requested assignment. A copy of the draft assignment agreement has been previously supplied under cover of the December 2005 Works and Corporate Services agenda.

It is recommended that Council agree to the assignment and authorise the Mayor and CEO to sign and seal a copy of the attached agreement that includes details of the guarantor.

ADDITIONAL STAFF COMMENT (Provided to the Committee meeting)

If a company rather than an individual is the guarantor, then in the event of a default by the guarantor, the Town of Cottesloe will only have access to the assets that the owners of the company put into the company and allow to be retained in the company. If the company goes into liquidation we will line up with the other creditors for anything that might be salvaged.

Although the directors of a company might have substantial personal wealth we will not be able to access it if it is not in the company coffers. In this case if the lessee company goes bust we will have access to the guarantor company's assets but, although it has assets now, if things are going bad for the lessee company it is likely to be stripped of assets and we will have a guarantor with no assets.

Personal wealth can be spread around as well but it is much harder to do and most people keep at least some property in their own name. This is not foolproof either because directors of company's are often required to guarantee company obligations and, accordingly, we may find with a personal guarantor that we will still have to fight with other creditors who have a guarantee to get their assets on the company going into liquidation.

Unless we go for a bond or bank guarantee arrangement (in this case the Town has gone for a combination of both) a personal guarantor is as good as it gets. Bond or bank guarantee arrangements have the disadvantage of making the lessee more likely to go bust because of necessity we are tying up some of their assets.

I attach a copy of an article in this morning's *West Australian* which may have a bearing.

VOTING

Simple Majority

COMMITTEE COMMENT

Nil

12.1.2 REVISED OFFICER RECOMMENDATION & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Furlong

That Council refuse to consent to the assignment of the lease on the ground that the Town of Cottesloe should only accept a personal guarantor of the lease with either proof of the existence of the assets of that guarantor or a bank guarantee of a minimum of two years rent.

Carried 7/0

12.1.3 LEGAL EXPENSES FOR DOG ATTACK PROSECUTION

File No: C15.2
Author: Mr Stephen Tindale
Author Disclosure of Interest: Nil
Report Date: 14 March, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

A recommendation is made to continue debt recovery action against Dr Salmon.

STATUTORY ENVIRONMENT

The *Dog Act 1976* provides the following definition of a dog attack:

attack~, in relation to the behaviour of a dog, does not include behaviour which was an immediate response to, and was induced by, provocation, but includes;

- (a) aggressively rushing at or harassing any person or animal; or
- (b) biting, or otherwise causing physical injury to, a person or an animal; or
- (c) tearing clothing on, or otherwise causing damage to the property of, the person attacked; or
- (d) attempting to attack, or behaving in such a manner toward a person as would cause a reasonable person to fear physical injury,

unless the owner establishes that the behaviour was justified by a reasonable cause.

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Legal costs of \$4,650.70 have yet to be paid by Dr Salmon.

BACKGROUND

On the 25th June 2002 a Western Power meter reader was attacked by Dr Salmon's Staffordshire bull terrier, Cokey.

The meter reader subsequently filed a statement concerning the incident at the Town of Cottesloe offices on the 1st July 2002.

According to file notes, Council's Senior Ranger phoned Dr Salmon who "...expressed regret about the incident but didn't see the sense in going to court." Dr

Salmon expressed a desire to speak to the complainant but the complainant chose not to talk to him.

Through the Town of Cottesloe, Dr Salmon subsequently wrote a letter of apology and regret to the complainant. The Senior Ranger advised that he "...would forward the letter on and call the complainant with a view to settle out of court..." by way of the issue of two \$100 infringement notices.

In his letter to the complainant Dr Salmon said that:

It is, however, apparent that anyone in uniform, particularly a blue uniform, incites some sort of rage in her – I think it is likely that someone in a uniform mistreated her at some stage and she has harboured ongoing fear and resentment, as it is out of character with her general behaviour...

If the matter is taken to court then the lawyers for the Council will pocket a further \$600 to \$700 and you and I will have to put aside half a day or so to sort out the matter - overall I can't see this is going to help matters further and I am sure neither of us want to see the Cottesloe lawyers get any richer!

Following receipt of the letter and a call from the Senior Ranger, the complainant advised that she still wanted the dog attack prosecution to proceed.

On the 18th July 2002 and in accordance with established practice and custom, the Senior Ranger wrote to Council's legal advisers requesting the commencement of legal proceedings against Dr Salmon. In the correspondence the Senior Ranger advises that Dr Salmon "... indicated that he would be pleading guilty. However, he will be writing a letter explaining the circumstances and why he cannot attend court."

The prosecution was heard in the Perth Court of Petty Sessions on 27th August 2002. Dr Salmon entered an endorsed plea of guilty. Dr Salmon was out of the country on the date of the court hearing and therefore did not attend in order to make any plea in mitigation or any submissions as to the penalty.

It was suggested to Dr Salmon by the Senior Ranger that he should make a written submission to the court explaining the circumstances and why he could not attend court but it is not known whether this suggestion was taken up.

In his absence Dr Salmon was fined \$1,000 with costs of \$447.70. The penalty was 10% of the maximum penalty of \$10,000.

Dr Salmon made an application to the Court of Petty Sessions for a rehearing of the prosecution in order to contest the penalties.

At Dr Salmon's request, the CEO agreed to instruct the Town's legal advisers not to appear on the Town's behalf at the application for a rehearing in order to provide a "level playing field" given that Dr Salmon had chosen not to have any legal representation in the first instance. The Town's legal advisers were instructed accordingly. Their response was to advise the CEO of the potential failings of the Town not having adequate legal representation.

The CEO confirmed that the hearing was to proceed without legal representation and on the advice of the Town's legal advisers arrangements were made to brief the Senior Ranger on how he should present the Town's case at the hearing.

The application for a rehearing was heard on the 24th September 2002 and was dismissed by the Magistrate.

Dr Salmon sought leave to appeal to the Supreme Court on the grounds that "...the fine and costs were manifestly excessive in the circumstances". Leave to appeal was granted without reference to the Town of Cottesloe or its legal advisers – which may have resulted in the leave to appeal being refused.

Dr Salmon wrote to the CEO on 8th April 2003 complaining at the Town's engagement of legal advisers to represent the Town in Supreme Court proceedings. To quote

I am disappointed that you have yet again chosen to unleash your 'dogs of war'...

If you had not opposed my rehearing application I would have had my one say in Court and accepted the verdict whatever. But instead you have allowed your lawyers to run the show, manifesting, as lawyers do, absolutely no regard for any sense of right and wrong and proportionality in the real world. They are, of course, poor things just looking to make a buck where they can. But is this the image you want your rate payers to have of you...

The Council's threat of imposing \$1,500 costs if I opposed and lost the initial dog charge persuaded me to plead guilty (a mistake), now you are threatening costs again hoping I will not pursue this matter further,

At this point we have a choice:

1. Do not involve your lawyers further, I will have my say in the Supreme Court, the ranger and meter reading lady can be witness and justice will be done. End of story.
2. Involve your lawyers and you will be subpoenaed to publicly account for the Council's attitude to matters of this kind and particularly the use of 'cost threat to' get a result' for the Council, regardless of any sense of proportion and justice in the real world and no doubt the press will enjoy recording the second instalment of this soap.

Dr Salmon was subsequently informed that Town's legal advisers would continue to act on behalf of the Council in the matter.

A further delay by Dr Salmon in entering the appeal for a hearing because he was "confused" by the terms of Court Orders saw an extension of time being granted to Dr Salmon by Justice Miller on 14 January 2004.

According to our legal advisers:

Justice Miller indicated that, usually, he would have no hesitation in striking out the appeal, but if he did so Dr Salmon would have a right of appeal against that decision to the Full Court of the Supreme Court, and that in light of Dr Salmon's attitude to the

matter he considered it likely that Dr Salmon would avail himself of that right of appeal.

The appeal proceeded and was heard in the Supreme Court on 29th March 2004 where it was dismissed with an immediate decision by Justice Pullin who confirmed that the penalty was appropriate. A copy of the decision is enclosed.

In addition to paying the original fine of \$ 1,000 and costs of \$447.70, Dr Salmon was ordered to pay the Town's costs of the appeal, to be taxed. The amount of costs was decided by the Registrar of the Supreme Court based on what was a reasonable amount for the work performed. The Bill of Costs was allowed in the amount of \$4,203.

In June 2004 Dr Salmon wrote again to the Town of Cottesloe making a number of points in relation to;

- The fees charged by the Town's legal advisers.
- The meter reader's emotional status.
- Advice from the Senior Ranger to "...plead guilty or the council lawyers will be involved and then your potential costs if you lose will outstrip the fine."
- His reliance on the Senior Ranger to present advice to the Court that the incident did not constitute a dog attack.
- The exaggeration and distortion of events in Court.

Dr Salmon then asked a number of questions which essentially reduce to:

1. Why did the Council prosecute him given that the Senior Ranger presumably advised the CEO "that the incident did not constitute a dog attack"?
2. Why does Council use lawyers to prosecute trivial matters?
3. Why was he coerced into pleading guilty when the incident was clearly debatable and defensible?

His correspondence was referred to Council's legal advisers and the Council's Works and Corporate Services Committee on 22nd June 2004. A copy of Dr Salmon's correspondence, our legal adviser's view of the correspondence and the CEO's subsequent response to Dr Salmon is enclosed.

The Bill of Costs relating to the Town's costs of the Supreme Court appeal was dealt with by the Registrar of the Supreme Court on 29th September 2004. Dr Salmon exercised his right to refuse to have the Registrar sign the Certificate of Costs in order to allow Dr Salmon the opportunity to lodge any written objections to the taxation.

Dr Salmon's application for review of the taxation of the Bill of Cost was effectively dismissed on 8th April 2005 for want of action by him.

The fine of \$1,000 has been paid but the legal costs of \$4,650.70 remain outstanding.

Debt recovery action by the Sheriff's Office was formally commenced in September 2005 with the registration of a "property sale and seizure order" on the title deed of No. 7 Federal Street, Cottesloe. Approval to commence proceedings for the sale of the property was granted to the Sheriff's Office on 12th January 2006. Any costs incurred by the Sheriff's Office are recoverable from the sale of the property.

In the meantime Council continues to accrue legal and administrative costs in terms of ongoing action to recover the debt outside the actions of the Sheriff's Office.

CONSULTATION

Nil.

STAFF COMMENT

Initial Understandings

In his correspondence to the complainant of 2nd July 2002 Dr Salmon clearly acknowledges that it is "...apparent that anyone in uniform, particularly a blue uniform, incites some sort of rage in her [the dog]".

He also acknowledges that "If the matter is taken to court then the lawyers for the Council will pocket a further \$600 to \$700."

Quite clearly Dr Salmon was aware that the dog had a behavioural problem (albeit in certain circumstances) and that the Town would be engaging lawyers whose legal costs would be in the vicinity of \$600 to \$700 (\$447.70 as it turned out).

However it does seem that the size of the penalty (\$1,000) caught Dr Salmon by surprise.

Application for a Rehearing

Dr Salmon's application for a rehearing of the case was on the grounds of "Out of country on court date. I wish to contest penalties."

At the application for a rehearing it became evident that Dr Salmon was not only upset at the size of the fine but that he was also upset at the advice he had received from the Senior Ranger. However by his own evidence in the court, it is clear that Dr Salmon had already been informed by the Senior Ranger of what the penalty range might be and that what the legal costs might be. That the penalty imposed was at the top end of that range is what appears to have upset Dr Salmon the most.

This evidence and more importantly, the case law presented by the Senior Ranger, was sufficient to convince the Magistrate that the rehearing application should be dismissed.

The Senior Ranger's Advice

In his correspondence of 8th April 2003 Dr Salmon says that "The Council's threat of imposing \$1,500 costs if I opposed and lost the initial dog charge persuaded me to plead guilty (a mistake), now you are threatening costs again hoping I will not pursue this matter further."

In June 2004 he said that the Senior Ranger gave him advice to "...plead guilty or the council lawyers will be involved and then your potential costs if you lose will outstrip the fine."

There are three points to be made in relation to the above.

The first point is that assuming that Dr Salmon is aware of the distinction between "legal costs" and "penalty", then on Dr Salmon's evidence, the advice given by the Senior Ranger to him is essentially correct. To paraphrase Dr Salmon's words, the advice was that had Dr Salmon chosen to contest the dog attack prosecution and lost, then he could have expected legal costs to be in the vicinity of \$1,500 - plus the penalty. Given that the penalty was \$1,000 and the predicted legal costs were \$1,500 in a contested but losing situation, it is quite clear that the costs would have outstripped the fine.

The second point is that in some point in time the advice Dr Salmon received from the Senior Ranger became a "threat" rather than just simple advice. In defence of the Senior Ranger, there was absolutely nothing to be gained by him in making any such threat. It really did not matter to him whether Dr Salmon pleaded "guilty" or "not guilty". The prosecution would have proceeded in any event and the matter would have been determined by the Court of Petty Sessions – not the Town of Cottesloe.

Indeed, if Dr Salmon's later accusation that the Council was in some sort of money-making alliance with its lawyers had any substance, then it would have served the Council and its lawyers better to have Dr Salmon contest and lose the case.

The third point is that Dr Salmon is suggesting that it was simple expediency that saw him pleading guilty to the dog attack prosecution. In other words, he simply wanted what was a trivial case to be put to rest in quick time at minimum financial cost to himself. The rights or wrongs of the case and the injury caused to the meter reader were not of any importance to him. Further, that if he had turned his mind to it, he could have easily defended the prosecution.

It is still not absolutely clear as to whether Dr Salmon truly believes that a dog attack occurred or not but everything leans toward him believing that a dog attack did not occur.

The Seriousness of the Dog Attack

According to the complainant's statement the dog had a history of threatening behaviour. On the day in question the dog repeatedly charged and growled at her while reading meters across the road from the house at No.7 Federal Street.

When Dr Salmon left the house;

...the dog trotted back into the yard. The man looked at me across the road, but just got into his car and drove away. Each time I proceeded onto the footpath the dog had a go at me, each time getting more daring. It was at this point I decided to leave the street. I walked up to the nearest cross street (North Street) and walked up it till I reached the next street running parallel to the previous street. I started walking down it when the dog came out of the laneway (linking the two streets). It had a go at me again. I retreated again and walked back up to where North St where I walked down

to Griver Street (the next parallel street) It was there that I saw him coming up towards me through another laneway...”

At this point the Senior Ranger was called in. According to the complainant;

I met up with the ranger and we drove back to the dog's house. The dog displayed aggressive behaviour towards me while the ranger and its owner [Dr Salmon's partner] were present.

Quite clearly the dog had terrorised the complainant and would continue to do so given half a chance.

It is therefore not all that surprising that the complainant took stress leave from work and that the Court of Petty Sessions imposed a penalty of \$1,000 given her evidence.

It is difficult, to say the least, to reconcile how Dr Salmon continues to portray the incident as simply one of a dog growling at a meter reader when quite clearly the complainant;

- was charged across the street by the dog on two occasions,
- was subsequently rounded up on not one, but two occasions by the dog,
- sought to evade the dog and
- suffered poor health and had to take stress leave because of the incident.

By any reckoning, the dog attack was not a trivial matter.

Misplaced Responsibility

Somewhere along the way Dr Salmon made the assumption that the evidence of the Senior Ranger in Court would be such as to undermine the Council's own prosecution of the matter. In other words, Dr Salmon expected the Senior Ranger to assert in court that the reported dog attack did not, in fact, constitute a dog attack.

As the question was never put to the Senior Ranger, it is not surprising that the Senior Ranger's view of things was never aired in court - regardless of the relevancy of such an opinion.

However by shifting responsibility to Council staff in terms of what influenced his original thought processes and the actual court decision, Dr Salmon conveniently ignores the reality that a dog attack did indeed occur and that this was confirmed by the Court by way of a judgement against him – not the Town of Cottesloe.

Dr Salmon's refusal to accept responsibility for the dog's behaviour is consistent with his apparent view that a dog attack did not occur. With this as a starting point, it is not difficult to see how Dr Salmon genuinely believes that he has been unfairly persecuted by the Town.

In my view, his judgement was so clouded from hereon in that he failed to see the warning signs that he was on “a hiding to nothing” in terms of being able to legitimately press his claims of being unfairly persecuted.

Warning Sign No. 1

Dr Salmon made an application to the Court of Petty Sessions for a rehearing of the prosecution in order to contest the penalties.

At Dr Salmon's request and in an attempt to appease him, the CEO agreed to instruct the Town's legal advisers not to appear on the Town's behalf at the rehearing in order to provide a "level playing field" given that Dr Salmon had chosen not to have any legal representation in the first instance. The Town's legal advisers were instructed accordingly.

Their response was to advise the CEO of the potential failings of the Town not having adequate legal representation which would almost certainly mean added expense and a potential travesty of justice.

Given the prior understanding with Dr Salmon, the CEO confirmed that the hearing was to proceed without legal representation. Arrangements were made to brief the Senior Ranger on how he should present the Town's case at the hearing. Dr Salmon has subsequently portrayed the briefing as constituting unfair "coaching" of the Senior Ranger but at no time was any indication or commitment given to Dr Salmon that the Town would not continue to take legal advice.

Indeed to have done otherwise would have been highly unprofessional and damaging to the interests of both the Council and the community at large. It is my firm understanding that there is a clear expectation by the community that the Council will be diligent in its prosecution of laws that are meant to protect the community in the first instance. That expectation translates into legal advice being sought for every prosecution undertaken by the Council.

The application for a rehearing was heard on the 24th September 2002 and was dismissed by the Magistrate.

Ordinarily one might expect that Dr Salmon would have taken heed of the outcome of the rehearing application but this was not to be the case.

Warning Sign No. 2

Dr Salmon wrote to the CEO on 8th April 2003 complaining at the Council's engagement of legal advisers to represent the Council in Supreme Court proceedings that he had initiated. He ended his correspondence with a threat.

Involve your lawyers and you will be subpoenaed to publicly account for the Council's attitude to matters of this kind and particularly the use of 'cost threat' to 'get a result' for the Council, regardless of any sense of proportion and justice in the real world and no doubt the press will enjoy recording the second instalment of this soap.

Dr Salmon was subsequently informed that Council's legal advisers would continue to act on behalf of the Council in the matter.

Ordinarily, one might expect that Dr Salmon would have taken heed of the inference contained within the response that the matter was not being treated lightly, that legal

advice would continue to be sought and that his threat had been dismissed for what it was – an attempt to thwart due process at the Town of Cottesloe.

Warning Sign No. 3

As advised earlier in this report, a further delay by Dr Salmon in entering the appeal for a hearing saw an extension of time being granted to Dr Salmon by Justice Miller on 14th January 2004.

Justice Miller indicated that, usually, he would have no hesitation in striking out the appeal, but if he did so Dr Salmon would have a right of appeal against that decision to the Full Court of the Supreme Court and that in light of Dr Salmon's attitude to the matter he considered it likely that Dr Salmon would avail himself of that right of appeal.

Ordinarily, one might expect that Dr Salmon would have taken heed of the inference made by Justice Miller that the appeal was likely to be unsuccessful but that Justice Miller was not about to give Dr Salmon the opportunity of wasting the Full Court's time.

Warning Sign No. 4

The appeal was heard in the Supreme Court in March 2004 and was dismissed with an immediate decision by Justice Pullin who confirmed that the penalty was appropriate.

Unsubstantiated allegations against Council staff were not heard by the Supreme Court. Essentially, they were not within its charter to consider given that they did not form part of the original Court of Petty Sessions hearing.

Ordinarily, one might expect that, by now, Dr Salmon would have engaged legal counsel for a Supreme Court matter and that Dr Salmon would have been informed by his legal advisers that the Court system could offer no remedy in terms of his claims against Council staff.

Warning Sign No. 5

In June 2004 Dr Salmon wrote again to the Town of Cottesloe and asked a number of questions which essentially reduced to:

1. Why did the Council prosecute him given that the Senior Ranger presumably advised the CEO "that the incident did not constitute a dog attack"?
2. Why does Council use lawyers to prosecute trivial matters?
3. Why was he coerced into pleading guilty when the incident was clearly debatable and defensible?

A response was provided and Dr Salmon was invited to inspect the file on the matter (including legal advice received - which would ordinarily have been kept confidential under an Freedom of Information application) so that he could satisfy himself that everything was above board.

Despite his inspection of the records, Dr Salmon continues to selectively reinterpret the contents of the file.

As a recent example he made an assertion to a journalist at the Sunday Times "...that his application for a re-hearing failed and the lawyer again wrote to the council administration on October 2, 2002, congratulating the administration on that outcome, reminding them that the victory saved the council lots of money."

In fact the correspondence of 2 October 2002 contains no congratulations or any suggestion of the like. It does however note that "...the Town has been saved a good deal of expense by avoiding the need to have this matter re-heard."

Ordinarily, one might expect that by now Dr Salmon would have formed the view that the Town had absolutely nothing to hide by opening its file to inspection by Dr Salmon and therefore felt that it was on unshakeable ground.

Warning Sign No. 6

Debt recovery action by the Sheriff's Office was formally commenced in September 2005 with the registration of a "property sale and seizure order" on the title deed of No. 7 Federal Street, Cottesloe. Approval to commence proceedings for the sale of the property was granted to the Sheriff's Office on 12th January 2006 and any costs incurred by the Sheriff's Office are recoverable from the sale of the property.

Ordinarily, one might expect that by now any other person would have formed the view that Council was intent on recovering its legal costs.

Conclusion

Dr Salmon has ignored all of the warning signs. With recent approaches to the *Sunday Times* and the *Post* Dr Salmon continues to make good on his threat to have the CEO;

...publicly account for the Council's attitude to matters of this kind and particularly the use of 'cost threat' to 'get a result' for the Council, regardless of any sense of proportion and justice in the real world and no doubt the press will enjoy recording the second instalment of this soap.

The time for a public accounting has now come.

It is salient to note that in all that has gone before, that Dr Salmon has never properly acknowledged the efforts of Council staff to assist him. To recap, Council staff have;

- Prompted Dr Salmon to write a letter of apology with a view to mediating the original complaint by way of the issue of two infringement notices.
- Advised Dr Salmon on the potential outcomes of a disputed court case so that he could make a better informed decision as to which course of action he should take.
- Suggested to Dr Salmon that he make a written submission to the Court of Petty Sessions given that he was going to be out of the country on the hearing date.
- Sought to appease Dr Salmon by ensuring that there was no legal representation at his application for a rehearing.
- Encouraged him to obtain his own professional legal advice.

- Have tolerated a number of unsubstantiated allegations against Council staff which have subsequently been shown to be untrue but for which there has been absolutely no retraction by Dr Salmon.
- Have opened the Council files on the matter to Dr Salmon far beyond the extent contemplated by the *Freedom of Information Act*.
- Have, until quite recently, avoided any public reckoning of the matter which will inevitably cause him further stress and result in a further deterioration in his relationship with the Town of Cottesloe.

Be that as it may, in my view the heart of matter lies in a failure by Dr Salmon to accept any genuine responsibility for his actions or his dog. It is everyone else's fault (the Senior Ranger, the lawyers, the CEO, the Council, the complainant and the court system) but not his. The evidence suggests that despite his plea of guilty, Dr Salmon does not truly believe that a dog attack occurred despite the courts determining otherwise. Accordingly, he believes that the Town should not have been as diligent in its prosecution of the matter as it was.

As evidenced by his reference to Council's *Code of Ethics* and the obligations placed on elected members and Council staff therein, he believes that somehow his status as a ratepayer confers upon him an immunity from prosecution. He believes that the Council's interests should align with his regardless of any greater community interest. Taken to its logical conclusion, this sort of argument would have it that the complainant's right of redress and protection should fall by the wayside simply because she was not a ratepayer of the Town of Cottesloe.

In the absence of any genuine acknowledgement of guilt by Dr Salmon, his continued trivialisation of the dog attack incident and his lack of sympathy for the complainant, I believe that Council is morally and duty bound to recover legal costs.

In my view there are no mitigating circumstances whatsoever.

Indeed it would set an unwelcome precedent if Council sought to overturn the decision of the Court in this matter. If it were to do so, then it would be exposed to having to deal with any number of future grievances from constituents who are disgruntled about how they have been treated by the legal system.

It would invite those have been successfully prosecuted by the Town to exhaust every avenue of appeal with the knowledge that the Council may end up wearing the expense of those appeals.

To avoid this, Council and the community will be better served by endorsing the CEO's action in recovering monies that are owed to the Town of Cottesloe and the ratepayers it serves.

VOTING

Simple Majority

OFFICER RECOMMENDATION

That Council:

- (1) Endorse the debt recovery action launched by the CEO against Dr Salmon; and
- (2) Advise Dr Salmon that Council and Council staff will no longer entertain any debate or discussion or communication on the matter.

12.1.3 COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Furlong

That Council:

- (1) **Endorse the debt recovery action launched by the CEO against Dr Salmon; and**
- (2) **Advise Dr Salmon that Council and Council staff will no longer entertain any debate or discussion or communication on the matter, other than arrangements for repayment of the debt.**

Carried 7/0

12.1.4 NORTHERN DOG BEACH - PROPOSED EXTENSION OF HOURS

File No: C15.2
Author: Mr Stephen Tindale
Author Disclosure of Interest: Nil
Report Date: 15 March, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

A recommendation is made to review Council policy which currently limits dog access hours to North Cottesloe Beach during summer.

STATUTORY ENVIRONMENT

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

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

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

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

4.2 PLACES WHICH ARE DOG EXERCISE AREAS

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

Public Beaches**Southern Dog Beach**

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

Northern Dog Beach

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

Reserves

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

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

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

BACKGROUND

In February 2006 the Member for Cottesloe, Colin Barnett wrote to the CEO as follows:

You may have read my 'Late 2005' newsletter in which I sought feedback about the restricted dog access hours on North Cottesloe Beach during summer.

The response indicates strong support amongst the older people for the beach to be open for dogs right throughout the day. Indeed a variety of dog owners, especially those who do not have commitments during the day, find the hours between 10am and 4pm to be the most suitable.

Perth is experiencing a mild summer this year and in recent years the warmer weather has continued well past the end of March when the restriction is lifted. I can not personally see any reason why well behaved dogs should be banned on specified beaches during the best part of the day.

Regardless of the Council's rationale, I suspect the feelings expressed to me reflect the general mood.

I wonder if the policy might be reviewed.

More recently John Bell sent the following email to the CEO.

1. I would be very grateful if you would forward this email onto His Worship the Mayor and to all Councillors, and ask them if they would consider relaxing the hours of the North Cottesloe dog beach.

Those who swim or walk there, all know that it is a dog beach and if they do not like the company of dogs, then these beachgoers simply go to the adjoining and more popular North Cottesloe swimmers-only beach instead.

2. My request for a relaxation of hours at this dog beach is now much more topical and immediate, especially now that the City of Nedlands has just amended its bi-laws and created an all-hours or unlimited hours dog beach at the northern end of the Town of Cottesloe's North Cottesloe Dog Beach.

(This begins below North Street and extends to the north to below Odern Crescent, or to the perimeter of the Swanbourne Beach redevelopment).

(There is also now an unlimited hours dog beach from the northern extremity of the Swanbourne Beach redevelopment to the boundary with the Town of Cambridge).

3. Clearly there will be some overlap in extended hours dog use onto the restricted North Cottesloe Dog beach as a result
4. While I am not a Ratepayer in Cottesloe and as such I do not contribute any fees or charges to your Town for your wonderful facilities, I would like to thank you, His Worship the Mayor and all Councillors for these facilities that you provide for me at no expense.
5. Every morning or evening I jog or stagger along the soft sand section of the North Cottesloe dog beach and use the yellow bags and bins for my mutt that are provided by your staff, so thank you.
6. As a result, I would be happy to make a regular donation to the Town of Cottesloe for this assistance, should the Town ever decide to establish a mechanism for "giving" by grateful dog owners for the use of your excellent facilities.

For example, one idea that springs to mind would be a coin operated dispenser for the yellow bags.

7. I must also thank you for the helpful support that your Rangers gave me some years ago, when two golden retrievers leapt from a parked car and savaged my dog. As a result, the Rangers fined this dog owner.

8. Propriety means that I must also disclose that I am a Councillor at the City of Nedlands, although I stress that I am only writing to you as a private individual who constantly uses your facilities and not of behalf of the City of Nedlands.

I look forward to your reply.
Best wishes and thank you.

CONSULTATION

While there is a formal consultation process that Council must observe with any proposal to change a local law, it is felt that it is too early to be defining what the proposed change might be without some community input in the first instance.

At the very minimum, Council's *Community Consultation Policy* contemplates that the development of any policy requires an advertisement in the newspaper, an invitation to make submissions on Council's web page, inclusion in the monthly newsletter and correspondence to any local ratepayer group.

If Council believes there is some merit in a proposal to change the current arrangements, then the above process should be followed so that Council can make an informed recommendation as to what the change might ultimately be.

STAFF COMMENT

Now that the City of Nedlands has agreed to allow dogs and their owners unrestricted access to the southern end of Swanbourne Beach, it seems faintly silly that the same dogs and dog owners face a time restriction before they are allowed to cross over into Cottesloe during summer.

Inherently, there is little that distinguishes the southern end of Swanbourne from the Northern Dog Beach. Both areas are less than heavily used and both back on to residential housing on Marine Parade.

Five options would appear to present themselves. They are to:

1. Do nothing.
2. Thank Nedlands for its generosity in providing an unrestricted dog beach and close Cottesloe's Northern Dog Beach to dogs during summer given that there is now a viable nearby alternative.
3. Swing into line with Nedlands unrestricted access provision.
4. Shift the southern boundary of Cottesloe's Northern Dog Beach further north and lift the restricted access requirement.
5. Shift the southern boundary of Cottesloe's Northern Dog Beach further north and **not** lift the restricted access requirement.

They may be other options which will become clearer with further public consultation.

VOTING

Simple Majority

12.1.4 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Dawkins

That Council seek community submissions on what, if any, changes should be made in relation to dogs accessing the Northern Dog Beach during summer.

Carried 7/0

12.1.5 STATUTORY COMPLIANCE AUDIT - 2005 RETURN

File No: C7.2
Author: Mr Stephen Tindale
Author Disclosure of Interest: Nil
Report Date: 15 March, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

A recommendation is made to:

- (1) adopt the Compliance Audit Return for 2005; and
- (2) authorise the Mayor and CEO to certify same so that it may be returned to the Department of Local Government and Regional Development.

STATUTORY ENVIRONMENT

Section 7.13 of the Local Government Act (1995) provides, in part, that

Regulations may make provision –

- (i) *requiring local governments to carry out, in the prescribed manner and in a form approved by the Minister, an audit of compliance with such statutory requirements as are prescribed whether those requirements are –*
 - (i) *of a financial nature or not; or*
 - (ii) *under this Act or another written law.*

Regulation 13 of the Local Government (Audit) Regulations 1996 sets out the specific areas that are subject to audit.

Regulation 14 of the Local Government (Audit) Regulations 1996 reads as follows:

14. Compliance audit return to be prepared

- (1) *A local government is to carry out a compliance audit for the period 1 January to 31 December in each year.*
- (2) *After carry out a compliance audit the local government is to prepare a compliance audit return in a form approved by the Minister.*
- (3) *A compliance audit return is to be –*
 - (a) *presented to the council at a meeting of the council;*
 - (b) *adopted by the council; and*
 - (c) *recorded in the minutes of the meeting at which it is adopted.*

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

One of the management objectives of Council's Strategic Plan is that all procedures and decisions comply with external and internal statutes.

FINANCIAL IMPLICATIONS

Nil.

BACKGROUND

Each year the Department of Local Government and Regional Development issues a compliance audit return that covers a wide range of mandatory actions required of staff, elected members and the Council as whole under the provisions of the Local Government Act (1995).

The return for 2005 has been compiled and a copy is enclosed with this agenda for each Councillor to review and make comment to the Council.

The return must be submitted to the Department of Local Government by 31st March 2006.

CONSULTATION

Nil.

STAFF COMMENT

As can be seen from the attached return, the one area where the Town of Cottesloe failed to comply with the requirements of the Local Government Act relates to Section 3.16(1) of the Act.

Section 3.16(1) requires that:

Within a period of 8 years from the day when a local law commenced or a report of a review of the local law was accepted under this section, as the case requires, a local government is to carry out a review of the local law to determine whether or not it considers that it should be repealed or amended.

There are no records to indicate that the following local laws have been reviewed within the last eight years.

- Signs, Hoardings and Billposting (1988)
- Eating Houses (1993)
- Health Local Laws (1997)

The return indicates that the organisation is compliant in every other area and therefore fulfilling its role in accordance with the Act.

VOTING

Simple Majority

12.1.5 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Furlong

That Council adopt the Compliance Audit Return for 2005 and authorise the Mayor and CEO to certify same so that it may be returned to the Department of Local Government and Regional Development.

Carried 7/0

12.1.6 WA LOCAL GOVERNMENT ASSOCIATION - DAYLIGHT SAVING

File No: X11.16
Author: Mr Stephen Tindale
Author Disclosure of Interest: Nil
Report Date: 15 March, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

The WA Local Government Association seeks answers to the following questions.

1. Does Council **support** the introduction of Daylight Savings Time in Western Australia?
2. Does Council **oppose** the introduction of Daylight Savings Time in Western Australia?
3. Is Daylight Savings Time a local government issue that members would like WALGA to pursue?

STATUTORY ENVIRONMENT

Nil.

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

There may be some increased costs to Council if it supports Daylight Savings Time by way of increased patronage of Cottesloe Beach during summer. Depending on your viewpoint this could be a good or a bad thing.

BACKGROUND

A copy of the correspondence from WALGA and the fax-back form is attached.

CONSULTATION

Nil.

STAFF COMMENT

Nil.

VOTING

Simple Majority

OFFICER RECOMMENDATION

That Council

- (1) Advise WALGA that it supports/opposes (delete whichever is inapplicable) Daylight Savings Time for the following reasons:
 - (list reasons)
 -
 -
- (2) Advise WALGA that it believes that Daylight Savings Time is/is not (delete whichever is inapplicable) an issue that WALGA should pursue.

12.1.6 COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Furlong

- (1) Advise WALGA that it opposes Daylight Savings Time; and**
- (2) Advise WALGA that it believes that Daylight Savings Time is not an issue that WALGA should pursue.**

Carried 7/0

12.1.7 REVIEW OF OCCUPATIONAL SAFETY AND HEALTH POLICY

File No: X 9.10. 1
Author: Mr Geoff Trigg
Author Disclosure of Interest: Nil
Report Date: 16 March, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

Council's Staff Occupational Safety and Health Committee has reviewed the *Occupational Safety and Health* policy, last reviewed in 2002 and proposes that Council readopt the current policy unchanged, apart from the next review date being March, 2011.

STATUTORY ENVIRONMENT

The statutory regulations under which the Town of Cottesloe must recognise and fulfil its duty of care for all employees are:

1. The *Occupational Safety and Health Act, 1984* and *2005* amendments; and
2. The *Occupational Safety and Health Regulations, 1996*.

POLICY IMPLICATIONS

This item deals with Council's *Occupational Safety and Health* policy.

STRATEGIC IMPLICATIONS

Management/Staff Satisfaction: Staff enjoy working at the Town of Cottesloe in an environment where they can reach their full potential.

Note: There appears to be a need for a defined Occupational Safety and Health statement within Council's future versions of its Strategic Plan.

FINANCIAL IMPLICATIONS

Nil

BACKGROUND

All policies are meant to be regularly reviewed. Council's *Occupational Safety and Health* policy was adopted/reviewed in August, 2002.

Council's Occupational Safety and Health Committee has recently, as part of a 'catch-up' program, reviewed the policy and compared it with alternatives.

No changes are proposed, apart from the next review date.

CONSULTATION

This does not apply to residents or ratepayers. It deals with staff occupational safety and health and consultation has occurred through staff and management representatives on the committee.

STAFF COMMENT

This policy is the 'motherhood' or 'umbrella' policy under which a raft of procedures is established covering how the CEO, Managers and staff will achieve the aims and objectives of the policy.

The policy contains all of the expected requirements to demonstrate Council's resolve to provide a workplace, working conditions and work practices which will ensure the safety of its workplace.

VOTING

Simple Majority

12.1.7 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Furlong

That Council:

- (1) **Re-adopt the *Occupational Safety and Health* policy, with the next review date to be March, 2011; and**
- (2) **Consider a statement/objective item to be included in the next version of the Strategic Plan relating to Occupational Safety and Health.**

Carried 7/0

12.2 ENGINEERING

12.2.1 REQUEST FOR SEALING OF ROW NO. 6

File No: E13. 1.06
Author: Mr Geoff Trigg
Author Disclosure of Interest: Nil
Report Date: 14 March, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

A letter has been received from the owners of 355 Marmion Street requesting the urgent sealing of Right of Way (ROW) No. 6, south of North Street, between Lyons Street and Marmion Street, due to the existing poor condition.

This report recommends consideration of funds, to be included in the 2006/07 budget, for laneway/ROW upgrading.

STATUTORY ENVIRONMENT

There are no statutory requirements for Council to seal laneways. However, Council is responsible for the condition of laneways used by the public, apart from privately owned ROWs or laneways.

Council's town planning scheme requires that the development of land for residential purposes shall conform to the provisions of the *Residential Design Codes*.

With regards to vehicular access, the *Residential Design Codes* item A4.1 provides for:

Access to on-site parking to be provided, where available, solely from a right of way available for the use of the relevant lot and adequately paved and drained from the property boundary to a constructed street, or from a secondary street where a right of way does not exist.

POLICY IMPLICATIONS

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

(1) OBJECTIVES:

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

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

(2) PRINCIPLES:

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

(3) ISSUES:

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

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

(4) POLICY:

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

developer to contribute an amount equivalent to 50% of the costs to construct a portion of standard ROW 4m x 20m in area.

- (a) Where a charge has been applied, as condition of development for the upgrade of a ROW, the money is to be placed in a Reserve Account established under Section 6.11 of the *Local Government Act*, for the specific purpose of ROW upgrade.
7. Notwithstanding averaging requirements for developments under the residential codes for rear setbacks and fencing specifications in Council's fencing local laws, there shall be a minimum building setback for carports and garages, to allow a minimum turning circle of six (6) metres, measured from the far side laneway boundary to the closest part of the structure, for each car bay, carport and garage designed at 90° to the laneway or ROW.
 8. Fees and charges for contribution to works, supervision and inspection will be determined annually by Council in accordance with the provisions of Section 6.16 of the *Local Government Act, 1995*.
 9. In situations where new developments or redevelopments are not factors in laneway upgrading and the condition of particular laneways has created concern regarding unsafe conditions for drivers and pedestrians, an increased public liability risk and ongoing maintenance requirements, the following shall apply regarding upgrading:
 - (a) A construction program of ROW's and Laneways will be determined by priority on the basis of vehicle and pedestrian usage, existing surface condition, drainage problems and condition of private fencing.
 - (b) The design of the ROW/Laneway will recognise the need to minimize vehicle speeds and maximize safety and security.
 - (c) All fences abutting ROW's and Laneways shall be constructed and maintained in accordance with Council's fencing Local Laws.
 - (d) The funds available for ROW/Laneway upgrading per budget year shall be total of:
 - (i) The equivalent of the total of minimum rates levied on privately owned ROW/Laneway sections per financial year; plus
 - (ii) Contributions received through the development process as covered under point #6, ie the contents of the Reserve Account for this purpose; plus
 - (iii) An amount determined by Council in each budget document, to be made available from Council funds for ROW/Laneway upgrading and construction.
 - (e) Where adjacent landowners wish to contribute to the cost of construction of a ROW/Laneway or section thereof, the project will be given priority over all other such works, subject to the following:
 - (i) The application shall contain confirmation by landowners of their request for the upgrading and the amount each is willing to contribute.

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

supporting the 'no sealing and drainage' case and accepting that any future request to Council from any affected landowner to upgrade or seal that laneway must include an acceptance of two thirds of those owners for a differential rating payment system for those properties to fund such improvement works.

STRATEGIC IMPLICATIONS

The areas of the strategic plan most applicable to this item are:

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

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

FINANCIAL IMPLICATIONS

Nil for 2005/06. Possible impact on future annual budgets regarding laneway improvements.

BACKGROUND

In March, 2001 the then owners of 355 Marmion Street requested approval of plans for additions and alterations at the rear of the existing house. Staff prepared a list of conditions for the approval and Council approved the development with the condition to seal the ROW removed by Council because the size of the development did not warrant it.

In August, 2003 a planning application for a new two-storey house was approved by the Manager Development Services, on behalf of Council. No condition for the sealing of the laneway was included, even though the scale of the development would normally require it.

The current property owners were not involved in the 2001 development, but were involved in the 2003 two-storey construction. No condition for sealing was imposed in 2003. Currently a number of properties have gates or garages connecting to the laneway.

This ROW is owned by the Town of Cottesloe.

The surface is almost all unsealed and a number of properties fronting Marmion Street and Lyons Street have access from this laneway.

CONSULTATION

There has been previous consultation regarding the original ROW/Laneway policy plus modifications to that document. No consultation has occurred regarding this matter.

STAFF COMMENT

With no imported surfacing material and low moisture content due to the time of year, the laneway condition is poor.

Council is legally liable for the laneway condition, as is any private laneway owner. It is not possible to maintain a quality laneway surface in summer when dry sand is being driven on by a variety of vehicles per day. Slowly, the sand is blown away in summer or washed away in winter. Sewer lids are exposed and less material is available to re-spread by maintenance machines.

Staff have few options in this situation where any form of surfacing onto a sand laneway is upgrading, for which there are no funds in 2005/06. Improving the surface condition, long term, of laneways is a common theme of letters and phone calls to Council. All requests for privately owned laneways are directed to private owners.

Currently, laneway maintenance covers vegetation pruning or spraying, cleaning out of existing drainage pits, repair of potholes on existing sealed sections and the re-spreading of sand on unsealed laneways.

The need for a funding allocation to improve laneway surfacing continues to grow, as traffic use increases and erosion continues.

Minor maintenance has taken place around the sewer manhole on ROW No. 6 but the loose sand surface remains a problem.

VOTING

Simple Majority

12.2.1 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Carmichael

That Council:

- (1) Consider an allocation of funds to improve laneway surfacing for lanes under the control of the Town of Cottesloe in the 2006/07 budget; and**
- (2) Inform the owners of 355 Marmion Street of Council's decision on this matter.**

Carried 7/0

12.2.2 RIGHT OF WAY NO. 29 - CLOSURE TO VEHICLE ACCESS

File No: E13. 1.29
Author: Mr Geoff Trigg
Author Disclosure of Interest: Nil
Report Date: 14 March, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

A request has been made for the replacement of bollards on Right of Way (ROW) No. 29, which were removed during private development works on the ROW, but which had previously been in place for many years, to stop vehicle use.

This report recommends that the requirements of Section 3.50 of the *Local Government Act, 1995* be followed to legally re-establish bollards on a section of ROW No. 29 to prevent vehicle access between Broome Street and Nailsworth Street, and that ROW No. 29 not be named after the late Professor Les Marchant.

STATUTORY ENVIRONMENT

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

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

POLICY IMPLICATIONS

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

(1) OBJECTIVES:

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

(2) PRINCIPLES:

1. To recognise that the Rights of Way (ROW)/Laneway network provides valuable access to residential and commercial properties.

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

(3) ISSUES:

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

the Town area. This will inevitably result in a variety of maintenance problems as ROW and Laneway use grows.

8. Many of the past approved laneway constructed sections have been to a 100mm thick, un-reinforced concrete standard. With vehicle weights increasing and the use of heavy machinery by Service Authorities to service their infrastructure in laneways, it is also inevitable that Council will be involved in expensive repairs to cracked and damaged concrete laneway sections. Therefore laneway surfacing should be based on flexible rather than inflexible pavements.

(4) POLICY:

1. Council's attitude towards the status of ROW's/Laneways is that all such accesses should be Crown land, where they are used by the general public rather than for a specific restricted property access function.
 2. Any sections of ROW's/Laneways owned by the Town of Cottesloe will be surrendered to the Crown under processes included in the *Local Government Act*. Any such sections owned by ratepayers of the Town of Cottesloe, which become available to Council for little or no cost, will also be surrendered to the Crown for Crown land.
 3. When a ROW or Laneway is required for primary access to a new development the developer will upgrade by paving, kerbing and drainage, the ROW or Laneway from the nearest built gazetted road or existing built laneway to the furthestmost lot boundary, to the satisfaction of the Manager Engineering Services.
 4. The developer may elect to have the Laneway upgrading works done by the Town of Cottesloe or by a Contractor.
 - (a) If the Town is to undertake the works, payment of the full estimated value of the works must be received by the Town before works commence.
 - (b) If the developer employs contractors, a supervision and inspection fee is to be charged, in accord with Section 6.16 of the *Local Government Act, 1995*.
 5. The design of the ROW or Laneway must recognise the need to minimize vehicle speeds and maximize safety and security.
 6. When a ROW is required for primary or secondary access from an existing property redevelopment, it is conditional (Town Planning) upon the developer to contribute an amount equivalent to 50% of the costs to construct a portion of standard ROW 4m x 20m in area.
 - (a) Where a charge has been applied, as condition of development for the upgrade of a ROW, the money is to be placed in a Reserve Account established under Section 6.11 of the *Local Government Act*, for the specific purpose of ROW upgrade.
 7. Notwithstanding averaging requirements for developments under the residential codes for rear setbacks and fencing specifications in Council's
-

fencing local laws, there shall be a minimum building setback for carports and garages, to allow a minimum turning circle of six (6) metres, measured from the far side laneway boundary to the closest part of the structure, for each car bay, carport and garage designed at 90° to the laneway or ROW.

8. Fees and charges for contribution to works, supervision and inspection will be determined annually by Council in accordance with the provisions of Section 6.16 of the *Local Government Act, 1995*.
9. In situations where new developments or redevelopments are not factors in laneway upgrading and the condition of particular laneways has created concern regarding unsafe conditions for drivers and pedestrians, an increased public liability risk and ongoing maintenance requirements, the following shall apply regarding upgrading:
 - (a) A construction program of ROW's and Laneways will be determined by priority on the basis of vehicle and pedestrian usage, existing surface condition, drainage problems and condition of private fencing.
 - (b) The design of the ROW/Laneway will recognise the need to minimize vehicle speeds and maximize safety and security.
 - (c) All fences abutting ROW's and Laneways shall be constructed and maintained in accordance with Council's fencing Local Laws.
 - (d) The funds available for ROW/Laneway upgrading per budget year shall be total of:
 - (i) The equivalent of the total of minimum rates levied on privately owned ROW/Laneway sections per financial year; plus
 - (ii) Contributions received through the development process as covered under point #6, ie the contents of the Reserve Account for this purpose; plus
 - (iii) An amount determined by Council in each budget document, to be made available from Council funds for ROW/Laneway upgrading and construction.
 - (e) Where adjacent landowners wish to contribute to the cost of construction of a ROW/Laneway or section thereof, the project will be given priority over all other such works, subject to the following:
 - (i) The application shall contain confirmation by landowners of their request for the upgrading and the amount each is willing to contribute.
 - (ii) It will be the responsibility of the applicants to collect the contributions and deliver all monies to the Council.
 - (iii) A minimum of 50% of the total cost of the work, estimated by the Council's Manager Engineering Services will be required prior to acceptance of any application. If the ROW/Laneway or section thereof already includes work previously required to be done in the preceding five years then expenditure involved will be treated as contributions, in order to assess priorities and make up the minimum of 50%.
 - (iv) Work will not commence until the full amount of the contribution has been received by the Council.

- (v) The programming and design of the work will be at the sole discretion of the Council.
 - (vi) Applications will be approved in the order in which the full amount of the contribution is received by the Council and will be subject to the availability of funds to meet the Council's contribution through budget allocations each year.
10. The higher the percentage of cost of laneway upgrading to be provided by private property owner contribution, the higher the priority of project acceptance from Council, apart from the need to allow for funding to remove public liability risks and unsafe conditions on any other ROW or Laneway.
 11. As a general rule it is Council policy to keep Laneways open, even if un-constructed. Applications for closure are to be considered by Council.
 12. The widths of ROW's/Laneways, the need for truncations on 90° bends, 'Tee' junctions and outlets of laneways onto gazetted roads, and set back requirements from laneways are issues dealt with in other Council documents.
 13. Naming of Laneways is not supported as this may create problems of residents requesting the normal services of a street eg; access for emergency vehicles, postal services, refuse collection and street numbering.

However, the installation of metal plates at each end of the ROW's/Laneways showing the ROW number is supported.
 14. Where a development or subdivision approval includes a condition requiring the sealing and drainage of a portion of ROW/Laneway to allow rear vehicle access, and the developer believes there is a substantial negative attitude from other affected landowners for such ROW/Laneway improvements, it is up to the developer to demonstrate to Council that attitude.
 15. Where no application for a development has been received relating to the drainage and sealing of a laneway, and one or more landowner wishes to prevent the sealing and drainage of a laneway, then the concerned landowner(s) would undertake the requirements of #16 to present Council will the case to prevent such sealing and drainage.
 16. The demonstration of a local landowner attitude against the drainage and sealing of a laneway to meet a development condition must include the signatures of at least two thirds of all landowners affected by the proposal supporting the 'no sealing and drainage' case and accepting that any future request to Council from any affected landowner to upgrade or seal that laneway must include an acceptance of two thirds of those owners for a differential rating payment system for those properties to fund such improvement works.

STRATEGIC IMPLICATIONS

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

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

FINANCIAL IMPLICATIONS

Nil.

BACKGROUND

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

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

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

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

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

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

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

A request has also been made for the name 'Marchant Walk' to be applied to this laneway, after the late Professor Les Marchant. Council policy is against the naming of any further ROWs or laneways (see clause 4.13 of *Rights of Way/Laneway* policy).

CONSULTATION

Nil.

STAFF COMMENT

Therefore, for any vehicle access closure to be legal, it must be dealt with under Section 3.50 of the *Local Government Act, 1995*. This requires advertising in a local newspaper, letters to all affected owners/residents and submissions being requested. There is no record of this ever happening.

VOTING

Simple Majority

COMMITTEE COMMENT

Cr Furlong suggested that it may be more appropriate to honour Les Marchant by naming the dual-use path between Bryan Way and James Street, as it would be more of a public acknowledgement.

The Mayor suggested that the policy be reviewed in relation to allowing laneways to be named, including a statement that Council will not provide services to laneways.

OFFICER RECOMMENDATION

That Council:

- (1) Follow the requirements of Section 3.50 of the *Local Government Act, 1995* in assessing local resident and general public support for the closure to vehicle use of Right of Way No. 29, at a point 11 metres east of the Tee junction, as shown on Plan No. ROW 29, including public advertising and letters to affected residents in Nailsworth Street, Napier Street and Broome Street;
- (2) Not agree to the use of the name 'Marchant Walk' for Right of Way No. 29; and
- (3) Inform the owners of 30 Napier Street of Council's decisions on these matters.

AMENDMENT

That (2) be amended to read:

- (2) That staff prepare a further report on the naming of Rights of Way and Pedestrian Access Ways.

12.2.2 COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Furlong

That Council:

- (1) Follow the requirements of Section 3.50 of the *Local Government Act, 1995* in assessing local resident and general public support for the closure to vehicle use of Right of Way No. 29, at a point 11 metres east of the Tee junction, as shown on Plan No. ROW 29, including public advertising and letters to affected residents in Nailsworth Street, Napier Street and Broome Street;**
- (2) That staff prepare a further report on the naming of Rights of Way and Pedestrian Access Ways; and**
- (3) Inform the owners of 30 Napier Street of Council's decisions on these matters.**

Carried 7/0

12.2.3 REQUEST FOR FOOTPATH ON WEST SIDE OF RAILWAY STREET

File No: 100 Eric Street, E17. 8. 1
Author: Mr Geoff Trigg
Author Disclosure of Interest: Nil
Report Date: 14 March, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

A request has been received from the North Cottesloe Primary School for the installation of a new footpath on the west side of Railway Street, from the Grant Street Railway Station access path to the north side of the parking area on Railway Street opposite the Primary School.

This report recommends that this provision be considered for funding in the 2006/07 draft budget.

STATUTORY ENVIRONMENT

Nil.

POLICY IMPLICATIONS

Council's *Footpath Replacement - Residential Streets* policy applies.

(1) OBJECTIVE

The Town of Cottesloe aims to replace pre-cast concrete slab footpaths with in-situ concrete in residential areas to improve access, public safety and amenity and provide universal access for all users including people with prams, children, the elderly and people with disabilities.

(2) POLICY APPLICATION

Various factors influence the priority of replacement of concrete slab footpaths. These include:

- condition rating
- history of repairs, eg tree roots, vehicles, building works
- usage levels
- proximity to pedestrian generators/attractors
- user needs and age groupings, eg aged persons homes, hospitals
- existing utility services, eg underground power, water mains, telecommunications
- single or parallel footpaths, eg a majority of streets have footpaths on both verges.

The minimum width of a new in-situ concrete footpath in a residential street will be 1.5 metres, increasing to 2.0 metres where increased use and traffic generators eg shopping centres, schools, hospitals, aged persons complexes etc justify this increased width. Major access routes, eg from the railway stations, to the Cottesloe beach area, will also require an increased width.

In assessing the factors, the intent is to avoid replacement of existing serviceable slab footpaths with a low maintenance history ahead of higher priority paths. On this basis, condition rating and history of repairs will have the highest weighting for priority.

Usage levels, pedestrian generators and attractors, user needs and age groupings are prioritised as follows:

- aged persons hospitals/homes complex
- medical centres
- schools
- local shops
- parks/reserves

Where there are footpaths on both sides of the road within a street block where one of the above facilities is located, preference is to be given to the footpath replacement on the side which abuts the facility.

Following adoption of the annual program, the residents abutting the footpaths to be replaced will be advised in writing of the Council resolution.

Prior to commencement of works, a minimum of one (1) week notice will be provided to abutting residents detailing the extent and duration of works.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

No budget allocation for 2005/06. Estimated cost of provision is \$13,000. Consideration of funding in 2006/07 is proposed.

BACKGROUND

In recent months, the Pelican crossing over Curtin Avenue at Grant Street has been in operation. More use is now made by school children and parents using this route to and from the North Cottesloe Primary School.

A footpath exists on the east side of Railway Street but the vehicle speeds on Railway Street are seen to be dangerous by pedestrians.

This is a new request, proposed by the school because of the use now being made of the 'Walking Bus' program and the new Curtin Avenue Pelican crossing at Grant Street.

The recently adopted five year program for Footpaths does not include this project or its construction cost.

Recent traffic counts in Railway Street between Grant Street and Greenham Street have registered close to 60% of all vehicles travelling in excess of the 50kph speed limit, with some in the 90-100kph area. Approximately 3,500 vehicles per day use this section of Railway Street. Therefore the speed and volume of speeding vehicles becomes a factor.

CONSULTATION

There has been no formal resident consultation by Council, but the School P&C have discussed this need and fully support the request.

STAFF COMMENT

With the heavy use of vehicles of the Railway Street/Eric Street intersection and Curtin Avenue from Eric Street, north, the proposal to enhance the use of Railway Street from Grant Street to Eric Street, by pedestrians, would appear to be a safety improvement plus a greater attraction for parents to leave the car at home.

All footpath upgrading works are now completed for 2005/06. If the 2006/07 budget includes funds for this path, estimated at \$13,000 for 175 metres length by 1.8m wide, the works could take place in July, 2006.

VOTING

Simple Majority

OFFICER & COMMITTEE RECOMMENDATION

That Council:

- (1) Consider the inclusion of \$13,000 for the installation of a concrete path on the west side of Railway Street, from Grant Street to the school parking area, in the draft 2006/07 financial year budget; and
- (2) Inform the North Cottesloe Primary School of Council's decision on this matter.

AMENDMENT

Moved Cr Jeanes, seconded Mayor Morgan

That item (3) be added to the recommendation, as follows:

- (3) Request staff to prepare a report on traffic management in respect to drop-off areas at North Cottesloe Primary School, prior to the 2006/07 budget deliberations.

Carried 7/0

12.2.3 COUNCIL RESOLUTION

Moved Cr Jeanes, seconded Mayor Morgan

That Council:

- (1) Consider the inclusion of \$13,000 for the installation of a concrete path on the west side of Railway Street, from Grant Street to the school parking area, in the draft 2006/07 financial year budget;**
- (2) Inform the North Cottesloe Primary School of Council's decision on this matter; and**
- (3) Request staff to prepare a report on traffic management in respect to drop-off areas at North Cottesloe Primary School, prior to the 2006/07 budget deliberations.**

Carried 7/0

12.2.4 RETICULATION BORE WATER REPORT

File No: E11. 2
Author: Mr Geoff Trigg
Author Disclosure of Interest: Nil
Report Date: 15 March, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

This report recommends that Council:

- (1) Accept the \$45,000 + GST Community Water Grant from the Federal Government and modify the Five Year Bore and Reticulation Improvement Program to ensure all works included in the grant project are provided for in the budgeted program;
- (2) Fund no further repairs or upgrading of the Flour Mill site bore owned by the Department of Planning and Infrastructure;
- (3) Fund the major maintenance of the North Cottesloe Primary School bore and make arrangements to take over the responsibility of this bore, including a bore licence in the name of the Town of Cottesloe;
- (4) Ensure that all reticulation systems are reduced to the minimum water use possible, to attempt to reach the new bore water target; and
- (5) Discuss with the State Government department in charge of bore water use the licenced allocations for the Town of Cottesloe with a view to increasing those allocations.

STATUTORY ENVIRONMENT

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

3.1 General function

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

3.2 Relationship to State Government

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

3.18 Performing executive functions

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

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

10. Functions

- (2) In addition the Commission has the functions of:
 - (a) advising the Minister on all aspects of policy in relation to water resources;
 - (b) assessing water resources, and carrying out works under Part 4;
 - (c) planning for the use of water resources;
 - (d) promoting the efficient use of water resources;
 - (e) undertaking, coordinating, managing and providing practical and financial assistance to, activities and projects for the conservation, management or use of water resources;
 - (f) developing plans for and providing advice on flood management;
 - (g) carrying out, collaborating in or procuring research or investigations relating to water resources; and
 - (h) publishing information and material relating to water resources.

11. Powers

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

POLICY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

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

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

FINANCIAL IMPLICATIONS

The Federal grant is an unbudgeted income of \$45,000. Council's contribution to the project is covered with year one of the five year reticulated areas and groundwater bores program.

Upgrading and servicing of existing bores and maintenance of reticulation sprinklers is normally funded from maintenance allocations in annual budgets.

BACKGROUND

A number of factors are coming to prominence regarding Council's existing reticulation systems:

1. The old bore on the Flour Mill site (left from the original ownership and located on the road reserve at the corner of Curtin Avenue and Eric Street) has failed and, if retained, will require at least \$8,000 for repairs.

This site has been included on the last two years' five year program for reticulation areas and bores for the close off of the reticulation system and replanting with native vegetation.

2. Staff have been successful in achieving a \$45,000 Federal community water grant, to be expended in the next 12 months, which provides for the installation of 3 x 90 KL concrete water storage tanks within the existing reticulation system, 3 reticulation surface pumps, the planting of 800 new trees and shrubs and the use of 500m³ of mulch, for the conversion of existing reticulated lawn areas to native vegetation, including the Flour Mill site.
3. The reticulation bore within the grounds of the North Cottesloe Primary School, used only for the Eric Street verge, is in need of a substantial maintenance effort, valued at approximately \$5,000.
4. The majority of the sprinklers on the Eric Street verge are of a particular model for which production has ended. The alternative replacement is more expensive, with approximately \$3,000 to convert the verge area to the new sprinkler type. The current monthly maintenance cost of sprinkler replacement on this verge is between \$600 and \$1,200, for approximately 9 months per year, due to breakages caused by verge parking.
5. Up until May, 2005 Council had approval from the Department of Environment (DoE) for the annual use of 148,500 kilolitres of bore water from its various bores and wells.

The new bore water licence approvals given in May, 2005 reduced this allowance to 114,750 kilolitres. Investigation of previous water use records, made difficult by the lack of total water meter coverage, has recently shown that Council use, if ever, rarely came close to the previous 148,500KL allocation.

With the wettest, coolest summer for some years and with staff actively trying to reduce water use, this season's water use has come close to meeting the original allocation approval, with little chance of meeting the new reduced figure.

CONSULTATION

The use of groundwater for reticulation and the 'pros' and 'cons' of the use of this resource is well known in the region, with a variety of local press articles covering various presentations from local interest groups and residents in recent years, particularly involving the Sea View Golf Club use of bore water.

Council's first Five Year Reticulated Areas and Groundwater Bores was advertised for comment in November, 2004. Only one response was received, from the Sea View Golf Club. The upgraded 2006 version is now out for comment.

STAFF COMMENT**Community Water Grant**

The successful \$45,000 grant for the community water program covers work that is included in the five year program originally to be funded by Council. Two of the 90KL storage tanks are included in year one of the program (2006/07). The third tank is listed for year four. All other works to replace reticulated lawn with native vegetation are listed in the five year program. A change in the adopted program will be required for 2006/07 to undertake the 3 x 90KL storage tanks in that budget.

One other change to the five year program concerns the Broome Street frontage of the tennis courts. It has already been resolved that an asphalt carpark will not be built on the west side verge of Broome Street opposite the tennis courts, but it is possible to replace some of the lawn, which is not normally used for parking, with native vegetation. It is proposed that a plan would be produced for Council consideration regarding this site.

Flour Mill Site

With regards to the Flour Mill site, the grassed area forms part of a reserve controlled by the Department of Planning & Infrastructure (DPI). DPI agreed that Council could maintain the site and use the available bore to enhance the aesthetic value of this entry point. At some time in the future it may be totally used for a major new road intersection, making long term expensive treatments unwise.

With the conversion of this site to native vegetation as per the provisions of the last two five year programs, and the availability of grant funding for this work, the approximate \$8,000 to repair an old bore not owned by Council would appear unreasonable.

North Cottesloe Primary School Bores

At the North Cottesloe Primary School there are two bores, of which one is only used by the Town of Cottesloe for the Eric Street verge reticulation. Neither this bore or the area it waters is included on the approval list from DoE, mainly because it is controlled by the Department of Education.

In 2003, discussions were held for Council to take over this bore and arrange a new licence in Council's name. This was never undertaken.

If Council wishes to continue to reticulate the Eric Street verge, a cost of at least \$5,000 will be required to undertake a major bore service. This bore has not been

serviced for many years and a three to five year heavy service program on each bore is the normal expectation.

The re-equipping of the verge sprinklers in Eric Street with the available new sprinkler model will take place over the next few months. The continuous need for lawn sprinklers to be replaced on this verge can be reduced by a program (at a cost) to install concrete protection rings for each sprinkler, under maintenance allocations.

Bore Water Use Generally

With regards to the overuse of bore water when compared to Council's approved allocation, a number of problems in the past had 'hidden' the true situation from investigation:

- (a) The Civic Centre bore water meter was faulty, with one 'bank' of sprinklers moving the water meter forward and the second 'bank' turning it in reverse, meaning almost no water use being recorded. This problem was fixed in 2004/05.
- (b) It has taken several years for all bores to be fitted with flow meters, which means very early data was estimated only.
- (c) Water meters can become faulty, as with Harvey Field in 2005/06. By the time it is fixed, data has been lost, and projections of water use can only be estimated.

With partial data and partial estimated water use, staff believe that bore water use in past years has been closer to 200,000 KL annual use rather than the approved 148,500KL.

With a concentrated effort in 2005/06, over a very cool and moist summer, to reduce bore water use to a minimum, it is likely that actual water use will approach the 'old' allowance of 148,500KL.

However, the new level is 114,750KL. This allocation is based on DoE trying to restrict bore water use plus the effects of various small areas of reticulated lawns being concerted to native vegetation. The combined effect of such lawn conversions will not be apparent for several years, once all such possible works are completed.

An approach to DoE (or the newly created Department of Water) requesting a re-appraisal of the capacity for Council to reduce its bore water use may provide a benefit. However, the fact remains that Council's use of bore water, from available data, has been above approved levels for some years and every effort is now required to cut back bore water use.

VOTING

Simple Majority

OFFICER RECOMMENDATION

That Council:

- (1) Accept the \$45,000 + GST Community Water Grant from the Federal Government and modify the Five Year Bore and Reticulation Improvement Program to ensure all works included in the grant project are provided for in the budgeted program;
- (2) Fund no further repairs or upgrading of the Flour Mill site bore owned by the Department of Planning and Infrastructure;
- (3) Fund the major maintenance of the North Cottesloe Primary School bore and make arrangements to take over the responsibility of this bore, including a bore licence in the name of the Town of Cottesloe;
- (4) Ensure that all reticulation systems are reduced to the minimum water use possible, to attempt to reach the new bore water target; and
- (5) Discuss with the State Government department in charge of bore water use the licenced allocations for the Town of Cottesloe to attempt to increase those allocations.

COMMITTEE RECOMMENDATION

That Council:

- (1) Accept the \$45,000 + GST Community Water Grant from the Federal Government and modify the Five Year Bore and Reticulation Improvement Program to ensure all works included in the grant project are provided for in the budgeted program;
- (2) Fund no further repairs or upgrading of the Flour Mill site bore owned by the Department of Planning and Infrastructure, subject to alternative arrangements made for the watering of newly established native plants;
- (3) Fund the major maintenance of the North Cottesloe Primary School bore and make arrangements to take over the responsibility of this bore, including a bore licence in the name of the Town of Cottesloe;
- (4) Ensure that all reticulation systems are reduced to the minimum water use possible, to attempt to reach the new bore water target; and
- (5) Discuss with the State Government department in charge of bore water use the licenced allocations for the Town of Cottesloe to attempt to increase those allocations.

AMENDMENT

Moved Mayor Morgan, seconded Cr Jeanes

That item (6) be added to the recommendation, as follows:

- (6) Request staff to prepare a report on the provision of a native plant entry statement on Eric Street.

Carried 7/0

12.2.4 COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Furlong

That Council:

- (1) **Accept the \$45,000 + GST Community Water Grant from the Federal Government and modify the Five Year Bore and Reticulation Improvement Program to ensure all works included in the grant project are provided for in the budgeted program;**
- (2) **Fund no further repairs or upgrading of the Flour Mill site bore owned by the Department of Planning and Infrastructure, subject to alternative arrangements made for the watering of newly established native plants;**
- (3) **Fund the major maintenance of the North Cottesloe Primary School bore and make arrangements to take over the responsibility of this bore, including a bore licence in the name of the Town of Cottesloe;**
- (4) **Ensure that all reticulation systems are reduced to the minimum water use possible, to attempt to reach the new bore water target;**
- (5) **Discuss with the State Government department in charge of bore water use the licenced allocations for the Town of Cottesloe to attempt to increase those allocations; and**
- (6) **Request staff to prepare a report on the provision of a native plant entry statement on Eric Street.**

Carried 7/0

12.3 FINANCE

12.3.1 STATUTORY FINANCIAL STATEMENTS FOR THE PERIOD ENDING 28 FEBRUARY, 2006

File No: C 7. 4
Author: Mr Wayne Richards
Author Disclosure of Interest: Nil
Period Ending: 28 February, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

A recommendation is made to receive the Operating Statement, Statement of Assets and Liabilities and supporting financial information for the period ending 28 February, 2006.

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Nil.

BACKGROUND

The Financial Statements are presented monthly.

CONSULTATION

Nil.

STAFF COMMENT

A report on the variances in income and expenditure for the period ended 28 February, 2006 is shown on pages 40 and 41. As can be seen from the report, most of these variances are the result of timing differences.

The operating statement on page 17 shows that operating revenue is behind of budgeted figures by an amount of \$151,169.

Overall expenditure is \$478,872 less than budgeted. This 'saving' is explained by timing differences, and reduced expenditure in the areas of Administration, Recreation & Culture and Transport.

VOTING

Simple Majority

12.3.1 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Furlong

That Council receive the Operating Statement, Statement of Assets and Liabilities and supporting financial information for the period ending 28 February, 2006.

Carried 7/0

12.3.2 SCHEDULE OF INVESTMENTS AND SCHEDULE OF LOANS FOR THE PERIOD ENDING 28 FEBRUARY, 2006

File No: C12 and C13
Author: Mr Wayne Richards
Author Disclosure of Interest: Nil
Period Ending: 28 February, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

A recommendation is made to receive the *Schedule of Investments* and *Schedule of Loans* for the period ending 28 February, 2006.

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Nil.

BACKGROUND

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

CONSULTATION

Nil.

STAFF COMMENT

The *Schedule of Investments* on page 49 of the *Financial Statements* shows that \$2,602,933.67 was invested as at 28 February, 2006. Of this \$693,720.85 was reserved and so restricted funds. Approximately 35% of the funds were invested with the Home Building Society, 57% with National Australia Bank and 8% with Bankwest.

The schedule of loans on page 50 shows a balance of \$379,810.29 as at 28 February, 2006. Of this \$179,829.79 relates to self supporting loans.

VOTING

Simple Majority

12.3.2 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Furlong

That Council receive the *Schedule of Investments* and *Schedule of Loans* for the period ending 28 February, 2006.

Carried 7/0

12.3.3 ACCOUNTS FOR THE PERIOD ENDING 28 FEBRUARY, 2006

File No: C 7. 8
Author: Mr Wayne Richards
Author Disclosure of Interest: Nil
Period Ending: 28 February, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

A recommendation is made to receive the List of Accounts for the period ending 28 February, 2006.

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Nil.

BACKGROUND

The List of Accounts is presented monthly.

CONSULTATION

Nil.

STAFF COMMENT

Significant payments included in the list of accounts commencing on page 42 of the financial statements, brought to Council's attention include:

- \$11,106.17, \$10,502.48 & \$10,601.24 to West Australian Local Government Superannuation Plan being for employer contributions to the plan.
- \$13,490.40 to The Aged Persons Support Service being Council's contribution.
- \$11,760.95 to Western Power for street lighting.
- \$50,732.00 to TAAPS Contracting for brick paving work in the town centre.
- \$10,608.61 to the Town of Mosman Park for drainage works.
- \$10,981.49 to Flexi Staff for temporary depot works staff.
- \$26,147.00 to the Marley Family Trust for footpath upgrade works.
- \$26,342.14 to the Australian Taxation Office for the January BAS.
- \$11,793.54 to B & N Waste for greenwaste collections.
- \$10,120.00 to Claremont Asphalt for asphalt works at various locations.
- \$95,835.89 to Roads 2000 for roadworks at Curtin Ave, Lyons Street etc

- \$21,270.82 to the Western Metropolitan Regional Council for transfer station fees & tip passes.
- \$51,707.67 & \$52,456.69 for staff payroll.
- \$34,188.19 to Trum Pty Ltd (t/a Wasteless) being for domestic and commercial waste collection services for the month of January 2006.
- \$10,078.12 to Surf Lifesaving WA for the January 2006 instalment of the summer contract.

VOTING

Simple Majority

12.3.3 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Furlong

That Council receive the List of Accounts for the period ending 28 February, 2006.

Carried 7/0

**12.3.4 PROPERTY AND SUNDRY DEBTORS REPORTS FOR THE PERIOD
ENDING 28 FEBRUARY, 2006**

File No: C 7. 9
Author: Mr Wayne Richards
Author Disclosure of Interest: Nil
Period Ending: 28 February, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

The purpose of this report is to present the Property and Sundry Debtors Reports for the period ending 28 February, 2006, to Council.

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Nil.

BACKGROUND

The Property Debtors and Sundry Debtors Reports are presented monthly.

CONSULTATION

Nil.

STAFF COMMENT

The sundry debtors report on page 48 of the financial statements shows a balance of \$15,179.73 of which \$5,550.54 relates to the current month. The balance of aged debt greater than 30 days stood at \$9,629.19.

The property debtors report on page 47 of the financial statements shows a balance of \$867,039.96. Of this amount \$167,734.83 and \$7,040.25 are deferred rates and deferred Emergency Services Levy respectively. As can be seen on the balance sheet on page 18 of the financial statements, rates, as a current asset, stood at \$693,721 as against \$769,481 at the same time last year.

VOTING

Simple Majority

12.3.4 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Furlong

That Council:

- (1) Receive the Property Debtors Report for the period ending 28 February, 2006; and**
- (2) Receive the Sundry Debtors Report for the period ending 28 February, 2006.**

Carried 7/0

12.3.5 BUDGET REVIEW

File No: C7.6
Author: Mr Wayne Richards
Author Disclosure of Interest: Nil
Report Date: 16 March, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

Local Governments are required to conduct a budget review between 1st January and 31st March each financial year. This budget review consists of a detailed comparison of the year-to-date actual results with the budget.

STATUTORY ENVIRONMENT

Regulation 33A of the Local Government (Financial Management) Regulations 1996 provides the following:

Review of budget

- (1) Between 1 January and 31 March in each year a local government is to carry out a review of its annual budget for that year.
- (2) Within 30 days after a review of the annual budget of a local government is carried out it is to be submitted to the council.
- (3) A council is to consider a review submitted to it and is to determine* whether or not to adopt the review, any parts of the review or any recommendations made in the review.

**Absolute majority required.*

- (4) Within 30 days after a council has made a determination, a copy of the review and determination is to be provided to the Department.

POLICY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

As part of the review it will be noted that projected net current assets are \$70,523 against zero in the budget. Many factors have contributed to this but one of the main factors is the projected surplus revenue received from the sale of the Eric Street sump site.

BACKGROUND

Regulation 33A is a relatively new provision (March 2005) that is meant to ensure that Council is kept fully abreast of marked variances between budgeted and actual income and expenditure.

CONSULTATION

The author has consulted with all senior staff within Council during the preparation of the budget review.

STAFF COMMENT

The budget review shows that Council's finances are tracking reasonably well when compared with both year to date and with projected figures. Indeed, it looks as though Council is heading towards a surplus position. I have attached a Statement of Financial Activity for the period 1 July, 2005 to 31 December, 2005 and also made commentary on significant variances. Also attached is the Operating Statement and more detailed reports are available upon request.

It is recommended that for all future budget reviews, Council establish the materiality level used to trigger a report on significant variances in the budget review as being greater than 15% or \$25,000.

I have increased the projected funds to be transferred to the Computer Hardware/Software Reserve as a prudent measure so that Council is better placed in future periods to deal with future liabilities in this area.

VOTING

Absolute Majority

COMMITTEE COMMENT

The Manager Corporate Services advised the following amendments to (1) and (2) of the recommendation:

- (1) Establish the materiality level used to report on significant variances in the budget review as being greater than 15% and greater than \$25,000
- (2) Endorse the proposed transfer of funds (\$110,024) to the Computer Hardware/Software Reserve as a prudent measure so that Council is better placed in the future periods to cope with a significant upgrade in computer technology

OFFICER RECOMMENDATION

That Council:

- (1) Establish the materiality level used to report on significant variances in the budget review as being greater than 15% or \$25,000;
- (2) Endorse the proposed transfer of funds to the Computer Hardware/Software Reserve as a prudent measure so that Council is better placed in the future periods to cope with a significant upgrade in computer technology; and
- (3) Adopt the budget review.

12.3.5 COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Furlong

That Council:

- (1) Establish the materiality level used to report on significant variances in the budget review as being greater than 15% and greater than \$25,000;**
- (2) Endorse the proposed transfer of funds (\$110,024) to the Computer Hardware/Software Reserve as a prudent measure so that Council is better placed in the future periods to cope with a significant upgrade in computer technology; and**
- (3) Adopt the budget review.**

Carried by Absolute Majority 7/0

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

Nil

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

Nil

15 MEETING CLOSURE

The Mayor announced the closure of the meeting at 9.04pm.

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