

TOWN OF COTTESLOE



FULL COUNCIL MEETING

MINUTES

**ORDINARY MEETING OF COUNCIL
TO BE HELD IN THE
COUNCIL CHAMBERS, COTTESLOE CIVIC CENTRE
109 BROOME STREET, COTTESLOE
7.00 PM, MONDAY, 27 OCTOBER, 2008**

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1 DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS

The Mayor announced the meeting opened at 7.05pm.

1.1 SUSPENSION OF STANDING ORDER 12.1 – MEMBERS TO RISE**BACKGROUND**

At the September 2006 meeting of Council it was agreed that the suspension of Standing Order 12.1 be listed as a standard agenda item for each Council and Committee meeting.

Standing Orders 12.1 and 21.5 read as follows:

Members to Rise

Every member of the council wishing to speak shall indicate by show of hands or other method agreed upon by the council. When invited by the mayor to speak, members shall rise and address the council through the mayor, provided that any member of the council unable conveniently to stand by reason of sickness or disability shall be permitted to sit while speaking.

Suspension of Standing Orders

- (a) The mover of a motion to suspend any standing order or orders shall state the clause or clauses of the standing order or orders to be suspended.
- (b) A motion to suspend, temporarily, any one or more of the standing orders regulating the proceedings and business of the council must be seconded, but the motion need not be presented in writing.

OFFICER RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Strzina, seconded Cr Boland

That Council suspend the operation of Standing Order 12.1 which requires members of Council to rise when invited by the Mayor to speak.

Carried by absolute majority 10/0

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

Mayor Kevin Morgan
Cr Jay Birnbrauer
Cr Greg Boland
Cr Patricia Carmichael
Cr Daniel Cunningham
Cr Bryan Miller
Cr Victor Strzina
Cr John Utting
Cr Jack Walsh
Cr Ian Woodhill

Officers

Mr Laurie Vicary	Acting Chief Executive Officer
Mr Andrew Jackson	Manager Planning & Development Services
	<i>Mr Jackson left the meeting at 9.20pm</i>
Mr Geoff Trigg	Manager Engineering Services
Ms Ruth Levett	Principal Environmental Health Officer
Ms Georgina Cooper	Acting Executive Assistant

Apologies

Nil

Leave of Absence (previously approved)

Cr Jo Dawkins

3 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil.

4 PUBLIC QUESTION TIME**Mr Michael O'Connor of 46 Forrest Street, Cottesloe – Item 12.1.3 Sea View Golf Club Development Proposal Represented**

Mr O'Connor put the same five questions to the Council as were asked at the Works and Corporate Services Committee :

1. If the development is approved, will the premises be used as a venue for social functions, be available for hire for such purposes, be an entertainment venue, or any other use that could involve the sale of alcohol, musical entertainment, or any other activity that might cause a disturbance to residents adjacent the development?
2. If approved, will a function licence be included as part of the approval?
3. If approved, will the new premises be any larger or higher than that which the present premises occupies?
4. Would any other development take place that could cause loss or impairment of ocean views to adjacent residents?
5. Under 1.2 Committee Recommendations, item (2) is a recommendation to the Sea View Golf Club "to undertake direct community consultation on the development proposal". Why isn't the Town of Cottesloe undertaking such community consultation?

Mayor Morgan advised that Council has not received a formal development application with the level of detail required to answer the above questions and

therefore referred to the response by the Chief Executive Officer at the Works and Corporate Service Committee meeting.

5 APPLICATIONS FOR LEAVE OF ABSENCE

Moved Cr Utting, seconded Mayor Morgan

That Cr John Utting be granted leave of absence for the November Committee and Council meetings.

Carried 11/0

6 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

Moved Cr Strzina, seconded Cr Birnbrauer

The Minutes of the Ordinary Meeting of Council held on Monday, 22 September, 2008 be confirmed.

Carried 11/0

7 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

Mayor Morgan welcomed Mr Laurie Vicary as the Acting Chief Executive Officer. Also wished Cr Utting's wife a speedy recovery after her recent stay in hospital.

The dates are finalised for the Enquiry By Design with public information sessions and all participants will receive their invitations shortly.

8 PUBLIC STATEMENT TIME

Ms Susan Frieth, 1 Florence Street - Item 12.1.3 Sea View Golf Club Development Proposal – Represented

Supports the recommendation by the Works Committee and commended the Committee members for the recognising that the golf course is land for community use and private land owned by the Sea View Golf Club. Granting a lease for 49years is too long and very irresponsible.

Ms Marion Ewing, 11 Rosser Street – Item 12.1.3 Sea View Golf Club Development Proposal – Represented

Raised concerns that there is a lot of issues for redeveloping the Sea View Golf Club and it would be very hard for Council to make an informed decision on the proposal when a formal development application has not been made with all the information being provided. Public consultation should also not be carried out until a formal development application has been made.

The Sea View Golf Club should not be taken over by private enterprise.

Mr Chris Bennett, 13 Old Jacaranda Way, Subiaco- Item 12.1.3 Sea View Golf Club Development Proposal – Represented

Mr Bennett read out the following statement on behalf of the Sea View Golf Club:

- 1. The SVGC wishes to advise Council that it withdraws the Development Proposal (DP) submitted to the CTC. The reasons for this withdrawal are:*
- 2. Following a number of meetings with the CEO of CTC and an Open Forum with the CTC, the SVGC agreed with the recommendations of the CEO to the Works Committee meeting of 16 September 2008, which essentially recommended CTC give in-principle support for the DP, and that SVGC undertake community consultation prior to submitting a Development Application to CTC. It has always been clear that the DP was incomplete and “commercial in-confidence”.*
- 3. The Works Committee meeting of 21 October adopted a substantially different recommendation that the CTC not SVGC conduct community consultation on the proposed Development Application. This recommendation pre-supposes that the DP is in its finite form. This is not so. The DP is in concept form and is therefore unsuitable for the purpose recommended by the Works Committee. In particular there is no detailed information on a number of issues, no concept drawings, no detailed financials or business plan. These all belong in a completed Development Application. The DP is also “commercial-in-confidence” thereby preventing its contents to be disclosed to the general public. There is as yet no formal Development Application.*
- 4. As an alternative to progressing this proposal SVGC advises Council that it will undertake direct community consultation on its proposal for development at no cost to the Council. With the co-operation of the CTC, to the extent possible, the consultation process will be in line with the CTC community consultation policy for a Key Strategic Issue Major Project. This work will be completed prior to finalising and submitting a formal and open development application to the Town Of Cottesloe.*
- 5. In summary for the reasons stated SVGC confirms that it now formally withdraws its Development Proposal and advises that a formal Development Application will be submitted following a community consultation process.*

Mr Martin Steens, c/- 104 Marine Parade (Cottesloe Beach Hotel) - Item 12.1.4 Strategy for Liquor Licencing Court Appeal – Representing

Council is looking to commit funds to gather evidence against the Hotel to reduce the patron numbers by 50%. No dialogue or communication has been undertaken on this matter with the Cottesloe Beach Hotel or even at recent meetings with Council there has been mention of this proposed strategy. We would like to discuss this matter further with Council.

On the 20 October 2008 a letter was sent to Council (copy distributed last week to all Councillors) of the recent initiatives the hotel has carried out to reduce the problems associated with the Hotel in particular at the Sunday sessions. These include being a finalist in the responsible service of alcohol awards, promoting the drink safe message through good service and by way of staff wearing drink safe t-shirts, complying with the liquor licence in relation to number of patrons, live music not being permitted in the beer garden.

The hotel currently has a good working relationship with Council and the local police and would not like to jeopardise this however they will defend their position in relation to the proposed 50% reduction in numbers and have engaged legal representation in this matter.

Mr Simon Yeo, 27 Margaret Street – Item 12.1.7 Request for Reimbursement of Legal Expenses – 25 Margaret Street

Mr Yeo advised that he purchased the land from Council. The land was subsequently surveyed and was found that the boundary fence on the south side was in the wrong place. At the time of sale there was no adverse possession claim on the land however the neighbour to the south wanted to pursue an adverse possession claim. Council had advised that the land was sold and therefore in no position to pay the legal fees for the claim.

Since then the matter has been negotiated amicably and the legal costs were kept to a minimum. Request that Council reimburse these legal costs as they arose from the purchase of Council land.

9 PETITIONS/DEPUTATIONS/PRESENTATIONS

Nil.

The items were dealt with in the following order:

12.1.3; 12.1.4; 12.1.7; 10.1.3; 10.1.1; 10.1.2; 11.1.1; 11.1.2; 12.1.6; 12.1.8; 12.1.10; 12.2.1;

The following items were dealt with en-bloc:

Moved Cr Miller, seconded Cr Carmichael

12.1.1; 12.1.2; 12.1.5; 12.1.9; 12.1.11; 12.1.12; 12.2.2; 12.2.3; 12.3.1 – 12.3.4

Carried 10/0

Items 14.2; 14.1 and 14.3 we dealt with in this order.

10 REPORTS OF COMMITTEES AND OFFICERS

10.1.1 CONFIDENTIAL ITEM - APPOINTMENT OF CHIEF EXECUTIVE OFFICER

File No: SUB/737
Author: Laurie Vicary
Attachments: [Report by Lester Blades](#)
Author Disclosure of Interest: Nil
Report Date: 23 October, 2008
Senior Officer: Laurie Vicary

10.1.2 TENDER - WASTE AND RECYCLING COLLECTION 2008-2013

File No: SUB/748
Attachments: [“CONFIDENTIAL” - \(2\)](#)
Author: Ms Ruth Levett
Author Disclosure of Interest: Nil
Report Date: 22 October, 2008
Senior Officer: Mr Stephen Tindale

SUMMARY

The preferred tenderer for waste and recycling collection services for the Town of Cottesloe is Transpacific Cleanaway Pty Ltd. It is recommended that the administration be authorised to finalise the contract with Transpacific Cleanaway Pty Ltd to commence on 29 November, 2008.

STATUTORY ENVIRONMENT

The *Local Government Act 1995* (Section 3.57) provides that where a local government intends to tender for another party to supply goods or services, it is required to invite tenders before entering into a contract.

The *Local Government (Functions and General) Regulations 1996* (Section 11) provide that tenders are to be publicly invited before entering into a contract for the supply of goods and services if it is anticipated that service will be worth more than \$100,000.

POLICY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

The preferred tenderer's cost for the first twelve month period from 29 November 2008 is \$485,043.00. The current budget for 2008/2009 allocates \$460,000 for waste and recycling collection services. As the proposed commencement date of the contract is 29 November 2008 the savings from the existing contract rates will offset the majority of this increase for the current year.

The total increase in the cost of services to the Town of Cottesloe using Transpacific Cleanaway will be 8.6% per annum based on current contractor rates and rates tendered. The first annual increase scheduled to be applied to the current rates tendered is on the first anniversary of the contract and therefore will have no impact on the current budget.

BACKGROUND

The Town of Cottesloe's current waste and recycling collection contract expires on 28 November, 2008. The current contract awarded to Trum Pty Ltd trading as Roads & Robinson Rubbish & Recycling in 1998 was a five year contract with an option to

extend the term for a further five years. Transpacific Cleanaway purchased the business of Trum Pty Ltd in May 2008 and continues to provide waste collection services for the Town of Cottesloe.

Tender documents were prepared by the administration and reviewed by solicitors, McLeods. An invitation to tender was advertised in the West Australian on Saturday, 16 August 2008.

The tender documents required the provision of the following services:

- a) Waste Collection Service:-
 - A weekly (5 working day) residential waste collection service utilising 120 litre green mobile garbage bins and 1100 litre bulk bins;
 - An 'as required' daily (7 day) street litter bin service utilising a variety of bin types as per the schedules provided;
 - An 'as required' daily (7 day) commercial waste collection service utilising 240 litre mobile garbage bins and 1100 litre bulk bins.

- b) Recycling Collection Service:-
 - A fortnightly (5 working day) residential recycling collection service utilising a 240 litre yellow lidded mobile garbage bin;
 - An 'as required' daily (7 day) commercial recycling collection utilising a 240 litre yellow lidded mobile garbage bin.

- c) Miscellaneous Items
 - Annual audit of 120 litre general waste bins
 - Repair and replacement of bins

The tender is for a five year term and there is an option in the tender to allow for a further five year extension of the contract.

TENDER ASSESSMENT

Tenders closed on Thursday, 18 September, 2008 and the following tenders were received:

- Transpacific Cleanaway conforming tender
- Transpacific Cleanaway alternative tender
- Perthwaste conforming tender (includes a discount option)

The tender document required that a tenderer submit prices for all of the schedules.

An independent consultant, Bruce Bowman of Bruce Bowman & Associates Pty Ltd, was engaged to assess the tenders.

In the absence of Cr Miller, Council's tender evaluation panel consisting of Mayor Kevin Morgan and CEO, Stephen Tindale undertook a review of the assessment of the qualitative and pricing criteria.

The consultant's assessment was compared with the assessment undertaken by the administration and both assessments were identical or very close in all respects. All tenders submitted were of a very high standard.

A copy of the evaluation criteria containing the assessment of the tenders is shown in confidential attachment 1. The qualitative criterion represents 80% of the evaluation with the remaining 20% allocated to price.

The alternative tender submitted by Transpacific Cleanaway requires the Town to appoint a contract for a 10 year term. For reasons such as the changes that may result from the Dicom facility and regional cooperation, a ten year term is not desirable at this point. It is also questionable whether the Town could accept a ten year term without other tenderers being offered the same opportunity.

The Perthwaste submission containing a discount option requires a direct debit transaction to be made on the first day of the month following service for part payment of the contractor's account followed by the lesser part on the 21st day of the month.

The following is a summary of the consultant's assessment of the conforming tenders and the fluctuations that will occur when various scales of CPI and fuel price index are applied. The 5 year costs of the Schedules for each supplier using 3% pa increases for CPI and 3%,5% and 7.5% Fuel Price were expressed numerically as a variation from the average and cumulatively expressed over the three schedules as a numerical number. A higher number shows that a Supplier has consistently been cheaper over the majority of Schedules. **The point score system is not an indication of which supplier was the cheapest in total cost.**

PRICE (20%)

	TENDERER	SCORE 0%	CPI 3% FUEL PRICE 3%	CPI 3% FUEL PRICE 5%	CPI 3% FUEL PRICE 7.5%
1.	Perthwaste	1.92	1.91	1.91	1.90
2.	Perthwaste discount	1.97	1.97	1.96	1.95
3.	Cleanaway	2.10	2.12	2.13	2.15

CUSTOMER SERVICE (20%)

	TENDERER	SCORE	CPI 3% FUEL PRICE 3%	CPI 3% FUEL PRICE 5%	CPI 3% FUEL PRICE 7.5%
1.	Perthwaste	1.03	1.03	1.03	1.03
2.	Perthwaste discount	1.03	1.03	1.03	1.03
3.	Cleanaway	1.03	1.03	1.03	1.03

CAPABILITY (60%)

	TENDERER	SCORE	CPI 3% FUEL PRICE 3%	CPI 3% FUEL PRICE 5%	CPI 3% FUEL PRICE 7.5%
1.	Perthwaste	3.38	3.38	3.38	3.38
2.	Perthwaste discount	3.38	3.38	3.38	3.38
3.	Cleanaway	3.38	3.38	3.38	3.38

SCORECARD

	TENDERER	SCORE 0%	CPI 3% FUEL PRICE 3%	CPI 3% FUEL PRICE 5%	CPI 3% FUEL PRICE 7.5%
1.	Perthwaste	6.33	6.32	6.31	6.31
2.	Perthwaste discount	6.38	6.37	6.37	6.36
3.	Cleanaway	6.51	6.53	6.54	6.55

CONCLUSION

It is concluded that using the pricing formula, Transpacific Cleanaway scorecard is the highest. Transpacific Cleanaway offers protection from excessively high increases in future fuel price.

PRICE SUMMARY

	2008/2009 \$000's pa	5 Years (3%+3%) \$000's pa	5 Years (3%+5%) \$000's pa	5 Years (3%+7.5%) \$000's pa	5 Years (3%+12.5%) \$000's pa
Perthwaste	479,312	2,511,029	2,551,620	2,604,194	2,715,867
Perthwaste discount	468,328	2,448,254	2,487,830	2,539,089	2,647,970
Cleanaway	485,043	2,563,005	2,580,599	2,602,759	2,647,462
RRRR	446,440	N/A	N/A	N/A	

Pricing assessment schedules for Perthwaste, Perthwaste discount and Cleanaway pricing are shown in confidential attachment 2 to the report. In summary, the table above shows the total of the prices submitted for all services for the first year of service, 2008/2009 and for the first five years of the contract based on a 3% CPI and 3%, 5%, 7.5% and 12.5% fuel price increase.

Perthwaste discount is cheaper on price for the first year of the contract and for the five year term based on predicted 3% CPI and 3%, 5% and 7.5% Fuel Price Indexes annually. The break even percentage is 12.5% where Cleanaway and Perthwaste discount prices would be equal. The fuel price increase over the past five years has

been averaged at 12.4% annually. Should the percentage go above this the Transpacific Cleanaway tender provides protection against further fuel price increases.

In addition, there would a saving of some \$3,000 per annum and \$15,000 over five years for interest earned by the Town on holding the money for 30 days rather than paying the bulk of the account on the first day of the month following service.

A comparison made with the prices tendered in 2006 for the Western Suburbs contract with the City of Nedlands and the Town of Claremont has revealed that prices submitted were lower than those submitted in this current tender. However, the prices estimated for the Town of Cottesloe to commence the contract in November 2008 were considerably higher based on the projected fuel price increase and it was therefore decided not to proceed with the Western Suburbs tender at that time.

CONSULTATION

Nil.

STAFF COMMENT

It was previously recognised when assessing the Western Suburbs tender in 2006 that one of the possible implications of tendering for Cottesloe's service in 2008 is that the same companies may no longer be in the market and prices for the service may be higher than those submitted in this tender. Whilst all the same companies did not tender for the current Town of Cottesloe tender, prices are in most instances higher than those previously submitted.

The difference in the fuel price projections resulted in much higher anticipated prices for the commencement of the contract for Cottesloe. Fuel price increases have not been as high as those estimated and it is likely that the cost would have been slightly lower at the commencement of the Cottesloe contract.

Customer Service

Both Perthwaste and Transpacific Cleanaway have demonstrated that they have adequate customer service procedures in place to satisfactorily respond to customer requirements. References provided for both companies indicate that customer service processes and responses are satisfactory in all respects.

Proposed service

No changes in services are proposed. Provision for a potential weekly recycling collection service was included in the tender. The reasons for this are twofold.

Firstly, upon request, residents are provided with an additional recycling bin at no charge as a means to encourage recycling. There are currently some 88 additional services and there are consistent requests for a weekly recycling service from the community. The cost of additional general waste bins adequately covers the cost of the free recycling bins.

Secondly, the trial of the Dicom process is about to commence at Brockway Road Transfer Station and if successful, a review of bin contents will be required. It will

reduce the cost of separation if the maximum amount of dry recyclable material is separated at the source.

It is not viable to introduce a weekly recycling service at present. However, Perthwaste have indicated they will commence this service mid contract if required. Cleanaway have advised that they are not willing to commence a weekly recycling service mid contract.

Price adjustment

A clause in the tender document provides for a price variation. The formula is based on the contractor's fixed costs, labour and repairs and fuel costs all represented by a nominated percentage. It is linked to CPI and the fuel price index. The tendered rates may be reviewed annually on the anniversary of the contract.

Due to current market fluctuations it is impossible to estimate what the first and subsequent percentage increases will be. A 3% increase for CPI and fuel price has been applied to the tendered rates for the purpose of providing an estimate for the life of the contract. An additional table shows the effect of a 5%, 7.5% and a 12.5% fuel price increase over the five years of the contract.

The percentage nominated by Perthwaste for fuel price in their submission is considerably higher than Transpacific Cleanaway and results in their prices being heavily exposed to fluctuations in fuel price as opposed to Cleanaway's nominated percentage which offers protection from an increased fuel price.

In conclusion, as stated above the qualitative criteria represents 80% of the evaluation with the remaining 20% allocated to price. Whilst it is a major consideration for a long term contract where price variation over an extended period has a significant impact on the overall price, it is not necessarily the deciding factor in choosing the preferred tenderer.

In this instance the two tenderers were equally scored in all areas except for price. A slightly higher assessment score due to comparative assessment of schedule prices and the protection from potentially higher increases in future fuel price (relative to CPI) meant that the submission by Transpacific Cleanaway has resulted in them being chosen as the preferred tenderer.

It is therefore recommended that the evaluation committee's decision to select Transpacific Cleanaway Pty Ltd as the preferred tenderer be supported.

VOTING

Simple Majority

OFFICER & COMMITTEE RECOMMENDATION

Moved Mayor Morgan, seconded Cr Miller

That Council:

- (1) Accepts the tender from Transpacific Cleanaway Pty Ltd for waste and recycling collection services for the Town of Cottesloe; and

- (2) Authorises the administration to finalise the contract with Transpacific Cleanaway Pty Ltd to commence on 29 November, 2008.

Lost 5/6

Mayor Morgan used his second vote to resolve the impasse.

Moved Cr Cunningham, seconded Cr Boland

That the matter lie on the table until the end of the meeting.

Lost 5/6

Mayor Morgan used his second vote to resolve the impasse.

Cr Carmichael left the room at 8.55pm and was not part of the vote for the following Council resolution.

Moved Cr Walsh, seconded Cr Strzina

That the officer recommendation be represented again

Carried 9/0

The introduction of the officer recommendation is permitted by clause 16.6 of the Standing Order Local Law.

10.1.2 OFFICER & COMMITTEE & COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Strzina

That Council:

- (1) Accepts the tender from Transpacific Cleanaway Pty Ltd for waste and recycling collection services for the Town of Cottesloe; and**
- (2) Authorises the administration to finalise the contract with Transpacific Cleanaway Pty Ltd to commence on 29 November, 2008.**

Carried 8/1

Cr Carmichael returned to the meeting at 9.05pm

10.1.3 COTTESLOE BEACH PYLON

File No: Sub/214
Author: Mr Geoff Trigg
Attachments: [Correspondence \(2\)](#)
[Memo to Council \(copy\)](#)
[Letter to the Premier](#)
[Lotterywest Grant Application](#)

Author Disclosure of Interest: Nil
Report Date: 17 October, 2008
Senior Officer: Mr Laurie Vicary

SUMMARY

At its meeting in June 2008 Council discussed the deteriorating condition of the Cottesloe Beach Pylon and resolved.

(Item 12.2.1, 23/06/2008 – Council resolution)

The consultants report was sent to the Heritage Council and DPI, with requests for commercial assistance being sent to DPI, Lotterywest, the previous and the new State Government and the Heritage Council.

Comments have now been received from Wood & Grieve Consultants, at no cost, proposing a course of action, often consideration had been given to a proposal from a diving services contractor.

This report covers these details and recommends that Council resolve to:

1. Adopt, as a first step in the rehabilitation of the Cottesloe Beach Groyne, 'Phase 1' as included in the Wood and Grieve Consultant comments, with such works to the dependant on funding contributions on grant, from the State Government and Lotterywest;
2. Provide the Town of Cottesloe portion of a combined funding package for these works from the Area Improvement Reserve;
3. Receive a further report on these proposed works once information is available on the success of contribution on grant applications is known, with a proposed works schedule to be included.

BACKGROUND

Since the required letters were sent to the Heritage Council and the Department of Planning & Infrastructure the State election has intervened. No answer was received from the previous government other than no funding decision was possible due to the care-taking situation prior to the election.

A new letter requesting consideration of a \$50,000 contribution has been sent to the Premier for urgent consideration. No answers have been received yet.

A series of letters have been sent to the Heritage Council regarding the Pylon. Strong support is given for retention of the existing pylon structure, as expected. Initially, no funds were believed to be available but the Heritage Council is investigating a small contribution for design and supervision costs.

A formal application to Lotterywest for a \$50,000 grant has been sent, with further queries on that submission being answered. No result on any of these requests has been formally received, as yet.

Wood and Grieve Consulting Engineers have offered a no-cost service for engineering and on this project. Similar professional help was given in 1995/96 when the Pylon column had collapsed. Indianic Diving Services, a WA based diving specialist contractor has also offered its expertise. A meeting was held on site with both companies. Indianic then supplied notes on a proposed method of repair/replacement. That information was supplied to Wood & Grieve for recommendations on treatment.

Copies of this information are attached.

STATUTORY ENVIRONMENT

The Cottesloe Beach Pylon falls within Reserve 47618 and Council has previously accepted the vesting of the Management Order for this reserve. Council is therefore responsible for the maintenance and safety of the structure.

CONSULTATION

At this time, the State Government, Heritage Council, Lotterywest, The Department of Planning & Infrastructure, Wood & Grieve Consultants and Indianic Diving Services have been involved with this matter. No resident consultation process is proposed at this stage.

STAFF COMMENT

Until a detailed inspection can be undertaken to determine how far the existing concrete and steel reinforcing of the base structure have deteriorated, no detailed cost estimate is possible.

Because of the structures age, permanent immersion in rough sea water, rusting of the reinforcing steel through the entire structure and the removal of small sections of steel and concrete from the outer 'shell' of the structure in an attempt to reduce injury to swimmers and people who moist on diving from the structure, the cost estimate of \$100,000 to \$200,000 is not a total cost to full restore the structure.

To provide long term stability, all steel reinforcing would have to be stripped out, replaced with high quality reinforcing steel (possibly stainless steel) and the structure reinstalled with new concrete.

The cost of this work would be several times the \$100k-\$200k estimate and the resulting structure would retain little of the original material.

Apart from total removal and replacement with a new structure, the main option is covered in the Wood & Grieve comment labelled "Phase 1" as a first step, followed by "Phase" if and when funding is available ie:

"Phase 1 – Repair of Shaft Lean

We suspect that the lean is due to disintegration of the base from which it cantilevers. As such, our suggestion would be to:

- provide temporary support to the shaft in a vertical orientation via scaffold or barge if necessary.
- Break back the poor quality concrete (to good concrete) to the top of the bell above the low waterline. Treat or replace corroded reinforcement. Recast the top of the bell with a high concrete mix or suitable cementitious repair mortar (depending on volumes involved). This would probably require a 2 part mould to be made up which could be oversized in diameter to fit in with future forms to the lower region.
- Create a new recessed pocket for the shaft and dry pack the pocket hard to the underside of shaft.

This would resolve the lean and improve the quality of the top of the bell. It would be the cheapest alternative but should be seen as a partial repair only and obviously doesn't address the bell below this line or its foundations."

(the entire Wood & Grieve comment is in the attachments).

As has been mentioned, Council has not budgeted any capital works expenditure on this project 2008/09. The two main funding options are to put off an approved project until 2009/10 and reallocate those funds to this project or to fund Council's approx \$50,000 cost for the project from the Area Improvement Reserve, currently budgeted to balance at \$85,426 at the end of this financial year.

Voting – Simple Majority

POLICY IMPLICATIONS

NIL

STRATEGIC IMPLICATIONS

NIL

FINANCIAL IMPLICATIONS

Works to restore the Beach Pylon to a sound condition will require an expenditure of \$100,000 +, depending on the final assessed condition, prior to the required works. Council has not budgeted for any construction expenditure on this item for 2008/09. Any position of cost to be gained by Council will impact on the current budget. At this stage an amount of \$50,000 is possible if submissions to the Premier and Lotterywest are both successful.

VOTING

Simple Majority

OFFICER RECOMMENDATION

That Council resolve to:

- (1) Adopt, as a first step in the rehabilitation of the Cottesloe Beach Pylon, Phase 1 as included in the Wood and Grieve Consultant comments, with such works to be dependant on funding contributions on grant, from the State Government and Lotterywest;
- (2) Provide the Town of Cottesloe portion of a combined funding package for these works from the Area Improvement Reserve;
- (3) Receive a further report on the proposed works once information is available on the success of contribution on grant applications is known, with a proposed works schedule to be included.

AMENDMENT

Moved Mayor Morgan, seconded Cr Woodhill

That the words 'capped at \$50,000' be added to condition (2).

Carried 10/0

10.1.3 COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Woodhill

That Council resolve to:

- (1) Adopt, as a first step in the rehabilitation of the Cottesloe Beach Pylon, Phase 1 as included in the Wood and Grieve Consultant comments, with such works to be dependant on funding contributions or grant, from the State Government and Lotterywest;**
- (2) Provide the Town of Cottesloe portion of a combined funding package for these works from the Area Improvement Reserve – capped at \$50,000;**
- (3) Receive a further report on the proposed works once information is available on the success of contribution or grant applications is known, with a proposed works schedule to be included.**

Carried 10/0

Note:

Cr Cunningham suggested the voluntary efforts of Wood and Grieve and the divers should be noted and thanked.

11 DEVELOPMENT SERVICES COMMITTEE MEETING HELD ON 20 OCTOBER 2008**11.1 PLANNING****11.1.1 NO. 191 (LOT 33) BROOME STREET – TWO-STOREY HOUSE (INCLUDING SPA)**

File No: 1481
Author: Ed Drewett
Author Disclosure of Interest: Nil
Report Date: 7 October 2008
Senior Officer: Mr Andrew Jackson

Property Owner: F Saraceni

Applicant: Craig Steere Architects
Date of Application: 5 June 2008 (Amended 28 August 2008)

Zoning: Residential
Use: P - A use that is permitted under this Scheme
Density: R20
Lot Area: 658m²
M.R.S. Reservation: N/A

SUMMARY

This application is for a two-storey house with basement cellar on the NW corner of Broome and Grant Streets, plus a spa.

Amended plans were submitted on 28 August 2008 following consideration of comments made by the Design Advisory Panel and discussions between the applicant and the Town's staff.

The applicant is seeking variations to the acceptable development standards of the Residential Design Codes (RD Codes) in respect to the proposed roof height, setbacks, fill/retaining walls and visual privacy and so each of these elements have been addressed under the performance criteria of the Codes.

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

PROPOSAL

The proposal is to demolish an existing house and construct a two-storey house with a basement cellar and access from Broome Street, plus a spa.

STATUTORY ENVIRONMENT

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

HERITAGE LISTING

N/A

DRAFT LOCAL PLANNING SCHEME NO. 3

No changes are proposed to the zoning of this lot.

APPLICATION ASSESSMENT

AREAS OF NON-COMPLIANCE

Residential Design Codes

Design Element	Acceptable Standards	Provided	Performance Criteria Clause
6.7 – Building height	7m for concealed (flat) roof	7m to main roof, 7.6m to raised sections	Clause 6.7.1 – P1
6.2 – Streetscape	1m intrusion into setback for up to 20% of frontage	1m intrusion for 52% of frontage	Clause 6.2.2 – P2
6.3 – Boundary setbacks	1.8m from upper-floor study to north boundary	1.75m	Clause 6.3.1 – P1
6.6 – Site works	Filling behind the front setback area and within 1m of a common boundary to 0.5m	Up to 1.4m	Clause 6.6.1 – P1
6.8 – Visual Privacy	7.5m from upper south deck to western boundary; 4.5m from upper-floor study and bedroom to northern boundary	4.5m from upper south deck; 1.75m & 1.5m to study and bedroom respectively	Clause 6.8.1 – P1

STRATEGIC IMPLICATIONS

N/A.

FINANCIAL IMPLICATIONS

N/A.

CONSULTATION

REFERRAL

Internal

- Building
- Engineering

External

N/A.

ADVERTISING OF PROPOSAL

The original plans submitted with the application were advertised as per Town of Cottesloe Town Planning Scheme No 2. The advertising consisted of a letter to two adjoining property owners. Two submissions were received.

The main points raised in the submissions are summarised as follows:

Ed Van Beem, 193 & 197 Broome Street

- The proposed (then) -8m roof height and subsequent elevation of floor levels will increase overlooking to 193 Broome Street due to insufficient setbacks;
- General elevation of the ground level will create a very high building when most of those around it are significantly lower, the exception being a block of flats opposite;
- The proposed height may give the appearance of a block of flats which is not ideal for this area; and
- If Council allows the requested concessions he would assume that Council would also grant such concessions to him at 193 Broome Street for any proposed development of that site.

Ian Crockett, 22 Grant Street

- The (then) 8m height of the proposed dwelling may result in overlooking from the upstairs study and guest room to my family room, backyard and upstairs bathroom. Understands that the cone of vision diagram shows sufficient clearance, however, at an 8m height they will have views into our property that impinge on our privacy;
- The owner of the proposal has advised that he is willing to erect fixed louvres to allow light into the study area but not a view out or alternatively to increase the height of the windows to 1.65m above the floor level or have opaque glass in the guest room. If these items are delivered and form part of the plans then we do not have an objection to the proposed height of 8m; and
- Agreement will need to be reached between the parties as to the common retaining wall and fence.

DESIGN ADVISORY PANEL

On 5 August 2008 the application and original plans were presented to the Panel for discussion. The Panel considered amongst other things that the mass and scale of the proposed dwelling appeared excessive and that its height should be reduced to no higher than 7m.

Applicant's response to DAP

- Building height – the proposed building height has been reduced by 1m, ie from a majority 8m flat roof (with a small portion of raised roof extending to 8.5m) to a majority 7m flat roof (with a small portion of raised roof to 7.6m);
- Scale – the altered building height has effectively reduced the overall scale of the building significantly, which is now consistent with the scale of other existing and future two-storey buildings in the vicinity;
- Retaining levels – the design has been checked to ensure that it complies with the performance criteria of the RDC relating to retaining fill levels, both within the street setback areas and the shared boundary setbacks.

APPLICANT'S JUSTIFICATION

The applicant has submitted amended plans and a detailed report in support of the revised proposal in response to the initial concerns raised by the Town's officers, Panel members and adjoining property owners. A copy of the report is attached.

A summary of the main comments raised are as follows:

- The design has been developed with consideration to the site constraints, weather conditions, solar access and in accordance with the objectives of TPS2 in terms of privacy, views and general amenity of the locality;
- The proposal has not maximised the development potential of the site (with over 56% open space retained), and instead has focussed on creating a design that achieves the ultimate Cottesloe lifestyle;
- The building form and style makes reference to the surrounding context together with the rectilinear forms and delicate detailing of contemporary Japanese architecture, incorporating layered wall planes, a subtle palette of natural materials, intricate horizontal slat screens that create visual interest (as well as addressing privacy requirements), and simple flat roof forms that 'float' over the wall main form, and create a sense of lightness in favour of the more heavy traditional pitched roof forms;
- The design responds to Environmentally Sustainable Design principles, including rainwater harvesting and storage, grey-water recycling, solar collection and storage cells and a solar hot water system. The building has also been designed in accordance with passive solar design principles that maximise natural lighting and solar gain (northern highlight windows) and cross ventilation (including southern highlight windows) thereby minimising the need for air conditioning;
- The proposed dwelling places focus on the SW outlook to the ocean, with upper and lower external decks providing outdoor living spaces. Cantilevered roof overhangs to the west offer protection from the harsh afternoon sun;

- A spa and deck is proposed for the SW corner where a sense of privacy can be achieved with landscaping elements without compromising outlook;
- The proposed outdoor area in the NW corner will be lower than the existing raised patio thereby improving current privacy and overlooking to adjoining properties;
- Mature trees will be an integral part of the landscaping and will be located so as to enhance privacy and add value and visual interest to the streetscape. Similarly, raised planters have been used to define the boundary fences and are incorporated into the main building form;
- The proposed height achieves the performance criteria for building height requirements of the R-Codes in terms of allowing adequate direct sun to buildings and open spaces on adjoining lots, allowing adequate daylight to major openings in habitable rooms on adjoining lots, and allowing access to views of significance (no views will be reduced for either lot);
- The north walls incorporate appropriate boundary setbacks and achieve the performance criteria in relation to privacy and overlooking as well as generally conforming with the setback requirements;
- The neighbouring residence at 22 Grant Street has been allowed an increased height to allow access to ocean views resulting in an approximate wall height of 8m for their entire east elevation (1m above allowed height). This wall is also setback only 1.4m from the shared boundary instead of 4.9m required for a wall this length and height with a major opening; and
- The overhanging entry awnings project forward only 1m within the setback area and can be considered a minor incursion.

STAFF COMMENT

The main issues regarding this proposed development (based on the amended plans) are:

- Building Height
- Setbacks
- Retaining Walls/Fill
- Visual Privacy

Each of these issues is discussed and assessed in detail below:

Building Height

The calculation of building height stems from Council's determination of natural ground level (NGL). Clause 5.1.1 of the TPS2 expresses policy in relation to building height and paragraph (c) of that clause provides a basic formula in relation to measurement of such height.

However, provision is made for Council to depart from the formula where natural ground forms indicate that a variation is warranted provided that the amenity of the area is not unreasonably diminished.

The natural ground level at the centre of the lot has been determined to be RL: 25.8 which has been derived using Water Authority contour maps obtained by the applicant's surveyors, Brown McAllister.

This method is considered to be more accurate than extrapolating from existing levels or calculating the average of the four corners of the lot in this case as the levels have previously been altered.

Based on this NGL under the RDC the maximum permitted building height for a concealed or flat roof is 7 metres (RL: 32.8).

The original plans submitted with this application proposed a roof height of between approx. 8m-8.5m (RL: 34.225). However, following liaison with Officers and the DAP the plans have been amended to show a reduced height for the main roof at 7m (RL: 32.8), with two sections of the roof extending to 7.6m (RL: 33.4). A small central section of roof fronting Broome Street has a height of 6.4m (RL: 32.286) which is 0.6m below that permitted under the Codes (refer attached roof plan for details).

The applicant advises that the two raised roof sections represent only 25% of the total roof area and are integral to the success of the environmentally-sustainable design (ESD) principles, incorporating highlight windows for cross-ventilation and northern solar access, whilst the central setdown allows a concealed area for the photovoltaic cells to be located on the service deck.

The applicant has also submitted a streetscape analysis to demonstrate that the proposed increased roof height will not be readily visible from the street and therefore will not present any additional bulk and scale to the streetscape appearance (see attached).

Under the Residential Design Codes minor projections above the standard roof height are permissible under the acceptable development standards. However, such minor projections are generally restricted to chimneys, vent pipes, aerials or other appurtenance of a like scale.

In this case, the proposed raised roof areas appear of a greater scale than that normally considered as minor projections and therefore should be considered under the performance criteria of the Codes.

The relevant Performance Criteria (Clause 6.7.1) are:

Building height consistent with the desired height of buildings in the locality, and to recognise the need to protect the amenities of adjoining properties, including where appropriate:

- *Adequate direct sun to buildings and appurtenant open spaces;*
- *Adequate daylight to major openings to habitable rooms; and*
- *Access to views of significance*

There is a variety of housing types in the area including single-storey and two-storey houses as well as older-style flats (multiple dwellings).

On the Grant Street / Broome Street intersection the corner properties are single-storey, with the exception of a three-storey apartment block on the SW corner at 187 Broome Street.

The location of the subject lot on the northern side of Grant Street ensures that adequate direct sun and daylight will be maintained to adjoining properties despite the proposed increased height of the roof, and overshadowing will be restricted to the road reserve.

Views of significance are also unlikely to be affected by the proposal as the applicant has demonstrated that the higher sections of roof will not be visible at eye level from most directions and no ocean views will be affected.

The main issue with regards to height is therefore whether Council considers that the proposed building height is consistent with the desired height of buildings in the locality so as to satisfy the performance criteria.

As previously mentioned, there are a variety of housing types and heights in the area but low rise is generally favoured and new houses should generally adhere to the building height provisions of the TPS and the RD Codes.

Notwithstanding this, the location of the proposed house on a crest at the intersection of Grant and Broome Streets, together with the positioning of the raised sections of roof towards the centre of the main roof, should reduce the possibility of seeing the raised sections from normal eye-level, as demonstrated by the applicant in their street elevation (see Drwg. No. SK17.01 – Attached). On this basis, the proposal has merit but it could also be seen to set a precedent for similar development proposals with raised roof sections being submitted for consideration by Council if they also met a similar criterion; although it is not such a common design approach but rather an individual architectural design.

Setbacks

Front Canopy

A 14.5m long entry canopy is proposed along the front (eastern elevation) which intrudes 1m into the preferred 6m setback (Council Resolution 28/10/02). Under the RD Codes this type of feature would normally be restricted to 20% of the frontage; however, greater intrusions may be considered under performance criteria where they do not detract from the character of the streetscape.

In this case the proposed entry canopy extends 52% of the frontage but forms an integral part of the design as described above and will not detract from the streetscape and is considered to satisfy performance criteria.

Setback to study

A minimum 1.8m setback is required to the proposed upper-floor study from the northern boundary whereas a 1.75 setback is proposed. However, this setback variation is minor and will have a negligible affect on the adjoining property and is due to the requirement under the Codes to take the nearest higher value of all intermediate height and length values rather than extrapolating a more exact setback calculation. For this reason it is supported under performance criteria of the Codes. It should be noted that although technically the proposed north-facing windows to the study and bedroom are major openings, it is nevertheless considered that the proposed permanent horizontal screening is effectively the same as assessing a window with a sill height of 1.6m above floor level and therefore they have been assessed as minor openings in this case.

Otherwise the proposal satisfies setback requirements and is positioned comfortably on its corner location.

Fill / Retaining Walls

The Scheme and RD Codes address the amount by which ground levels may be modified during development.

Clause 5.1.4 of the Scheme allows for retaining up to 1.8m whereas the acceptable development standards of the Codes restrict filling behind the street setback and within 1m of a common boundary to 0.5m.

In this case, fill and retaining walls are proposed behind the street setback area to a height of approx. 1.4m along the western boundary and should therefore be considered under performance criteria of the Codes. All other retaining walls are compliant.

The relevant performance criterion of the Codes (Clause 6.6.1) states:

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

The higher section (1.4m) of proposed retaining along the western boundary will be setback 6.4m from Grant Street and so will not have a significant visual impact on the streetscape due to the location of the existing house on the adjoining lot. Furthermore, there are no major openings on the adjoining property abutting the proposed retaining wall and so it will not impact on that property, with the exception of a small area of retaining proposed towards the NW corner of the lot which will be abutting the adjoining owner's courtyard.

However, this section of wall replaces an existing higher wall on the boundary which currently forms part of a garage (to be removed) and the area proposed to be filled does not form part of the main outdoor living areas so is unlikely to have any significant adverse affect on the neighbour. Furthermore, the adjoining house has its main outdoor living areas on the western side away from the proposed development and no specific concerns have been raised by the neighbour in regards to the height of the retaining proposed.

The applicant is also proposing a 1.65m high fence above the proposed retaining walls (in lieu of the normal 1.8m high fence) which should further lessen the visual impact on the neighbour, although the final height of the proposed fence will need the agreement of both owners in the normal manner.

Visual Privacy

The proposed development complies with the majority of the visual privacy requirements of the RD Codes. However, the proposed upper floor south deck and the upper floor study and master bedroom windows need to be assessed under performance criteria.

The relevant performance criteria (Clause 6.8.1) state:

Direct overlooking of active habitable spaces and outdoor living areas of other dwellings is minimised by building layout, location and design of major openings and outdoor active habitable spaces, screening devices and landscape, or remoteness.

Effective location of major openings and outdoor active habitable spaces to avoid overlooking is preferred to the use of screening devices or obscured glass.

Where they are used, they should be integrated with the building design and have minimal impact on residents' or neighbours' amenity.

Where opposite windows are offset from the edge of another, the distance of the offset should be sufficient to limit views into adjacent windows.

The proposed upper floor south deck will predominantly overlook the adjoining dwelling's driveway within the front setback area, which is acceptable under the Codes. However, there is potential for some overlooking from the deck to an upper-floor front balcony and a living room window on the eastern elevation of the adjoining dwelling, although this window is offset at approximately a 45-degree angle to the deck so any overlooking will be limited. Furthermore, the applicant advises that options for a permanent screening device are currently being discussed between the owners of each property to ensure that there is no loss of amenity to the neighbour. External aluminium fixed horizontal slats are proposed in front of the upper-floor north-facing windows to the study, drying area and main bedroom windows, to avoid direct overlooking of active habitable spaces or outdoor living areas. These will appear integrated with the building design and will not impact on the neighbour's amenity.

Potential overlooking from a proposed 0.2m² north-facing bedroom window will be minimal as this is a small opening that will have restricted visibility to only the front of the adjoining dwelling thereby avoiding any active habitable spaces.

CONCLUSION

The proposed two-storey house can be supported with the variations sought as it satisfies the relevant performance criteria of the RD Codes.

While Council's discretion is sought in regards to the height of two portion of the proposed roof, aspects such as privacy, views and general amenity have been satisfactory addressed and the proposed roof height may therefore be supported.

VOTING

Simple Majority

COMMITTEE COMMENT

Committee sought clarification regarding the determination of NGL in relation to building height and the MDS explained the various methods as guided by Council Policy on a case-by-case basis depending on the circumstances. Overall Committee supports the proposal having regard to the reduced height, sustainable design and setting.

AMENDMENT

Moved Cr Walsh, seconded Cr Woodhill

That the following conditions be added to the recommendation:

- (1) (n) Building height should conform to the 7.0m allowed for flat roof designs.
- (1) (o) Fill on the western boundary be restricted to 0.5m as per the Town Planning Scheme No. 2 requirements.

Lost 3/7

11.1.1 OFFICER & COMMITTEE & COUNCIL RESOLUTION

Moved Cr Walsh, seconded Cr Strzina

- (1) **That Council GRANT its Approval to Commence Development for the proposed two-storey house (including spa) at No 191 (Lot 33) Broome Street, Cottesloe, in accordance with the plans submitted on 28 August 2008, subject to the following conditions:**
 - (a) **All construction work shall be 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 shall not be discharged onto the street reserve or adjoining properties, and the gutters and downpipes used for the disposal of stormwater runoff from roofed areas shall be included within the working drawings for a building licence.**
 - (c) **The external profile of the development as shown on the approved plans shall not be changed whether by the addition of any service plant, fitting, fixture or otherwise except with the written consent of Council.**
 - (d) **The applicant applying to the Town of Cottesloe for approval to construct a crossover, in accordance with Council specifications, as approved by the Manager Engineering Services or an authorised officer.**

- (e) The existing redundant crossover being removed and the verge, kerb and all surfaces made good at the applicant's expense to the satisfaction of the Manager Engineering Services.
 - (f) Air-conditioning plant and equipment shall be located closer to the proposed dwelling than the adjoining dwellings, and suitably housed or treated as may be necessary, so as to ensure that sound levels emitted shall not exceed those outlined in the Environmental Protection (Noise) Regulations 1997.
 - (g) Any fencing to the site within the front setback area shall be of an open- aspect design in accordance with Council's Fencing Local Law and the subject of a separate application to Council.
 - (h) No retaining walls or fill within the street setback areas or along the northern boundary are to exceed 0.5 metres above natural ground level.
 - (i) The spa pump and filter shall be located so as not to impact on adjoining properties and suitably housed or treated as may be necessary so as to ensure that environmental nuisance due to noise or vibration from mechanical equipment is satisfactorily minimised to within permissible levels outlined in the Environmental Protection (Noise) Regulations 1997.
 - (j) Wastewater or backwash from spa filtration systems shall be contained within the boundary of the property and disposed of into adequate soakwells.
 - (k) 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 1.8 metres away from any building or boundary.
 - (l) Wastewater or backwash shall not be disposed of into the Council's street drainage system or the Water Corporation sewer.
 - (m) The north-facing section of the proposed south deck shall be screened to a minimum height of 1.65m above finished floor level, and the proposed north-facing windows to the upper-floor study and bedroom shall be screened with fixed horizontal slats as shown on the approved plans, all to the satisfaction Manager Development Services.
- (2) Advise the submitters of this decision.

Carried 7/3

Cr Walsh requested that the vote be recorded:

For: Mayor Morgan, Cr Carmichael, Cr Cunningham, Cr Millar, Cr Strzina, Cr Boland, Cr Birnbrauer

Against: Cr Walsh, Cr Wodhill, Cr Utting

11.1.2 REAR OF NOS 48 & 50 (LOTS 5 & 243) NORTH STREET – TWO-STOREY HOUSE AND POOL

File No: 1519
Author: Ed Drewett
Author Disclosure of Interest: Nil
Report Date: 14 October 2008
Senior Officer: Mr Andrew Jackson

Property Owner: Mrs A Knowles

Applicant: Evoke Developments
Date of Application: 30 July, 2008

Zoning: Residential
Use: P - A use that is permitted under this Scheme
Density: R20
Lot Area: 498m²
M.R.S. Reservation: N/A

SUMMARY

This application is for a two-storey house and pool on a proposed green title lot fronting Federal Street that has been given conditional approval by the Western Australian Planning Commission (WAPC).

The applicant is seeking a front setback variation to Council's 6m setback preference, however, the proposal is consistent with the RD Codes for such lots and also in keeping with the streetscape context.

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

PROPOSAL

This application is for a two-storey house with pool and vehicular access from an adjoining right of way (ROW) on a proposed new green-title lot fronting Federal Street.

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

N/A.

HERITAGE LISTING

N/A

STRATEGIC IMPLICATIONS

N/A.

FINANCIAL IMPLICATIONS

N/A.

CONSULTATION

REFERRAL

Internal

- Building

External

N/A.

ADVERTISING OF PROPOSAL

The Application was advertised as per Town of Cottesloe Town Planning Scheme No 2. The advertising consisted of a letter to two adjoining property owners. No submissions were received.

BACKGROUND

On 25 January 2008 (Amended 3 July 08) the WAPC granted conditional approval for a new green title lot to be created at the rear of HN 48 & 50 North Street (fronting Federal Street).

Planning approval is now sought for a two-storey house on this proposed lot with a reduced front setback.

STAFF COMMENT

The proposed development complies with Town Planning Scheme No. 2 and the Acceptable Development Standards of the Residential Design Codes (RD Codes). However, the applicant is seeking a variation to Council's alternative requirement of a 6m front setback (Council resolution 28/10/02).

The proposed two-storey house has a front setback ranging between 2.5m to 6m on both the ground and upper floors (4m to a proposed verandah/portico). The closest part of the house to the street is to a protruding window (with awning over) pertaining to a proposed living room and master bedroom above.

Under the Acceptable Development Standards of the Codes where a single house results from subdivision of an original corner lot and has a frontage to the original secondary street the front setback may be reduced to 2.5m or 1.5m to a porch, verandah, balcony or the equivalent (Clause 6.2.1).

The explanatory guidelines of the Codes pertaining to this provision further advises:

Different streetscapes usually occur on secondary or side streets, with the street alignments formed by the long side boundaries of corner lots. These are

characterised by side fences or walls rather than open gardens, and a small setback to the dwelling.

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

In this case, it is proposed to remove an existing solid wall in front of the proposed house and replace it with an open-aspect fence in accordance with Council's Fencing Local Law to give a more open aspect to the street.

The house and garage (to remain) on the existing lot at 48 North Street has a reduced side setback to Federal Street and the proposed reduced front setback to the new house will be stepped back to create a transition to the adjoining ROW and 1 Federal Street. A composite elevation showing the proposed new streetscape has been submitted by the applicant and is attached.

Although the proposed upper floor could potentially be relocated behind the 6m setback it is not considered necessary in this case for the reasons discussed.

CONCLUSION

The proposed reduced front setback complies with the Acceptable Development Standards of the RD Codes and will not have a detrimental visual impact on the streetscape as it will have a frontage to an original secondary street in keeping with the character of Federal Street and the general pattern of development of corner lots / side street in the locality.

A range of conditions cover the usual requirements for the dwelling and the pool, together with a specific condition relative to the subdivision.

VOTING

Simple Majority

COMMITTEE COMMENT

Committee briefly clarified the difference between minor and major openings and the approach to setbacks to side streets allowed in accordance with the RD Codes and was satisfied with the overall proposal.

11.1.2 OFFICER & COMMITTEE & COUNCIL RESOLUTION

Moved Cr Walsh, seconded Cr Strzina

That Council GRANT its Approval to Commence Development for a two-storey house and pool on the proposed lot at the rear of Nos 48 & 50 (Lots 5 & 243) North Street, Cottesloe, in accordance with the plans submitted on 30 July 2008, subject to the following conditions:

- (a) All construction work shall be 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 shall not be discharged onto the street reserve or adjoining properties, and the gutters and downpipes used for the disposal of stormwater runoff from roofed areas shall be included within the working drawings for a building licence.
- (c) The external profile of the development as shown on the approved plans shall not be changed whether by the addition of any service plant, fitting, fixture or otherwise except with the written consent of Council.
- (d) Finalisation of the subdivision approval (WAPC Ref: 136375) to create the subject lot prior to the issue of a building licence.
- (e) 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.
- (f) Air-conditioning plant and equipment shall be located closer to the proposed dwelling than the adjoining dwellings, and suitably housed or treated as may be necessary, so as to ensure that sound levels emitted shall not exceed those outlined in the Environmental Protection (Noise) Regulations 1997.
- (g) Fencing to the site within the front setback area shall be of an Open-Aspect design in accordance with Council's Fencing Local law.
- (h) The pool pump and filter shall be located closer to the proposed dwelling than the adjoining dwellings, and suitably housed or treated as may be necessary, so as to ensure that environmental nuisance due to noise or vibration from mechanical equipment is satisfactorily minimised to within permissible levels outlined in the Environmental Protection (Noise) Regulations 1997.
- (i) Wastewater or backwash water from the swimming pool filtration system shall be contained within the boundary of the property and disposed of into adequate soakwells.
- (j) 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.
- (k) Wastewater or backwash water shall not be disposed of into the Council's street drainage system or the Water Corporation's sewer.
- (l) The proposed upper-floor windows on the northern elevation shall have a sill height of not less than 1600mm above the Finished Floor Level.

Carried 10/0

Mr Andrew Jackson left the meeting at 9.25pm.

**12 WORKS AND CORPORATE SERVICES COMMITTEE MEETING HELD ON
21 OCTOBER 2008****12.1 ADMINISTRATION****12.1.1 STRATEGIC WASTE MANAGEMENT PLAN**

File No:	SUB/378
Author:	Ms Ruth Levett
Author Disclosure of Interest:	Nil
Report Date:	13 October, 2008
Senior Officer:	Mr Stephen Tindale

SUMMARY

The Western Metropolitan Regional Council (WMRC) on behalf of the member Councils has prepared a draft Strategic Waste Management Plan (SWMP) consistent with the State's vision of *Towards Zero Waste*. It is recommended that the draft SWMP is supported.

STATUTORY ENVIRONMENT

Pursuant to the *Environmental Protection Act 1986*, the Minister for the Environment has enacted Ministerial Conditions for Phase 2 of the Zero Waste Plan Development Scheme. Payment may be made to a local government or a constituted regional local government to prepare a strategic waste management plan in accordance with specific guidelines developed by the department.

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

There is no direct cost to the Town of Cottesloe. Funding of \$5,000 per Council for the preparation of the strategic waste management plan has been allocated by the state government to the regional Councils rather than to individual Councils.

BACKGROUND

Phase 1 of the Zero Waste Plan Development Scheme (ZWPDS) completed in 2006/2007 consisted of a survey of municipal solid waste and recycling data. The purpose of the study was to establish baseline characteristics for local governments across the state and to identify where gaps existed.

Phase 2 of the ZWPDS requires that a strategic waste management plan be prepared by regional Councils. The purpose of the Plan is to provide strategies and actions to guide local governments and communities to improve waste management practices and ultimately reduce waste. The information gathered in Phase 1 along with a number of recommendations made by the Department of Environment and

Conservation (DEC) has been used in the development of the strategic waste management plan.

The WMRC has engaged Bruce Bowman of Bruce Bowman & Associates Pty Ltd to prepare a Plan on behalf of the member Councils and the City of Nedlands. A copy of the draft Strategic Waste Management Plan is attached.

CONSULTATION

The DEC requires that public consultation be undertaken prior to the adoption of the strategic waste management plan. It is proposed that the draft Plan will be released for public consultation upon receipt of submissions from the member Councils to WMRC.

STAFF COMMENT

The tonnes of waste disposed of in landfill are escalating despite the imposition of a levy to discourage landfill. In addition, the availability of space in metropolitan landfills and the impact of disposing of waste in this manner has prompted the state government to implement measures to evaluate current practices and to develop a strategic and more participatory model for local government.

Phase 1 of the process identified that there are significant differences and gaps in the provision of waste services by individual Councils, the majority of which are members of constituted regional Councils. One of the objectives of Phase 2, the development of a SWMP, is therefore to seek opportunities for partnering and to achieve economies of scale through a more cooperative approach. Actions and responses outlined in the Plan are aligned with goals and objectives set by DEC in the guidelines.

The goals of the Plan are to:

- Minimise the direct and indirect environmental impacts of waste and its management in the region over the next five years.
- Manage waste in a sustainable manner.
- Increase community awareness of the impact of waste issues on the environment.

The purpose and objectives of the Plan is to:

- protect human health and the environment.
- confirm current waste infrastructure and levels of service.
- identify priority actions and associated costs and timelines to incrementally improve waste management within the local government area(s) covered by the Plan.
- form partnerships with other local governments, business and industry to achieve economies of scale where feasible.
- increase community awareness, appreciation and responsiveness to waste related issues.
- assign actions, costs and timelines.
- define a performance monitoring and review schedule.

In preparing actions for the SWMP each of the member Councils have identified future initiatives, refer to pages 49 -52 of the attached draft Plan, in order to meet the goals and objectives outlined. These initiatives have been compiled into three lists:

- 'operational activities' to be undertaken by the regional Council and including 'in kind activities' to be undertaken by the member Councils;
- 'capital activities' for implementation by WMRC; and
- items attracting external funding.

Budgets and timeframes for completion of activities have been set for the next three years to 2012. All activities are shown on pages 61 to 63 of the attached draft Plan.

The benefits of the SWMP to the Town of Cottesloe are increased efficiencies for the waste system, increased diversion of waste from landfill, economies of scale where activities are regional and increased cooperation and sharing of resources. In addition funding will be made available to the WMRC for some of the projects outlined in the Plan.

It is noted that the first line item of the WMRC's operational budget is to appoint a waste officer. This is critical to the entire performance and progress of the SWMP. Without an officer to implement the activities outlined in the Plan it is unlikely that any of the benefits can be obtained and certainly no funding will be forthcoming. It is recommended that this be highlighted in the letter of support to WMRC along with the increasing need to focus on regional cooperation. There have been numerous attempts to provide waste collection services regionally but to date none have been successful. Other endeavours include the regional Earth Carer Program, bulk waste collection and household hazardous waste collection, with varying success. The SWMP recognises the benefits of regional cooperation and it is important to focus on this rather than past failures.

The SWMP is the first step of a coordinated approach to bring some strategic and cooperative measures to the provision of waste collection and disposal services by local government throughout the state. Other initiatives to target producers are outlined in the recently introduced Waste Avoidance and Resource Recovery Act 2007.

To ensure that the state government target of 'zero waste by 2020' is achieved, it is recommended that the SWMP is supported and implementation is commenced as soon as practicable.

VOTING

Simple Majority

12.1.1 OFFICER & COMMITTEE & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Carmichael

That Council:

- (1) **Advises the Western Metropolitan Regional Council (WMRC) that the Town of Cottesloe supports the Draft Strategic Waste Management Plan.**

- (2) **Advises the WMRC that in addition to the benefits to the member Councils, the following two primary considerations are critical to the satisfactory performance and progress of the SWMP:**
- (a) the appointment of a waste officer to WMRC; and**
 - (b) co-ordinated and successful regional cooperation.**

Carried 10/0

12.1.2 TENDER - WASTE AND RECYCLING COLLECTION 2008-2013

File No: SUB/748
Author: Ms Ruth Levett
Author Disclosure of Interest: Nil
Report Date: 13 October, 2008
Senior Officer: Mr Stephen Tindale

SUMMARY

The preferred tenderer for waste and recycling collection services for the Town of Cottesloe is Transpacific Cleanaway Pty Ltd. It is recommended that the administration be authorised to finalise the contract with Transpacific Cleanaway Pty Ltd to commence on 29 November, 2008.

STATUTORY ENVIRONMENT

The *Local Government Act 1995* (Section 3.57) provides that where a local government intends to tender for another party to supply goods or services, it is required to invite tenders before entering into a contract.

The *Local Government (Functions and General) Regulations 1996* (Section 11) provide that tenders are to be publicly invited before entering into a contract for the supply of goods and services if it is anticipated that service will be worth more than \$100,000.

POLICY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

The preferred tenderer's cost for the first twelve month period from 29 November 2008 is \$463,158.00. The current budget for 2008/2009 allocates \$460,000 for waste and recycling collection services.

The total increase in the cost of services to the Town of Cottesloe using Transpacific Cleanaway will be 3.7% based on current contractor rates and rates tendered. The proposed commencement date of the contract is 29 November 2008. The first annual increase scheduled to be applied to the current rates tendered is on the first anniversary of the contract and therefore will have no impact on the current budget.

BACKGROUND

The Town of Cottesloe's current waste and recycling collection contract expires on 28 November, 2008. The current contract awarded to Trum Pty Ltd trading as Roads & Robinson Rubbish & Recycling in 1998 was a five year contract with an option to extend the term for a further five years. There is an option in the current tender to allow for a further five year extension of the contract. Transpacific Cleanaway

purchased the business of Trum Pty Ltd in May 2008 and continues to provide waste collection services for the Town of Cottesloe.

Tender documents were prepared by the administration and reviewed by solicitors, McLeods. An invitation to tender was advertised in the West Australian on Saturday, 16 August 2008.

The tender documents required the provision of the following services:

- a) Waste Collection Service:-
 - A weekly (5 working day) residential waste collection service utilising 120 litre green mobile garbage bins and 1100 litre bulk bins;
 - An 'as required' daily (7 day) street litter bin service utilising a variety of bin types as per the schedules provided;
 - An 'as required' daily (7 day) commercial waste collection service utilising 240 litre mobile garbage bins and 1100 litre bulk bins.

- b) Recycling Collection Service:-
 - A fortnightly (5 working day) residential recycling collection service utilising a 240 litre yellow lidded mobile garbage bin;
 - An 'as required' daily (7 day) commercial recycling collection utilising a 240 litre yellow lidded mobile garbage bin.

- c) Miscellaneous Items
 - Annual audit of 120 litre general waste bins
 - Repair and replacement of bins

TENDER ASSESSMENT

Tenders closed on Thursday, 18 September, 2008 and the following tenders were received:

- Transpacific Cleanaway conforming tender
- Transpacific Cleanaway alternative tender
- Perthwaste conforming tender (includes a discount option)

The tender document required that a tenderer submit prices for all of the schedules.

An independent consultant, Bruce Bowman of Bruce Bowman & Associates Pty Ltd, was engaged to assess the tenders.

In the absence of Cr Miller, Council's tender evaluation panel consisting of Mayor Kevin Morgan and CEO, Stephen Tindale undertook a review of the assessment of the qualitative and pricing criteria.

The consultant's assessment was compared with the assessment undertaken by the administration and both assessments were identical or very close in all respects. All tenders submitted were of a very high standard.

A copy of the evaluation criteria containing the assessment of the tenders is shown in confidential attachment 1. The qualitative criterion represents 80% of the evaluation with the remaining 20% allocated to price.

The alternative tender submitted by Transpacific Cleanaway requires the Town to appoint a contract for a 10 year term. For reasons such as the changes that may result from the Dicom facility and regional cooperation, a ten year term is not desirable at this point. It is also questionable whether the Town could accept a ten year term without other tenderers being offered the same opportunity.

The Perthwaste submission containing a discount option, although representing a saving, requires a direct debit transaction to be made on the first day of the month following service for part payment of the contractor's account followed by the lesser part on the 21st day of the month. Direct debit enables monies to be debited directly from the Town's account on specified dates and may have implications for the operation of the contract, therefore this option can not be considered.

The following is a summary of the consultant's assessment of the conforming tenders.

PRICE (20%)

1. Perthwaste	scored	1.85
2. Cleanaway	scored	2.15

CUSTOMER SERVICE (20%)

1. Perthwaste	scored	1.03
2. Cleanaway	scored	1.03

CAPABILITY (60%)

1. Perthwaste	scored	3.38
2. Cleanaway	scored	3.38

SCORECARD

1. Perthwaste	scored	6.25
2. Cleanaway	scored	6.56

CONCLUSION

It is concluded that Transpacific Cleanaway offers protection from excessively high increases in future fuel price.

Price Summary

	Town of Cottesloe 2008/2009 \$000's pa	Town of Cottesloe 5 Years (3%) \$000's pa	Town of Cottesloe Current rates \$000's pa	Western Suburbs 2008/2009 \$000's pa
Perthwaste	468,454	2,454,148		529,110
Perthwaste discount	456,742	2,392,795		
Cleanaway	463,158	2,447,364		592,210
Cleanaway alternative	450,033	2,378,004		
RRRR			446,440	

Pricing assessment schedules for Perthwaste and Cleanaway pricing are shown in confidential attachment 2 to the report. In summary, the table above shows the total of the prices submitted for all services for the first year of service, 2008/2009 and for the first five years of the contract based on a 3% CPI and fuel price increase. A comparison is also made with the prices tendered in 2006 for the Western Suburbs contract that Council explored with the City of Nedlands and the Town of Claremont. The prices are those estimated for the Town of Cottesloe to commence the contract in November 2008.

CONSULTATION

Nil.

STAFF COMMENT

It was previously recognised when assessing the Western Suburbs tender in 2006 that one of the possible implications of tendering for Cottesloe's service in 2008 is that the same companies may no longer be in the market and prices for the service may be higher than those submitted in this tender. Whilst the same companies are no longer in the market, prices are in fact lower than those previously submitted.

Customer Service

Both Perthwaste and Transpacific Cleanaway have demonstrated that they have adequate customer service procedures in place to satisfactorily respond to customer requirements. References provided for both companies indicate that customer service processes and responses are satisfactory in all respects.

Proposed service

No changes in services are proposed. Provision for a potential weekly recycling collection service was included in the tender. The reasons for this are twofold.

Firstly, upon request, residents are provided with an additional recycling bin at no charge as a means to encourage recycling. There are currently some 88 additional services and there are consistent requests for a weekly recycling service from the

community. The cost of additional general waste bins adequately covers the cost of the free recycling bins.

Secondly, the trial of the Dicom process is about to commence at Brockway Road Transfer Station and if successful, a review of bin contents will be required. It will reduce the cost of separation if the maximum amount of dry recyclable material is separated at the source.

It is not viable to introduce a weekly recycling service at present. However, Perthwaste have indicated they will commence this service mid contract if required. Cleanaway have advised that they are not willing to commence a weekly recycling service mid contract.

Price adjustment

A clause in the tender document provides for a price variation. The formula is based on the contractor's fixed costs, labour and repairs and fuel costs all represented by a nominated percentage. It is linked to CPI and the fuel price index. The tendered rates may be reviewed annually on the anniversary of the contract. Due to current market fluctuations it is impossible to estimate what the first and subsequent percentage increases will be. A 3% increase for CPI and fuel price has been applied to the tendered rates for the purpose of providing an estimate for the life of the contract.

The percentage nominated by Perthwaste for fuel price in their submission results in their prices being heavily exposed to fluctuations in fuel price as opposed to Cleanaway's nominated percentage which offers protection from an increased fuel price. As a result Transpacific Cleanaway have scored higher on price.

Sustainability

Sustainability requires that the social, environmental and cost factors are considered in any decisions concerning the provision of services, plant procurement and infrastructure development.

The main sustainability issues to consider with the waste collection service are:

- Minimise trucking distances
- Minimise the number of services for each bin
- Service supports waste reduction
- Service facilitates recycling and re-use of materials
- Service meets community needs
- Cost is affordable and value for money

The preferred tenderer, Transpacific Cleanaway proposes to process recycleable materials at their Maddington materials recovery facility (MRF). Perthwaste proposes to process recyclable materials at their Bunbury MRF. The sustainability of the proposed transport and processing of recyclable materials to Bunbury and return to Perth for export or other markets, is questionable in terms of sustainability. However, Perthwaste has provided a satisfactory explanation of the process and given assurance that the process is sustainable, although perhaps not environmentally at this point in time.

In conclusion, as stated above the qualitative criteria represents 80% of the evaluation with the remaining 20% allocated to price. Whilst it is a major consideration for a long term contract where price variation over an extended period has a significant impact on the overall price, it is not generally the deciding factor in choosing the preferred tenderer.

In this instance the two tenderers were equally scored in all areas except for price. A slightly higher assessment score due to comparative protection from potentially higher increases in future fuel price (relative to CPI) meant that the submission by Transpacific Cleanaway has resulted in them being chosen as the preferred tenderer.

It is therefore recommended that the evaluation committee's decision to select Transpacific Cleanaway Pty Ltd as the preferred tenderer be supported.

VOTING

Simple Majority

OFFICER RECOMMENDATION

That Council:

- (1) Accepts the tender from Transpacific Cleanaway Pty Ltd for waste and recycling collection services for the Town of Cottesloe; and
- (2) Authorises the administration to finalise the contract with Transpacific Cleanaway Pty Ltd to commence on 29 November, 2008.

12.1.2 COMMITTEE & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Carmichael

That the item be deferred pending a further report to the full Council Meeting.

Carried 10/0

12.1.3 SEA VIEW GOLF CLUB DEVELOPMENT PROPOSAL - REPRESENTED

File No: SUB/235
Author: Mr Stephen Tindale
Author Disclosure of Interest: Nil
Report Date: 14 October, 2008
Senior Officer: Mr Stephen Tindale

SUMMARY

The Sea View Golf Club (SVGC) has presented a development proposal for the Sea View Golf Course involving Next Generation Clubs Australia Pty Ltd (NGCA) and "...seeks Cottesloe Town Council in-principle approval for the development of a community Golf, Health and Lifestyle Club at the site of the Sea View Golf Club."

Recommendations are made to Council to:

1. Indicate its in-principle support for the development of a community Golf, Health and Lifestyle Club at the site of the Sea View Golf Club.
2. Recommend to the Sea View Golf Club that it undertake direct community consultation on the development proposal in line with the Town's Community Consultation policy as a preliminary to putting a formal and open development proposal to the Town of Cottesloe.
3. Request Council staff to enter into preliminary discussions with the relevant State Government agencies in terms of obtaining heritage, land tenure, planning and any other necessary approvals.
4. Seek legal advice confirming that Council is dealing with a "major land transaction" together with any other legal advice in terms of ensuring compliance with the relevant requirements of the *Local Government Act 1995*.

STATUTORY ENVIRONMENT

Clause 28.1 of the lease agreement with the SVGC provides:

No assignment without consent

- (a) Subject to subclause (b), the Lessee must not assign, mortgage or charge the leasehold estate to the Golf Course nor sublet, part with possession, or dispose, of the Golf Course or any part of the Golf Course without the written consent of the Lessor.
- (b) The Lessor:
- (1) must act reasonably in the grant or refusal of consent in respect to a matter specified in subclause (a); but
 - (2) in granting consent, may impose conditions in respect to the consent which are reasonable in the circumstances.

Sections 3.58 and 3.59 of the Local Government Act 1995 provide:

3.58. DISPOSING OF PROPERTY

- (1) In this section —
"dispose" includes to sell, lease, or otherwise dispose of, whether absolutely or not;

“**property**” includes the whole or any part of the interest of a local government in property, but does not include money.

- (2) Except as stated in this section, a local government can only dispose of property to —
 - (a) the highest bidder at public auction; or
 - (b) the person who at public tender called by the local government makes what is, in the opinion of the local government, the most acceptable tender, whether or not it is the highest tender.
- (3) A local government can dispose of property other than under subsection (2) if, before agreeing to dispose of the property —
 - (a) it gives local public notice of the proposed disposition —
 - (i) describing the property concerned;
 - (ii) giving details of the proposed disposition; and
 - (iii) inviting submissions to be made to the local government before a date to be specified in the notice, being a date not less than 2 weeks after the notice is first given;and
 - (b) it considers any submissions made to it before the date specified in the notice and, if its decision is made by the council or a committee, the decision and the reasons for it are recorded in the minutes of the meeting at which the decision was made.
- (4) The details of a proposed disposition that are required by subsection (3)(a)(ii) include —
 - (a) the names of all other parties concerned;
 - (b) the consideration to be received by the local government for the disposition; and
 - (c) the market value of the disposition as ascertained by a valuation carried out not more than 6 months before the proposed disposition.
- (5) This section does not apply to —
 - (a) a disposition of land under section 29 or 29B of the Public Works Act 1902;
 - (b) a disposition of property in the course of carrying on a trading undertaking as defined in section 3.59;
 - (c) anything that the local government provides to a particular person, for a fee or otherwise, in the performance of a function that it has under any written law; or
 - (d) any other disposition that is excluded by regulations from the application of this section.

3.59. COMMERCIAL ENTERPRISES BY LOCAL GOVERNMENTS

- (1) In this section —

“**acquire**” has a meaning that accords with the meaning of “dispose”;

“**dispose**” includes to sell, lease, or otherwise dispose of, whether absolutely or not;

“**land transaction**” means an agreement, or several agreements for a common purpose, under which a local government is to —

- (a) acquire or dispose of an interest in land; or
- (b) develop land;

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

- (a) the consideration under the transaction; and
- (b) anything done by the local government for achieving the purpose of the transaction,
is more, or is worth more, than the amount prescribed for the purposes of this definition;

“major trading undertaking” means a trading undertaking that —

- (a) in the last completed financial year, involved; or
- (b) in the current financial year or the financial year after the current financial year, is likely to involve,
expenditure by the local government of more than the amount prescribed for the purposes of this definition, except an exempt trading undertaking;

“trading undertaking” means an activity carried on by a local government with a view to producing profit to it, or any other activity carried on by it that is of a kind prescribed for the purposes of this definition, but does not include anything referred to in paragraph (a) or (b) of the definition of “land transaction”.

- (2) Before it —
 - (a) commences a major trading undertaking;
 - (b) enters into a major land transaction; or
 - (c) enters into a land transaction that is preparatory to entry into a major land transaction,
a local government is to prepare a business plan.
- (3) The business plan is to include an overall assessment of the major trading undertaking or major land transaction and is to include details of —
 - (a) its expected effect on the provision of facilities and services by the local government;
 - (b) its expected effect on other persons providing facilities and services in the district;
 - (c) its expected financial effect on the local government;
 - (d) its expected effect on matters referred to in the local government’s current plan prepared under section 5.56;
 - (e) the ability of the local government to manage the undertaking or the performance of the transaction; and
 - (f) any other matter prescribed for the purposes of this subsection.
- (4) The local government is to —
 - (a) give Statewide public notice stating that —
 - (i) the local government proposes to commence the major trading undertaking or enter into the major land transaction described in the notice or into a land transaction that is preparatory to that major land transaction;

- (ii) a copy of the business plan may be inspected or obtained at any place specified in the notice; and
 - (iii) submissions about the proposed undertaking or transaction may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given;
- and
- (b) make a copy of the business plan available for public inspection in accordance with the notice.
- (5) After the last day for submissions, the local government is to consider any submissions made and may decide* to proceed with the undertaking or transaction as proposed or so that it is not significantly different from what was proposed.

*** Absolute majority required.**

- (5a) A notice under subsection (4) is also to be published and exhibited as if it were a local public notice.
- (6) If the local government wishes to commence an undertaking or transaction that is significantly different from what was proposed it can only do so after it has complied with this section in respect of its new proposal.
- (7) The local government can only commence the undertaking or enter into the transaction with the approval of the Minister if it is of a kind for which the regulations require the Minister's approval.
- (8) A local government can only continue carrying on a trading undertaking after it has become a major trading undertaking if it has complied with the requirements of this section that apply to commencing a major trading undertaking, and for the purpose of applying this section in that case a reference in it to commencing the undertaking includes a reference to continuing the undertaking.
- (9) A local government can only enter into an agreement, or do anything else, as a result of which a land transaction would become a major land transaction if it has complied with the requirements of this section that apply to entering into a major land transaction, and for the purpose of applying this section in that case a reference in it to entering into the transaction includes a reference to doing anything that would result in the transaction becoming a major land transaction.
- (10) For the purposes of this section, regulations may —
- (a) prescribe any land transaction to be an exempt land transaction;
 - (b) prescribe any trading undertaking to be an exempt trading undertaking.

Regulations 7, 8, 9 and 10 of the *Local Government (Functions and General) Regulations 1996* provide:

7. Minimum value of major land transaction

For a land transaction to be a major land transaction the total value of —

- (a) the consideration under the transaction; and

- (b) anything done by the local government for achieving the purpose of the transaction,

has to be more, or worth more, than either \$1,000,000 or 10% of the operating expenditure incurred by the local government from its municipal fund in the last completed financial year.

8. Transactions that cannot be major land transactions

- (1) A land transaction is an exempt land transaction for the purposes of section 3.59 of the Act if the local government enters into it —
 - (a) without intending to produce profit to itself; and
 - (b) without intending that another person will be sold, or given joint or exclusive use of, all or any of the land involved in the transaction.
- (2) For the purposes of subregulation (1)(b) a person is given joint use of land if the land is to be jointly used for a common purpose by the local government and that person (whether or not other persons are also given joint use of the land).
- (3) A transaction under which a local government disposes of a leasehold interest in land is an exempt land transaction for the purposes of section 3.59 of the Act if —
 - (a) all or any of the consideration to be received by the local government under the transaction is by way of an increase in the value of the land due to improvements that are to be made without cost to the local government; and
 - (b) although the total value referred to in the definition of “major land transaction” in that section is more, or is worth more, than the amount prescribed for the purposes of that definition, it would not be if the consideration were reduced by the amount of the increase in value mentioned in paragraph (a).

9. Minimum expenditure involved in a major trading undertaking

- (1) For a trading undertaking to be a major trading undertaking the expenditure by the local government that —
 - (a) the undertaking involved in the last completed financial year; or
 - (b) the undertaking is likely to involve in the current financial year or the financial year after the current financial year,has to be more than either \$500,000 or 10% of the lowest operating expenditure described in subregulation (2).
- (2) The lowest operating expenditure referred to in subregulation (1) is the lowest of —
 - (a) the operating expenditure incurred by the local government from its municipal fund in the last completed financial year;
 - (b) the operating expenditure likely to be incurred by the local government from its municipal fund in the current financial year; and
 - (c) the operating expenditure likely to be incurred by the local government from its municipal fund in the financial year after the current financial year.

10. Other matters of which details to be given in business plan

- (1) If a local government is required to prepare a business plan because of a major trading undertaking or major land transaction that it is to carry on or enter into jointly with another person —
 - (a) the business plan is to include details of the whole undertaking or transaction, even though the local government is not the only joint venturer; and
 - (b) the business plan is to include details of —
 - (i) the identity of each joint venturer other than the local government;
 - (ii) the ownership of, and any other interests in, property that is involved in, or acquired in the course of, the joint venture;
 - (iii) any benefit to which a joint venturer other than the local government may become entitled under or as a result of the joint venture; and
 - (iv) anything to which the local government may become liable under or as a result of the joint venture.
- (2) In subregulation (1) —
 - “ **joint venture**” means the major trading undertaking or major land transaction that is to be jointly carried on or entered into;
 - “ **joint venturer**” means the local government or another person with whom the local government is to carry on or enter into the joint venture.

POLICY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

The development proposal envisages a minimum return to the Town of Cottesloe of \$4.9m over a period of 49 years conditional upon a rent free period to reflect the start up losses of the business.

BACKGROUND

This matter is represented from the September 2008 meeting of Council.

The CEO and Mayor first met with Bill Guile from NGCA and Trevor Gallagher and Peter Oates from SVGC on 26 March 2008.

Trevor Gallagher is a former General Manager of the Kings Park Tennis Club and has a previous association with NGCA in the upgrade and commercialisation of recreational facilities at Kings Park.

The CEO and Mayor were informed that the SVGC has decided that it needs to ensure the future of the club. Four options were considered by the SVGC and in the end they decided to enter discussions with NGCA.

The CEO and Mayor were also informed that NGCA has been involved with the rejuvenation of a number of sporting facilities where existing members have taken on foundation member rights. Existing volunteer members are then relieved of the management burden. Commercial rentals are paid to the landlord. Community consultation is generally involved. The size of the capital investment has usually required a 50 year lease.

SVGC and NGCA were informed that Council, the community and State Government would require a convincing argument in order to effect change.

The meeting concluded with advice to SVGC and NGCA that in order to avoid the past experience of protracted community consultation in relation to matters concerning the Sea View Golf Club, any development proposal put before Council would need to be comprehensive.

A second meeting was held with the CEO on 8th May 2008 - again with Bill Guile from NGCA and Trevor Gallagher and Peter Oates from SVGC

The CEO advised that a simple extension of the existing lease for a further 21 years beyond the current lease expiry date was unlikely to be acceptable to the community regardless of the relative freedom of the provisions of clause 28.1 of the lease agreement (see under Statutory Environment heading above). A new lease would be required setting out the detail of the development proposal, the lease and the sub-lease

The CEO said that the community would want to know what it was getting in return for an extended lease which meant that schematics, financial projections and other details will be required. The community would also want to know why NGCA rather than anyone else.

Another meeting with the CEO was held on 16th July 2008 where the CEO made the following suggestions as a means of winning increased community support.

- Improve and bring forward the implementation of the safety management plan.
- Provide access to some facilities to all members of the public.
- Confirm that commercial rates of return will be provided to the Town of Cottesloe.
- Demonstrate that the requested lease term is sufficient but not excessive in terms of the return on the investment.
- Confirm that all debts of the SVGC will be extinguished.
- Seek community input on potential uses and users of the facilities prior to fine tuning a development proposal for Council's consideration

On the 4th August 2008 SVGC, NGCA and the Town of Cottesloe held a concept forum to discuss the development proposal. The concept forum was open to members of the public.

Under the chairmanship of the Mayor, Council members were briefed by the CEO on the development proposal and the outcome of meetings held to date. An opportunity was provided for elected members to ask questions of the CEO and senior staff present at the meeting.

Representatives of the SVGC and NGCA were then invited into the forum to present the development proposal in more detail. The briefing was followed by a question and answer session where elected members (and members of the public present at the forum) asked questions and raised concerns with the development proposal and the process going forward. No decisions (or implied decisions) were made by Council at the concept forum.

Out of the concept forum a refined proposal has now been put to Council. The proposal is commercial-in-confidence and has been provided only for the purposes of obtaining in-principle support from the Town of Cottesloe.

It should be noted that section 5.23(2)(e) of the *Local Government Act 1995* provides that the meeting, or part of the meeting, may be closed to members of the public if the matter deals with a trade secret, information that has commercial value to a person, or information about the business, professional, commercial or financial affairs of a person. If the development proposal is to be discussed in detail, it may become necessary to close the meeting to the public.

The development proposal as presented by SVGC and NGCA deals with the following matters:

- The Proposal
- Rationale
- SVGC history and significance
- Background to the proposal
- Next Generation Clubs Australia
- New Facilities
- NGCA's Operations
- Contractual Obligations
- Understandings
- Conclusion

As the development proposal envisages a return to the Town of Cottesloe of \$4.9m over a period of 49 years it seems self evident that the development proposal constitutes a "major land transaction" as contemplated by regulation 8 of the *Local Government (Functions and General) Regulations 1996* (see above).

In other words because the development proposal is likely to provide a profit to the Town of Cottesloe and will result in NGCA being given exclusive use of built facilities on the golf course land, a business plan will have to be prepared at some point in time and advertised for public comment.

CONSULTATION

Nil

STAFF COMMENT

The development proposal has much to recommend it if the Town of Cottesloe wants to ensure the continued viability of the existing golf course as a properly rated golf course falling under the auspices of Golf Australia (formerly the Australian Golf Union).

In addition, the provision of new recreation facilities on a self-funding basis will indirectly relieve Council of any future community expectation to provide additional recreational facilities that contribute to the health and wellbeing of the community.

Many local governments would jump at the opportunity of being able to facilitate the development of new recreation facilities while simultaneously obtaining a profit to be applied to the betterment of the broader community.

In the vast majority of cases, recreation facilities on Council land are run at a loss and suffer from a lack of ongoing maintenance. That in turn tends to perpetuate a vicious cycle where tired facilities start to turn away the very customers they are meant to attract. If the private sector is able to satisfy a public demand at no cost to the public purse and is driven by a profit motive to keep recreation facilities up to scratch, then the question for the Town of Cottesloe should be why not rather than why should we.

However there is no doubt that the proposed 49 year lease will tie up a significant community asset for a lengthy period of time. There may well be broad community concern that notwithstanding the proposed size of the capital investment in the land and the benefits to be obtained, the length of time required to generate a reasonable return on the investment by NGCA is simply just too long.

Also that other community uses of the land may emerge as a higher community priority over the proposed 49 year lease period and that due caution is required. It may well be argued that just because the golf course has existed for nigh on a hundred years, there is no reason to assume that it should continue to do so for another 50 years.

For those that are amenable to the proposed development, the question may well be one of whether the Town of Cottesloe and the community will be well satisfied with the proposed profit or return on the land to the community.

This sort of discussion for and against the development proposal can be held now or much later when Council has advertised a business plan and drawn up draft legal documentation.

However, it is the opinion of staff that public discussion should be held now so that the community is fully involved from the outset. To leave the discussion until things are much further developed down the track may result in a lot of wasted time and energy for very little gain and much aggravation.

The development proposal as presented by the Sea View Golf Club sets out the following understandings:

- That further presentations and discussions between the Town of Cottesloe, SVGC and NGCA will be necessary.
- That a community response will be necessary.
- That an approval process involving State Government authorities will be necessary.

In addition and before Council enters any agreement with SVGC and NGCA, it would be wise to obtain legal advice confirming that Council is dealing with a “major land transaction” together with any other legal advice in terms of ensuring compliance with the relevant requirements of the *Local Government Act 1995*.

Finally while the SVGA is seeking in-principle **approval**, it is felt that in-principle **support** would be more appropriate.

In-principle **approval** may be seen as pre-empting meaningful community consultation and the necessary State Government approvals. It could place the Town of Cottesloe in a very difficult position if the community and/or the State Government approvals are not forthcoming

In-principal **support** tacitly acknowledges that it is not entirely up to the Town of Cottesloe to approve the project and that others also have a say in the matter.

VOTING

Simple Majority

OFFICER RECOMMENDATION

That Council:

- (1) Indicate its in-principle support for the development of a community Golf, Health and Lifestyle Club at the site of the Sea View Golf Club.
- (2) Recommend to the Sea View Golf Club that it undertake direct community consultation on the development proposal in line with the Town’s Community Consultation policy as a preliminary to putting a formal and open development proposal to the Town of Cottesloe.
- (3) Request Council staff to enter into preliminary discussions with the relevant State Government agencies in terms of obtaining heritage, land tenure, planning and any other necessary approvals.
- (4) Seek legal advice confirming that Council is dealing with a “major land transaction” together with any other legal advice in terms of ensuring compliance with the relevant requirements of the *Local Government Act 1995*.

DECLARATION OF INTEREST

Mayor Morgan, Cr Walsh and Cr Strzina declared a financial interest due to being members of the Sea View Golf Club and left the meeting at 7.43.

NOMINATION OF CHAIRPERSON FOR ITEM 12.1.3

Moved Cr Miller, seconded Birnbrauer

That Cr Miller chair the meeting for item 12.1.3 in the absence of Mayor Morgan.

Carried 7/0

COMMITTEE RECOMMENDATION

That Council conduct community consultations on the proposed development application for the private golf, health and lifestyle club on the Sea View Golf Club site and the level of consultation be at the Key Strategic Issue Major Projects Level.

AMENDMENT

Due to the statement read earlier by Mr Chris Bennett on behalf of the Sea View Golf Club stating that they formally wish to withdraw the development application Council, resolved to amend the resolution:

12.1.3 COUNCIL RESOLUTION

Moved Cr Cunningham, seconded Cr Birnbrauer

That Council take no further action on this matter.

Carried 7/0

Mayor Morgan, Cr Walsh and Cr Strzina returned to the meeting at 7.55pm

12.1.4 STRATEGY FOR LIQUOR LICENCING COURT APPEAL - REPRESENTED

File No: SUB/362
Author: Mr Graham Pattrick
Author Disclosure of Interest: Nil
Report Date: 14 October, 2008
Senior Officer: Mr Stephen Tindale

SUMMARY

This report contains a recommendation to adopt a strategy designed to reduce patron numbers at the beachfront hotels.

STATUTORY ENVIRONMENT

The relevant sections of the *Liquor Control Act 1988* provide the following:

S64. POWER OF LICENSING AUTHORITY TO IMPOSE, VARY OR CANCEL CONDITIONS

- (1) Subject to this Act, in relation to any licence, or to any permit, the licensing authority may at its discretion impose conditions —
- (a) in addition to the conditions specifically imposed by this Act; or
 - (b) in such a manner as to make more restrictive a condition specifically imposed by this Act,

and may vary or cancel any condition previously imposed by the licensing authority, having regard to the tenor of the licence or permit and the circumstances in relation to which the licensing authority intends that it should operate.

- (1a) The licensing authority may impose, vary or cancel a condition under subsection (1) —
- (a) of its own motion; or
 - (b) on the application of the licensee; or
 - (c) at the written request of the parties to a liquor accord.

- (1b) In subsection (1a) —

“liquor accord” means a written agreement or other arrangement —

- (a) that is entered into by 2 or more licensees in a local community, and persons who represent the licensing authority, departments of the Public Service, State agencies or local government, and other persons; and
 - (b) that has the purposes of minimising the harm caused in the local community by the excessive consumption of liquor and promoting responsible practices in the sale, supply and service of liquor in the local community; and
 - (c) that is approved by the Director.
- (2) The power conferred by subsection (1) may, subject to compliance with section 31(6)(b), be exercised at any time, but a condition takes effect on —
- (a) the date of the grant of the licence or the issue of the permit in relation to which it was imposed; or

- (b) such other date as is specified in the notice setting out the particulars, or in the endorsement or revised version of the licence or permit made, under section 31(6),

whichever is the later.

- (2a) If the licensing authority proposes to impose, vary or cancel a condition under this section, the licensing authority may, by notice in writing, require the licensee to show cause to the licensing authority why the condition should not be imposed, varied or cancelled.
- (2b) Subsection (2a) does not apply in relation to a condition proposed to be imposed, varied or cancelled in accordance with an application under subsection (1a)(b).
- (3) Without derogating from the generality of the discretion conferred on the licensing authority, the licensing authority may impose conditions which it considers to be in the public interest or which it considers desirable in order to —
 - (a) ensure that the noise emanating from the licensed premises is not excessive; or
 - (b) minimize the offence, annoyance, disturbance or inconvenience that might be caused to those who reside or work in the vicinity of the licensed premises, or to persons in or making their way to or from a place of public worship, hospital or school, in consequence of activities on the licensed premises or the conduct of those making their way to or from the licensed premises; or
 - (ba) ensure that local laws of a local authority under the Local Government Act 1995 or by-laws of an Aboriginal community under the Aboriginal Communities Act 1979 are complied with; or
 - (c) ensure that the safety, health or welfare of persons who may resort to the licensed premises is not at risk; or
 - (ca) ensure that liquor is sold and consumed in a responsible manner; or
 - (cb) ensure that all persons involved in conducting business under the licence have suitable training for attaining the primary objects of this Act; or
 - (cc) minimize harm or ill-health caused to people, or any group of people, due to the use of liquor; or
 - (cd) limit or prohibit the sale of liquor on credit; or
 - (d) ensure public order and safety, particularly where circumstances or events are expected to attract large numbers of persons to the premises or to an area adjacent to the premises; or
 - (e) limit —
 - (i) the kinds of liquor that may be sold;
 - (ii) the manner in which or the containers, or number or types of containers, in which liquor may be sold;
 - (iii) the days on which, and the times at which, liquor may be sold;or
 - (ea) without limiting paragraph (e)(iii), limit the times when packaged liquor may be sold on and from the licensed premises to those times

- when liquor may be purchased for consumption on those premises;
or
- (f) prohibit persons being, or limit the number of persons who may be, present on, or on any particular part of, the licensed premises or any area which is subject to the control or management of the licensee and is adjacent to those premises; or
 - (fa) prohibit entry to the licensed premises after a specified time; or
 - (g) prohibit the provision of entertainment, or limit the kind of entertainment that may be provided, on, or in an area under the control of the licensee adjacent to, the licensed premises; or
 - (ga) prohibit promotional activity in which drinks are offered free or at reduced prices, or limit the circumstances in which this may be done; or
 - (gb) prohibit any practices which encourage irresponsible drinking; or
 - (h) otherwise limit the authority conferred under a licence or permit; or
 - (j) require action therein specified to be undertaken by the licensee —
 - (i) within a time or at times therein specified; or
 - (ii) on occasions or in circumstances therein specified, in relation to the licensed premises or any part of those premises, the conduct of the business carried on under the licence, or otherwise in the public interest; or
 - (k) prevent improper arrangements or practices calculated to increase any subsidy payable; or
 - (m) ensure compliance with the requirements of, or with terms fixed or conditions imposed by or under, this Act.
- (4) If there is an inconsistency between a condition imposed under this Act and a requirement of, or made under, any other written law, the condition or requirement which is more onerous for the licensee shall prevail.
- [(5) repealed]*
- (6) A condition imposed under this section may relate to —
- (a) any aspects of the business carried on under the licence; and
 - (b) any activity carried on at the licensed premises, at any time and whether or not related to the business carried on under the licence.
- (7) Where a condition imposed under this section in relation to a licence has been contravened the licensing authority may —
- (a) impose a more restrictive condition in relation to that licence; or
 - (b) impose on the licence holder a monetary penalty not exceeding \$500 for each day on which the contravention continues, which shall be payable to the Crown by that person,
- or both.
- (8) The imposition, variation or cancellation of a condition, or the imposition of a monetary penalty, under this section is not to be regarded as the taking of disciplinary action for the purposes of section 96.

S117. COMPLAINTS ABOUT NOISE OR BEHAVIOUR RELATED TO LICENSED PREMISES

- (1) A complaint in writing may be lodged with the Director alleging —
- (a) that the amenity, quiet or good order of the neighbourhood of the licensed premises is frequently unduly disturbed by reason of any activity occurring at the licensed premises; or
 - (b) that any —
 - (i) behaviour of persons on the licensed premises;
 - (ii) noise emanating from the licensed premises; or
 - (iii) disorderly conduct occurring frequently in the vicinity of the licensed premises on the part of persons who have resorted to the licensed premises,is unduly offensive, annoying, disturbing or inconvenient to persons who reside or work in the vicinity, or to persons in or making their way to or from a place of public worship, hospital or school.
- (2) A complaint under subsection (1) may be lodged by —
- (a) the Commissioner of Police;
 - (b) the local government of the district in which the licensed premises are situated, or of any other district adjacent to the licensed premises and appearing to the Director to have an interest in the amenity, quiet or good order of the neighbourhood of the licensed premises;
 - (c) a government agency or statutory authority; or
 - (d) a person claiming to be adversely affected by the subject matter of that complaint who —
 - (i) resides, works or worships;
 - (ii) attends, or is a parent of a child who attends, a school; or
 - (iii) attends, or is a patient in, a hospital,in the vicinity of the licensed premises concerned.
- (2a) If a complaint is lodged by a person referred to in subsection (2)(d), the complaint is to be signed, unless the Director otherwise approves, by 3 unrelated adults (including the complainant).
- (2b) In subsection (2a) —
- “3 unrelated adults”** means 3 adults each of whom —
- (a) resides at different residential premises; and
 - (b) is not —
 - (i) a child; or
 - (ii) a parent; or
 - (iii) a brother or sister; or
 - (iv) an aunt or uncle; or
 - (v) a spouse or former spouse; or
 - (vi) a de facto partner or former de facto partner,of either of the other 2 adults.

- (3) The Director shall give notice of each complaint lodged to the licensee of the licensed premises with respect to which the complaint is made.
- (3a) When a complaint is lodged with the Director under subsection (1), the Director is to attempt to settle the matter by conciliation or negotiation.
- (3b) If the Director determines at any stage of the proceedings under this section that the complaint is frivolous or vexatious, the Director is to dismiss the complaint.
- (4) If the matter referred to in a complaint is not settled by conciliation or negotiation, the Director is to give the complainant, the licensee and any other person appearing to the Director to have a relevant interest in the matter a reasonable opportunity to be heard or to make submissions.
- (4a) Having complied with subsection (4), the Director —
- (a) subject to subsection (4c), may determine the matter; and
 - (b) if of the opinion that the allegation in the complaint is established on the balance of probabilities and that the licensee has failed to show cause why an order should not be made under this section — may make an order under this section,
- but otherwise the Director is to dismiss the complaint.
- (4b) Without limiting the matters that the Director may have regard to when making a determination under subsection (4a), the Director may have regard to —
- (a) any alteration, including any structural change, made —
 - (i) to the licensed premises; or
 - (ii) if the complainant is a person referred to in subsection (2)(d) — to any relevant premises where the complainant (or, if subsection (2)(d)(ii) applies, the complainant's child) resides, works, worships, attends or is a patient;
- and
- (b) any changes that have taken place over time to the activities that take place on the licensed premises; and
 - (c) the kind of business conducted under the licence and how that business is managed; and
 - (d) if the complainant is a person referred to in subsection (2)(d) — whether the complainant (or, if subsection (2)(d)(ii) applies, the complainant's child) began to reside, work, worship, attend or be a patient at any relevant premises before or after the licensee began to conduct business at the licensed premises; and
 - (e) any provision of the Environmental Protection Act 1986, or of any regulations made under that Act, that is relevant to the subject matter of the complaint.
- (4c) The Director —
- (a) may defer making a determination under subsection (4a) for any period the Director considers appropriate; and
 - (b) may make an interim order that has effect for that period for any purpose for which an order may be made under subsection (5).

- (5) For the purposes of this section, whether pursuant to conciliation or negotiation or by way of an order, the Director may —
- (a) vary the existing conditions of the licence;
 - (b) redefine, or redesignate a part of, the licensed premises;
 - (c) prohibit the licensee from providing entertainment or any other activity of a kind specified by the Director during a period specified by the Director or otherwise than in circumstances specified by the Director, and impose that prohibition as a condition to which the licence is to be subject; or
 - (d) otherwise deal with the matter in such a manner as is likely, in the opinion of the Director, to resolve the subject matter of the complaint.
- (6) Where, under section 25, a determination made by the Director under this section is to be reviewed by the Commission —
- (a) effect shall be given to any determination made by the Director; and
 - (b) any order made, or other action taken, by the Director under subsection (5) remains in force until revoked by the Director or quashed by the Commission,
- unless the Commission, by way of interim order, otherwise directs.
- (7) A licensee who contravenes an order made under this section commits an offence.
- Penalty: \$10 000.

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Within the Future Plan under Objective 1: Lifestyle one of the major strategies identified for protecting and enhancing the lifestyle of residents and visitors is to:

1.2 Reduce beachfront hotel patron numbers to a sustainable level.

The strategy detailed within this item is focused on this objective.

FINANCIAL IMPLICATIONS

The total estimate for the implementation of the strategy is \$30,000 - \$40,000.

BACKGROUND

This matter is represented from the September 2008 meeting of Council.

At the May 2008 meeting of Council it was resolved:-

- (1) That the Town of Cottesloe withhold consideration of any further development of a strategy to support an amendment to the *Liquor Control Act 1988* until a complaint under section 117 of the *Liquor Control Act 1988* has been finalised or a review of liquor license conditions has been undertaken under section 64 of the Act.

- (2) That the Town of Cottesloe review the measures available under the *Liquor Control Act 1988* and the practicalities of lodging a complaint under section 117 of the *Liquor Control Act 1988* in respect to the Cottesloe Beach Hotel.
- (3) That the Town of Cottesloe review the most practical manner of obtaining information that will support a change in liquor license conditions either under section 64 or the lodging of a complaint under section 117.
- (4) That the Town of Cottesloe adopt a similar plan of action for developing a strategy to finding a solution to problems associated with the Ocean Beach Hotel.
- (5) That the Town of Cottesloe not consider, until after the complaint under section 117 of the *Liquor Control Act 1988* has been finalised or a review of liquor license conditions has been undertaken under section 64, any further development of a strategy to support an amendment to the *Liquor Control Act 1988*.
- (6) That the Town of Cottesloe develop a succinct communications strategy to locally publicise the need for residents to provide better evidence in support of complaints, and to also more widely publicise the need to address problems that arise from the high patron numbers allowed at the Cottesloe Beach Hotel and the Ocean Beach Hotel.
- (7) That Council form a Liquor Licensing Working Group comprised of the Mayor and Council members of the Community Safety & Crime Prevention Committee, together with executive support from the Chief Executive Officer, to oversee the completion within four months of the abovementioned reviews and the preparation of the abovementioned plans of action and communications strategy, including the preparation for Council approval of any proposal to lodge a submission with the Liquor Licensing Authority seeking to invoke a review under section 64.

A Liquor Licensing Working Group was formed as per the Council directive and met for the first time on 24 June 2008. The group has met a number of times since then and:

- Reviewed the available information.
- Listened to representatives from the Department of Racing, Gaming and Liquor on the issues surrounding appeals to the Liquor Licensing Court.
- Worked up a strategy to address the situation as uncovered during previous meetings.
- Present agreed strategy to Council for ratification before proceeding further.

At the Working Group meeting of the **15 July 2008** it was noted that the objectives of the *Liquor Control Act 1988* have changed (emphasis added).

S5. OBJECTS OF THE ACT

- (1) The primary objects of this Act are —
 - (a) to regulate the sale, supply and consumption of liquor; and

- (b) to minimize harm or ill-health caused to people, or any group of people, due to the use of liquor; and
 - (c) **to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.**
- (2) In carrying out its functions under this Act, the licensing authority shall have regard to the primary objects of this Act and also to the following secondary objects —
- (a) **to facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State; and**
 - [(b), (c) deleted]*
 - (d) to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
 - (e) to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.
- (3) If, in carrying out any of its functions under this Act, the licensing authority considers that there is any inconsistency between the primary objects referred to in subsection (1) and the secondary objects referred to in subsection (2), the primary objects take precedence.

The following points arose from the discussion with the representatives of the Department of Racing Gaming and Liquor around the changed objects of the Act:

- Cottesloe hotels could be deemed to be essential for the development of tourism in the State.
- Lawyers for licensees are not afraid to use intimidation to stave off objections to liquor licensing conditions i.e. sue for loss of business.
- S.117 complaints have to focus on the stand out features of bad behaviour.
- Legal fees for s.117 complaints have to met by the Council in the first instance.
- Onus is on the Council to prove the case which requires a high standard of evidence.
- S.64 is cheaper for the Council – the Director runs the enquiry.
- Potential issues to be taken into account:-
 - Irresponsible drinking
 - Hotel newsletter/email encouraging irresponsible behaviour
 - Regular overcrowding
 - Beer garden noise levels
 - Unacceptable standards
 - Non compliance with certification requirements
 - Video footage
 - Private investigator footage – use CCC contractors.

- Police reports on drunk driving
 - Booze buses
 - Criminal Injuries Assessor – location of assaults
 - 6 to 12 signed statements developed to court room standard by an articulated clerk
 - Tourists being frightened away – i.e. turn 5. (1) (c) of the *Liquor Control Act 1988* to the town's favour. Rubbish and vandalism to vehicles etc.
- Must tread quietly in order to gather quality evidence.
 - Use volunteers to gather information over a typical week/weekend.
 - Continue to cooperate with hotels.
 - Write up a strategy to gather evidence on a nominated long weekend.
 - To include communications strategy to stimulate public concern.
 - Use Paul Bowen and CCTV footage.

From the Working Group meeting of the **29 July 2008** it was concluded that:

- Police resourcing is an issue and is tending to be concentrated in entertainment precincts.
- There is a need for a “grandfathering” clause to reduce adverse health impacts by reducing patron numbers over several years to further the objectives of Section 64. We need to gather scientific evidence of the adverse health impacts of large liquor establishments.
- Focus should be on social betterment through the progressive removal of an anachronistic formula that determines patron numbers.
- Any report to Council on a strategy to gather evidence should be presented as a confidential attachment to the report.
- Next meeting to flesh out the who, what, when, why and how evidence is to be gathered.
- Also the elements of a communications strategy after the evidence has been gathered needs to be documented.

The working group meeting of the 12 August 2008 concluded that the desired outcome of any action undertaken by the town against the hotels must be to dramatically reduce the numbers of patrons at both hotels.

To achieve this outcome, irrefutable evidence would need to be gathered. Rather than collect dribs and drabs of evidence over a summer, a comprehensive effort to gather evidence should be undertaken on a nominated Sunday. The precise date of was to be kept confidential.

The various arms of the evidence gathering strategy were identified as follows:

1. Legal Advice

Cost: estimate being sought from 2 law firms. One quote received to date \$6,500

2. Visual Observation Area

Cost: estimate being provided by Estill and Associates

3. Clean Up Costs

Cost: each Sunday costs approximately \$320 in labour (\$40/hr for 2 depot staff for 4 hours) to rubbish pick at the beachfront.

4. Impact on Tourism

Cost: estimate being provided by Estill and Associates

5. Video Camera Surveillance

Cost: \$4,400

6. Other Data

Cost: no additional cost

7. Noise Monitoring

Cost: The estimated cost to monitor the 2 hotels from 5pm to 11pm is \$2,160

8. Hotel Behaviour

Cost: estimate being provided by Estill and Associates or one of the legal firms

9. Evidence of Residents

Cost: estimate being provided by Estill and Associates

10. Communications Strategy

Cost: estimate being sought from Paul Bowen

11. Taxis & Public Transport Authority

Cost: no additional cost

The detail behind each of the above strategies is presented in a confidential attachment to this report. Council's endorsement for the implementation of the overall strategy and the authorisation for any required expenditure is now requested.

CONSULTATION

Nil

STAFF COMMENT

The patrons of the beachfront hotels on a Sunday night in summer continue to provide the majority of complaints of anti-social behaviour in the Town of Cottesloe. There has been a concerted effort over the past two summers to capture objective information to ascertain the size of the problem at the beachfront. This information shows that there has been a significant improvement in levels of anti-social behaviour. This is substantiated by anecdotal evidence from residents in the area.

Whilst there has been an improvement, the level of anti-social behaviour in the area is still unacceptable. The consensus of opinion is that the only way to address the problem is to reduce the licensed number of patrons at the beachfront hotels.

The concept of targeting a single weekend and capturing a comprehensive snapshot of the impact of Sunday sessions in Cottesloe was developed following discussions with representatives from the Department of Racing, Gaming and Liquor who attended a Liquor License Working Group meeting.

The idea is to pursue a s64 rather than a s117 complaint. This is because the Director of Liquor Licensing runs this matter as opposed to a s117 where the Town of Cottesloe and a legal team appear in court and must substantiate 'undue' disturbance to residents.

VOTING

Absolute Majority – unauthorised expenditure.

COMMITTEE COMMENT

Committee would like number of hotel patrons significantly reduced to 50% and this to be justify the expenditure to implement the proposed strategy.

OFFICER RECOMMENDATION

That Council endorse the expenditure of Council funds on the proposed strategy.

12.1.4 COMMITTEE & COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Strzina

That Council endorse the expenditure of Council funds on the proposed strategy to reduce the number of patrons by 50% which is currently at 2000 (approximately) per hotel.

Carried 7/3

12.1.5 GENERAL ELECTORS MEETING - ACCEPTANCE OF ANNUAL REPORT

File No: SUB/383
Author: Mr Stephen Tindale
Author Disclosure of Interest: Nil
Report Date: 13 October, 2008
Senior Officer: Mr Stephen Tindale

SUMMARY

A recommendation is made to accept the annual report for the 2007/08 financial year and to hold the general electors meeting on Wednesday, 26 November 2008.

STATUTORY ENVIRONMENT

The relevant sections of the *Local Government Act 1995* read as follows:

5.27. Electors' general meetings

- (1) *A general meeting of the electors of a district is to be held once every financial year.*
- (2) *A general meeting is to be held on a day selected by the local government but not more than 56 days after the local government accepts the annual report for the previous financial year.*
- (3) *The matters to be discussed at general electors' meetings are to be those prescribed.*

5.29. Convening electors' meetings

- (1) *The CEO is to convene an electors' meeting by giving -
 - (a) at least 14 days' local public notice; and
 - (b) each council member at least 14 days' notice,of the date, time, place and purpose of the meeting.*
- (2) *The local public notice referred to in subsection (1)(a) is to be treated as having commenced at the time of publication of the notice under section 1.7(1)(a) and is to continue by way of exhibition under section 1.7(1)(b) and (c) until the meeting has been held.*

5.53. Annual reports

- (1) *The local government is to prepare an annual report for each financial year.*
- (2) *The annual report is to contain -
 - (a) a report from the mayor or president;
 - (b) a report from the CEO;
 - [(c), (d) deleted]
 - (e) an overview of the plan for the future of the district made in accordance with section 5.56, including major initiatives that are proposed to commence or to continue in the next financial year;*

- (f) *the financial report for the financial year;*
- (g) *such information as may be prescribed in relation to the payments made to employees;*
- (h) *the auditor's report for the financial year;*
- (ha) *a matter on which a report must be made under section 29(2) of the Disability Services Act 1993;*
- (hb) *details of entries made under section 5.121 during the financial year in the register of complaints, including -*
 - (i) *the number of complaints recorded in the register of complaints;*
 - (ii) *how the recorded complaints were dealt with; and*
 - (iii) *any other details that the regulations may require; and*
- (i) *such other information as may be prescribed.*

5.54. Acceptance of annual reports

- (1) *Subject to subsection (2), the annual report for a financial year is to be accepted* by the local government no later than 31 December after that financial year.*

*** Absolute majority required.**

- (2) *If the auditor's report is not available in time for the annual report for a financial year to be accepted by 31 December after that financial year, the annual report is to be accepted by the local government no later than 2 months after the auditor's report becomes available.*

5.55. Notice of annual reports

The CEO is to give local public notice of the availability of the annual report as soon as practicable after the report has been accepted by the local government.

Regulations 15 and 19B of the *Local Government (Administration) Regulations, 1996* require that:

15. Matters for discussion at general electors' meetings s. 5.27(3)

For the purposes of section 5.27(3), the matters to be discussed at a general electors' meeting are, firstly, the contents of the annual report for the previous financial year and then any other general business.

19B. Annual report to contain information on payments to employees s. 5.53(2)(g)

For the purposes of section 5.53(2)(g) the annual report of a local government for a financial year is to contain the following information -

- (a) *the number of employees of the local government entitled to an annual salary of \$100 000 or more;*
- (b) *the number of those employees with an annual salary entitlement that falls within each band of \$10 000 over \$100 000.*

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Nil.

BACKGROUND

The annual report (see attached) is made up of a number of reports including those of the Mayor and CEO, an overview of the plan for the future, the annual financial statements, the auditor's report and other statutory and prescribed reports and information.

The last General Meeting of Electors was held on Wednesday, 21 November, 2007.

Subject to Council's acceptance of the Annual Report, the proposed date (previously agreed to by Council) for the electors meeting is Wednesday, 26 November 2008 (committee week).

CONSULTATION

Nil.

STAFF COMMENT

The date is the most suitable in terms of ensuring that the Annual Report summary (the small, coloured version of the Annual Report which is printed on recycled paper using natural vegetable inks) is distributed to all households in advance of the meeting.

VOTING

Simple Majority

12.1.5 OFFICER & COMMITTEE & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Carmichael

That Council:

- (1) Accept the Annual Report for the 2007/08 Financial Year, and**
- (2) Call for the General Meeting of Electors to be held in the Lesser Hall, Cottesloe Civic Centre, on Wednesday, 26 November, 2008 commencing at 7.00pm.**

Carried 10/0

12.1.6 INDIANA TEA HOUSE - LEGAL ADVICE

File No: PRO/2414-02
Author: Mr Stephen Tindale
Author Disclosure of Interest: Nil
Report Date: 14 October, 2008
Senior Officer: Mr Stephen Tindale

SUMMARY

A recommendation is made to receive legal advice indicating that it is open to the Town of Cottesloe to require that the lessee of the Indiana Tea House limit seating numbers in the restaurant/café at 170 people rather than the current 240.

STATUTORY ENVIRONMENT

Nil.

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Nil.

BACKGROUND

At the May 2008 meeting of Council, it was resolved not to support a redevelopment proposal for Indiana's on the grounds that it did not sufficiently address the public domain and amenity expectations for the premises.

It was also decided to seek legal advice on Council's power to enforce the limit of 170 people for the café/restaurant as provided for under clause 17.1(a) of the lease agreement notwithstanding the fact that the Town of Cottesloe has issued eating house licences permitting a seating capacity of 240 in the restaurant.

In July 2008 a revised and much reduced redevelopment proposal was submitted to Council.

Council decided to:-

- (1) Require ITH (WA) Pty Ltd to upgrade the public toilets to the satisfaction of the Town of Cottesloe as an additional work under Clause 16.2 of the lease agreement.
- (2) Refuse to grant consent under Clause 16.2 in the event that no agreement can be reached on the upgrade of the public toilets.
- (3) Require, subject to agreement being reached on the additional work, including supplementary detailed design of the proposed deck extension and complementary upgrading of the lower level kiosk area, the development

- proposal to be simultaneously referred to the Design Advisory Panel and advertised for public comment under Council's *Community Consultation* policy.
- (4) Require any comments received from the Design Advisory Panel and any community comments received to be referred back to Council as part of the Development Application process.

At this point in time the Town has not received any plans for the upgrade of the toilets which means that the latest development proposal is stalled.

In the meantime legal advice has been received indicating that it is open to the Town of Cottesloe to require that the lessee limit seating numbers in the restaurant/café at 170 people (see attached).

CONSULTATION

Nil.

STAFF COMMENT

Nil

VOTING

Simple Majority

OFFICER RECOMMENDATION

That Council receive legal advice indicating that it is open to the Town of Cottesloe to require that the lessee of the Indiana Tea House limit seating numbers in the restaurant/café at 170 people rather than the current 240.

12.1.6 COMMITTEE & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Strzina

That Council receive legal advice indicating that it is open to the Town of Cottesloe to require that the lessee of the Indiana Tea House limit seating numbers in the restaurant/café at 170 people.

Carried 10/0

12.1.7 REQUEST FOR REIMBURSEMENT OF LEGAL EXPENSES - 25 MARGARET STREET

File No: PRO/2245
Author: Mr Stephen Tindale
Author Disclosure of Interest: Nil
Report Date: 13 October, 2008
Senior Officer: Mr Stephen Tindale

SUMMARY

In February 2008 the Town of Cottesloe sold a vacant block of land at 25 Margaret Street. The purchaser had the property surveyed with a view to installing a new brick dividing fence between 23 and 25 Margaret Street.

The survey revealed that the existing dividing fence was not constructed on the boundary line between 23 and 25 Margaret Street.

Sometime during the settlement process, the purchaser was informed by the owner of 23 Margaret Street of her intention to make an adverse possession claim for the land enclosed into hers by the incorrectly aligned boundary fence.

As a consequence, the purchaser of 25 Margaret Street put the Town on notice that there had been a mis-description of the land in the contract of sale and that in the event that an adverse possession claim by his new neighbour was successful, compensation for the loss of land would be sought from the Town of Cottesloe.

Without any admission of liability, the purchaser was counselled by staff of the Town of Cottesloe to test the adverse possession claim through due legal process.

The advice was given freely on the basis of a similar experience with an 'adverse possession claim' at the rear of the lot in question involving the owner of 23 Margaret Street and in the knowledge that from a legal point of view, the Town of Cottesloe no longer had an interest in the land.

The purchaser queried whether the Town of Cottesloe would meet his legal costs. He was informed that the Town would not meet his costs but that subject to the resolution of the adverse possession claim, the Council could well consider the reimbursement of costs based on the merits of the case.

The purchaser is now seeking reimbursement of \$2,807.75 in legal fees incurred in resolving the adverse possession issue.

A recommendation is made to refuse the request as the claim appears to be without merit.

STATUTORY ENVIRONMENT

Confidential legal advice has been obtained on the matter and is attached.

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Payment of \$2807.75 has not been budgeted for and requires an absolute majority decision of Council if payment is to be made.

BACKGROUND

Copies of correspondence are attached which provide further detailed background.

CONSULTATION

The main stakeholders, the owners of No. 23 and No. 25/27 Margaret Street and Council have been fully involved to this time.

STAFF COMMENT

By the attached legal advice and correspondence it will be noted that there was no misdescription of the land at the time of sale and that at no time has the purchaser been given any undertaking by Council staff that his legal costs would be reimbursed in defending an adverse possession claim.

Any reimbursement based on the reported misdescription of the land and reported undertakings given by staff that legal costs would be met would be entirely without foundation.

However Council may decide that the purchaser is entitled to some reimbursement of costs on the merits of the case (which are unknown to Council staff at this point in time).

If Council does decide to reimburse costs, it may also want to consider reimbursing the legal costs of the adjoining landowner who could well argue that she also has been given unnecessary 'grief' by the Town of Cottesloe's action in selling 25 Margaret Street.

VOTING

Simple Majority for the Officer Recommendation.

COMMITTEE COMMENT

Committee felt that there was a moral obligation for Council to reimburse the legal costs as Council was the previous owner of the land and these costs occurred due to the boundary fences not being in the correct place at the time of sale.

OFFICER RECOMMENDATION

That Council refuse the request for reimbursement of legal costs.

AMENDMENT

Moved Cr Cunningham, seconded Cr Strzina

That Council reimburse the legal costs to Mr & Mrs Yeo subject to a deed being prepared between the parties prior to the payment of \$2,807.75 being made to Mr & Mrs Yeo.

Lost 2/8

12.1.7 COMMITTEE & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Birnbrauer

That Council reimburse the legal costs of \$2,807.75 to Mr & Mrs Yeo.

Carried 7/3

12.1.8 COTTESLOE CIVIC CENTRE - COMMUNITY CONSULTATION

File No: SUB/126
Author: Mr Stephen Tindale
Author Disclosure of Interest: Nil
Report Date: 14 October, 2008
Senior Officer: Mr Stephen Tindale

SUMMARY

Recommendations are made to:

- (1) Implement the short and medium term recommendations of the report prepared by Estill & Associates on uses of the Civic Centre with the exception of a proposed display of historical documents in the new office foyer.
- (2) Request staff to report on the costs of renovating the Lesser Hall for further consideration when framing the 2009/2010 budget.
- (3) Convene an elected member workshop facilitated by a "place maker" to identify potential public and private uses of the Civic Centre for additional community consultation purposes.

STATUTORY ENVIRONMENT

Nil.

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Under Council's *Future Plan 2006 – 2010*, Objective 1 relates to the protection and enhancement of the lifestyle of residents and visitors.

One of the specific actions identified under this objective is to:-

- 1.5 *Identify increased opportunities to use existing facilities or provide new venues for formal community cultural events and activities.*

One of Council's dynamic current priorities under the plan is to 'Enhance use of the Civic Centre'.

FINANCIAL IMPLICATIONS

Nil

BACKGROUND

In June 2005 Council decided to engage a consultant to assess usage options for the Cottesloe Civic Centre that provided either a commercial or community benefit, or both, while at the same time optimising use of the facility and meeting Council and community needs.

VSA Property was engaged to undertake the following tasks:

- inspect and report on the existing uses within the premises;
- review the accommodation requirements – undertake a quick review of the accommodation requirements (prepared by Griffiths Muston) to ensure they are still current;
- examine potential commercial uses - this would include the existing catering arrangements and the implications (if any) of the proposed options outlined in the Town's letter to Considine & Griffiths dated 6 July 2005, i.e. the feasibility of establishing a cafe/coffee shop on site and the potential for hiring out the various meeting rooms for conference/seminar facilities. VSA Property is also to examine the feasibility of doing away with the catering lease and taking over the hiring of the facilities direct - this may involve hiring a caretaker or an onsite property manager;
- examine the current community uses that operate from the facility and determine whether there is capacity to accommodate any additional uses and/or improve the services to existing users; and
- report on the findings and recommendations.

VSA Property concluded that:

It is evident from the recent review of requirements at the Cottesloe Civic Centre that there is insufficient space to meet the demands of the all the existing users. In addition to this, the administrative functions of the Council are presently fragmented over the site.

An assessment of other potential uses on the site suggests that there are no viable alternatives. A café/coffee shop is unlikely to be commercially feasible due to the location, lack of visibility to passing traffic and competition from more successful operations on the ocean foreshore. Similarly, a seminar/conference facility is also not considered to be feasible as a standalone operation for the same reasons. It is considered that a small on-site kiosk may be viable if there is an increase in community activities especially in summer and at weekends. Also if the facilities in the building are upgraded as recommended by Considine and Griffiths, there may be a flow on effect for use of the upper level areas for seminars and conferences.

As indicated in this report, it is recommended that all the existing uses, including the on-site catering arrangement, be retained on site if at all possible. The solutions for the Cottesloe Civic Centre revolve around whether Heritage Council approval is received for the proposed building extension(s). Two broad solutions have been identified.

The first solution, i.e. retaining all the existing uses on-site [rather than moving activities off-site], is considered to be the most attractive option. As pointed out, this solution is dependent on getting Heritage Council approval to the proposed extension(s). It is recommended that more detailed plans be developed for this option and that discussions be held with the Heritage Council to gauge the level of support for the proposed extensions. While this is happening, it is also recommended that community feedback be sought on the two solutions and the impact that these have on existing uses.

Any future tender for the existing catering arrangement should be based around an events coordinator, which would be responsible for managing and coordinating the

community uses (such as craft and community fairs), the numerous private functions and any additional conferences or seminars that are held on site.

The tender should also allow for an upgrade of the existing facilities and the provision of a kiosk if it is considered necessary.

In the event that Heritage Council approval is not forthcoming, the only realistic option is to terminate the on-site catering arrangement or cease the community activities in the Lesser Hall or both, in which case the solution outlined in Section 6.2 should be progressed.

After considering the report, Council decided that a short-term contract with Mustard Catering should be prepared so that Council could retain flexibility in considering its future options.

In December 2006, Council's Public Events Committee gave further thought to the matter of increased public use of the Civic Centre Grounds.

Suggestions that were made included:-

- To encourage better use of the grounds, plans are required to address the primary works and maintenance, including a budget.
- A landscape management plan is required for the Civic Centre gardens to detail the future vision for upgrading of the grounds.
- A Cottesloe Civic Centre Gardens vision/concept plan/management plan is required to detail the future vision for maximising public orientated uses of the Civic Centre. A suggestion was to have themes in different areas of the gardens and to promote the uses that will go best with these themes.
- Food and wine festival could be held on the west lawn, from 10am – 2pm on Sundays during the off-season.
- Installation of 'Spanish Steps' off the west lawn would integrate the Civic Centre with the beachfront.
- The current agreement with Mustard Catering to be reviewed. The committee agreed that the Managers of Mustard Catering be invited to an Events Committee meeting to discuss the vision and future plans for the Civic Centre.
- Staff were requested to report to the Events Committee in relation to the obligations that may need to be met in a future long term catering contract, contributing to the future upgrade and use of the Civic Centre, including annual performance criteria.
- Council may consider inviting expressions of interest from other event coordinators to see what ideas they have and what they could bring to the Civic Centre.

Council subsequently resolved to

- (1) Develop a Civic Centre Gardens Management Plan based on a conceptual plan/vision for the upgrade of the grounds.
- (2) Develop a complementary plan to maximise public orientated uses of the Civic Centre and grounds.
- (3) Enter into discussions with the current lessee concerning items (1) and (2) above.

In September 2007 Mustard Catering indicated its intention to cease operations at the Cottesloe Civic Centre at the end of 2007.

The announcement of Mustard Catering's departure was seen as a timely opportunity to pause and reflect on the future use of the Civic Centre grounds. It provided an opportunity to properly ascertain the community's aspirations for the Cottesloe Civic Centre without being constrained by the need to maintain a healthy ongoing business relationship with the current lessee of the Civic Centre.

Council then resolved to undertake community consultation on the potential continuation of long-term private-catering arrangements and/or alternative use/s of the Cottesloe Civic Centre and Grounds.

Earlier this year Mrs Rosie Walsh emailed all elected members seeking their views on a proposal based on the North Sydney weekend markets.

Some years ago now I suggested that the beautiful council lawns be used in the summer for food markets on Sundays.

I had visited the North Sydney weekend markets and while I usually question why we in WA have to copy everywhere else, especially since most places want to be like us, I saw the markets as a great way of bringing a community together.

My idea was to have food stalls (pancakes, juices, Mexican, Turkish, Japanese, ice-creams, coffee etc) and possibly a fresh fruit-vegetable stall or two, from about 9am till 3pm on Sundays so that people could gather for breakfast or lunch. Nothing too grand. A jazz band would add to the mood.

I understood that the council was going to look into how to go about this but nothing seems to have come of it. I'm sure the North Sydney Council would provide information as to how they work it. It seems too late again for this summer but I'm interested to know the views of councillors at this time.

At the February 2008 meeting of Council it was decided that the Town should undertake community consultation on the potential uses of the Cottesloe Civic Centre in accordance with Council's Community Consultation policy as it relates to service planning.

The results of that consultation were to then be used to inform any further consideration of the potential continuation of long-term private-catering arrangements at the Cottesloe Civic Centre.

Estill and Associates were engaged to undertake the consultation and a copy of their report is attached.

A summary of the recommendations of the report follows.

Short term (low cost)

Booking service/catering

- It is recommended that the Town provide a booking service internally for the bookable areas of the facility and enter into a preferred provider arrangement with a caterer or group of caterers. This will allow flexibility for user groups and a marketing opportunity for a caterer.

Signage

- It is recommended that the Town investigate and have the reported restrictions of the heritage signage lifted in the interest of preserving the ambience and pleasant enjoyment of the facility by the public.
- It is recommended that the Town develop its own unique brand of signage that is striking and meets the reported restrictions of the Heritage Act.

Medium Term (medium cost)**Promotion**

- It is recommended that the Town develop a marketing strategy that reintroduces the facility and its opportunities to the community when it is reopened to the public.

Historical display

- It is recommended that the Town provide more directional and information signage that encourages appropriate use of the facility; these could include information on the historical aspects of the facility.
- It is recommended that an area be set aside for the display of historical documents that may be of interest to the public.
- It is recommended that this be in a public space with the opportunity for active and passive surveillance and this would indicate that the new entrance foyer would provide the best opportunity.

Security

- It is recommended that the Town consider the installation of security cameras in discrete locations around the facility and additional lighting to assist the security cameras. These should cover key activity areas and if extra camera points are provided in the initial installation, cameras can be moved around in response to increase in activity.

Long Term (high cost)**Renovation**

- It is recommended that the Town renovate the current lesser hall in order to bring it up to the current building code and give a general internal and external facelift to the building. This would also serve to make it more attractive and encourage greater use.

Redevelopment

- It is recommended that the Town consider future redevelopment of the Eric Street Scout Hall site in order to relocate users of the minor hall and establish a café utilising the lesser hall facility if there is sufficient demand for that type of amenity at the time.

CONSULTATION

See attached report.

STAFF COMMENT

The short and medium term recommendations can be acted upon using existing resources with perhaps one exception. The one exception is the recommendation

that the new office foyer be used for the display of historical documents of interest to the public.

Space in the new foyer area is severely limited - so much so that it will not be possible to properly display the trophies and awards that the Town accumulates from time to time let alone historical documents of interest to the public.

It is understood that a 'history room' is to be built in the new library. This facility will be easier to access and maintain. It will foster the development of the library as a community and resource centre. It is therefore felt that historical documents at the Civic Centre should be more properly displayed at the library where the access is better and the displays can be thematically rotated.

The longer term recommendations of the report have high costs associated with them and need to be considered within the context of Council's strategic and financial plans and the annual budget priorities.

Out of the last Strategic Planning Committee meeting, it was also agreed that the results of the report should be used to inform an elected member workshop facilitated by a "place maker" to identify potential public and private uses of the Civic Centre for additional community consultation purposes. For the avoidance of any uncertainty, that decision is repeated in the recommendation below.

VOTING

Simple Majority

12.1.8 OFFICER & COMMITTEE & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Birnbrauer

That Council:

- (1) Request staff to implement the short and medium term recommendations of the report prepared by Estill & Associates with the exception of the proposed display of historical documents in the new office foyer.**
- (2) Request staff to report on the costs of renovating the Lesser Hall for further consideration when framing the 2009/2010 budget.**
- (3) Convene an elected member workshop facilitated by a "place maker" to identify potential public and private uses of the Civic Centre for additional community consultation purposes.**

Carried 10/0

12.1.9 AUSTRALIAN COUNCIL OF LOCAL GOVERNMENT - INAUGURAL MEETING

File No: SUB/36
Author: Mr Stephen Tindale
Author Disclosure of Interest: Nil
Report Date: 14 October, 2008
Senior Officer: Mr Stephen Tindale

SUMMARY

Mayor Kevin Morgan has been invited to attend the inaugural meeting of the Australian Council of Local Government to be held at Parliament House in Canberra on the 18th November 2008.

A recommendation is made to authorise the accommodation and travel expenses of Mayor Morgan in attending the meeting.

STATUTORY ENVIRONMENT

Section 2.8 of the *Local Government Act 1995* provides the following in part:-

2.8. THE ROLE OF THE MAYOR OR PRESIDENT

- (1) The mayor or president —
 - (a) presides at meetings in accordance with this Act;
 - (b) provides leadership and guidance to the community in the district;
 - (c) carries out civic and ceremonial duties on behalf of the local government;
 - (d) speaks on behalf of the local government;
 - (e) performs such other functions as are given to the mayor or president by this Act or any other written law; and
 - (f) liaises with the CEO on the local government's affairs and the performance of its functions.

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

The cost of attendance including two nights accommodation is estimated to be \$2,000 to \$2,500. An amount of \$3,500 has been set aside in the 2008/09 budget for conference and training expenses for elected members.

BACKGROUND

On 18 September 2008, the Prime Minister, the Hon Kevin Rudd MP, and the Federal Minister for Local Government, Anthony Albanese, announced the establishment of the Australian Council of Local Government (ACLG) to forge a new cooperative engagement between the Commonwealth and local government. The creation of this Council has been endorsed by the Australian Local Government Association.

The Mayor has been invited to attend the inaugural meeting of the ACLG to be held at Parliament House in Canberra on the 18th November 2008 and a welcoming function on the 17 November 2008 where the winners of the 2008 National awards for Local Government will be presented.

The one-day meeting will give communities a real voice in addressing the issues of vital national and local interest, including priorities for national and local infrastructure, tackling the challenges of our major cities and examining a process for recognition of local government in the Commonwealth constitution.

The Government will meet the costs of holding the meeting but each attendee has been asked to bear their own travel and accommodation costs.

CONSULTATION

Nil.

STAFF COMMENT

Despite the short duration of the event, it would be politically astute to have as many Mayors and Presidents from local governments in WA present at the meeting so that the tyranny of distance doesn't undermine any claim by WA local governments for infrastructure funding or the like in the future.

Cottesloe rarely has any elected member attending an interstate conference (or for that matter any State conference) and the Mayor's willingness to attend the inaugural ACLG meeting may set an example for Cottesloe in being more outward rather than inward looking.

VOTING

Simple Majority

12.1.9 OFFICER & COMMITTEE & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Carmichael

That Council authorise the accommodation and travel expenses of Mayor Morgan in attending the inaugural meeting of the Australian Council of Local Government to be held at Parliament House in Canberra on the 18th November 2008.

Carried 10/0

12.1.10 DRAFT STANDING ORDERS LOCAL LAW 2008

File No: SUB/179
Author: Mr Stephen Tindale
Author Disclosure of Interest: Nil
Report Date: 14 October, 2008
Senior Officer: Mr Stephen Tindale

SUMMARY

A recommendation is made to proceed with the making of *Standing Orders Local Law 2008*.

PURPOSE AND EFFECT OF THE PROPOSED LOCAL LAW

The purpose of the proposed local law is to provide rules and guidelines which are to apply to the conduct of meetings of the Council and its committees and to meetings of electors in accordance with State Government legislation and regulations and the standing orders.

The effect of the proposed local law will result in:

- a) better decision making by the Council and committees;
- b) the orderly conduct of meetings dealing with Council business;
- c) better understanding of the process of conducting meetings; and
- d) the more efficient and effective use of time at meetings.

STATUTORY ENVIRONMENT

Sections 3.5 & 3.12 of the *Local Government Act 1995* apply.

3.5. Legislative power of local governments

(1) A local government may make local laws under this Act prescribing all matters that are required or permitted to be prescribed by a local law, or are necessary or convenient to be so prescribed, for it to perform any of its functions under this Act.

(2) A local law made under this Act does not apply outside the local government's district unless it is made to apply outside the district under section 3.6.

(3) The power conferred on a local government by subsection (1) is in addition to any power to make local laws conferred on it by any other Act.

(4) Regulations may set out -

(a) matters about which, or purposes for which, local laws are not to be made;
or

(b) kinds of local laws that are not to be made,

and a local government cannot make a local law about such a matter, or for such a purpose or of such a kind.

(5) Regulations may set out such transitional arrangements as are necessary or convenient to deal with a local law ceasing to have effect because the power to make it has been removed by regulations under subsection (4).

3.12. Procedure for making local laws

(1) *In making a local law a local government is to follow the procedure described in this section, in the sequence in which it is described.*

(2) *At a council meeting the person presiding is to give notice to the meeting of the purpose and effect of the proposed local law in the prescribed manner.*

(3) *The local government is to -*

(a) give Statewide public notice stating that -

(i) the local government proposes to make a local law the purpose and effect of which is summarized in the notice;

(ii) a copy of the proposed local law may be inspected or obtained at any place specified in the notice; and

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

(b) as soon as the notice is given, give a copy of the proposed local law and a copy of the notice to the Minister and, if another Minister administers the Act under which the local law is proposed to be made, to that other Minister; and

(c) provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.

(3a) A notice under subsection (3) is also to be published and exhibited as if it were a local public notice.

(4) After the last day for submissions, the local government is to consider any submissions made and may make the local law as proposed or make a local law* that is not significantly different from what was proposed.*

*** Absolute majority required.**

(5) After making the local law, the local government is to publish it in the Gazette and give a copy of it to the Minister and, if another Minister administers the Act under which the local law is proposed to be made, to that other Minister.

(6) After the local law has been published in the Gazette the local government is to give local public notice -

(a) stating the title of the local law;

(b) summarizing the purpose and effect of the local law (specifying the day on which it comes into operation); and

(c) advising that copies of the local law may be inspected or obtained from the local government's office.

(7) The Minister may give directions to local governments requiring them to provide to the Parliament copies of local laws they have made and any explanatory or other material relating to them.

(8) In this section -

making ~ in relation to a local law, includes making a local law to amend the text of, or repeal, a local law.

Regulation 3 of the *Local Government Functions and General Regulations* provides the following.

3. Notice of purpose and effect of proposed local law - s. 3.12(2)

For the purpose of section 3.12, the person presiding at a council meeting is to give notice of the purpose and effect of a local law by ensuring that -

(a) the purpose and effect of the proposed local law is included in the minutes for that meeting; and

(b) the minutes of the meeting of the council include the purpose and effect of the proposed local law.

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Nil other than the direct cost of advertising the proposed local law and its gazettal in the *State Government Gazette*.

BACKGROUND

In September 2006 Council passed the following resolutions.

- (1) That Council suspend the operation of Standing Order 12.1 which requires members of Council to rise when invited by the Mayor to speak.
- (2) That the suspension of Standing Order 12.1 be listed as a standard agenda item for each Council and Committee meeting.
- (3) That the CEO be requested to provide a report and recommendations to Council on suggested improvements to Councils Standing Orders.

The proposed *Town of Cottesloe Standing Orders Local Law 2008* is based on a model provided by the Town's legal advisers.

At the June 2008 meeting of Council it was agreed that the model local law should be modified to suit Cottesloe's particular circumstances in six places.

At the August 2008 meeting of Council it resolved:-

That Council:

- (a) *Give Statewide public notice stating that –*
 - (i) *the Town of Cottesloe proposes to make Standing Orders Local Law 2008 the purpose of which is to provide rules and guidelines*

which are to apply to the conduct of meetings of the Council and its committees and to meetings of electors in accordance with State Government legislation and regulations and the standing orders and the effect of which will result in:

- (A) *better decision making by the Council and committees;*
 - (B) *the orderly conduct of meetings dealing with Council business;*
 - (C) *better understanding of the process of conducting meetings; and*
 - (D) *the more efficient and effective use of time at meetings.*
- (ii) *a copy of the proposed local law may be inspected or obtained at any place specified in the notice; and*
- (iii) *submissions about the proposed local law may be made to the Town of Cottesloe before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given;*
- (b) *As soon as the notice is given, give a copy of the proposed local law and a copy of the notice to the Minister; and*
- (c) *Provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.*

CONSULTATION

Public notice of the proposal to make the *Standing Orders Local Law 2008* and an invitation to make submissions on same were advertised in the *West Australian* on Monday 1st September and in the *Post* newspaper on Saturday 13th & 27th September 2008. Copies of the proposed local law were made available from Council's website, offices and the library.

A copy of the proposed local law and a copy of the notice was dispatched to the Minister on 29th August 2008.

No submissions were received by the closing date of Wednesday 15th October 2008.

STAFF COMMENT

Nil.

VOTING

Absolute Majority

AMENDMENT

Cr Utting left the room at 9.25pm

The Mayor advised the meeting that the Department of Local Government had requested an extension until the 3rd November to review the Standing Orders Local Law.

OFFICER & COMMITTEE RECOMMENDATION

That Council in pursuance of the powers conferred under the *Local Government Act 1995* and of all other powers enabling it, resolve to make the following Local Law:

12.1.10 COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Woodhill

That the matter be deferred to the November round of meetings.

Carried 9/0

Cr Utting returned to the meeting at 9.30pm

LOCAL GOVERNMENT ACT 1995

Town of Cottesloe

STANDING ORDERS LOCAL LAW 2008

Under the powers conferred by the *Local Government Act 1995* and under all other powers, the Council of the Town of Cottesloe resolved on 27th October 2008 to make the following local law.

PART 1 - PRELIMINARY**1.1 CITATION**

- (1) This local law may be cited as the Town of Cottesloe Standing Orders Local Law 2008.
- (2) In the clauses that follow, this local law is referred to as “these Standing Orders”.

1.2 COMMENCEMENT

By virtue of section 3.14 of the Act, these Standing Orders come into operation 14 days after the date of their publication in the *Government Gazette*.

1.3 APPLICATION AND INTENT

- (1) These Standing Orders provide rules and guidelines which apply to the conduct of meetings of the Council and its committees and to meetings of electors.
- (2) All meetings are to be conducted in accordance with the Act, the Regulations and these Standing Orders.
- (3) These Standing Orders are intended to result in:
 - (a) better decision making by the Council and committees;
 - (b) the orderly conduct of meetings dealing with Council business;
 - (c) better understanding of the process of conducting meetings; and
 - (d) the more efficient and effective use of time at meetings.

1.4 INTERPRETATION

- (1) In these Standing Orders unless the context otherwise requires:
“**absolute majority**” has the same meaning as given to it in the Act;
“**75% majority**” has the same meaning as given to it in the Act;

“**Act**” means the *Local Government Act 1995*;
“**CEO**” means the Chief Executive Employee of the Town;
“**committee**” means a committee of the Council established under section 5.8 of the Act;
“**committee meeting**” means a meeting of a committee;
“**Council**” means the Council of the Town;
“**Mayor**” means the Mayor of the Town or other Presiding Member at a Council meeting under section 5.6 of the Act;
“**meeting**” means a meeting of the Council or a committee, as the context requires;
“**member**” has the same meaning as given to it in the Act;
“**Presiding Member**” means:
(a) in respect of the Council, the person presiding under section 5.6 of the Act; and
(b) in respect of a committee, the person presiding under sections 5.12, 5.13, and 5.14 of the Act;
“**Regulations**” means the *Local Government (Administration) Regulations 1996*;
“**simple majority**” means more than 50% of the Members present and voting;
“**substantive motion**” means an original motion or an original motion as amended, but does not include an amendment or a procedural motion; and
“**Town**” means the Town of Cottesloe.

- (2) Unless otherwise defined in these Standing Orders, the terms and expressions used in these Standing Orders are to have the meaning given to them in the Act and Regulations.
- (3) A reference to “local government” in these Standing Orders is a reference to the Town of Cottesloe.

1.5 REPEAL

The Town of Cottesloe Standing Orders Local Law No. 1, published in the *Government Gazette* on 30 December 1997, is repealed.

PART 2 – ESTABLISHMENT AND MEMBERSHIP OF COMMITTEES

2.1 ESTABLISHMENT OF COMMITTEES

- (1) The establishment of committees is dealt with in the Act.
- (2) A Council resolution to establish a committee under section 5.8 of the Act is to include:
 - (a) the terms of reference of the committee;
 - (b) the number of Council Members, employees and other persons to be appointed to the committee;
 - (c) the names or titles of the Council Members and employees to be appointed to the committee;
 - (d) the names of other persons to be appointed to the committee or an explanation of the procedure to be followed to determine the appointments; and
 - (e) details of the delegation of any powers or duties to the committee under section 5.16 of the Act.

- (3) These Standing Orders are to apply to the conduct of committee meetings.

2.2 TYPES OF COMMITTEES

The types of committees are dealt with in the Act.

2.3 DELEGATION OF SOME POWERS AND DUTIES TO CERTAIN COMMITTEES

The delegation of some powers and duties to certain committees is dealt with in the Act.

2.4 LIMITS ON DELEGATION OF POWERS AND DUTIES TO CERTAIN COMMITTEES

The limits on the delegation of powers and duties to certain committees are dealt with in the Act.

2.5 APPOINTMENT OF COMMITTEE MEMBERS

The appointment of committee members is dealt with in the Act.

2.6 TENURE OF COMMITTEE MEMBERSHIP

Tenure of committee membership is dealt with in the Act.

2.7 RESIGNATION OF COMMITTEE MEMBERS

The resignation of committee members is dealt with in the Regulations.

2.8 REGISTER OF DELEGATIONS TO COMMITTEES

The register of delegations to committees is dealt with in the Act.

2.9 COMMITTEES TO REPORT

A committee:

- (a) is answerable to the Council; and
- (b) is to report on its activities when, and to the extent, required by the Council.

PART 3 - CALLING AND CONVENING MEETINGS

3.1 ORDINARY AND SPECIAL COUNCIL MEETINGS

- (1) Ordinary and special Council meetings are dealt with in the Act.
- (2) An ordinary meeting of the Council, held on a monthly basis or otherwise as determined by the Council, is for the purpose of considering and dealing with the ordinary business of the Council.
- (3) A special meeting of the Council is held for the purpose of considering and dealing with Council business that is urgent, complex in nature, for a particular purpose or confidential.

3.2 CALLING COUNCIL MEETINGS

The calling of Council meetings is dealt with in the Act.

3.3 CONVENING COUNCIL MEETINGS

- (1) The convening of a Council meeting is dealt with in the Act.
- (2) In addition to the ways a document may be given to a person as provided for by sections 9.50 to 9.54 of the Act and sections 75 and 76 of the Interpretation Act 1984, written notice of a Council meeting may also be given to a member by the notice being transmitted by post, or otherwise left or delivered to the member's usual or last known place of residence or business or to another address the member may request by notice in writing to the CEO.
- (3) Subject to subclause (4), the CEO is to give at least 72 hours' notice, for the purposes of section 5.5, in convening a special meeting of the Council.
- (4) Where, in the opinion of the Mayor or at least one-third of the Members, there is a need to meet urgently, the CEO may give a lesser period of notice of a special Council meeting.

3.4 CALLING COMMITTEE MEETINGS

The CEO is to call a meeting of any committee when requested by the Mayor, the Presiding Member of a committee or any two Members of that committee.

3.5 PUBLIC NOTICE OF MEETINGS

Public notice of meetings is dealt with in the Regulations.

PART 4 – PRESIDING MEMBER AND QUORUM**DIVISION 1: WHO PRESIDES****4.1 WHO PRESIDES**

Who presides at a Council meeting is dealt with in the Act.

4.2 WHEN THE DEPUTY MAYOR CAN ACT

When the Deputy Mayor can act is dealt with in the Act.

4.3 WHO ACTS IF NO MAYOR

Who acts if there is no Mayor is dealt with in the Act.

4.4 ELECTION OF PRESIDING MEMBERS OF COMMITTEES

The election of Presiding Members of committees and their deputies is dealt with in the Act.

4.5 ELECTION OF DEPUTY PRESIDING MEMBERS OF COMMITTEES

The election of Deputy Presiding Members of committees is dealt with in the Act.

4.6 FUNCTIONS OF DEPUTY PRESIDING MEMBERS

The functions of Deputy Presiding Members are dealt with in the Act.

4.7 WHO ACTS IF NO PRESIDING MEMBER

Who acts if no Presiding Member is dealt with in the Act.

DIVISION 2 – QUORUM**4.8 QUORUM FOR MEETINGS**

The quorum for meetings is dealt with in the Act.

4.9 REDUCTION OF QUORUM FOR COUNCIL MEETINGS

The power of the Minister to reduce the number for a quorum and certain majorities is dealt with in the Act.

4.10 REDUCTION OF QUORUM FOR COMMITTEE MEETINGS

The reduction of a quorum for committee meetings is dealt with in the Act.

4.11 PROCEDURE WHERE NO QUORUM TO BEGIN A MEETING

The procedure where there is no quorum to begin a meeting is dealt with in the Regulations.

4.12 PROCEDURE WHERE QUORUM NOT PRESENT DURING A MEETING

If at any time during a meeting a quorum is not present, the Presiding Member is:

- (a) immediately to suspend the proceedings of the meeting for a period of up to 15 minutes; and
- (b) if a quorum is not present at the expiry of that period, the Presiding Member is to adjourn the meeting to some future time or date.

4.13 NAMES TO BE RECORDED

At any meeting:

- (a) at which there is not a quorum present; or
 - (b) which is adjourned for want of a quorum,
- the names of the Members then present are to be recorded in the minutes.

PART 5 - BUSINESS OF A MEETING**5.1 BUSINESS TO BE SPECIFIED**

- (1) No business is to be transacted at any ordinary meeting of the Council other than that specified in the MINUTES, without the approval of the Presiding Member or the Council.
- (2) No business is to be transacted at a special meeting of the Council other than that given in the notice as the purpose of the meeting.
- (3) Subject to subclause (4), no business is to be transacted at an adjourned meeting of the Council other than that:
 - (a) specified in the notice of the meeting which had been adjourned; and
 - (b) which remains unresolved.
- (4) Where a meeting is adjourned to the next ordinary meeting of the Council then, unless the Council resolves otherwise, the business unresolved at the adjourned meeting is to be dealt with before considering Reports (Item 12) at that ordinary meeting.

5.2 ORDER OF BUSINESS

- (1) Unless otherwise decided by the Council the order of business at any ordinary meeting of the Council is to be as follows:
 1. Declaration of Opening/Announcement of Visitors
 2. Disclaimer
 3. Announcements from the Presiding Member
 4. Attendance
 - 4.1 Apologies
 - 4.2 Approved leave of absence
 - 4.3 Applications for leave of absence
 5. Declaration of interest
 6. Public Question Time
 - 6.1 Response to previous public questions taken on notice
 - 6.2 Public question time
 7. Public Statement Time
 8. Confirmation of minutes
 9. Presentations
 - 9.1 Petitions
 - 9.2 Presentations
 - 9.3 Deputations
 10. Method of dealing with agenda business
 11. New business of an urgent nature introduced by decision of the meeting
 12. Reports
 13. Elected members motions of which previous notice has been given
 14. Meeting closed to public
 - 14.1 Matters for which the meeting may be closed
 - 14.2 Public reading of recommendations that may be made public
 15. Closure

- (2) Unless otherwise decided by the Council, the order of business at any special meeting of the Council is to be the order in which that business stands in the agenda of the meeting.
- (3) In determining the order of business for any meeting of the Council, the provisions of the Act and Regulations relating to the time at which public question time is to be held are to be observed.

5.3 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

- (1) Unless the Act, Regulations or these Standing Orders otherwise provide, a member may raise at a meeting such business as he or she considers appropriate, in the form of a motion, of which notice has been given in writing to the CEO and which has been included on the agenda.
- (2) A notice of motion under subclause (1) is to be given at least 24 hours before the publication of the business paper for the meeting at which the motion is to be moved.
- (3) A notice of motion is to relate to the good governance of the district.
- (4) The CEO -
 - (a) with the concurrence of the Mayor, may exclude from the notice paper any notice of motion deemed to be, or likely to involve, a breach of any of these Standing Orders or any other written law; or,
 - (b) may make such amendments to the form but not the substance as will bring the notice of motion into due form; and
 - (c) may provide to the Council relevant and material facts and circumstances pertaining to the notice of motion on such matters as policy, budget and law.
- (5) A motion of which notice has been given is to lapse unless:
 - (a) the member who gave notice of it, or some other member authorised by the originating member in writing, moves the motion when called on; or
 - (b) the Council on a motion agrees to defer consideration of the motion to a later stage or date.
- (6) If a notice of motion is given and lapses under subclause (5), notice of a motion in the same terms or to the same effect is not to be given again for at least 3 months from the date of such lapse.

5.4 NEW BUSINESS OF AN URGENT NATURE

- (1) In cases of extreme urgency or other special circumstances, matters may, on a motion by the Presiding Member that is carried by the meeting, be raised without notice and decided by the meeting.
- (2) In subclause (1), 'cases of extreme urgency or other special circumstances' means matters that have arisen after the

preparation of the agenda that are considered by the Presiding Member to be of such importance and urgency that they are unable to be dealt with administratively by the Town and must be considered and dealt with by the Council before the next meeting.

5.5 ADOPTION BY EXCEPTION RESOLUTION

- (1) In this clause 'adoption by exception resolution' means a resolution of the Council that has the effect of adopting, for a number of specifically identified reports, the employee or committee recommendation as the Council resolution.
- (2) Subject to subclause (3), the Town may pass an adoption by exception resolution.
- (3) An adoption by exception resolution may not be used for a matter:
 - (a) that requires a 75% majority or a special majority;
 - (b) in which an interest has been disclosed;
 - (c) that has been the subject of a petition or deputation;
 - (d) that is a matter on which a member wishes to make a statement; or
 - (e) that is a matter on which a member wishes to move a motion that is different to the recommendation.

5.6 Specified papers

Any member may, in writing addressed to the CEO and delivered to the office of the CEO at least 48 hours before any meeting, request that any specified information be laid upon the table at the meeting and the information, if held by the Town, shall be laid upon the table accordingly.

5.7 Papers relating to matter under discussion

At any meeting, the Mayor or any other member may require the production of any information held by the Town that is relevant to any question under discussion providing that, where possible, the information is requested in writing addressed to the CEO and delivered to the office of the CEO at least 48 hours before the meeting. If such prior written request is not made, the meeting is not to be unreasonably delayed while the information is obtained.

PART 6 - PUBLIC PARTICIPATION

6.1 MEETINGS GENERALLY OPEN TO THE PUBLIC

Meetings being generally open to the public is dealt with in the Act.

6.2 MEETINGS NOT OPEN TO THE PUBLIC

- (1) The CEO may, at any time, recommend that a meeting or part of a meeting be closed to members of the public.

- (2) The Council or a committee, in one or more of the circumstances dealt with in the Act, may at any time, by resolution, decide to close a meeting or part of a meeting.
- (3) If a resolution under subclause (2) is carried:
 - (a) the Presiding Member is to direct everyone to leave the meeting except:
 - (i) the members;
 - (ii) the CEO; and
 - (iii) any employee specified by the Presiding Member;
 - and
 - (b) the meeting is to be closed to the public until, at the conclusion of the matter justifying the closure of the meeting to the public, the Council or the committee, by resolution, decides otherwise.
- (4) A person who fails to comply with a direction under subclause (3) may, by order of the Presiding Member, be removed from the meeting.
- (5) While the resolution under subclause (2) remains in force, the operation of clause 8.9 is to be suspended until the Council or the committee, by resolution, decides otherwise.
- (6) A resolution under this clause may be made without notice.
- (7) Unless the Council resolves otherwise, once the meeting is reopened to members of the public the Presiding Member is to ensure that any resolution of the Council made while the meeting was closed is to be read out including a vote of a member to be included in the minutes.

6.3 QUESTION TIME FOR THE PUBLIC

Question time for the public is dealt with in the Act.

6.4 QUESTION TIME FOR THE PUBLIC AT CERTAIN MEETINGS

Question time for the public at certain meetings is dealt with in the Regulations.

6.5 MINIMUM QUESTION TIME FOR THE PUBLIC

Minimum question time for the public is dealt with in the Regulations.

6.6 PROCEDURES FOR QUESTION TIME FOR THE PUBLIC

Procedures for question time for the public are dealt with in the Regulations.

6.7 OTHER PROCEDURES FOR QUESTION TIME FOR THE PUBLIC

- (1) A member of the public who raises a question during question time, is to state his or her name and address.

- (2) A question may be taken on notice by the Council for later response.
- (3) When a question is taken on notice the CEO is to ensure that:
 - (a) a response is given to the member of the public in writing; and
 - (b) a summary of the response is included in the agenda of the next meeting of the Council.
- (4) Where a question relating to a matter in which a relevant person has an interest is directed to the relevant person, the relevant person is to:
 - (a) declare that he or she has an interest in the matter; and
 - (b) allow another person to respond to the question.
- (5) Each member of the public with a question is entitled to ask up to 2 questions before other members of the public will be invited to ask their questions.
- (6) Where a member of the public provides written questions then the Presiding Member may elect for the questions to be responded to as normal business correspondence.
- (7) The Presiding Member may decide that a public question shall not be responded to where:
 - (a) the same or similar question was asked at a previous meeting, a response was provided and the member of the public is directed to the minutes of the meeting at which the response was provided;
 - (b) the member of public uses public question time to make a statement, provided that the Presiding Member has taken all reasonable steps to assist the member of the public to phrase the statement as a question; or
 - (c) the member of the public asks a question that is offensive or defamatory in nature, provided that the Presiding Member has taken all reasonable steps to assist the member of the public to phrase the question in a manner that is not offensive or defamatory.
- (8) A member of the public shall have two minutes to submit a public question.
- (9) The council, by resolution, may agree to extend public question time.
- (10) Where an answer to a question is given at a meeting, a summary of the question and the answer is to be included in the minutes.

6.8 STATEMENT TIME FOR THE PUBLIC

- (1) Time is to be allocated for statements to be made by members of the public at every meeting of Council and any meeting of a committee to which the Council has delegated a power or duty.

- (2) The minimum time to be allocated for the making of public statements by members of the public at every meeting of Council and of a committee to which the Council has delegated a power or duty is thirty minutes.
- (3) The Council, by resolution, may agree to extend public statement time.
- (4) A member of the public who makes a statement during public statement time, is to state his or her name and address.
- (5) A member of the public shall have three minutes to make a public statement.
- (6) A member of the public making a public statement is to cease making the statement immediately after being directed to do so by the Presiding Member.
- (7) A person who fails to comply with a direction of the Presiding Member under subclause 6.8 (4) may, by order of the Presiding Member, be removed from the meeting room.
- (8) A statement made by a member of the public must relate directly to an item of business contained in the agenda for the meeting.
- (9) Each member of the public who wishes to make a statement at a meeting is to be given an equal and fair opportunity to make the statement.
- (10) The Presiding Member may decide that a public statement shall not be heard where:
 - (a) the same or a similar statement was made at a previous meeting; or
 - (b) the member of the public makes a statement that is offensive or defamatory in nature, provided that the Presiding Member has taken all reasonable steps to assist the member of the public to phrase the statement in a manner that is not offensive or defamatory.
- (11) Each member of the public may only make one public statement on any one item of business contained in the agenda for the meeting.
- (12) Each member of the public is entitled to make only one public statement before other members of the public will be invited to make their statements.
- (13) A summary of each public statement is to be included in the minutes.
- (14) Once all the statements made by members of the public have been made at a meeting, nothing shall prevent the unused part of the public statement time period from being used for other matters.
- (15) A Council member must not use statement time for members of the public to make a public statement.

6.9 DISTINGUISHED VISITORS

If a distinguished visitor is present at a meeting of the Council, the Presiding Member may acknowledge the presence of the distinguished visitor at an appropriate time during the meeting, and the presence of that visitor shall be recorded in the minutes.

6.10 DEPUTATIONS

- (1) Any person or group wishing to be received as a deputation by the Council is to either:
 - (a) apply, before the meeting, to the CEO for approval; or
 - (b) with the approval of the Presiding Member, at the meeting, address the Council.
- (2) The CEO may either:
 - (a) approve the request and invite the deputation to attend a meeting of the Council; or
 - (b) refer the request to the Council to decide by simple majority whether or not to receive the deputation.
- (3) Unless the council resolves otherwise, a deputation invited to attend a Council meeting:
 - (a) is not to exceed 5 persons, only 2 of whom may address the Council, although others may respond to specific questions from members; and
 - (b) is not to address the Council for a period exceeding 10 minutes without the agreement of the Council.
- (4) For the purpose of determining who may address the Council on an issue, all those people either in favour of or opposed to an item for consideration are deemed to comprise a single deputation.
- (5) Any matter which is the subject of a deputation to the Council is not to be decided by the Council until the deputation has completed its presentation.

6.11 PETITIONS

- (1) A petition is to -
 - (a) be addressed to the Mayor;
 - (b) be made by electors of the district;
 - (c) state the request on each page of the petition;
 - (d) contain the name, address and signature of each elector making the request, and the date each elector signed;
 - (e) contain a summary of the reasons for the request; and
 - (f) state the name of the person to whom, and an address at which, notice to the petitioners can be given.
- (2) Upon receiving a petition, the Town is to submit the petition to the relevant employee to be included in his or her deliberations and report on the matter that is the subject of the petition, subject to subclause(3).
- (3) At any meeting, the Council is not to vote on any matter that is the subject of a petition presented to that meeting, unless:
 - (a) the matter is the subject of a report included in the agenda; and

- (b) the Council has considered the issues raised in the petition.

6.12 PRESENTATIONS

- (1) In this clause, a 'presentation' means the acceptance of a gift or an award by the Council on behalf of the Town or the community.
- (2) A presentation may be made to the Council at a meeting only with the prior approval of the CEO.

6.13 COUNCIL MAY MEET TO HEAR PUBLIC SUBMISSIONS

- (1) Where an item on the agenda at a Council meeting is contentious and is likely be the subject of a number of deputations, the Council may resolve to meet at another time to provide a greater opportunity to be heard.
 - (2) The CEO and the Mayor shall set the time and date of the meeting to provide the opportunity to be heard.
 - (3) Where the Council resolves to meet to provide the opportunity to be heard under subclause (1), the Presiding Member shall;
 - (a) instruct the CEO to provide local public notice of the time and date when the Council will meet to provide an opportunity to be heard;
 - (b) provide a written invitation to attend the meeting to provide the opportunity to be heard to all members of the public who have applied under subclause 6.10 to make a deputation on the issue; and
 - (c) cause minutes to be kept of the meeting to provide the opportunity to be heard.
 - (4) A meeting held under subclause (1) shall be conducted only to hear submissions. The council shall not make resolutions at a meeting to provide the opportunity to be heard.
 - (5) At a meeting held under subclause (1), each person making a submission shall be provided with the opportunity to fully state his or her case.
 - (6) A member of the public shall be limited to 10 minutes in making an oral submission, but this period may be extended at the discretion of the Presiding Member.
 - (7) Once every member of the public has had the opportunity to make a submission the Presiding Member is to close the meeting.
 - (8) The CEO is to ensure that a report is included on the agenda of the next Council meeting summarising each submission made at the meeting.
-

- (9) The Council must not resolve on the matter that is the subject of a meeting to provide the opportunity to be heard until it has received the CEO's report under subclause (8).

6.14 PUBLIC INSPECTION OF AGENDA MATERIALS

The right of the public to inspect the documents referred to, and in accordance with, regulation 14 of the Regulations may be exercised at the Cottesloe Civic Centre, Cottesloe-Mosman Park-Peppermint Grove Library and on the Town's website.

6.15 CONFIDENTIALITY OF INFORMATION WITHHELD

- (1) Information withheld by the CEO from the public under regulation 14(2) of the Regulations is to be:
- (a) identified in the agenda of a Council meeting under the item "Matters for which meeting may be closed";
 - (b) marked "*Confidential*" in the agenda; and
 - (c) kept confidential by employees and members until the Council resolves otherwise.
- (2) A member or an employee in receipt of confidential information under subclause (1) or information that is provided or disclosed during a meeting or part of a meeting that is closed to the public is not to disclose any of that information to any person other than another member or an employee to the extent necessary for the purpose of carrying out his or her duties.
- (3) Subclause (2) does not apply where a member or employee discloses the information to his or her lawyer or a government employee for the purpose of seeking advice in order to lawfully fulfil his or her roles and responsibilities.

6.16 RECORDING OF PROCEEDINGS

A person is not to use any electronic, visual or vocal recording device or instrument to record the proceedings of the Council without the permission of the Presiding Member.

6.17 PREVENTION OF DISTURBANCE

- (1) A reference in this clause to a person is to a person other than a member.
- (2) A person addressing the Council shall extend due courtesy and respect to the Council and the processes under which it operates and shall comply with any direction by the Presiding Member.
- (3) A person observing a meeting shall not create a disturbance at a meeting, by interrupting or interfering with the proceedings, whether by expressing approval or dissent, by conversing or by any other means.
- (4) A person shall ensure that his or her mobile telephone or audible pager is not switched on or used during any meeting of the Council.

- (5) A person shall not behave in a manner that is contrary to section 75 of the *Criminal Code*.

PART 7 – QUESTIONS

7.1 QUESTIONS WITHOUT NOTICE

- (1) A member who wishes to seek general information from an employee present at a Council meeting may, without notice:
- (a) ask a question of that employee; and
 - (b) with the consent of the Presiding Member, ask one or more further questions of that employee or another employee present at the meeting.
- (2) Where possible, the employee shall endeavour to answer each question to the best of his or her knowledge and ability but, if the information is unavailable or requires research or investigation, the employee may ask that:
- (a) the question be placed on notice for the next meeting of the Council; or
 - (b) the answer to the question be given to the member who asked it, within 7 days.

7.2 QUESTIONS DURING DEBATE

At any time during the debate on a motion before the motion is put, a member may ask a question and, with the consent of the Presiding Member, may ask one or more further questions.

7.3 RESTRICTIONS ON QUESTIONS AND ANSWERS

- (1) Questions, whether asked by a member or a member of the public, and answers:
- (a) are to be brief and concise; and
 - (b) are not to be accompanied by:
 - (i) any argument, expression of opinion or statement of facts, except to the extent necessary to explain the question or answer; or
 - (ii) any discussion or further question, except with the consent of the Presiding Member.
 - (iii)
- (2) In answering any question, a member or an employee may qualify his or her answer and may at a later time in the meeting or at a subsequent meeting alter, correct, add to or otherwise amend the original answer.

PART 8 – CONDUCT OF MEMBERS

8.1 MEMBERS TO BE IN THEIR PROPER PLACES

- (1) At the first meeting held after each election day, the CEO is to allot by random draw a position at the Council table to each councillor.

- (2) Each member is to occupy his or her allotted position at each Council meeting.

8.2 RESPECT TO THE PRESIDING MEMBER

After the business of a Council has been commenced, a member is not to enter or leave the meeting without first paying due respect to the Presiding Member.

8.3 TITLES TO BE USED

A speaker, when referring to the Mayor, Deputy Mayor or Presiding Member, or a member or employee, is to use the title of that person's office.

8.4 ADVICE OF ENTRY OR DEPARTURE

During the course of a meeting of the Council, a member is not to enter or leave the meeting without first advising the Presiding Member, in order to facilitate the recording in the minutes of the time of entry or departure.

8.5 MEMBERS TO INDICATE THEIR INTENTION TO SPEAK

A member of the Council who wishes to speak is to indicate his or her intention to speak by raising his or her hand or by another method agreed by the Council. When invited by the Presiding Member to speak, members shall remain seated and address the Council through the Presiding Member.

8.6 PRIORITY OF SPEAKING

- (1) Where two or more members indicate, at the same time, their intention to speak, the Presiding Member is to decide which member is entitled to be heard first.
- (2) A decision of the Presiding Member under subclause (1) is not open to discussion or dissent.
- (3) A member is to cease speaking immediately after being asked to do so by the Presiding Member.

8.7 PRESIDING MEMBER MAY TAKE PART IN DEBATES

The Presiding Member may take part in a discussion of any matter before the Council, subject to compliance with these Standing Orders.

8.8 RELEVANCE

- (1) A member is to restrict his or her remarks to the motion or amendment under discussion, or to a personal explanation or point of order.
 - (2) The Presiding Member, at any time, may:
 - (a) call the attention of the meeting to:
 - (i) any irrelevant, repetitious, offensive or insulting language by a member; or
 - (ii) any breach of order or decorum by a member; and
 - (b) direct that member, if speaking, to discontinue his or her speech.
 - (3) A member is to comply with the direction of the Presiding Member under subclause (2) by immediately ceasing to speak.
-

8.9 SPEAKING TWICE

- (1) A member is not to address a Council meeting more than once on any recommendation, motion or amendment before it except:
 - (a) as the mover of a substantive motion, to exercise a right of reply;
 - (b) to raise a point of order; or
 - (c) to make a personal explanation.
- (2) A member may address a committee meeting more than once on any recommendation, motion or amendment before it.

8.10 DURATION OF SPEECHES

- (1) A member is not to speak on any matter for more than three minutes without the consent of the Council which, if given, is to be given without debate.
- (2) An extension under this clause cannot be given to allow a member's total speaking time to exceed six minutes.

8.11 NO SPEAKING AFTER CONCLUSION OF DEBATE

A member is not to speak on any motion or amendment:

- (a) after the mover has replied; or
- (b) after the question has been put.

8.12 NO INTERRUPTION

A member is not to interrupt another member who is speaking unless:

- (a) to raise a point of order;
- (b) to call attention to the absence of a quorum;
- (c) to make a personal explanation under clause 8.13; or
- (d) to move a procedural motion that the member be no longer heard (see clause 11(1)(e)) .

8.13 PERSONAL EXPLANATIONS

- (1) A member who wishes to make a personal explanation relating to a matter referred to by another member who is then speaking is to indicate to the Presiding Member his or her intention to make a personal explanation.
- (2) The Presiding Member is to determine whether the personal explanation is to be heard immediately or at the conclusion of the speech by the other member.
- (3) A member making a personal explanation is to confine his or her observations to a succinct statement relating to a specific part of the speech at which he or she may have been misunderstood.

8.14 NO REOPENING OF DISCUSSION

A member is not to reopen discussion on any Council decision, except to move that the decision be revoked or changed (see Part 16).

8.15 ADVERSE REFLECTION

- (1) A member is not to reflect adversely on a decision of the Council except on a motion that the decision be revoked or changed (see Part 16).
- (2) A member is not:

- (a) to reflect adversely on the character or actions of another member or employee; or
 - (b) to impute any motive to a member or employee, unless the meeting resolves, without debate, that the question then before the meeting cannot otherwise be adequately considered.
- (3) A member is not to use offensive or objectionable expressions in reference to any member, employee or other person.
- (4) If a member specifically requests, immediately after their use, that any particular words used by a member be recorded in the minutes:
- (a) the Presiding Member is to cause the words used to be taken down and read to the meeting for verification; and
 - (b) the Council may, by resolution, decide to record those words in the minutes.

8.16 WITHDRAWAL OF OFFENSIVE LANGUAGE

- (1) A member who, in the opinion of the Presiding Member, uses an expression which:
- (a) in the absence of a resolution under clause 8.15:
 - (i) reflects adversely on the character or actions of another member or employee; or
 - (ii) imputes any motive to a member or employee; or
 - (b) is offensive or insulting, must, when directed by the Presiding Member, withdraw the expression and make a satisfactory apology.
- (2) If a member fails to comply with a direction of the Presiding Member under subclause (1), the Presiding Member may refuse to hear the member further on the matter then under discussion and call on the next speaker.

8.17 RECORDING OF PROCEEDINGS

A member is not to use any electronic, visual or vocal recording device or instrument to record the proceedings of the Council without the permission of the Presiding Member.

PART 9 - PRESERVING ORDER

9.1 PRESIDING MEMBER TO PRESERVE ORDER

- (1) The Presiding Member is to preserve order, and, whenever he or she considers necessary, may call any member to order.
- (2) When the Presiding Member speaks during a debate, any member then speaking, or indicating that he or she wishes to speak, is to immediately cease doing so and every member present is to preserve strict silence so that the Presiding Member may be heard without interruption.
- (3) Subclause (2) is not to be used by the Presiding Member to exercise the right provided in clause 8.7 but to preserve order.

9.2 POINT OF ORDER

- (1) A member may object, by way of a point of order, only to a breach of:
 - (a) any of these Standing Orders; or
 - (b) any other written law.
- (2) Examples of valid points of order are:
 - (a) a speaker's remarks not being relevant to the motion or amendment being debated (see clause 8.8); and
 - (b) a speaker's use of offence of objectionable expressions or adverse reflection on a decision of the Council (see clause 8.15).
- (3) Despite anything in these Standing Orders to the contrary, a point of order:
 - (a) takes precedence over any discussion; and
 - (b) until determined, suspends the consideration or discussion of any other matter.

9.3 PROCEDURES ON A POINT OF ORDER

- (1) A member who is addressing the Presiding Member is not to be interrupted except on a point of order.
- (2) A member interrupted on a point of order is to cease speaking until:
 - (a) the member raising the point of order has been heard; and
 - (b) the Presiding Member has ruled on the point of order, and, if permitted, the Member who has been interrupted may then proceed.

9.4 CALLING ATTENTION TO BREACH

A member may, at any time, draw the attention of the Presiding Member to any breach of these Standing Orders.

9.5 RULING BY THE PRESIDING MEMBER

- (1) The Presiding Member is to rule on any point of order which is raised by either upholding or rejecting the point of order.
- (2) A ruling by the Presiding Member on a point of order:
 - (a) is not to be the subject of debate or comment; and
 - (b) is to be final unless the majority of members then present and voting, on a motion moved immediately after the ruling, dissent from the ruling.
- (3) Subject to a motion of dissent being carried under subclause (2), if the Presiding Member rules that:
 - (a) any motion, amendment or other matter before the meeting is out of order, it is not to be considered further; and
 - (b) a statement made or act done by a member is out of order, the Presiding Member may require the member to make an explanation, retraction or apology.

9.6 CONTINUED BREACH OF ORDER

If a member:

- (a) persists in any conduct that the Presiding Member had ruled is out of order; or
 - (b) refuses to make an explanation, retraction or apology required by the Presiding Member under clause 9.5(3),
- the Presiding Member may direct the member to refrain from taking any further part in that meeting, other than by voting, and the member is to comply with that direction.

9.7 RIGHT OF PRESIDING MEMBER TO ADJOURN

- (1) For the purpose of preserving or regaining order, the Presiding Member may adjourn the meeting for a period of up to 15 minutes.
- (2) On resumption, the debate is to continue at the point at which the meeting was adjourned.
- (3) If, at any one meeting, the Presiding Member adjourns the meeting more than once for the purpose of preserving or regaining order, the second or subsequent adjournment may be to a later time on the same day or to another day.

PART 10 - DEBATE OF SUBSTANTIVE MOTIONS

10.1 MOTIONS TO BE STATED AND IN WRITING

Any Member who wishes to move a substantive motion or an amendment to a substantive motion:

- (a) is to state the substance of the motion before speaking to it; and
- (b) if required by the Presiding Member, is to put the motion or amendment in writing.

10.2 MOTIONS TO BE SUPPORTED

- (1) A substantive motion or an amendment to a substantive motion is not open to debate until it has been seconded.
- (2) A motion to revoke or change a decision made at a Council meeting is not open to debate unless the motion has the support required under regulation 10 of the Regulations.

10.3 UNOPPOSED BUSINESS

- (1) Immediately after a substantive motion has been moved and seconded, the Presiding Member may ask the meeting if any member opposes it.
- (2) If no member opposes the motion, the Presiding Member may declare it carried without debate and without taking a vote.
- (3) A motion declared carried under this clause is to be recorded in the minutes as a unanimous decision of the Council.
- (4) If a member opposes a motion, the motion is to be dealt with under this Part.

- (5) This clause does not apply to a motion to revoke or change a decision which has been made at a Council meeting (see Part 16).

10.4 ONLY ONE SUBSTANTIVE MOTION AT A TIME

When a substantive motion is under debate at a meeting of the Council, no further substantive motion is to be accepted. The Council is not to consider more than one substantive motion at any time.

10.5 ORDER OF CALL IN DEBATE

The Presiding Member is to call speakers to a substantive motion in the following order:

- (a) the mover to state the motion;
- (b) a seconder to the motion;
- (c) the mover to speak to the motion;
- (d) the seconder to speak to the motion;
- (e) a speaker against the motion;
- (f) a speaker for the motion;
- (g) other speakers against and for the motion, alternating where possible; and
- (h) mover takes right of reply which closes debate.

10.6 LIMIT OF DEBATE

The Presiding Member may offer the right of reply and put a substantive motion to the vote if he or she believes that sufficient discussion has taken place even though all members may not have spoken.

10.7 MEMBER MAY REQUIRE QUESTION TO BE READ

A member may require the question or matter under discussion to be read at any time during a debate, but not so as to interrupt any other member who is speaking.

10.8 CONSENT OF SECONDER REQUIRED FOR ALTERATION

The mover of a substantive motion may not alter the wording of the motion without the consent of the seconder.

10.9 ORDER OF AMENDMENTS

Any number of amendments may be proposed to a substantive motion, but when an amendment is moved to a substantive motion, no second or subsequent amendment is to be moved or considered until the first amendment has been withdrawn, carried or lost.

10.10 FORM OF AN AMENDMENT

An amendment must add, delete, or substitute words to the substantive motion.

10.11 AMENDMENT MUST NOT NEGATE ORIGINAL MOTION

An amendment to a substantive motion cannot negate the original motion or the intent of the original motion.

10.12 RELEVANCE OF AMENDMENTS

Each amendment is to be relevant to the motion in respect of which it is moved.

10.13 MOVER OF MOTION MAY SPEAK ON AMENDMENT

Any member may speak during debate on an amendment.

10.14 EFFECT OF AN AMENDMENT

If an amendment to a substantive motion is carried, the motion as amended then becomes the substantive motion, on which any member may speak and any further amendment may be moved.

10.15 WITHDRAWAL OF MOTION OR AMENDMENT

- (1) Subject to subclause (2), the Council may, without debate, grant leave to withdraw a motion or amendment on the request of the mover of the motion or amendment and with the approval of the seconder.
- (2) Where an amendment has been proposed to a substantive motion, the substantive motion is not to be withdrawn, except by consent of the majority of members present, until the amendment proposed has been withdrawn or lost.

10.16 RIGHT OF REPLY

- (1) The mover of a substantive motion has the right of reply.
- (2) The mover of any amendment to a substantive motion does not have a right of reply.
- (3) The right of the reply may only be exercised:
 - (a) where no amendment is moved to the substantive motion – at the conclusion of the discussion on the motion; or
 - (b) where one or more amendments have been moved to the substantive motion – at the conclusion of the discussion on the substantive motion and any amendments.
- (4) After the mover of the substantive motion has commenced the reply:
 - (a) no other member is to speak on the question;
 - (b) there is to be no further discussion on, or any further amendment to, the motion.
- (5) The right of the reply is to be confined to rebutting arguments raised by previous speakers and no new matter is to be introduced.
- (6) At the conclusion of the right of reply, the substantive motion, or the substantive motion as amended, is immediately to be put to the vote.

PART 11 - PROCEDURAL MOTIONS**11.1 PERMISSIBLE PROCEDURAL MOTIONS**

In addition to the right to move an amendment to a substantive motion (under Part 9) a member may move the following procedural motions:

- (a) that the meeting proceed to the next item of business;

- (b) that the debate be adjourned;
- (c) that the meeting now adjourn;
- (d) that the question be now put;
- (e) that the member be no longer heard;
- (f) that the ruling of the Presiding Member be disagreed with;
- (g) that the meeting be closed to the public (see clause 6.2).

11.2 NO DEBATE

- (1) The mover of a motion specified in paragraph (a), (b), (c), (f) or (g) of clause 11.1 may speak to the motion for not more than three minutes, the seconder is not to speak other than to formally second the motion, and there is to be no debate on the motion.
- (2) The mover of a motion specified in paragraph (d) or (e) of clause 11.1 may not speak to the motion, the seconder is not to speak other than to formally second the motion, and there is to be no debate on the motion.

11.3 WHO MAY MOVE

No person who has moved, seconded, or spoken for or against the substantive motion, or any amendment to the substantive motion, may move any procedural motion which, if carried, would close the debate on the substantive motion or amendment.

11.4 PROCEDURAL MOTIONS - RIGHT OF REPLY ON SUBSTANTIVE MOTION

The carrying of a procedural motion which closes debate on the substantive motion or amendment and forces a decision on the substantive motion or amendment does not deny the right of reply to the mover of the substantive motion.

11.5 MEETING TO PROCEED TO THE NEXT BUSINESS

The motion "that the meeting proceed to the next business", if carried, has the effect that:

- (a) the debate on the substantive motion or amendment ceases immediately;
- (b) no decision is made on the substantive motion;
- (c) the Council moves to the next item of business; and
- (d) there is no requirement for the matter to be raised again for consideration.

11.6 DEBATE TO BE ADJOURNED

A motion "that the debate be adjourned":

- (a) is to state the time to which the debate is to be adjourned; and
- (b) if carried, has the effect that all debate on the substantive motion or amendment ceases immediately, but continues at the time stated in the motion.

11.7 MEETING NOW ADJOURN

- (1) A member is not to move or second more than one motion of adjournment during the same setting of the Council.

- (2) Before putting the motion for the adjournment of the Council, the Presiding Member may seek leave of the Council to deal first with matters that may be the subject of an adoption by exception resolution (see clause 5.5).
- (3) A motion "that the meeting now adjourn":
 - (a) is to state the time and date to which the meeting is to be adjourned; and
 - (b) if carried, has the effect that the meeting is adjourned to the time and date specified in the motion.
- (4) A meeting adjourned under subclause (3) is to continue from the point at which it was adjourned, unless the Presiding Member or the Council determines otherwise.

11.8 QUESTION TO BE PUT

- (1) If the motion "that the question be now put", is carried during debate on a substantive motion without amendment, the Presiding Member is to offer the right of reply and then put the motion to the vote without further debate.
- (2) If the motion "that the question be now put" is carried during discussion of an amendment, the Presiding Member is to put the amendment to the vote without further debate.
- (3) This motion, if lost, causes debate to continue.

11.9 MEMBER TO BE NO LONGER HEARD

If the motion "that the member be no longer heard", is carried, the speaker against whom the motion has been moved cannot speak further on the current substantive motion, or any amendment relating to it, except to exercise the right of reply if he or she is the mover of the substantive motion.

11.10 RULING OF THE PRESIDING MEMBER TO BE DISAGREED WITH

If the motion "that the ruling of the Presiding Member be disagreed with", is carried, that ruling is to have no effect and the meeting is to proceed accordingly.

PART 12 - DISCLOSURE OF INTERESTS

12.1 DISCLOSURE OF INTERESTS

Members and employees must deal with all interests and potential conflicts of interest in accordance with the requirements of the Act, the *Local Government Act (Rules of Conduct) Regulations 2007*, the *Town's Code of Conduct* and all other legal obligations.

PART 13 - VOTING

13.1 QUESTION - WHEN PUT

- (1) Immediately after the debate on any question is concluded and the right of reply has been exercised, the Presiding Member:

- (a) is to put the question to the Council; and
 - (b) if requested by any member, is to again state the terms of the question.
- (2) A member is not to leave the meeting when the Presiding Member is putting any question.

13.2 VOTING

Voting is dealt with in the Act and the Regulations.

13.3 MAJORITIES REQUIRED FOR DECISIONS

The majorities required for decisions of the Council and committees are dealt with in the Act.

13.4 METHOD OF TAKING VOTE

- (1) In taking the vote on any motion or amendment, the Presiding Member:
- (a) is to put the question, first in the affirmative, and then in the negative;
 - (b) may put the question in this way as often as may be necessary to enable him or her to determine whether the affirmative or the negative has the majority of votes;
 - (c) may accept a vote on the voices or may require a show of hands; and
 - (d) is, subject to this clause, to declare the result.
- (2) If a member calls for the votes to be recorded, the result of the vote is to be determined on the count of raised hands and the CEO is to cause to be recorded:
- (a) the name of each member who voted; and
 - (b) whether he or she voted in the affirmative or negative.

PART 14 – MINUTES OF MEETINGS

14.1 KEEPING OF MINUTES

The keeping and confirmation of minutes are dealt with in the Act.

14.2 CONTENT OF MINUTES

- (1) The content of minutes is dealt with in the Regulations.
- (2) In addition to the matters required by regulation 11, the minutes of a Council meeting is to include, where an application for approval is refused or the authorisation of a licence, permit or certificate is withheld or cancelled, the reasons for the decision.

14.3 PUBLIC INSPECTION OF UNCONFIRMED MINUTES

The public inspection of unconfirmed minutes is dealt with in the Regulations.

14.4 CONFIRMATION OF MINUTES

- (1) When minutes of an ordinary meeting of the Council are distributed to the Council for consideration prior to their confirmation at the next meeting, if a member is dissatisfied with the accuracy of the minutes, he or she is to provide to the Town a written copy of the alternative wording to amend the minutes no later than 7 clear working days before the next ordinary meeting of the Council.
- (2) At the next ordinary meeting of the Council the member who provided the alternative wording shall, at the time for confirmation of minutes;
 - (a) state the item or items with which he or she is dissatisfied; and
 - (b) propose a motion clearly outlining the alternative wording to amend the minutes.
- (3) Council members must not discuss items of business contained in the minutes, other than discussion as to their accuracy as a record of the proceedings.

PART 15 - ADJOURNMENT OF MEETING**15.1 MEETING MAY BE ADJOURNED**

The Council may adjourn any meeting:

- (a) to a later time on the same day; or
- (b) to any other time on any other day, including a time which coincides with the conclusion of another meeting or event.

15.2 EFFECT OF ADJOURNMENT

Where any matter, motion, debate or meeting is adjourned under these Standing Orders:

- (a) the names of members who have spoken on the matter prior to the adjournment are to be recorded in the minutes;
- (b) debate is to be resumed at the next meeting at the point where it was interrupted; and
- (c) the provisions of clause 8.9 apply when the debate is resumed.

PART 16 – REVOKING OR CHANGING DECISIONS**16.1 REQUIREMENTS TO REVOKE OR CHANGE DECISIONS**

The requirements to revoke or change a decision made at a meeting are dealt with in regulation 10 of the Regulations.

16.2 LIMITATIONS ON POWERS TO REVOKE OR CHANGE DECISIONS

- (1) Subject to subclause (2), the Council or a committee is not to consider a motion to revoke or change a decision:
 - (a) where, at the time the motion is moved or notice is given, any action has been taken under clause 16.3 to implement the decision; or

- (b) where the decision is procedural in its form or effect.
- (2) The Council or a committee may consider a motion to revoke or change a decision of the kind described in subclause (1)(a) if the motion is accompanied by a written statement of the legal and financial consequences of carrying the motion.

16.3 IMPLEMENTING A DECISION

- (1) In this clause:
 - (a) **"authorisation"** means a licence, permit, approval or other means of authorising a person to do anything;
 - (b) **"implement"**, in relation to a decision, includes:
 - (i) communicate notice of the decision to a person affected by, or with an interest in, the decision; and
 - (ii) take any other action to give effect to the decision; and
 - (c) **"valid notice of revocation motion"** means a notice of a motion to revoke or change a decision that complies with the requirements of the Act, Regulations and the Standing Orders and may be considered, but has not yet been considered, by the Council or a Committee as the case may be.
- (2) Subject to subclause (4), and unless a resolution is made under subclause (3), a decision made at a meeting is not to be implemented by the CEO or any other person until the afternoon of the first business day after the commencement of the meeting at which the decision was made.
- (3) The Council or a committee may, by resolution carried at the same meeting at which a decision was made, direct the CEO or another person to take immediate action to implement the decision.
- (4) A decision made at a meeting is not to be implemented by the CEO or any other person:
 - (a) if, before commencing any implementation action, the CEO or that person is given a valid notice of revocation motion; and
 - (b) unless and until the valid notice of revocation motion has been determined by the Council or the committee as the case may be.
- (5) The CEO is to ensure that members of the public attending the meeting are informed, by an appropriate notice, that a decision to grant an authorisation:
 - (a) is to take effect only in accordance with this clause; and
 - (b) cannot be acted upon by the person who has been granted the authorisation unless and until the decision has been implemented in accordance with this clause.

PART 17 - SUSPENSION OF STANDING ORDERS**17.1 SUSPENSION OF STANDING ORDERS**

- (1) A member may, at any time, move that the operation of one or more of the provisions of these Standing Orders be suspended.
- (2) A member moving a motion under subclause (1) is to state the reasons for the motion but no other discussion is to take place.
- (3) A motion under subclause (1) which is:
 - (a) seconded; and
 - (b) carried by an absolute majority,is to suspend the operation of the clause or clauses to which the motion relates for the duration of the meeting, unless the meeting earlier resolves otherwise.

17.2 WHERE STANDING ORDERS DO NOT APPLY

- (1) In situations where:
 - (a) these Standing Orders have been suspended; or
 - (b) a matter is not regulated by the Act, the Regulations of these Standing Orders,the Presiding Member is to decide questions relating to the conduct of the meeting.
- (2) The decision of the Presiding Member under subclause (1) is final, except where a motion of dissent is moved and carried under clause 11.10.

17.3 CASES NOT PROVIDED FOR IN STANDING ORDERS

The Presiding Member is to decide questions of order, procedure, debate, or otherwise in cases where these Standing Orders and the Act and Regulations are silent. The decision of the Presiding Member in these cases is final, except where a motion is moved and carried under clause 11.1(f).

PART 18 - MEETINGS OF ELECTORS**18.1 ELECTORS' GENERAL MEETINGS**

Electors' general meetings are dealt with in the Act.

18.2 MATTERS FOR DISCUSSION AT GENERAL ELECTORS' MEETING

The matters to be discussed at a general electors' meeting are dealt with in the Regulations.

18.3 ELECTORS' SPECIAL MEETINGS

Electors' special meetings are dealt with in the Act.

18.4 REQUESTS FOR ELECTORS' SPECIAL MEETINGS

Requests for electors' special meetings are dealt with in the Regulations.

18.5 CONVENING ELECTORS' MEETINGS

Convening electors' meetings is dealt with in the Act.

18.6 WHO PRESIDES AT ELECTORS' MEETINGS

Who presides at electors' meetings is dealt with in the Act.

18.7 PROCEDURE FOR ELECTORS' MEETINGS

- (1) The procedure for electors' meetings is dealt with in the Act and the Regulations.
- (2) In exercising his or her discretion to determine the procedure to be followed at an electors' meeting, the Presiding Member is to have regard to these Standing Orders.

18.8 PARTICIPATION OF NON-ELECTORS

A person who is not an elector of the Town shall not take part in any discussion at an electors' meeting unless the meeting, by resolution, permits him or her to do so.

18.9 VOTING AT ELECTORS' MEETINGS

Voting at electors' meetings is dealt with in the Regulations.

18.10 MINUTES OF ELECTORS' MEETINGS

Minutes of electors' meetings are dealt with in the Act.

18.11 DECISIONS MADE AT ELECTORS' MEETINGS

Decisions made at electors' meetings are dealt with in the Act.

PART 19 – BRIEFINGS AND OTHER INFORMAL MEETINGS**19.1 BRIEFINGS AND OTHER INFORMAL MEETINGS**

- (1) The Council may conduct briefings, workshops and other informal meetings.
- (2) Where the Council conducts briefings, workshops and other informal meetings, the CEO is to:
 - (a) advise all members of the time and date of the meeting;
and
 - (b) cause notes of the meeting to be kept.
- (3) A member who has an interest in a matter to be discussed at a briefing, workshop or other informal meeting is to deal with the interest in accordance with the provisions of Part 12 of these Standing Orders.
- (4) The Council is not to make a formal resolution at any meeting other than a Council meeting or a committee meeting.
- (5) The Council is not to meet, except at;

- (a) a Council or committee meeting;
- (b) a briefing, workshop or informal meeting under this clause;
or
- (d) a meeting to consider public submissions under clause 6.13.

PART 20 - ENFORCEMENT

20.1 PENALTY FOR BREACH

A person who breaches a provision of these Standing Orders commits an offence.

Penalty: \$5,000 and a daily penalty of \$500

20.2 WHO CAN PROSECUTE

Who can prosecute is dealt with in the Act.

PART 21 - COMMON SEAL

21.1 TOWN'S COMMON SEAL

- (1) The CEO is to have charge of the common seal of the Town, and is responsible for its safe custody and proper use.
- (2) Each document to which the seal is affixed must be signed by the CEO or a senior employee authorised by the CEO.
- (3) The common seal of the Town is to be affixed to any local law which is made by the Town.
- (4) The CEO is to record in a register each date on which the common seal of the Town was affixed to a document, the nature of the document, and the parties to any agreement to which the common seal was affixed.
- (5) A person who without authority, uses the common seal of the Town, or a replica of it, commits an offence.

This Standing Orders Local Law 2008 was adopted by resolution of the Council of the Town of Cottesloe at a meeting held on 27th October 2008

The Common Seal of the Town of Cottesloe was affixed in the presence of -

Mr KEVIN MORGAN, Mayor
Mr LAURIE VICARY, Acting Chief Executive Officer

12.1.11 LIBRARY PROJECT STEERING COMMITTEE - COUNCIL REPRESENTATIVE

File No: SUB/547
Author: Mr Stephen Tindale
Author Disclosure of Interest: Nil
Report Date: 14 October, 2008
Senior Officer: Mr Stephen Tindale

SUMMARY

Councillor Dawkins has resigned from the Library Project Steering Committee.

A replacement representative to the committee is to be appointed by Council.

STATUTORY ENVIRONMENT

Nil.

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Nil.

BACKGROUND

Library Project Steering Committee meetings are held on an as-needs basis.

Currently the two delegates to the steering committee are Crs Dawkins and Miller. The two deputy delegates are Mayor Morgan and Cr Birnabrauer.

Cr Dawkins wishes to stand down from the committee so that she can better dedicate her time and energy as the chair of the Library Fundraising Committee.

Cr Strzina has been nominated by Cr Dawkins as her replacement on the basis that Cr Strzina has 'expertise' in engineering/technical matters given that the tender date for the library is near.

Cr Strzina has accepted the nomination.

CONSULTATION

Nil.

STAFF COMMENT

Nil.

VOTING

Simple Majority

12.1.11 OFFICER & COMMITTEE & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Carmichael

That Council appoint Cr Strzina to the Library Project Steering Committee.

Carried 10/0

12.1.12 VLAMINGH MEMORIAL

File No: SUB/212
Author: Mr Stephen Tindale
Author Disclosure of Interest: Nil
Report Date: 14 October, 2008
Senior Officer: Mr Stephen Tindale

SUMMARY

Following community consultation, a recommendation is made to decommission parts of the Vlamingh Memorial at South Cottesloe Beach and to commission a new Vlamingh Memorial at Cottesloe Beach.

STATUTORY ENVIRONMENT

Nil.

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Nil.

BACKGROUND

In May 2008 the CEO wrote to Niek van Zutphen, the Ambassador of the Kingdom of Netherlands as follows:

Further to our recent meeting, I write to confirm that the Kingdom of Netherlands would have no objection to a proposed relocation of the Vlamingh Memorial from its current position in South Cottesloe to the grassed terraces immediately above Cottesloe Beach.

As you will have discovered from our recently published history, 'Cottesloe – A Town of Distinction', Cottesloe Beach is a more likely landing point for Vlamingh's exploration party than the South Cottesloe site.

The grassed terraces above Cottesloe Beach are far superior in terms of overall appearance to the South Cottesloe site. There is also much better vehicle parking and Cottesloe Beach is also heavily visited by local, interstate and international visitors. It represents a first class opportunity to better acquaint people with our historic connection to the Netherlands.

While the exact landing point may never be known, I strongly believe that the proposed site presents a better opportunity to celebrate the arrival of Vlamingh's first landing party on the 5th January 1697.

The correspondence concluded with a request for the Ambassador's consideration of the proposal. The Ambassador's response is as follows:

I herewith confirm receipt of your letter dated the 6th May 2008 with regard to the proposed relocation of the Vlamingh Memorial from its current position to the grassed terraces immediately above Cottesloe Beach.

I have no objection to the above mentioned proposal as a matter of fact I wholeheartedly support the relocation of the memorial,

The 5th January 2009 would be an excellent opportunity to unveil the Vlamingh Memorial in its new location above Cottesloe Beach with perhaps a Dutch cultural event on the day to celebrate the occasion.

At the July 2008 meeting of Council the CEO advised the meeting of the following.

Attached to this report is an extract from the recently published history of the town 'Cottesloe – A Town of Distinction'. The history casts considerable doubt on the exact location of Vlamingh's landing.

From the history, it does seem that the Old Cable Station site would seem to be the least likely contender as a landing point and it is perhaps worth noting that the settlers attached to Governor Stirling's premature settlement of Garden Island are reported to have eventually found their way inland from the beaches at Cottesloe and Swanbourne.

For any landing party, the avoidance of reefs is much preferred and Cottesloe and Swanbourne Beaches would seem to be better candidates for Vlamingh's landing party in that regard.

As an aside, it is understood that the existing Vlamingh Memorial sits on top of a World War II fortification which once housed a duplicate cable station as a back up facility to the Old Cable Station across the road in the event that it was destroyed by aerial bombardment. The Vlamingh Memorial's location on top of the fortification is somewhat convenient in terms of giving legitimacy to an unnatural lump in the beach landscape.

Regardless of the exact location of Vlamingh's landing, the most important consideration is the actual celebration of the landing rather than the identification of the exact site of the landing. Cottesloe Beach is a better proposition in that regard.

In the author's experience, which involves a daily commute to and from work along Curtin Avenue, very few motorists stop on Curtin Avenue to look at the Vlamingh Memorial (in fact none that I can recall). Pedestrians and cyclists using the dual use pathway are more likely to stop but once they have done so, there is little reason to do so again.

In order to test whether there is any strong sentiment for retaining the Vlamingh Memorial in its current location; it is recommended that community consultation be undertaken on a proposed relocation of the memorial to Cottesloe Beach.

Council resolved to undertake community consultation "...on the proposed removal of the existing Vlamingh Memorial obelisk and tourist directional sign; and if the removal is supported, whether the Town should install a new Vlamingh Memorial plaque at Cottesloe Beach."

CONSULTATION

The matter was given prominence in the August 9th edition of *Cottesloe Council News* in the *Post* newspaper.

An advertisement was also placed in the *Post* newspaper on Saturday 16th August 2008 seeking submissions by Friday 5th September 2008.

Advertisements were also placed on the Council notice boards and at the Library.

One formal submission was received from Betty Mc Geever by the due date in response to the advertising (see attached).

The matter was also the subject of a newspaper article in the *Post* on the 20th September 2008 which was responded to by Louise Higham in the same paper on the 27th September 2008 (see attached).

STAFF COMMENT

The submissions received do not suggest that there is any strong community support either for or against the decommissioning of the existing memorial and the proposed new memorial.

Given that a new memorial at Cottesloe Beach has the qualified support of the Ambassador of the Kingdom of Netherlands recommendations are made to:-

- decommission portions of the existing memorial at South Cottesloe, and
- commission a new memorial at Cottesloe Beach subject to Council agreeing to the form and wording of any new memorial/plaque to be installed at Cottesloe Beach.

VOTING

Simple Majority

OFFICER RECOMMENDATION

That Council

1. Remove the existing Vlamingh Memorial obelisk and tourist directional sign at South Cottesloe.
2. Commission a new memorial at Cottesloe Beach subject to Council agreeing to the form and wording of any new memorial/plaque to be installed at Cottesloe Beach.

12.1.12 COMMITTEE & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Carmichael

That Council:

- (1) Retain the existing memorial as it is; and**
- (2) Advise the Ambassador of the Kingdom of Netherlands of Council's decision to retain the existing memorial.**

Carried 10/0

12.2 ENGINEERING

12.2.1 FIG TREES ON CHARLES STREET, COTTESLOE

File No: SUB/229
Author: Mr Geoff Trigg
Author Disclosure of Interest: Nil
Report Date: 14 October, 2008
Senior Officer: Mr Stephen Tindale

SUMMARY

This matter first came before Council at its September 2008 meeting. Council resolved the following:

That Council request the residents of Charles Street and the Flour Mill Estate to make a submission on a proposal to remove the fig trees on the eastern verge of Charles Street and that staff report back to Council on the results of the submissions.

A letter drop has occurred to all properties in Charles Street and to properties within the Flour Mill Estate. This report covers the results of that letter drop and recommends that Council remove the existing seven fig trees in Charles Street and replace them with an alternative species selected from Council's approved list.

STATUTORY ENVIRONMENT

All road verge trees are under Council's control, with Council being responsible for damage done by such trees, due to the road reserve being vested in the Town of Cottesloe with all liability and responsibilities attached.

POLICY IMPLICATIONS

Council's *Street Tree Policy* applies, which has been included as an attachment to this report.

STREET TREES

(1) OBJECTIVE:

To recognise the environmental and aesthetic contribution that street trees make to the continuing development and presentation of streetscapes, by:

- selecting, planting and maintaining street trees, which enhance both existing and future streetscapes;
- creating a setting in sympathy with the function and appearance of the adjacent land uses, a safe and comfortable pedestrian environment, and cater for vehicular traffic;
- promoting the use of indigenous vegetation, including trees, on road reserves, to extend the habitat of native birds and animals in urban areas.

(2) PRINCIPLE:

Street trees should be established on every street and road in the Town of Cottesloe, with one tree fronting every property, supported by proper systems of protection, watering, pruning and processes for species selection.

(3) ISSUES:

- A balance is required between the Norfolk Island Pine tree as the Cottesloe 'Icon' tree and other tree species.
- Many existing tree species in Cottesloe were poorly chosen in the past and these mature trees are providing a variety of problems.
- The large range of street verge widths, up to 15 metres wide requires flexibility in species choice and planting locations to achieve the one tree per property aim.
- Ratepayers and residents vary in their attitudes to street trees and individual trees may suffer damage or die from 'unknown causes' in areas where they cause problems to houses and properties.
- Street trees can be a major source of public liability concerns due to root damage of drainage, paths, kerbing and crossovers on the verge and a variety of problems in private property.
- Supporting street trees on every verge is an expensive task, requiring substantial annual budget support. Normal maintenance costs are ongoing and the cost of damage caused by street trees in major storms can be very high.

(4) POLICY:

The Town of Cottesloe has demonstrated, in past years, its commitment to the amenity and visual image of the Town's streetscape by the introduction and maintenance of street trees.

This commitment will continue with the maintenance of existing trees and the establishment of new trees, based on the following conditions and requirements:

1. The Norfolk Island Pine tree is the icon or symbol of Cottesloe and shall be preserved.
2. The Town of Cottesloe shall aim at planting and maintaining one street tree per property frontage.
3. All individual street tree planting will be undertaken by Council staff. All other planting on verges, other than a lawn, will require a submission to the Town of Cottesloe for approval.
4. Tree pruning shall be aimed at producing a full canopy typical of the species, while still addressing legal obligations and the preservation of public safety. Major pruning may require the Manager Engineering Services to seek professional advice.
5. Tree removals must be seen as a last resort, used for dead and/or dangerous trees. The Manager Engineering Services must give approval for any tree removal.

The following reasons do not justify tree removals:

- tree litter/leaf fall ("messy:" tree),

- restoration of a view,
 - alternative species requested by resident,
 - a desire to re-landscape,
 - house alterations requiring crossover relocation,
 - shading of lawns, pools,
 - swimming pool installation – root or falling leaf problems,
 - perception that tree may fall in a storm.
6. A proposal to remove or replace multiple street trees in one street shall require an expert's report, public consultation and consideration by Council.
7. For development or building approvals, plans and drawings submitted must include the locations of all street trees on abutting road verges for the consideration of the effects of such land or building changes on these street trees.
8. A person or company identified as having damaged or removed a street tree(s) without Council approval, shall be required to provide full compensation to Council for all costs associated with the re-establishment of an advanced tree of that same species together with an assessed value determined by the Manager Engineering Services for the loss of amenity/aesthetic value of that tree(s).
9. The Town of Cottesloe will maintain a street tree species list of the most suitable tree species for the different soil and micro climate areas of the town, plus species determined as being unacceptable as street trees.

Such undesirable species would exhibit the following characteristics:

- intolerance to drought or low watering conditions;
- self pruning of larger limbs;
- suckering or adventitious growth patterns;
- roots that cause damage to paths, roads, buildings, pipelines;
- susceptibility to insect and pathogen infestation;
- aggressive self seeding; and
- unacceptable toxicity.

RESOLUTION NO: 12.2.11
ADOPTION: February, 2005
REVIEW: February, 2013

(Replaces W1, 28 February, 2000)

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

If the trees are removed soon, removal costs would be met under allocated maintenance funding.

If the trees are retained, then there is some potential for an action against the Town of Cottesloe for negligence if nearby walls and fences are damaged.

BACKGROUND

These fig trees have been in place for an unknown number of years. They are relatively young and small when compared to the height and size they can achieve.

A tree consultant believes the tree species is *Ficus Hillii* or Hills Weeping Fig. They can grow to 15-30 metres in height and 15-20 metres in diameter (branch extension). They are known to have invasive and wide spreading roots, with care normally required not to plant them near pipes, buildings, roads and paths.

This species is not a recommended one in Council's preferred Street Trees species list.

The City of Subiaco and the Town of Cambridge are experiencing ongoing problems with fig trees, with Cambridge having a removal program and Subiaco concerned with potential damage to infrastructure, including the rail tunnel.

Owner and residents of the Flour Mill Estate have been divided on their attitudes regarding retention or removal. The most recent Council of Owners vote was in favour of removal and replacement with an alternative species.

CONSULTATION

Properties in Charles Street and the Flour Mill Estate have received letters explaining this issue and requesting comments, as per Council resolution.

STAFF COMMENT

A total of 10 comments were received, of which 7 were in favour of these fig trees being removed, 2 against and one who wants the trees to remain so long as a heavy pruning takes place each year to retain the shade in summer but remove growth in winter to allow sunlight onto their garden at that time.

One of the objections also related to the need to retain shade relief from the hot afternoon sun.

The removal proposal envisages the replacement of the existing trees with more suitable tree species from Council's approved species list. Such trees would be advanced in size to achieve an early re-establishment of shade in the street.

With regards to the suggestion that heavy annual pruning should be undertaken, as the trees grow this requested pruning will grow in cost - a cost which would not apply to any other street in Cottesloe.

It should also be noted that regardless of pruning, the root systems would continue to grow both towards private properties and to the kerbed road edge.

These trees will eventually create major problems when the root systems expand as the trees grow. Early removal, as supported by the majority of respondents would

allow replacement trees to replace the aesthetic and shade aspects in the street while removing the eventual root growth problems.

VOTING

Simple Majority

12.2.1 OFFICER & COMMITTEE & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Carmichael

That Council:

- (1) Remove the existing fig trees in Charles Street and replace them with an alternative species selected from Council's approved list.**
- (2) Inform all respondents of Council's decision.**

Carried 9/1

12.2.2 DRAFT REVISED RESIDENTIAL VERGES POLICY

File No: SUB/474
Author: Mr Geoff Trigg
Author Disclosure of Interest: Nil
Report Date: 8 October, 2008
Senior Officer: Mr Stephen Tindale

SUMMARY

At its September 2008 meeting, Council discussed the issue of an illegal vegetable and herb garden on the street verge in front of 19 Lyons Street, Cottesloe. Council requested staff to prepare a draft revised Residential Verge policy that allows vegetable and herb gardens on road and street verges.

This report provides a draft revised policy and recommends that Council resolves to advertise, for public consultation, the draft revised Residential Verge policy, with the results to be provided to the December 2008 meeting.

STATUTORY ENVIRONMENT

Under the *Local Government Act 1995*, Council has vested power over road reserves within the Town of Cottesloe other than MRWA controlled highways. This includes the control of road reserves, where responsibility for the care, control and management rests with the Town of Cottesloe. This applies to all local governments in the state.

Council's local law on "Activities on Thoroughfares and Trading in Thoroughfares and Public Places" also applies in regards to establishing and enforcing Council's control of road reserves.

POLICY IMPLICATIONS

Council's Residential Verges policy applies until any revised version is adopted by Council:

RESIDENTIAL VERGES**(1) OBJECTIVES:**

1. To develop an attractive and safe streetscape.
2. To discourage verge parking wherever alternatives exist.
3. To encourage owners and occupiers of premises to maintain their street verges.
4. To ensure that verge treatments comply with the Local Law relating to thoroughfares.
5. To ensure that verge developments are not hazardous to pedestrians, cyclists or motorists.
6. To encourage alternatives for verge treatments which remove or reduce the use of bore water, fertilisers, weedicides, pesticides and non-absorbent materials.
7. To encourage the use of indigenous plant species.

(2) PRINCIPLES:

1. The road reserve area is under the control of the Town of Cottesloe but owners and occupiers are encouraged to maintain street verges.
2. All developments on street verges must be safe at all times for the general public when using the road verge for normal, legal activities.
3. The Town of Cottesloe plus a range of Service Authorities will impact on the road reserve from time to time with infrastructure construction and maintenance activities.
4. With the reducing availability of mains water and bore water supplies, Council supports alternatives to reticulated verge lawns, particularly the use of indigenous plant species.

(3) ISSUES:

- (a) All verges are affected by intermittent construction activities, to improve paths, drainage and roads, as well as for the maintenance of public services eg; power, water, communications and sewer lines.
- (b) Landscape designs for the road verge must have compliance standards to ensure 'extreme' or dangerous treatments do not occur.
- (c) If plants larger than semi-prostrate species are to be planted, then the general maximum height allowed is 600mm, unless on a 40 metres wide road reserve where the maximum height is 1.5 metres, apart from street trees.
- (d) Verge treatments undertaken by owners or occupants do not include street trees. All street trees are installed and maintained by the Town of Cottesloe.
- (e) A permit is not needed for a grass lawn area.
- (f) Verge treatments are not approved for the purpose of providing extra parking space on the verge.
- (g) All verge treatments must comply with Council's Local Law "Activities on Thoroughfares and Trading in Thoroughfares and Public Places."
- (h) The construction of tree houses, tree swings and the installation of play structures is not considered appropriate within the road reserve due to safety issues.

(4) POLICY:**The Town's Responsibilities**

1. **Inspection**
Each verge development will be inspected by Engineering Services from time to time, to ensure that the development has been carried out in accordance with the foregoing Council Policy.
2. **Breach**
If any verge development does not comply with this policy, then the breach may be made good by the Town and the costs recovered from the owner or occupier.
3. **Fees**
The Town will not charge a fee for the inspection of verge developments.

The Owner's Responsibilities

1. Accept all costs involved in the construction of the verge development.

2. Keep the verge treatment in a safe and tidy condition.
3. Accept all liability in respect of damages to persons or property as a result of a verge development.
4. Accept that the verge remains a public space and may be traversed by the public as and when required.
5. Water or maintain the verge in such a manner as to not cause a nuisance to other people.
6. Accept that the improvements automatically become the property of the Town of Cottesloe.
7. Contact the Perth One Call System (Dial Before You Dig) on 1100 and locate all underground services prior to undertaking any works within the verge area and take all care to ensure that no damage is caused to underground services.

Species Selection

The Town of Cottesloe encourages the use of planting of native and in particular indigenous plants (plants naturally occurring within the Town of Cottesloe) within verge areas. Owners are free however to choose the species of plants planted within their verge and are not restricted to native or indigenous plants. All species of plants whether native or exotic must comply with the aforementioned clauses and be suitable for the location in which they are planted.

Procedure

No permit is required from Council for planting lawn on verges.

A permit is required for all other works in the verge such as garden beds, shrubs, kerbing, paving, retaining walls, pipelines and below ground reticulation systems. This shall be obtained by the owner/occupier submitting an application in writing with a sketch plan that shows the details of the proposal.

Landscape Design

Landscape designs must comply with the following conditions:

- i) Comply with the Local Law relating to Thoroughfares.
- ii) Provide adequate access to the letterbox for mail delivery.
- iii) Provide unobstructed pedestrian access to existing signs, water meter, telecom pit and manhole covers.
- iv) Where there is a bus stop, provide clear access of at least 1.2 metres wide around the bus stop, and between the footpath and the bus stop.
- v) Pathways through verge plants may be constructed of any solid material such as tree rings and stepping stones, providing they do not protrude above kerb level and are laid flush with the surrounding ground.
- vi) Height and placement of plants must not obstruct slight distance for pedestrians and road users.
- vii) On 20 metre wide road reserves, no plant shall exceed 600 mm in height. The same applies to intersections for sight clearance. On 40 metre wide road reserves, plants shall not exceed 600 mm in height 2 metres from the kerb line and from the property boundary. On these very wide road reserves plants are

- allowed up to 1.5 metres high in the centre of the verge width, ramping down to 600 mm high 2 metres from the kerb line and property boundary.
- viii) Paving of generally only one third of the residential verge area, including the crossover, is permitted. Verges adjacent to approved commercial premises may exceed this providing the area is broken up with landscaping to adjacent areas or around approved street trees. All brick paving must have a header course on all edges.
 - ix) Retaining walls, rocks and sleepers are permitted only in special circumstances where difficult site conditions prevail.
 - x) All garden kerbing shall be flush with the ground surface unless around garden beds.
 - xi) Bollards, star iron pickets, stakes, spikes or other objects that could cause injury to the public are not permitted.
 - xii) Materials that may cause a hazard to the public are not permitted. This includes loose gravel and pea gravel. Rocks and earth mounding are permitted in garden beds.
 - xiii) Plants must not present a hazard to pedestrians eg; cactus, and will not include species classified as declared weeds by the Department of Agriculture's "Agriculture and Related Resources Protection Act (1976).
 - xiv) Any polythene or impervious layer laid beneath the surface must be pierced with sufficient number of holes to ensure adequate drainage without runoff.
 - xv) In new developments where verges are grassed, provision is to be made for the reticulation to be connected to the domestic water supply on completion of the dwelling. No valves or controllers for reticulation are permitted in the verge.
 - xvi) No fixed structures including those attached to trees e.g. cubby/tree houses, swings etc shall be permitted within the verge area.
 - xvii) Lighting or electrical cabling must be of low voltage (e.g. 12 volt) with all transformers, power supply and switching located within the adjacent property and not within the verge. Lighting must not cause a nuisance to neighbouring properties.
 - xviii) Council staff shall maintain a list of species suitable for use in the Town of Cottesloe, which can be considered for verge treatments. This list shall be modified as species prove to be unsuitable or when new species have a proven success rate.
 - ixx) Council staff can provide advice regarding verge developments using native and indigenous plants, particularly where reticulated lawn areas are being replaced with non-lawn, non reticulated or low water use species.

RESOLUTION NO: 12.2.7
ADOPTION: November, 2004
REVIEW: November, 2012

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

An inspection fee would remove the cost to Council of staff having to inspect and report on applications for vegetable / herb gardens on verges. A bond charged at the time of approval would ensure the Council did not carry the cost of restoring any verge from an abandoned garden and the replacement of any verge tree killed or damaged due to digging through root systems.

Damage to service authority installations and/or injury to residents from such damage on the verge remains an unknown regarding a liability exposure risk.

BACKGROUND

Council adopted the current *Residential Verges* policy in 2004 which basically allows the establishment of level reticulated lawns without a permit or any staff involvement. Anything other than a flat lawn requires an application so that the proposed treatment can be checked by staff. The main reasons for this process, is to ensure public safety is retained and extreme treatments are rejected e.g. walls, depressions, rocks, bollards, dangerous or unsuitable plants e.g. cactus, toxic plants, invasive root systems etc.

In past years, a number of vegetable gardens have been discovered on road verges. The owners have not requested approval prior to digging up the verge. These gardens have been removed when requested to do so by staff.

No existing local government policy approving and giving control conditions for verge vegetable and herb gardens has been *Residential Verges* found by staff as a basis for the requested revision to the existing policy.

CONSULTATION

It is proposed that once Council has approved of the draft revised policy, it will be advertised for public comment prior to being returned to Council for final adoption.

STAFF COMMENT

The attached draft version of revised *Residential Verge* policy attempts to include the points adopted by Council in its September 2008 meeting agenda item on this matter.

It is believed to be unique, in that no copies of any other local government policy have been found regarding verge vegetable / herb gardens.

As has been previously communicated to Council regarding private use verge car parking bays, all responsibility rests with the Town of Cottesloe regarding the total road reserve including any form of verge plantings and gardens, because of the vesting of this land in Council.

VOTING

Simple Majority

12.2.2 OFFICER & COMMITTEE RECOMMENDATION

Moved Cr Miller, seconded Cr Carmichael

That Council resolves to advertise, for public consultation, the draft revised Residential Verge policy, with the results to be provided to the December 2008 meeting.

Carried 10/0

TOWN OF COTTESLOE POLICY

RESIDENTIAL VERGES**(1) OBJECTIVE**

1. To develop an attractive and safe streetscape.
2. To discourage verge parking wherever alternatives exist.
3. To encourage owners and occupiers of premises to maintain their street verges.
4. To ensure that verge treatments comply with the Local Law relating to thoroughfares.
5. To ensure that verge developments are not hazardous to pedestrians, cyclists or motorists.
6. To encourage alternatives for verge treatments which remove or reduce the use of bore water, fertilisers, weedicides, pesticides and non-absorbent materials.
7. To encourage the use of indigenous plant species.

(2) PRINCIPLE:

1. The road reserve area is under the control of the Town of Cottesloe but owners and occupiers are encouraged to maintain street verges.
2. All developments on street verges must be safe at all times for the general public when using the road verge for normal, legal activities.
3. The Town of Cottesloe plus a range of Service Authorities will impact on the road reserve from time to time with infrastructure construction and maintenance activities.
4. With the reducing availability of mains water and bore water supplies, Council supports alternatives to reticulated verge lawns, particularly the use of indigenous plant species.

(3) ISSUES:

- (a) All verges are affected by intermittent construction activities, to improve paths, drainage and roads, as well as for the maintenance of public services eg; power, water, communications and sewer lines.
- (b) Landscape designs for the road verge must have compliance standards to ensure 'extreme' or dangerous treatments do not occur.
- (c) If plants larger than semi-prostrate species are to be planted, then the general maximum height allowed is 600mm, unless on a 40 metres wide road reserve where the maximum height is 1.5 metres, apart from street trees.
- (d) Verge treatments undertaken by owners or occupants do not include street trees. All street trees are installed and maintained by the Town of Cottesloe.
- (e) A permit is not needed for a grass lawn area.

- (f) Verge treatments are not approved for the purpose of providing extra parking space on the verge.
- (g) All verge treatments must comply with Council's Local Law "Activities on Thoroughfares and Trading in Thoroughfares and Public Places."
- (h) The construction of tree houses, tree swings and the installation of play structures is not considered appropriate within the road reserve due to safety issues.
- (i) Complex designs for verge treatments or for vegetable / herb gardens require more staff time and effort to inspect to ensure that development complies with the approved plan. The cost of inspections is to be funded by the applicant.
- (j) Because of the short growth span and applicable season for various vegetable and herb species and the potential problems left by semi-developed or abandoned verge vegetable / herb gardens, a bond is needed to ensure the verge can be restored to a flat surface and made safe for public use.

(4) POLICY:

The Town's Responsibilities

1. Inspection
Each verge development will be inspected by Engineering Services from time to time, to ensure that the development has been carried out in accordance with the foregoing Council Policy.
2. Breach
If any verge development does not comply with this policy, then the breach may be made good by the Town and the costs recovered from the owner or occupier.
3. Fees
The Town will not charge a fee for the inspection of verge developments *other than for vegetable / herb gardens*.

The Owner's Responsibilities

1. Accept all costs involved in the construction of the verge development.
2. Keep the verge treatment in a safe and tidy condition.
3. Accept all liability in respect of damages to persons or property as a result of a verge development.
4. Accept that the verge remains a public space and may be traversed by the public as and when required.
5. Water or maintain the verge in such a manner as to not cause a nuisance to other people.

6. Accept that the improvements automatically become the property of the Town of Cottesloe.
7. Contact the Perth One Call System (Dial Before You Dig) on 1100 and locate all underground services prior to undertaking any works within the verge area and take all care to ensure that no damage is caused to underground services.
8. Ensure that vegetable / herb gardens are maintained in a controlled manner, with no stockpiling of waste, mulch or manure and free of obstructions created that may create safety problems to pedestrians, cyclists and vehicles. All diseased or rotten plant material must be removed from the verge.
9. Ensure that vegetable or herb species planted on a road verge are controlled so as to minimise seeding or expansion into neighbouring gardens, verges or native vegetation areas.

Species Selection

The Town of Cottesloe encourages the use of planting of native and in particular indigenous plants (plants naturally occurring within the Town of Cottesloe) within verge areas. Owners are free however to choose the species of plants planted within their verge and are not restricted to native or indigenous plants. All species of plants whether native or exotic must comply with the aforementioned clauses and be suitable for the location in which they are planted.

Procedure

No permit is required from Council for planting lawn on verges.

A permit is required for all other works in the verge such as garden beds, shrubs, kerbing, paving, retaining walls, pipelines, below ground reticulation systems and vegetable / herb gardens. This shall be obtained by the owner/occupier submitting an application in writing with a sketch plan that shows the details of the proposal.

Landscape Design

Landscape designs must comply with the following conditions:

- i) Comply with the Local Law relating to Thoroughfares.
- li Provide adequate access to the letterbox for mail delivery.
- iii) Provide unobstructed pedestrian access to existing signs, water meter, telecom pit and manhole covers.
- iv) Where there is a bus stop, provide clear access of at least 1.2 metres wide around the bus stop, and between the footpath and the bus stop.
- v) Pathways through verge plants may be constructed of any solid material such as tree rings and stepping stones, providing they do not

- protrude above kerb level and are laid flush with the surrounding ground.
- vi) Height and placement of plants must not obstruct sight distance for pedestrians and road users.
 - vii) On 20 metre wide road reserves, no plant shall exceed 600 mm in height. The same applies to intersections for sight clearance. On 40 metre wide road reserves, plants shall not exceed 600 mm in height 2 metres from the kerb line and from the property boundary. On these very wide road reserves plants are allowed up to 1.5 metres high in the centre of the verge width, ramping down to 600 mm high 2 metres from the kerb line and property boundary.
 - viii) Paving of generally only one third of the residential verge area, including the crossover, is permitted. Verges adjacent to approved commercial premises may exceed this providing the area is broken up with landscaping to adjacent areas or around approved street trees. All brick paving must have a header course on all edges.
 - ix) Retaining walls, rocks and sleepers are permitted only in special circumstances where difficult site conditions prevail.
 - x) All garden kerbing shall be flush with the ground surface.
 - xi) Bollards, star iron pickets, stakes, spikes, fences or other objects that could cause injury to the public are not permitted.
 - xii) Materials that may cause a hazard to the public are not permitted. This includes loose gravel and pea gravel. Rocks and earth mounding are permitted in garden beds.
 - xiii) Plants must not present a hazard to pedestrians eg; cactus, and will not include species classified as declared weeds by the Department of Agriculture's "Agriculture and Related Resources Protection Act (1976).
 - xiv) Any polythene or impervious layer laid beneath the surface must be pierced with sufficient number of holes to ensure adequate drainage without runoff.
 - xv) In new developments where verges are grassed, provision is to be made for the reticulation to be connected to the domestic water supply on completion of the dwelling. No valves or controllers for reticulation are permitted in the verge.
 - xvi) No fixed structures including those attached to trees eg cubby/tree houses, swings etc shall be permitted within the verge area.
 - xvii) Lighting or electrical cabling must be of low voltage (eg 12 volt) with all transformers, power supply and switching located within the adjacent property and not within the verge. Lighting must not cause a nuisance to neighbouring properties.
 - xviii) Council staff shall maintain a list of species suitable for use in the Town of Cottesloe, which can be considered for verge treatments. This list shall be modified as species prove to be unsuitable or when new species have a proven success rate.
 - ixx) Council staff can provide advice regarding verge developments using native and indigenous plants, particularly where reticulated lawn areas are being replaced with non-lawn, non reticulated or low water use species.
 - xx) Any verge cultivation for vegetable / herb gardens must not be closer than 3 metres away from any established street tree.

- (xxi) Maintenance of infrastructure on road verges e.g. service alignments, footpaths, drainage installations and the pruning of street trees will continue regardless of the existence of vegetable / herb gardens with no compensation of damage to be considered.

Fees / Bonds

An inspection fee of \$100 shall be charged in relation to approvals for proposed vegetable / herb gardens.

No approval will be granted unless the proposal has been discussed with staff on site and signed off prior to any approval being given.

A bond of \$500 is to be paid by applicants prior to any grant of approval to cover the cost of reinstatement of verges once vegetable / herb gardens become derelict in the opinion of Council staff.

The bond will be repaid in full if and when any garden is removed and the verge reinstated by the applicant.

If no reinstatement takes place then the bond will applied either in full or in part to fund such works by Council staff.

Vegetable / Herb Verge Gardens – Control Issues

No produce from verge gardens is to be disposed of or sold on a commercial basis.

Harmful sprays or powders shall not be used on verge gardens that may cause injury or nuisance to people or animals or adjoining vegetation.

Council staff will not become involved in the resolution of any disputes about vandalism, theft of produce or other upsets involving the general public and the developers of verge vegetable / herb gardens except where staff involvement is needed to ensure the general safety of the total road reserve.

RESOLUTION NO:

ADOPTION:

REVIEW:

12.2.3 DRAFT PLAYGROUND EQUIPMENT DONATION POLICY

File No: SUB/240
Author: Mr Geoff Trigg
Author Disclosure of Interest: Nil
Report Date: 8 October, 2008
Senior Officer: Mr Stephen Tindale

SUMMARY

At its meeting in May 2008, Council requested the development of a policy that would allow the donation of redundant playground equipment to local community based organisations subject to appropriate safeguards being put in place.

This report recommends that Council advertise for public comment a draft *Playground Equipment Donation Policy* with the results to be considered by Council at its December 2008 meeting.

STATUTORY ENVIRONMENT

Nil.

POLICY IMPLICATIONS

No existing policy. This report proposes a new policy.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Nil.

BACKGROUND

In May 2008 Council discussed a need for suitable playground equipment in the Broome Street playground. At the time, a suggestion was made that redundant equipment could be made available to local community organisations. This may improve the capacity of groups such as Cottesloe Playgroup to provide play equipment at a low cost.

CONSULTATION

Nil.

STAFF COMMENT

All new play equipment installed by the Town of Cottesloe now meets Australian Standards. Often the equipment being replaced falls below these standards – particularly where treated pine poles, solid steel pipes and similar out of date construction materials have been used.

Old play equipment used by the public at the time of replacement can be rusted or worn and may require modifications or repairs prior to being recycled. Under the proposed policy, all responsibility for such repair and reuse must be taken on by the

receiving organisation. The Town, in effect, would be disposing of surplus materials which may be capable of use as play equipment if the proper standards of repair, location and installation are met.

VOTING

Simple Majority

12.2.3 OFFICER & COMMITTEE & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Carmichael

That Council resolve to advertise, for public comment, the draft Playground Equipment Donation Policy, with the results to be considered by Council at its December 2008 meeting.

Carried 10/0

TOWN OF COTTESLOE POLICY

DRAFT: PLAYGROUND EQUIPMENT DONATIONS POLICY**(1) OBJECTIVE**

To allow local community groups to gain access to surplus play equipment when such equipment becomes available.

(2) PRINCIPLES:

- 2.1 Surplus play equipment may become available from time to time when it is replaced with new equipment.
- 2.2 No guarantee can be given as to the availability of surplus play equipment in any particular year.
- 2.3 If such equipment becomes available, no guarantee can be given by the Town that it is fit for purpose and due allowance must be made any recipient for total disposal, repair or re-configuration of some or all of the play equipment.
- 2.4 The Town will not fund any repairs or improvements to surplus play equipment in order to make it available for re-use by a community group.

(3) ISSUES:

- 3.1 Public safety is a major concern where the Town donates equipment for use by a community group. Play equipment may be damaged or in poor condition requiring extensive repairs for re-use. It may be 'out of date' in terms of current Australian Standards and community expectations.
- 3.2 Community groups may see the use of redundant play equipment as a low cost way of replacing or upgrading existing play equipment. Such groups must understand that costly repairs may be needed to make redundant play equipment fit for purpose.
- 3.3 The Town may be joined in a public liability claim in the event of a playground accident where the Town has handed over play equipment that is not fit for purpose or it undertakes repairs or meets the cost of repairs thereby giving an implied warranty that the equipment is fit for purpose.
- 3.4 While the cost of public liability claims may be insured against, the time and expense in defending such claims and the threat to child safety in the first instance should be minimised if not eliminated.

(4) POLICY:**Playground Equipment Donation**

- (a) General

The Town replaces old play equipment in public playgrounds at various times. These replacements may make available old equipment or components which may still have a useful life, if properly repaired, relocated and installed by local community groups on land that is not under the care, control or management of the Town.

- (b) **Availability**
The Town's 5 year Public Playground Capital Improvement Program is revisited every year. This may constrain any commitment by the Town that particular play equipment will be replaced in any financial year. No early guarantee of the availability of redundant play equipment is therefore possible.
- (c) Any community group receiving surplus play equipment from the Town will be fully responsible for the assessment of condition and suitability for re-use of the items made available. Such assessment and any repairs, relocation and re-assembly for re-use shall be undertaken by properly trained and qualified contractors to ensure Australian Standards are complied with.
- (d) Once such surplus play equipment is removed from a public playground by a community group, it shall be a condition of removal between the Town and the community group that the Town ceases to have any legal or financial interest in the equipment and that all future responsibility and liability rests with the community group.
- (e) **List of Applicable Community Groups**
The Town will maintain a list of local community groups interested in receiving any available surplus play equipment. Listed groups shall be informed of the planned replacement of public play equipment when each financial year's budget is adopted, to allow assessment of potential equipment available and the submission of an interest in obtaining such equipment. Any 'clash' between competing groups shall be decided on by the CEO at his/her complete discretion.

RESOLUTION NO:

ADOPTION:

REVIEW:

12.3 FINANCE**12.3.1 STATUTORY FINANCIAL STATEMENTS FOR THE PERIOD ENDING 30 SEPTEMBER 2008**

File No:	SUB/137
Author:	Mr Wayne Richards
Author Disclosure of Interest:	Nil
Period Ending:	30 September 2008
Senior Officer:	Mr Stephen Tindale

SUMMARY

The purpose of this report is to present the Operating Statement, Statement of Assets and Liabilities and supporting financial information for the period ending 30 September 2008, to Council.

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

BACKGROUND

The Financial Statements are presented monthly.

CONSULTATION

Nil

STAFF COMMENT

The Operating Statement on page 2 of the Financial Statements shows a favourable variance between the actual and budgeted year to date operating surplus of \$734,797 as at 30th September 2008. Revenue from operations is ahead of budget by \$35,536 and Grants/Contributions for Asset Development are ahead by \$104,994. Operating expenditure is \$592,741 less than budgeted year to date expenditure, however of this amount, \$359,012 relates to depreciation not posted as at 30th September 2008. The Annual Financial Statements are close to being signed off with our Auditors, UHY Haines Norton Chartered Accountants. Once signed off, depreciation for the current financial year can be posted and it is expected that this will be reflected in the Financial Statements for the period ending 31st October 2008.

A report on the significant variances in income and expenditure for the period ended 30th September 2008 is shown on pages 7 and 8 of the Financial Statements.

VOTING

Simple Majority

12.3.1 OFFICER & COMMITTEE & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Carmichael

That Council receive the Operating Statement, Statement of Assets and Liabilities and supporting financial information for the period ending 30 September 2008, as submitted to the 21 October 2008 meeting of the Works and Corporate Services Committee.

Carried 10/0

12.3.2 SCHEDULE OF INVESTMENTS AND SCHEDULE OF LOANS FOR THE PERIOD ENDING 30 SEPTEMBER 2008

File No: SUB/150 & SUB/151
Author: Mr Wayne Richards
Author Disclosure of Interest: Nil
Period Ending: 30 September 2008
Senior Officer: Mr Stephen Tindale

SUMMARY

The purpose of this report is to present the Schedule of Investments and Schedule of Loans for the period ending 30 September 2008, to Council.

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

BACKGROUND

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

CONSULTATION

Nil

STAFF COMMENT

The Schedule of Investments on page 15 shows that \$4,160,043.77 was invested as at 30 September, 2008. Reserve Funds make up \$2,421,896.01 of the total invested and are restricted funds.

Approximately 37% of the funds are invested with the National Australia Bank, 37% with the Bank of Queensland and 26% with BankWest.

The Schedule of Loans on page 16 shows a balance of \$220,384.02 as at 30 September, 2008. There is an amount of \$142,456.50 included in this balance that relates to self supporting loans.

VOTING

Simple Majority

12.3.2 OFFICER & COMMITTEE & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Carmichael

That Council receive the Schedule of Investments and Schedule of Loans for the period ending 30 September 2008, as submitted to the 21 October 2008 meeting of the Works and Corporate Services Committee.

Carried 10/0

12.3.3 ACCOUNTS FOR THE PERIOD ENDING 30 SEPTEMBER 2008

File No: SUB/144
Author: Mr Wayne Richards
Author Disclosure of Interest: Nil
Period Ending: 30 September 2008
Senior Officer: Mr Stephen Tindale

SUMMARY

The purpose of this report is to present the List of Accounts for the period ending 30 September 2008, to Council.

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

BACKGROUND

The List of Accounts is presented monthly.

CONSULTATION

Nil

STAFF COMMENT

The following significant payments are brought to your attention that are included in the list of accounts commencing on page 9 of the Financial Statements:

- \$10,002.36 to BCITF for levies collected from building applications which go towards funding the training fund.
- \$11,000.00 to the City of Nedlands being Council's contribution towards the funding of the Travelsmart officer.
- \$14,425.82 to WALGSP for staff superannuation.
- \$11,098.00 to Byrnes & Associates for professional advice relating to the EBD.
- \$15,176.88 to WALGSP for staff superannuation.
- \$37,606.21 to Osborne Park Volkswagen for a new passenger vehicle.
- \$13,143.20 to Red 1 for the purchase of new computers.
- \$13,080.76 to Claremont Asphalt for various asphalt works.
- \$18,257.81 to LGIS for Council's second fifty per cent contribution towards property insurance.

- \$258,652.50 to Fire and Emergency Services WA being Council's first thirty per cent contribution of FESA levies collected from ratepayers.
- \$35,733.32 to Giant Nissan for a new ranger vehicle.
- \$23,750.16 to WALGA for advertising.
- \$15,160.35 to Red 11 for the purchase of new computer hardware and software.
- \$16,500.00 to Playground Solutions for installation of new playground equipment.
- \$13,125.75 to Brian Curtis Pty Ltd in relation to work on the EBD.
- \$28,255.21 to Transpacific Cleanaway for waste collection services.
- \$124,563.44 to Town of Cottesloe staff for payroll during September 2008.

VOTING

Simple Majority

12.3.3 OFFICER & COMMITTEE & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Carmichael

That Council receive the List of Accounts for the period ending 30 September 2008, as submitted to the 21 October 2008 meeting of the Works and Corporate Services Committee.

Carried 10/0

**12.3.4 PROPERTY AND SUNDRY DEBTORS REPORTS FOR THE PERIOD
ENDING 30 SEPTEMBER 2008**

File No: SUB/145
Author: Mr Wayne Richards
Author Disclosure of Interest: Nil
Period Ending: 30 September 2008
Senior Officer: Mr Stephen Tindale

SUMMARY

The purpose of this report is to present the Property and Sundry Debtors Reports for the period ending 30 September 2008, to Council.

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

BACKGROUND

The Property and Sundry Debtors Reports are presented monthly.

CONSULTATION

Nil

STAFF COMMENT

The Sundry Debtors Reports on pages 17 and 18 shows a balance of \$146,653.86 of which \$1,899.03 relates to the current month. The balance of aged debt greater than 30 days stood at \$144,754.83 of which \$96,410.51 relates to pensioner rebates that are being reconciled by the Senior Finance Officer.

Property Debtors are shown in the Rates and Charges Analysis on page 19 of the Financial Statements and show a balance of \$2,386,223.69. Of this amount, \$234,313.85 and \$338,183.26 are deferred rates and outstanding ESL respectively. As can be seen on the Balance Sheet on page 4 of the Financial Statements, rates as a current asset are \$2,151,919 as at 30th September 2008 as compared to \$1,908,452 at the same time last year.

VOTING

Simple Majority

12.3.4 OFFICER & COMMITTEE & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Carmichael

That Council:

- (1) **Receive and endorse the Property Debtors Report for the period ending 30 September 2008; and**
- (2) **Receive the Sundry Debtors Report for the period ending 30 September 2008.**

Carried 10/0

13 ELECTED MEMBERS' MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**14 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY ELECTED MEMBERS/OFFICERS BY DECISION OF MEETING****14.1 WALK AGAINST WARMING ON COTTESLOE BEACH**

Moved Cr Miller, seconded Mayor Morgan

That Council approve the Annual 2008 Walk Against Warming on Cottesloe Beach on Saturday 15 November 2008.

Carried 9/1

14.2 SIGNS FOR METER EYES**AMENDMENT**

Moved Cr Cunningham, seconded Cr Strzina

That:

- (1) The Manager Engineering Services provide recommendations for a discreet sign be placed in a number of strategic locations explaining that the 'meter eye' technology is aimed at providing efficient use of car parks.
- (2) The signs will help dispel the criticism that meter eyes are a revenue raising tool.

Lost 7/3

COMMITTEE RECOMMENDATION

Moved Cr Strzina, seconded Cr Cunningham

Provide signage where Meter Eyes are present to explain that these parking areas are electronically monitored and provide information on this signage of the positives for the installation of Meter Eyes.

Lost 8/2

14.3 CONFIRMATION OF THE APPOINTMENT OF THE ACTING CHIEF EXECUTIVE OFFICER

Mr Laurie Vicary declared an interest and left the room at 9.40pm.

Moved Cr Miller seconded Mayor Morgan

The Council confirm the appointment of Mr Laurie Vicary as the Acting Chief Executive Officer for the Town of Cottesloe.

Carried by absolute majority 10/0

Mr Laurie Vicary returned to the meeting at 9.41pm.

15 MEETING CLOSURE

The Mayor announced the closure of the meeting at 9.45pm.

CONFIRMED: MAYOR DATE: / /