

# **TOWN OF COTTESLOE**



## **FULL COUNCIL MEETING MINUTES**

**ORDINARY MEETING OF COUNCIL,  
HELD IN THE WAR MEMORIAL TOWN HALL,  
109 BROOME STREET, COTTESLOE,  
7.05 PM, MONDAY, 28 JULY, 2003**

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**DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS**

Mayor Rowell announced the meeting opened at 7.05 pm.

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

**Councillors In Attendance**

Mayor Rowell (Chairperson)  
Cr D Cunningham  
Cr A Furlong  
Cr P Jeanes  
Cr B Miller  
Cr K Morgan  
Cr W Robertson  
Cr A Sheppard  
Cr V Strzina  
Cr J Utting  
Cr J Walsh.

**Officers in Attendance**

Mr S Tindale	Chief Executive Officer
Mr M Doig	Manager Engineering Services
Mr S Sullivan	Manager Development Services
Mr A Lamb	Manager Corporate Services
Mrs K MacLean	Executive Assistant

**Apologies**

Nil

**Leave of Absence (previously approved)**

Nil

**RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**

Nil.

**PUBLIC QUESTION TIME**

- (1) Mr Dell Bibby, 5 Rosser Street, Chairman "A" Class Reserves Review Group – Jarrad Street Proposed Closure  
What has Council planned in order to protect the scarce groundwater resource in Cottesloe?

Mayor Rowell responded that groundwater problems were a matter of great concern to Council, Council had written to the Sea View Golf Club for information regarding groundwater management and is awaiting a reply.

- (2) Ms Valerie Frearson-Lane, 65 John Street - Jarrad Street Proposed Closure  
Ms Frearson-Lane asked is the proposal to close Jarrad Street from the roundabout to Marine Parade and not from Broome Street to Marine Parade and if so, is there no danger to users of the section from Broome Street to the roundabout?

Mayor Rowell replied that it would appear so.

- (3) Mr David Wilcox, 54 Broome Street - Jarrad Street Proposed Closure  
Mr Wilcox asked what is the public safety issue that justifies closing the road from 5.30 pm to 7.30 am?

Mayor Rowell responded that it was best to close the road totally from an operational point of view.

- (4) Mr Julian Donaldson, former Mayor, 54 Pearse Street - Jarrad Street Proposed Closure  
Mr Donaldson asked is it Council's belief that in passing the motion before it on Jarrad Street it is doing so in the interest of good governance?

Mayor Rowell responded that Council will take the interest of the community into account when making a decision.

- (5) Mr Peter Robinson, 258 Marmion Street - Jarrad Street Proposed Closure  
Mr Robinson asked is Council aware that the last traffic count for the average number of cars on Jarrad Street through the golf course is 3.6 cars per hour?

Mayor Rowell responded Council does have this information and that the figures were taken in winter.

- (6) Mr Bud Huning, South Perth - Jarrad Street Proposed Closure  
Mr Huning asked has Council taken into consideration the matter of inconvenience to people if Jarrad Street is closed?

Mayor Rowell replied in the affirmative.

### **APPLICATIONS FOR LEAVE OF ABSENCE**

Cr Morgan advised that he would be absent from meetings in August and September.

Moved Cr Walsh, seconded Cr Furlong

**That Cr Morgan be granted leave of absence for August and September, 2003.**

Carried 10/0

### **CONFIRMATION OF MINUTES OF PREVIOUS MEETING**

Moved Cr Cunningham, seconded Cr Sheppard

That the Minutes of:

- (1) the Ordinary Meeting of Council held on Monday, 23 June, 2003; and
  - (2) the Special Meeting of Council held on 7 July, 2003
- be confirmed.

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Carried 11/0

### ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

- (1) Icon Sites  
Mayor Rowell announced that he proposed forming a committee to look at what could be done for development in the district.
- (2) Jarrad Street Proposed Closure  
Mayor Rowell stated that the proposal to close Jarrad Street had divided the community and he felt that the lease for the Sea View Golf Club should have been considered first and a management plan to come out of that.

He also stated that no insurance claim has been refused by Council's insurers so there was no reason for haste in closing Jarrad Street.

He further stated that the idea from SOS for an advisory committee made up of members of the stakeholder groups and the community to make recommendations for Council was an excellent idea.

### PUBLIC STATEMENT TIME

The Mayor ruled that with respect to the Jarrad Street road closure issue he would take two speakers on behalf of the Sea View Golf Club and two speakers on behalf of the Jarrad Street "A" Class Reserves Review Group and five speakers from the community as there were speakers on other issues and the business of Council needed to be concluded in a timely manner.

- (1) Ms Janet Walker, Member of Care for Cott (LA21) Committee – LA21 Committee Membership  
Ms Walker requested that Council appoint all 14 people who nominated for the committee to the committee.
- (2) Dr Jay Birnbrauer, Member of Care for Cott (LA21) Committee – LA21 Committee Membership  
Dr Birnbrauer concurred with the previous speaker's view and thanked all those who had contributed to the committee and especially the previous Co-chair, Mrs Marion Ewing and Secretary, Ms Valerie Frearson-Lane.
- (3) Ms Claire Macaulay, 323 Marmion Street – No. 321 Marmion Street  
Ms Macaulay spoke of her concern that she had made a submission in relation to the original plans for No. 321 Marmion Street and was not advised that revised plans had been submitted to Council.
- (4) Mr John Glen, 14 Mertz Crt Hillarys, Board Member of Sea View Golf Club - Proposed Jarrad Street Closure  
Mr Glen stated that hitting golf balls across a roadway is not safe and legal opinions state the only safe course of action is to close the road to avoid the risk. He stated that insurance does not protect Council or the Club from all risk.
- (5) Mr Dell Bibby - Proposed Jarrad Street Closure  
Mr Bibby felt that the report from staff on the issue was inadequate. There was no comprehensive summary of views, it excluded petition numbers and

no mention of alternatives such as to redesign the course. The committee recommendation ignored the law and staff opinion was of limited value. Mr Bibby requested a whole new study be done and not simply by Main Roads WA.

- (6) Ms Sarah Wells, 60 Marine Parade - Proposed Jarrad Street Closure  
Ms Wells stated that safety is the most valid reason for closure. She said the real issue was the manner in which vehicle drivers use the road – they are not vigilant. She wanted to assure the public that recreational access for them will not change and that it was only traffic that would be diverted if the road is closed. If people meandered through the golf course, they were much more likely to keep a look out. Some areas of the course were very safe for walking.
- (7) Mr David Wilcox, 54 Broome Street, Vice Chair “A” Class Reserves Review Group - Proposed Jarrad Street Closure  
Mr Wilcox stated that Council is ignoring the public good and simply responding to the Sea View Golf Club. Exclusive use of the land by the golf club will mean a loss of options to citizens. Land could be utilised for other uses which may not be now considered and this is prejudicial to future generations. The safety argument is spurious as vehicles on the other roads are not protected. He requested that Council reconsider the motion before it.
- (8) Mr Bud Huning - Proposed Jarrad Street Closure  
Mr Huning stated that the safety issue is paramount and that the golf course is equally a part of the history of Cottesloe as is the beach.
- (9) Mr Julian Donaldson - Proposed Jarrad Street Closure  
Mr Donaldson suspected that the surveys and petitions were the result of “push-polling”. Council should weigh the surrounding issues carefully and choose what is right for the town and not what is the most popular. He requested that Council close the road for a shorter period and revisit the issue with an open view after exploring other options and further consultation.
- (10) Mr Richard Thomas, 8 Sea View Tce - Proposed Jarrad Street Closure  
Mr Thomas felt Council was rushing like a bull at a gate and treating the issue in a similar manner to the heritage issues. It should not make a decision tonight, but rather canvas other views, set up a study group and have it report back.
- (11) Mr Joel, 86 Grant Street - Proposed Jarrad Street Closure  
Mr Joel advised that he had taken around a survey in the Eric Street area and there was no “push-polling” by him. On only one occasion did he find someone that was not interested.
- (12) Mr John Sadleir, 14 John Street - Proposed Jarrad Street Closure  
Mr Sadleir stated he was against the motion. There is a danger to pedestrians and closing the road will not remove the danger for them. He also felt that the roundabout is an impediment and should be removed, intersections need signage and the extension of the golf club’s lease should be for one year only.
- (13) Mr John Foulsham, 12 Florence Street - Proposed Jarrad Street Closure  
Mr Foulsham stated that the problem is not that golfers can’t see pedestrians and make allowances, but rather that they can’t see cars coming which can arrive in the middle of a stroke.



- (14) Mr Greg Boland, 70 Napier Street - Proposed Jarrad Street Closure  
Mr Boland stated that he is against the closure of Jarrad Street. He further stated that Council has spent \$35,000 on road closures. He felt that the matter was pursued in haste at the first meeting of the new Council and little decency had been shown in foreshadowing the eventual amended motion. He felt due process should be observed and meaningful public consultation undertaken. He stated that when matters concerning the tennis club arose while he served on Council, he left the Chamber. He suggested that current councillors do the same.

The Mayor concluded the public statement time. There was a request from the floor to allow those remaining wishing to speak to so do. The Mayor invited Councillors to decide.

### **COUNCIL RESOLUTION**

Moved Cr Utting, seconded Cr Miller

**That Council allow the residents who wish to speak to be heard.**

Carried 11/0

- (15) Ms Valerie Frearson-Lane - Proposed Jarrad Street Closure  
Ms Frearson-Lane stated that:
- the original survey for the vesting of the land allowed for a line of communication to the beach and one reserve was to be parklands forever and the other recreation forever.
  - Jarrad Street separates one reserve from the other.
  - The golf course took up a significant percentage of public open space.
  - The result of the golf course taking over most of the land means a confused community.
- (16) Dr Charles Murphy, 58 Broome Street - Proposed Jarrad Street Closure  
Dr Murphy stated that amalgamation of councils has been proposed three times in the past 20 years but Cottesloe had voted for things to be left as it because it meant a more responsive Council and community. Public consultation is essential and due process needs to be observed.
- (17) Mr Robert Frith, 1 Lillian Street - Proposed Jarrad Street Closure  
Mr Frith advised that he was a regular pedestrian on the golf course and that he had written to the golf club about aggressive golfers and ground staff. He feels the club wants to exclude pedestrians and cyclists as well. Cyclists have less gradient in Jarrad Street to cope with than in Pearse and Forrest Streets. He also stated that there may be other options for reducing risks that Council has failed to consider.
- (18) Ms Ruth Grebble, owner of 47 & 49 John Street - Proposed Jarrad Street Closure  
Ms Grebble stated that she is a member of SOS, but is expressing her own views. She felt that the process was rushed and requested Council to reconsider by deferring the decision. Golfers should understand that they have a personal responsibility for public safety.

- (19) Mrs Marion Ewing, 11 Rosser Street - Proposed Jarrad Street Closure  
Mrs Ewing stated that the Council should embrace the whole issue of public open space and not deal with the road closure issue in isolation. The road should not be closed at night. She felt that Council closes Jarrad Street when the golf club tells it to close it. The proposed closure would not stop golf balls from being hit across the road and eliminate the danger.
- (20) Dr Jay Birnbrauer, 64 Napier Street - Proposed Jarrad Street Closure  
Dr Birnbrauer stated that he was opposed to the closure of Jarrad Street. When the road is open, golfers are not supposed to hit across the road. A compromise had been worked out before and Council should stick to it.
- (21) Ms Frauke Chambers, 19 Brighton Street - Proposed Jarrad Street Closure  
Ms Chambers stated that the issue is not the closure of Jarrad Street, but rather a public space for all to use. She believed there was an environmental problem in keeping the area green. She felt that in future the club would extend the golf course and add to the problem. She suggested that Council should close the golf course by not granting the new lease.
- (22) Mr John Davis, 91 Broome Street - Proposed Jarrad Street Closure  
Mr Davis stated that he was opposed to the road closure and requested Councillors to cast their vote in the interest of everyone and not just the club.
- (23) Ms Janet Walker, 190 Broome Street - Proposed Jarrad Street Closure  
Ms Walker said she was not against golf or golf players. She felt safety is important and spoke of her experience in a hospital emergency department. She posed the question "how can you be safer walking than in a car?" She suggested that both sides join hands and have cool heads and work out a solution. She stated she was in favour of the community group meeting to further discuss options.
- (24) Mr Richard Thomas - Proposed Jarrad Street Closure  
Mr Thomas stated that he was against the closure of Jarrad Street.
- (25) Ms Jan Boening, 47 Kathleen Street - Proposed Jarrad Street Closure  
Ms Boening said over time the road has got busier for lady golfers and cars come more quickly down the street. She felt that the people who live close by the course are selfish. She also believed that our forefathers had foresight as all ages and genders can play golf and anyone can join in and get rid of their aggression.

**PETITIONS/DEPUTATIONS/PRESENTATIONS****JARRAD STREET – PROPOSED CLOSURE****PETITION NO. 1**

Cr Sheppard presented a petition in favour of closing that part of Jarrad Street which bisects the Sea View Golf course. He stated that of 1,349 signatories to the petition, 1,199 were Cottesloe residents. He read the prayer which follows aloud:

*“We the undersigned, support the Cottesloe Town Council’s proposal to close that part of Jarrad Street that bisects the Sea View Golf course from Marine Parade to the Golf Club entry.*

*Users of the road are in clear and obvious danger of being struck by flying golf balls in spite of care by golf players. The danger is so obvious as to potentially expose both the Council and ratepayers to a very substantial damages claim in the event of a death or serious accident. Motor vehicle traffic and sporting areas are totally incompatible. The Council has a clear duty of care to members of the public. Pedestrian access to the course will not be affected.”*

**COUNCIL RESOLUTION**

Moved Cr Furlong, seconded Cr Sheppard

**That the petition be accepted.**

Carried 11/0

**PETITION NO. 2**

Cr Miller presented a petition against the permanent closure of Jarrad Street (West) between the roundabout and Marine Parade. He stated that there were 294 signatories to the petition. He read the prayer which follows aloud:

*“We the undersigned strongly oppose the proposed permanent closure of Jarrad Street (west).”*

**COUNCIL RESOLUTION**

Moved Cr Miller, seconded Cr Strzina

**That the petition be accepted.**

Carried 11/0

**REPORTS OF COMMITTEES AND OFFICERS**

The meeting agreed to deal with the Works & Corporate Services Committee items first.

**1 WORKS AND CORPORATE SERVICES COMMITTEE MEETING HELD ON 22 JULY 2003****1.1 ADMINISTRATION****DECLARATIONS OF IMPARTIALITY**

Cr Morgan made the following declaration:

*I, Kevin Morgan, disclose that I have an interest in the next matter before the meeting in that I am a member of the Sea View Golf Club. This interest may give rise to a reasonable belief that my impartiality will be adversely affected when debating and voting on the matter. I declare that this is not the case and that I will duly, faithfully, honestly and with integrity, act for the people of Cottesloe according to the best of my judgement and ability.*

Crs Jeanes, Furlong, Morgan, Robertson, Sheppard, Strzina & Walsh followed suit.

Cr Jeanes qualified his declaration by stating that he was a past social member of the Sea View Golf Club.

**SUPPORT FOR THE INTRODUCTION OF THE ITEM**

As a rescission motion was envisaged, the Mayor called for a show of hands from those who supported the introduction of the item.

Mayor Rowell and Crs Cunningham, Jeanes, Furlong, Morgan, Robertson, Sheppard, Strzina and Walsh indicated their support for the introduction of the item by a show of hands. The level of support (more than 1/3) was deemed sufficient for the matter to be considered by the meeting.

**1.1.1 JARRAD STREET - PROPOSED CLOSURE**

<b>File No:</b>	<b>E17.10.50</b>
<b>Author:</b>	<b>Mr M Doig</b>
<b>Author Disclosure of Interest:</b>	<b>Nil</b>
<b>Report Date:</b>	<b>10 July, 2003</b>
<b>Senior Officer:</b>	<b>Mr S Tindale</b>

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**SUMMARY**

In May Council resolved invite public comment on a proposal to close a portion of Jarrad Street from 29 July for a period of four years and also to request the Minister for Lands to order a section of Jarrad Street to be closed permanently.

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Council therefore needs to review the submissions received before deciding on the proposed closure and also determine if the Minister for Lands is to be requested by Council to permanently close a section of Jarrad Street.

The recommendation is to rescind the motion of 26 May, 2003 and resolve to close the road for a period of up to 4 years.

### **STATUTORY ENVIRONMENT**

Section 3.50 Local Government Act of 1995

Section 58 of the Land Administration Act 1997.

Activities on Thoroughfares & Trading on Thoroughfares & Public Places Local Law.

### **POLICY IMPLICATIONS**

Nil

### **STRATEGIC IMPLICATIONS**

Nil

### **FINANCIAL IMPLICATIONS**

A decision to close the road for a four-year period would require minor modification to the kerb line at both the roundabout and at Marine Parade and signage as detailed in a response from Main Roads WA at a total cost approximately \$2,000.

If the Minister for Lands were to approve a request for the permanent closure of Jarrad Street and a change of purpose from road reserve to "Recreation Reserve", Council would need to consider more permanent changes.

### **BACKGROUND**

In May 2003 Council resolved as follows:

*That Council, in accordance with section 3.50 of the Local Government Act 1995, as amended, and section 58 of the Land Administration Act 1997, as amended:*

- (1) *Order and advertise by public notice the temporary closure of a section Jarrad Street between Marine Parade and the Golf Club entry during the period between 7 June, 2003 and 29 July, 2003 on the following days:*
  - *Every Wednesday and Saturday;*
  - *Every Friday afternoon;*
  - *Every Sunday morning; and*
  - *On other days subject to prior agreement by Council.*
- (2) *Advertise by local public notice and invite public comment prior to 8 July, 2003, a proposal to permanently close for reasons of public safety a section of Jarrad Street between Marine Parade and the Golf Club entry for a period not exceeding four years commencing on 29 July, 2003 and to additionally request the Minister for Lands to order this section of Jarrad Street to thereafter be closed permanently and instead used for purposes consistent with existing reserves on either side thereof."*

Public notices inviting public submissions prior to 8 July were posted on Council's notice boards on 27 May, 2003 and published in the Post Newspaper of 31 May, 2003 and repeated in the West Australian on 5 June, 2003.

**CONSULTATION**

The proposal has attracted considerable local interest and publicity with a total of 314 submissions received in response to Council's advertisements and public notices. Copies of the submissions have been forwarded to each elected member for consideration.

Of the 332 persons represented in the 314 submissions addressed to Council, 237 are in favour of full closure and 72 against full closure and 23 made a more general comment. A few people have made more than one submission and in these cases the submissions have been counted as one.

Most of the submissions addressed a wide variety of reasons to support the viewpoint of the individual writer rather than a simple yes or no. The various viewpoints detailed in the submissions have been categorised to provide an overview of the most frequently raised issues.

<b>SUPPORT FOR CLOSURE OF JARRAD STREET</b>	
Duty of Care (injury & liability)	136
Vehicle Access not Required	11
Both Reasons	57
Other	33
<b>TOTAL</b>	<b>237</b>

<b>OPPOSED TO CLOSURE OF JARRAD STREET</b>	
Right of Access to Reserve	17
Conflict of Interest with Councillors	17
Both Reasons	22
Other	16
<b>TOTAL</b>	<b>72</b>

<b>MISCELLANEOUS COMMENT</b>	
Miscellaneous	23
<b>TOTAL</b>	<b>23</b>

In addition, the Jarrad Street "A" Class Reserves Review Group has also submitted a bundle of form letters addressed to the group and signed by 440 persons opposing the closure. The Review Group has also provided a list of the names and addresses and a breakdown of postcodes for the information of Council.

Cr Robertson has also lodged the submissions he received from a survey of residents in the Central Ward in which four options were proposed and has advised the following results.

<b>CENTRAL WARD VOTING</b>	
53	Close the road as per the Council resolution
27	Open the Road
36	Accept the current situation that sees the road closed on the days mentioned
8	Other suggestions

Written advice of the proposed closure was also directed to each of the following public utilities and organisations with a direct interest.

- Western Australian Planning Commission
- Minister for Water Resources
- Western Power Corporation
- Alinta Gas
- Australia Post State Head Office
- Telstra Corporation Perth Head Office
- Water Corporation
- St John Ambulance
- Commissioner for Police
- Fire and Rescue Service of WA
- Main Roads WA
- Officer-in-Charge Cottesloe Police
- Jarrad Street "A" Class Reserves Review Group (Inc.)
- Sea View Golf Club Inc.
- Municipal Insurance Broking Services of WA.

Both the Sea View Golf Club and the Jarrad Street "A" Class Reserves Review Group have indicated that they have collected petitions that have yet to be presented to Council. In accordance with Standing Orders these petitions are expected to be presented by a Councillor either at the Committee meeting on 22 July or at the Council Meeting on 28 July.

### **STAFF COMMENT**

The submissions detail a range of both positive and negative aspects that need to be weighed one against the other. There seems to be very little dispute that many consider the playing of golf across Jarrad Street as dangerous. It can and has been argued that in knowing that the practice is dangerous, Council has a duty of care to reduce the risk to an acceptable level and that failure to do so may have unintended consequences, particularly in the event of any serious accident.

While occasional closures over the past four years may have reduced the risk and given the public a very good indication of what the effects of closure are, the occasional closure is not a long-term solution as there are still significant periods of risk.

Reduced to the simplest terms, the Council needs to decide whether to wholly close the road or enforce the Thoroughfares Local Law and require that golf balls are not struck across the road reserve.

It should be understood that golf balls are deliberately struck over and from Jarrad Street as opposed to being struck accidentally over and onto surrounding streets.

Council has also received correspondence that challenges the legality of the wording of the resolution of 26 May, 2003. This correspondence has been circulated to all elected members, together with the legal opinion obtained by Council. While there may be some doubt as to precise wording of the Council resolution, the intention of Council is clear.

On balance, the staff view is that the road should be fully closed for an extended period before consideration is given to the permanent closure.

To date the temporary road closures have been restricted to daylight hours and the closure process has been designed accordingly. The closure of Jarrad Street at night will raise new issues that need to be properly resolved in advance.

The site has therefore been inspected with an officer of Main Roads WA and it has been suggested that the following signage and barriers would need to be put in place if full closure is decided upon:

- Two "no through road" signs near Broome Street.
- The current "Jarrad Street Closed" sign at the intersection of Broome and Jarrad and at Marine Parade would remain as advanced warning in the interim period.
- A reflective hazard board would be erected on the west side of the roundabout.
- Water filled traffic barriers positioned on the west side of the roundabout and at Marine Parade until a concrete kerb infill is laid.
- Temporary sign east of the roundabout indicating a modified intersection ahead.
- Temporary hazard lights at the roundabout.

If the Committee accepts that the resolution of 26 May, 2003 and the ensuing advertisement were defective, the officer recommendation, drafted by Council's solicitors, will need to be adopted by Council.

The public notice would read:

### **JARRAD STREET ROAD CLOSURE**

*In accordance with sections 3.50(1) and 3.50(8) of the Local Government Act 1995, as amended, Council hereby:*

- (1) Orders that for reasons of public safety the section of Jarrad Street between Marine Parade and the Sea view golf club entry is closed to the passage of vehicles at all times for a period not exceeding four (4) years commencing on 29 July 2003:and*
- (2) Invites submissions prior to 14 August 2003 from any person who wishes to make a submission in relation to the road closure specified in paragraph (1) of this Notice.*

*The section of Jarrad Street will be closed using the existing barriers at the intersection of Jarrad Street and Marine Parade and at the Sea View Golf Club entry. The advance warning signs which are located at the Broome Street/Jarrad Street intersection and the Marine Parade/Jarrad Street intersection will remain.*



If at later date Council decided to request the Minister for Lands to permanently close a section of Jarrad Street, the following draft recommendation and notice of motion is required:

*“That Council, in accordance with section 58(1) of the Land Administration Act 1997, as amended, publish in a newspaper circulating in the district the following notice of motion:*

#### **NOTICE OF MOTION**

*That Council, in accordance with section 58(1) of the Land Administration Act 1997, as amended, request the Minister for Lands to permanently close the section of Jarrad Street between Marine Parade and the Sea View Golf Club entry for reasons of public safety.”*

Council would then publish a copy the notice of motion, together with advice that any objections concerning the proposal set out in the notice of motion should be made to the Town of Cottesloe within 35 days of publication.

Before the notice of motion to request the Minister to close Jarrad Street permanently is put to Council the Town should ensure that it allows sufficient time after the expiration of the 35 day objection period for Council to consider objections pursuant to the notice.

#### **VOTING**

Absolute majority.

Note: A motion to rescind a previous decision must first be supported by at least one-third of the number of members of the Council or committee. The second stage (after the required support for the motion has been obtained and recorded) is the formal consideration of the motion (after it is seconded) and the decision whether or not to rescind the earlier resolution.

The names of the members who support the introduction of the motion will be recorded in the minutes, before the motion to revoke or change a decision is put to the meeting.

#### **OFFICER RECOMMENDATION**

(1) That Council rescind its resolution of 26 May 2003 whereby it resolved:

That Council, in accordance with section 3.50 of the Local Government Act 1995, as amended, and section 58 of the Land Administration Act 1997, as amended:

- (1) Order and advertise by public notice the temporary closure of a section Jarrad Street between Marine Parade and the Golf Club entry during the period between 7 June, 2003 and 29 July, 2003 on the following days:
  - Every Wednesday and Saturday;
  - Every Friday afternoon;
  - Every Sunday morning; and

- On other days subject to prior agreement by Council.
- (2) Advertise by local public notice and invite public comment prior to 8 July, 2003, a proposal to permanently close for reasons of public safety a section of Jarrad Street between Marine Parade and the Golf Club entry for a period not exceeding four years commencing on 29 July, 2003 and to additionally request the Minister for Lands to order this section of Jarrad Street to thereafter be closed permanently and instead used for purposes consistent with existing reserves on either side thereof.
- (2) That Council, in accordance with section 3.50(1) of the Local Government Act 1995, as amended order that the section of Jarrad Street between Marine Parade and the Sea View Golf Club entry is closed to the passage of vehicles at all times for a period not exceeding four (4) years commencing on 29 July, 2003 and shall give local public notice of that closure.
- (3) That for the purposes of section 3.50(7) of the Local Government Act 1995, as amended, the Council considers it is impractical to give local public notice under section 3.50(4) of the Act before closing the section of Jarrad Street referred to in paragraph 2 above, for reasons of public safety.
- (4) That Council, in accordance with section 3.50(8) of the Local Government Act 1995, as amended, shall give local public notice of the order to close the section of Jarrad Street between Marine Parade and the Sea View Golf Club entry to the passage of vehicles at all times for a period not exceeding four (4) years commencing on 29 July, 2003.

### COMMITTEE AMENDMENT

That the motion be amended by adding the following:

*“(5) That all petitions and submissions to the Council received to date since 26 May, 2003 be taken into account when next dealing with this matter.”*

### COMMITTEE RECOMMENDATION

Moved Cr Morgan, seconded Cr Furlong

- (1) That Council rescind its resolution of 26 May 2003 whereby it resolved:

That Council, in accordance with section 3.50 of the Local Government Act 1995, as amended, and section 58 of the Land Administration Act 1997, as amended:

- (1) Order and advertise by public notice the temporary closure of a section Jarrad Street between Marine Parade and the Golf Club entry during the period between 7 June, 2003 and 29 July, 2003 on the following days:
- Every Wednesday and Saturday;
  - Every Friday afternoon;
  - Every Sunday morning; and
  - On other days subject to prior agreement by Council.
- (2) Advertise by local public notice and invite public comment prior to 8 July, 2003, a proposal to permanently close for reasons of public safety a section of Jarrad Street between Marine Parade and the Golf Club entry for a period not exceeding four years commencing on 29 July, 2003 and to additionally request the Minister for Lands to order this section of Jarrad Street to thereafter be closed permanently and instead used for purposes consistent with existing reserves on either side thereof.

- (2) That Council, in accordance with section 3.50(1) of the Local Government Act 1995, as amended order that the section of Jarrad Street between Marine Parade and the Sea View Golf Club entry is closed to the passage of vehicles at all times for a period not exceeding four (4) years commencing on 29 July, 2003 and shall give local public notice of that closure.
- (3) That for the purposes of section 3.50(7) of the Local Government Act 1995, as amended, the Council considers it is impractical to give local public notice under section 3.50(4) of the Act before closing the section of Jarrad Street referred to in paragraph 2 above, for reasons of public safety.
- (4) That Council, in accordance with section 3.50(8) of the Local Government Act 1995, as amended, shall give local public notice of the order to close the section of Jarrad Street between Marine Parade and the Sea View Golf Club entry to the passage of vehicles at all times for a period not exceeding four (4) years commencing on 29 July, 2003.
- (5) That all petitions and submissions to the Council received to date since 26 May, 2003 be taken into account when next dealing with this matter.

Absolute Majority Required

#### AMENDMENT NO. 1

Moved Cr. Miller, seconded Mayor Rowell

That the motion be amended by:

- (1) deleting the words "*at all times for a period not exceeding four (4) years*" in paragraph (2) and substituting with the words "*between the hours of 7.30 am and 5.30 pm for a period not exceeding one(1) year*"; and
- (2) deleting the words "*four (4) years*" in paragraph (4) and substituting with the words "*one (1) year*".

Lost 3/8

#### AMENDMENT NO. 2

Moved Cr. Jeanes, seconded Cr. Miller

That the motion be amended by: deleting the words "*four (4) years*" in paragraph (4) and substituting with the words "*one (1) year*".

Lost 5/6

The substantive motion was put.

#### COUNCIL RESOLUTION

- (1) **That Council rescind its resolution of 26 May 2003 whereby it resolved:**

**That Council, in accordance with section 3.50 of the Local Government Act 1995, as amended, and section 58 of the Land Administration Act 1997, as amended:**

- (1) **Order and advertise by public notice the temporary closure of a section Jarrad Street between Marine Parade and the Golf Club entry during the period between 7 June, 2003 and 29 July, 2003 on the following days:**

- Every Wednesday and Saturday;
  - Every Friday afternoon;
  - Every Sunday morning; and
  - On other days subject to prior agreement by Council.
- (2) Advertise by local public notice and invite public comment prior to 8 July, 2003, a proposal to permanently close for reasons of public safety a section of Jarrad Street between Marine Parade and the Golf Club entry for a period not exceeding four years commencing on 29 July, 2003 and to additionally request the Minister for Lands to order this section of Jarrad Street to thereafter be closed permanently and instead used for purposes consistent with existing reserves on either side thereof.
- (2) That Council, in accordance with section 3.50(1) of the Local Government Act 1995, as amended order that the section of Jarrad Street between Marine Parade and the Sea View Golf Club entry is closed to the passage of vehicles at all times for a period not exceeding four (4) years commencing on 29 July, 2003 and shall give local public notice of that closure.
- (3) That for the purposes of section 3.50(7) of the Local Government Act 1995, as amended, the Council considers it is impractical to give local public notice under section 3.50(4) of the Act before closing the section of Jarrad Street referred to in paragraph 2 above, for reasons of public safety.
- (4) That Council, in accordance with section 3.50(8) of the Local Government Act 1995, as amended, shall give local public notice of the order to close the section of Jarrad Street between Marine Parade and the Sea View Golf Club entry to the passage of vehicles at all times for a period not exceeding four (4) years commencing on 29 July, 2003.
- (5) That all petitions and submissions to the Council received to date since 26 May, 2003 be taken into account when next dealing with this matter.

Absolute Majority Attained, Carried 8/3

## RECORDING OF VOTES

FOR	AGAINST
Cr Cunningham	Mayor Rowell
Cr Jeanes	Cr Miller
Cr Robertson	Cr Utting
Cr Furlong	
Cr Sheppard	
Cr Strzina	
Cr Morgan	
Cr Walsh	

**1.1.2 CARE FOR COTTESLOE (LA21) COMMITTEE - ELECTION OF MEMBERS**

**File No:** X12.1  
**Author:** Ms P Varvell  
**Author Disclosure of Interest:** Nil  
**Report Date:** 11 July, 2003  
**Senior Officer:** Mr S Tindale

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**SUMMARY**

To determine membership of the Care for Cottesloe (LA21) Committee for a two year period commencing August 2003.

**STATUTORY ENVIRONMENT**

Nil

**POLICY IMPLICATIONS**

Nil

**STRATEGIC IMPLICATIONS**

Nil

**FINANCIAL IMPLICATIONS**

Nil

**BACKGROUND**

As the Care for Cottesloe (LA21) Committee was formalised as a Council Advisory Committee in June 2003, Council was required to seek expressions of interest from members of the public wishing to participate in the Committee.

The Care for Cottesloe (LA21) Committee currently consists of 10 members. Seven members have indicated their interest in continuing to be part of the Committee.

A dedicated advertisement in 'The Post' newspaper along with an article in the 'Cottesloe Council News' section sought expression of interests from those persons interested in serving on the Committee. As per the Terms of Reference, relevant Community organisations were also sent a letter inviting them to nominate a member of their organisation for the Committee. The closing date for expressions of interest was Monday, 14 July, 2003. Seven additional expressions of interest were received.

**CONSULTATION**

Nil

**STAFF COMMENT**

Circulated separately is a list of the nominations for the Care for Cottesloe (LA21) Committee. Fourteen nominations have been received for twelve vacancies. All nominees are considered worthy candidates, therefore, it is requested that Council

appoint 12 representatives of the 14 nominations to the Committee for a two year period from August 2003 to August 2005.

**VOTING**

Absolute Majority

**OFFICER RECOMMENDATION**

That Council:

(1) Appoint the following people to the Care for Cottesloe (LA21) Committee for the period August 2003 to August 2005:

- (a) .....; (b) .....; (c) .....; (d) .....
- (e) .....; (f) .....; (g) .....; (h) .....
- (i) .....; (j) .....; (k) .....; and (l) .....

(2) Thank each nominee for their interest and application and each retiring member for their past contribution.

**COMMITTEE RECOMMENDATION**

Moved Cr Miller, seconded Cr Furlong

That Council:

(1) Appoint the following people to the Care for Cottesloe (LA21) Committee for the period August 2003 to August 2005:

Miss Pat Adamson; Mr Jay Birnbrauer; Mr Peter Goff; Ms Jan Walker; Mrs Phillipa Wiggins; Ms Pia Carter; Ms Deborah Goundrey; Ms Julia Hays; Ms Dolorus Hyde; Mr Brian Nockolds; Ms Gail Manton; and Ms Nina McCreery.

(2) Thank each nominee for their interest and application and each retiring member for their past contribution.

**AMENDMENT**

Moved Cr. Miller, seconded Cr. Sheppard

That the motion be amended by the addition of:

(3) Appoint Ms Valerie Frearson-Lane and Mrs Marion Ewing as reserve members should any of the selected committee not wish to continue.

Carried 9/2

The amended motion was put.

**COUNCIL RESOLUTION**

**That Council:**

- (1) **Appoint the following people to the Care for Cottesloe (LA21) Committee for the period August 2003 to August 2005:**

**Miss Pat Adamson; Mr Jay Birnbrauer; Mr Peter Goff; Ms Jan Walker; Mrs Phillipa Wiggins; Ms Pia Carter; Ms Deborah Goundrey; Ms Julia Hays; Ms Dolorus Hyde; Mr Brian Nockolds; Ms Gail Manton; and Ms Nina McCreery.**

- (2) **Thank each nominee for their interest and application and each retiring member for their past contribution.**
- (3) **Appoint Ms Valerie Frearson-Lane and Mrs Marion Ewing as reserve members should any of the selected committee not wish to continue.**

Absolute Majority Attained, Carried 11/0

**1.1.3 SUPPLY OF GREEN ENERGY TO CIVIC CENTRE**

**File No:** X12.1  
**Author:** Ms P Varvell  
**Author Disclosure of Interest:** Nil  
**Report Date:** 11 July, 2003  
**Senior Officer:** Mr S Tindale

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**SUMMARY**

This report demonstrates the feasibility of using renewable energy as the power source for the Civic Centre (as per the Cities for Climate Protection Programme). It is recommended that the proposal from Perth Energy to provide this service is approved.

**STATUTORY ENVIRONMENT**

Nil

**POLICY IMPLICATIONS**

Nil

**STRATEGIC IMPLICATIONS**

The supply of green energy to the Civic Centre supports the principles of sustainability as articulated within Council's Strategic Plan.

**FINANCIAL IMPLICATIONS**

See attachment (confidential).

**BACKGROUND**

One of the actions endorsed for investigation as part of the Cities for Climate Protection Programme in 2003/2004 was to "Investigate the feasibility of Natural Power". This report is the result of that study and pertains to electricity used by Council assets only (not including streetlights).

There are two renewable energy suppliers in Western Australia; Western Power and Perth Energy. Western Power would be able to provide all Council buildings with green energy (renewable energy), Perth Energy can only provide the Civic Centre due to a minimum electricity consumption requirement. As the Civic Centre uses approximately 70% of the total power used in the Council's assets, this report only covers the provision of green energy to the Civic Centre.

Costs provided by the two companies are confidential. The feasibility study was pursued with Perth Energy.

The nature of the contestable electricity market in WA currently requires independent power producers (generators) which are supplying independent customer loads to capacity match the energy generated with the energy consumed from a particular power plant. The Town of Cottesloe's loads would be matched to the output of the Red Hill Power Plant. The Red Hill power station is an accredited renewable



generator by the Office of the Renewable Energy Regulator (ORER), accreditation number BEBGWA01. However, Perth Energy has not yet been accredited under the GreenPower program and as such, Cottesloe would not be able to use the GreenPower logo on its stationery. Other Councils have indicated that not being able to use the GreenPower logo has not had any negative effects within the Council.

Perth Energy will supply their green energy through Western Power's existing infrastructure network and will invoice the Town of Cottesloe directly for the energy supplied to the Civic Centre. There would be no disruption to current services.

Perth Energy also supplies green energy to the Cities of Melville, Mandurah, Bayswater and Belmont along with the Town of Cambridge.

The environmental benefits from converting the Civic Centre to green energy would be the abatement of 131 tonnes of CO<sub>2</sub><sup>e</sup> which is 20% of our Corporate Greenhouse gas emissions based on 1995 / 1996 levels. While it will not be known if this meets our target of 20% emissions by 2011 until we complete Milestone 5, it would be close.

### **CONSULTATION**

Engineering Technical Officer, Manager Corporate Services.

### **STAFF COMMENT**

Having the electricity supplied to the Civic Centre using green energy would be the most cost efficient and resource effective way to abate such a large portion of our greenhouse gas emissions. If this proposal is accepted, it is highly likely we could meet our corporate greenhouse gas reduction goal of 20% less emissions by 2010 with minimal extra effort thus saving valuable money and resources. It requires no behaviour change or pressure on existing staff or resources to implement making the probability of long-term success high.

Two referees were contacted who had been using Perth Energy for two years and one year respectively and both highly recommended Perth Energy for their efficiency, service and comprehensive monthly reports. Due to their recommendations, the financial implications, the significant reduction in greenhouse gas emissions and the fact that it will not disrupt any energy supplies to the Civic Centre, it is recommended that Council approves the proposal submitted by Perth Energy to supply the Civic Centre with renewable energy.

### **VOTING**

Simple Majority

### **OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION**

Moved Cr Miller, seconded Cr Furlong

**That Council approve the proposal for Perth Energy to supply the Cottesloe Civic Centre with energy produced from landfill gas.**

Carried 11/0

**1.1.4 BOAT PARKED ON MEDIAN STRIP- REQUEST FOR APPROVAL**

**File No:** 33 Congdon Street  
**Author:** Mr A Lamb  
**Author Disclosure of Interest:** Nil  
**Report Date:** 14 July, 2003  
**Senior Officer:** Mr S Tindale

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**SUMMARY**

The purpose of this report is to put before Council the request from Mr Dean Stockwell for approval to park a boat and trailer on the Congdon Street media strip.

**STATUTORY ENVIRONMENT**

Council's Parking and Parking Facilities Local Law applies.

Clause 1.3 provides that the interpretation that the word "vehicle" has the meaning given to it by the Road Traffic Code 2000 (this includes a trailer).

Clause 7.8 provides that the driver of a vehicle shall not stop so that any portion of the vehicle is on a path, traffic island or median strip, unless the driver stops in an area to which a parking control sign applies and the driver is permitted to stop at that place under the Local Laws.

Clause 9.6 provides that a person shall not leave a vehicle, or any part of a vehicle, in a public place so that it obstructs the use of any part of that place without the permission of the local government or unless authorised under any written law. This Clause goes on to provide that a person will not contravene the foregoing where the vehicle is left for a period not exceeding 24 hours.

Clause 7.9 may have some relevance in that this deals with stopping on the verge. Under this Clause it is an offence for a person to stop a vehicle on a verge unless the person is the owner or occupier of the premises adjacent to that verge or is authorised by the occupier of those premises.

It should be noted that where Council has imposed a parking or stopping restriction for any part of the thoroughfare (includes the carriageway, verges and any median strips) and signed the area accordingly, it becomes an offence to park or stop a vehicle, as the case may be, in the areas covered by the restriction.

The Local Law provides that the word "park" means to permit a vehicle, whether attended or not by any person, to remain stationary except for the purpose of:

- (a) avoiding conflict with other traffic; or
- (b) complying with the provisions of any law; or
- (c) taking up or setting down persons or goods (maximum of two minutes).

Also that the word "stop" means to stop a vehicle and permit it to remain stationary, except for the purposes of avoiding conflict with other traffic, or complying with the provisions of any law.

**POLICY IMPLICATIONS**

Council's Parking – Residential policy applies to verge parking. The objective of this policy is to encourage property owners to provide sufficient on site parking.

**STRATEGIC IMPLICATIONS**

Nil

**FINANCIAL IMPLICATIONS**

Nil

**BACKGROUND**

Acting on a complaint, Rangers approached the owner of a trailer mounted boat parked on the Congdon Street median strip and asked that it be removed. The owner indicated he would write to Council seeking approval for the boat and trailer to be parked on the median strip and no further action has been taken pending Council's decision.

A letter was received from Mr Stockwell of No. 33 Congdon Street on 10 July, 2003. In the letter he seeks approval to park his boat and trailer on the median strip in Congdon Street. He notes that he has no viable alternative to store his boat. It will not fit on his property and the verge is not suitable. Also that he has kept the boat on this median strip and the median strip near his previous address in Parry Street for more than eight years. Mr Stockwell has his boat in for repairs and so it has not been on the median strip for some days and he seeks approval to keep the boat and trailer on the median strip.

**CONSULTATION**

Nil, other than with staff.

**STAFF COMMENT**

The Local law does not appear to provide for Council to give approval to allow stopping on a median strip other than by signing the area to indicate that stopping is permitted.

Ranger staff noted that there are three or four boats on trailers that are left on wide and grassed median strips in Cottesloe and that other vehicles are parked in these areas. The practice has been to act on such matters in response to complaints, or where the vehicle poses some danger, or blocks access. The location where Mr Stockwell leaves his boat and trailer does not appear to pose a danger and does not block access.

A number of older type developments and many modern developments have limited on-site parking for additional vehicles (including trailers, boats on trailers and caravans). This results in vehicles being parked on verges. A number of verges in Cottesloe are not wide enough to accommodate vehicles and so some residents use the median strips. It is noted that most cars and the like parked on verges and

median strips move fairly regularly and are generally parked over night for example. Boats on trailers, trailers and caravans tend to be used less regularly and so can create more of a problem for other residents.

Whilst Mr Stockwell raised the issue in respect to his own situation, Council may wish to look at the whole issue of vehicles parked on median strips. Options could include strict enforcement of the Local Laws or amending them to provide for a permit system with a fee system set to cover the cost of administering the system and any associated physical works (such as signage, kerb adjustments and pavement treatments) that may be required. Vehicles that are moved regularly, such as passenger vehicles, may be seen in a different light to others that don't, such as trailers. The Local Government (Functions and General) Amendment Regulations (No. 2) 1998 prohibits Council from requiring the payment of fees or charges for the parking of vehicles on any land under the care, control or management of a local government in the district of Cottesloe west of Broome Street. This legislation would prohibit the charging of permit fees in that area and so if a fee system were to be considered, then the constraints of the legislation may need to be addressed first.

Council may also wish to look at vehicles parked on verges where, unless there are restrictions to the contrary, it is not an offence for an owner or resident to park a vehicle on their verge.

It is recommended that the Local Law not be enforced in respect of Mr Stockwell's boat and trailer parked on the Congdon Street median strip, provided it is parked in such a way as to not pose a safety issue, for a period of twelve months. That Council also call on administration to conduct a review of the Local Law that addresses the issue of parking on median strips (verge parking could be added).

## **VOTING**

Simple majority

## **OFFICER RECOMMENDATION**

That Council:

- (1) Advise Mr Stockwell that it will not enforce Clause 7.8 of the Parking and Parking Facilities Local Law with respect to him parking his boat and trailer on the Congdon Street median strip, so long as it is parked safely and to the satisfaction of the CEO, for a period of twelve months; and
- (2) Call on administration to conduct a review of the Parking and Parking Facilities Local Law, particularly with regard to the use of median strips for parking vehicles.

## **REASON FOR CHANGE**

The Committee did not wish to encourage the parking of boats and trailers on median strips.

**COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION**

Moved Cr Miller, seconded Cr Furlong

**That Council advise Mr Stockwell that it will enforce Clause 7.8 of the Parking and Parking Facilities Local Law with respect to him parking his boat and trailer on the Congdon Street median strip.**

Carried 10/1

**1.1.5 BRYAN WAY & EILEEN STREET - PARKING PERMIT SYSTEM**

**File No:** C15.1  
**Author:** Mr A Lamb  
**Author Disclosure of Interest:** Nil  
**Report Date:** 15 July, 2003  
**Senior Officer:** Mr S Tindale

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**SUMMARY**

The purpose of this report is to put before Council the application received from the Strata Council of Regency Views for parking permit zones to be established in Bryan Way and Eileen Street outside the entrances to the building at No. 134 Marine Parade Cottesloe.

**STATUTORY ENVIRONMENT**

Council's Parking and Parking Facilities Local Law applies. Clause 1.8 provides that Council may by resolution prohibit or regulate by signs or otherwise, the stopping or parking of any vehicle or class of vehicles in any part of the parking region. Council may set up areas where parking is restricted to the holders of residential parking permits and Part 8 of the Local Law provides the mechanism for application, assessment and issue of permits.

**POLICY IMPLICATIONS**

Nil.

**STRATEGIC IMPLICATIONS**

Nil.

**FINANCIAL IMPLICATIONS**

Costs would be limited to signage erected in the streets to indicate the parking restrictions and costs associated with administering the permit system.

**BACKGROUND**

The Chairman of the Body Corporate of Regency Views wrote on behalf of the Strata Council applying to have a permit zone established in Bryan Way and Eileen Street outside of the units at No. 134 Marine Parade. The letter noted ever increasing traffic and parking congestion in Bryan Way and Eileen Street both at weekends and during the week, due to the greater number of people visiting the beach, hotels and restaurants in the vicinity. This causes ongoing problems for residents of the units as visitor parking is becoming non-existent. The letter notes that while this problem used to be limited to weekends, it is now a daily issue. It also notes that there are precedents in the area for the creation of permit zones. The application notes that there are 16 units and requests at least ten parking bays, and points out that this is a real lifestyle issue for residents and one that is causing a great deal of inconvenience, stress and frustration. The applicant wishes to have this request

dealt with separately and not to include consideration of the whole of the two streets in the permit zones at this time.

Parking permit zones have been operating in a number of streets in Cottesloe for some time.

### **CONSULTATION**

The Chairman of the Body Corporate and Council Rangers were consulted.

### **STAFF COMMENT**

Parking permit zones appear to meet the needs of residents, but are not without their problems for both residents and Council. Residents have to remember to display permits for their own vehicles. They also have to remember to give their visitors a permit to display, which involves going back to the vehicle as soon as the visitor arrives to put the permit on the vehicles dashboard and then remembering to retrieve the permit when the visitor leaves. Administration of the system is time consuming. However on balance, and based on the lack of complaints regarding the system, permit parking does appear to provide an acceptable solution to parking problems in the beachfront area.

Following inspections of Bryan Way it was found that either side of the street could accommodate eight vehicles (six adjacent to No. 134 Marine Parade and two adjacent to the units at No. 1 Eileen Street) but parking would have to be restricted to one side only, due to the width of the street. Current restrictions limit parking to the north side only. The south side is a "no stopping" zone. It is suggested that a permit system could work well for this street and, if accepted by Council, the plan would be to line mark the north side of the street to set out six bays, adjacent to No. 134 Marine Parade, with "no stopping" in front of building access points.

Current restrictions in Eileen Street limit on street parking to the south side (the street is not wide enough to accommodate parking on both sides). It was noted during inspections that the "no stopping" zones at Marine Parade and at Gadsdon Street are not the required ten metres from the intersection and so these will be adjusted as part of any signage changes resulting from this item or, if there are to be no other changes to signs, it will be done as soon as practicable. Inspection of the street indicated that there would be space for eleven parking bays on either side and there appears to be no good reason to change the current arrangement where parking is permitted on the southern side. There appears to be space for three bays adjacent to No. 134 Marine Parade.

It is recommended that Council trial the permit zone as requested, for a period of twelve months. It is anticipated that other residents of Eileen Street may wish to see the permit system applied to the whole of that street however the applicant wishes to have this application dealt with separately.

Current provisions of the Local Law relating to Residential Parking Permits have been found to be inadequate, and other sections are in need of review, and it is intended that proposed amendments to the Local Law be put to Council soon.

**VOTING**

Simple Majority

**OFFICER RECOMMENDATION**

That Council:

- (1) Restrict parking in Bryan Way adjacent to No. 134 Marine Parade to permit holders only and that residents of No. 134 Marine Parade be eligible to apply for parking permits.
- (2) Restrict parking in Eileen Street adjacent to No. 134 Marine Parade to permit holders only and that residents of No. 134 Marine Parade be eligible to apply for parking permits.

Note: The Committee did not favour the proposed expansion of the residential permit system.

As there was no mover or seconder for the recommendation, the motion lapsed.



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**1.1.6 REVIEW OF STANDING COMMITTEES - PROPOSED STRATEGIC PLANNING COMMITTEE**

**File No:** X4.11  
**Author:** Mr S Tindale  
**Author Disclosure of Interest:** Nil  
**Report Date:** 14 July, 2003  
**Senior Officer:** Mr S Tindale

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**SUMMARY**

Two options are presented for Council's consideration.

Option A is that Council form a third standing Committee of the Council to be known as the Strategic Planning Committee which is to meet quarterly.

Option B is that Council meet as a committee of the whole on a quarterly basis to consider and/or make decisions of a strategic nature.

**STATUTORY ENVIRONMENT**

Section 5.8 of the Local Government Act provides that:

*A local government may establish committees of 3 or more persons to assist the council and to exercise the powers and discharge the duties of the local government that can be delegated to committees.*

**POLICY IMPLICATIONS**

Resolution C109 of September 1999 sets out the areas of responsibility for Council's two standing committees as follows:

***DEVELOPMENT SERVICES***

- *Town Planning matters, specifically relating to private land*
- *Building matters, relating to private and public buildings*
- *Environmental Health matters, relating to residential and commercial areas and buildings classified as 'Public Buildings' by the Health Department of WA.*

*The role of the committee is as follows:*

***Policy***

*To develop policy proposals and strategic plans, relevant to the area of responsibility, for consideration by Council.*

***Statutory***

*To consider development applications and reports, relevant to building and environmental health matters, and make appropriate recommendations in accordance with statutes, regulations, common and local laws and Council's adopted policies.*

***Activities***

*To consider reports and make recommendations to Council on:*

- *Town Planning Scheme and associated policies, State Government initiatives or policies relevant to Town Planning,*
  - *Subdivisions and Amalgamations*
  - *Statutes*
  - *Rights of Way acquisition or closure*
-

- *Building and Health control and inspection services*
- *Pest control*
- *Food analysis*
- *Noise control*
- *Building local-laws, signs and swimming pools.*
- *Traffic and transport matters in conjunction with the Works and Corporate Services Committee when appropriate.*

**Delegations**

*Council has delegated power to the committee to:*

- *provide planning consent for development proposals which fulfil the requirements of the Town Planning Scheme, but for which objections have been received;*
- *approve development applications which require concessions, but for which no objections have been received; and*
- *approve development applications where objections have been received, but the objectors' concerns can be satisfied with negotiated amendments to the proposal.*

**WORKS AND CORPORATE SERVICES**

*Areas of responsibility:*

- *Financial management*
- *Electoral matters*
- *Administrative matters*
- *Community development and human services matters*
- *Law enforcement*
- *Construction and maintenance of Council infrastructure and assets*
- *Special projects.*

*The role of the committee is as follows:*

**Policy**

*To develop policy proposals and strategic plans relevant to the area of responsibility for consideration by Council.*

**Statutory**

*To consider reports on works, financial management, electoral, policy, administrative and ceremonial matters and make recommendations to Council within the relevant statutory regulations, common and local laws.*

**Activities**

- *To provide direction and advice to Council on matters relevant to:*
- *Governance and ceremonial matters*
- *Issues relating to regional services or facilities*
- *Financial management, including Principal Activities Plan and Budget preparation*
- *Rating and electoral rolls*
- *Leases, contracts, general legal matters and insurance*
- *Waste Management*
- *Staffing matters*
- *Administrative matters*
- *Community, human services and cultural development*
- *Library services*
- *Law enforcement*
- *Property, infrastructure and asset matters*
- *Works and special projects*
- *Traffic and transport matters in conjunction with the Development Services Committee when appropriate.*

**STRATEGIC IMPLICATIONS**

Greater rigour in the way strategic issues are handled by Council.

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**FINANCIAL IMPLICATIONS**

Nil.

**BACKGROUND**

In July 1998, Council reduced the number of standing committees from four to two in order to streamline the operations of Council and reduce the frequency and duration of committee meetings.

The then Works and Special Projects Committee was joined with the Corporate Services Committee to form a new Works and Corporate Services Committee.

The roles and responsibilities of the then Policy Committee were farmed out to the newly constituted Works and Corporate Services Committee and the Development Services Committee.

With the recent re-election to Council of Mayor Rob Rowell, the absence of a Policy Committee has been queried.

At the same time new and existing elected members of Council have queried the perceived lack of opportunity to discuss things “in the round” in the absence of any formal forum for general discussion. The current committee meetings focus very much on the resolution of specific issues.

**CONSULTATION**

The CEO has spoken to the Mayor, senior staff and several elected members on this matter.

**STAFF COMMENT**

While plans are in hand to revisit Council’s strategic plan during the month of August, it does seem that we are all too preoccupied with issues of the day rather than taking time out to focus on the “big picture” stuff.

Town Planning Scheme No. 3 promises a lot but it has languished while Council resources have been directed towards overcoming staff shortages, dealing with development applications and appeals, and generally defending Council’s heritage stance.

In the meantime a holistic approach has yet to be taken to the overall development of the district. Developments occur within the framework of a tired town planning scheme.

The Cottesloe Village and Marine Parade precincts demand our attention, along with the rail and road corridor. At the same time there are some very mixed views as to how Council’s own land assets should be maintained, developed, or disposed of and a consensus of opinion needs to be found.

It seems that Town Planning Scheme No. 3 has become a quest for the holy grail and that all else has fallen by the wayside.

In order to bring rigour to the implementation of what are obviously strategic issues, a case can be made for institutionalising regular meetings of a new committee charged with the overall responsibility for implementing strategic issues.

It has been suggested that the Policy Committee should be reconvened.

However if one looks at the recommendations of the Policy Committee made during its last years a number of things stand out that tend not to support its reactivation.

Firstly it was preoccupied with the adoption of administrative and Council policy. This is no longer a major consideration for Council given the passage of time and the evolution of policy for almost every circumstance.

Secondly (as was subsequently realised) it quite clearly dealt with many items that could have easily been dealt with by other standing committees.

Thirdly it had what might best be described as agenda "fillers" e.g. the receiving of reports.

Fourthly it seems a failed attempt was made to give the committee some real clout by making it a board of review and effectively diminishing the role of Council and to a lesser extent, staff.

Notwithstanding the perceived failings of the Policy Committee, its membership was commendably drawn from across the Council. It included the Mayor, Deputy Mayor, Committee Presiding Members and one Councillor.

Such a committee structure for the proposed new Strategic Planning Committee could be useful to Council - drawing as it does across the broad range of Council activities.

However such a committee membership structure may bring forth criticisms of an elite inner cabinet having an inordinate say over Cottesloe's future - notwithstanding Council's ultimate right to veto anything the committee may recommend to it.

An alternative proposal is to have Council meeting as a committee of the whole and effectively allowing all elected members an equal say in the development of the district from the ground up. This may not prove to be particularly workable (i.e. efficient and effective) given 11 elected members with a diverse range of views and experience. With Council meeting as a committee of the whole there is a distinct possibility of instant decisions being made without pause or time for reflection. At least with a committee recommendation going to Council there is an intervening week to discover new information, new arguments, or rebuttals before a matter is finally resolved by Council.

In my view, a new committee with a membership based on that of the old Policy Committee has much to recommend it but only with the following rider. The rider would be that all Council members could participate in and debate on matters at any Strategic Planning Committee meeting - but not vote on them.

In this way all elected members could have a say on a matter in the less formal environment of a committee meeting, while at the same time allowing the timely and considered passage of recommendations through to Council.

It should be noted that the following recommendations envisage the extension of this right of participation to all standing committees.

The terms of reference for the committee would be best served at the outset by deleting the words "*and strategic plans*" from the *Policy* subheadings of the current standing committees shown above.

The new Strategic Planning Committee's terms of reference would therefore simply be as follows.

- *To develop and provide recommendations to Council on the implementation of Council's strategic objectives.*
- *To review and provide guidance to Council in the adoption, modification or deletion of Council's strategic objectives.*

In my view, the adoption of Town Planning Scheme No. 3 is a strategic objective and falls within the ambit of the proposed Strategic Planning Committee. Council may like to consider winding up the Town Planning Scheme Review Committee and consigning its roles and responsibilities to the Strategic Planning Committee.

The frequency of meetings of the proposed Strategic Planning Committee is open to debate, but Council should be aware that existing resources are fully committed to servicing the existing two standing committees.

Once in every quarter there is an "extra" week and depending Council's normal meeting cycle, it is recommended that the proposed Strategic Planning Committee meet in that week.

The important thing is to make a start!

## **VOTING**

Absolute majority if committee members are to be appointed.

## **OFFICER & COMMITTEE RECOMMENDATION**

Moved Cr Miller, seconded Cr Furlong

That Council:

- (1) That Council form a third standing Committee of the Council to be known as the Strategic Planning Committee.
  - (2) That the Committee be comprised of the Mayor, Deputy Mayor, Works & Corporate and Development Services Committee Presiding Members and one other Councillor.
-

- (3) That the Committee meet on a Monday at 7.00 pm in the “extra” week of each quarter.
- (4) That the terms of reference for the committee be as follows:
  - To develop and provide recommendations to Council on the implementation of Council’s strategic objectives.
  - To review and provide guidance to Council in the adoption, modification or deletion of Council’s strategic objectives.
- (5) That Council wind up the Town Planning Scheme Review Committee and consign its roles and responsibilities to the Strategic Planning Committee
- (6) That as a matter of policy, all elected members be allowed to participate in the debate and discussion of any Council Standing Committee but only to the extent that elected members who have not specifically been elected by Council to a Standing Committee shall not vote on any matter immediately before that particular Standing Committee meeting.

A secret ballot was held which resulted in Cr Robertson being elected to the committee.

### **COUNCIL RESOLUTION**

#### **That Council:**

- (1) That Council form a third standing Committee of the Council to be known as the Strategic Planning Committee.**
- (2) That the Committee be comprised of the Mayor, Deputy Mayor, Works & Corporate and Development Services Committee Presiding Members and Cr Robertson.**
- (3) That the Committee meet on a Monday at 7.00 pm in the “extra” week of each quarter.**
- (4) That the terms of reference for the committee be as follows:**
- (5) To develop and provide recommendations to Council on the implementation of Council’s strategic objectives.**
- (6) To review and provide guidance to Council in the adoption, modification or deletion of Council’s strategic objectives.**
- (7) That Council wind up the Town Planning Scheme Review Committee and consign its roles and responsibilities to the Strategic Planning Committee**
- (8) That as a matter of policy, all elected members be allowed to participate in the debate and discussion of any Council Standing Committee but**

**only to the extent that elected members who have not specifically been elected by Council to a Standing Committee shall not vote on any matter immediately before that particular Standing Committee meeting.**

Absolute Majority Attained, Carried 11/0

**1.1.7 CURTIN AGED PERSONS FOUNDATION INC - DISSOLUTION**

**File No:** C16.2  
**Author:** Mr S Tindale  
**Author Disclosure of Interest:** Nil  
**Report Date:** 14 July, 2003  
**Senior Officer:** Mr S Tindale

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**SUMMARY**

Members of the Curtin Aged Persons Foundation are continuing the process of dissolving the organisation.

By resolution, the members of the Curtin Aged Persons Foundation (which includes each local government) must determine the appropriate institution to whom the remaining assets are to be handed over – which in this case will be the Curtin Aged Persons Homes.

As a member of the Curtin Aged Persons Foundation the Town of Cottesloe is required to pass a formal resolution endorsing the dissolution of the Curtin Aged Persons Foundation.

Minter Ellison is drafting the necessary letters and the resolution for Council's consideration which is expected to be to hand by the time of the Works & Corporate Services Committee meeting.

**STATUTORY ENVIRONMENT**

Nil.

**POLICY IMPLICATIONS**

Nil.

**STRATEGIC IMPLICATIONS**

Nil.

**FINANCIAL IMPLICATIONS**

Nil.

**BACKGROUND**

The Curtin Aged Persons Foundation was formed primarily as a fundraising arm for Curtin Aged Persons Homes.

Curtin Aged Persons Homes manages RiverSea and Wearne hostels. The day-to-day operation of the hostels is contracted out in turn by Curtin Aged Persons Homes to Churches of Christ Homes and Community Services.

Commonwealth legislation now largely controls the standard of aged accommodation, client eligibility and the overall standard of care through various Commonwealth funding subsidies.

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**CONSULTATION**

This agenda item has been prepared largely on the advice of the CEO of the Shire of Peppermint Grove.

**STAFF COMMENT**

With Commonwealth funding, the need to raise local capital to solve local accommodation needs for the aged has reduced in importance – at least for the time being.

The current operators of the hostels have demonstrated that Curtin Aged Persons Homes can become more financially viable if the number of beds is increased. The figures stack up favourably for the required expansion works - even after an allowance is made for the cost of borrowing funds from the commercial sector.

Given the healthy financial prognosis for Curtin Aged Persons Homes, the emerging view is that two separate bodies (CAPF and CAPH) are not required and that both should be consolidated into one organisation. The Curtin Aged Persons Foundation has had fairly lengthy periods of fundraising inactivity and from time to time its ongoing functional role of been called into question. It is therefore the prime candidate for dissolution.

Currently the Curtin Aged Persons Foundation has cash in the bank and term deposits amounting to approximately \$400,000.

It is anticipated that the transferred funds will be of great benefit to Curtin Aged Persons Homes for use in establishing a number of beds that ordinarily would not receive a Commonwealth subsidy but would be open to fee-paying clients. This would keep faith with the purpose for which the funds were raised and add to the overall financial viability of Curtin Aged Persons Homes.

The local governments of Claremont, Cottesloe, Mosman Park and Peppermint Grove are “establishment members” of the Curtin Aged Persons Foundation and as such, they must determine, by resolution, the appropriate institution(s) to whom the surplus property is to be transferred.

Because the dissolution of an incorporated association is a reasonably complex procedure, it is being undertaken with advice from the law firm of Minter Ellison.

The process for dissolving the Curtin Aged Persons Foundation must be approved by the Commissioner for Fair Trading. The current time-frame for the winding up requires the establishment members (Councils) to resolve to proceed with the wind up during July and allow the Curtin Aged Persons Foundation to meet in early August to complete the process.

**VOTING**

Simple Majority

**OFFICER & COMMITTEE RECOMMENDATION**

Moved Cr Miller, seconded Cr Furlong

That Council adopt the resolution provided by Minter Ellison relating to the dissolution of the Curtin Aged Persons Foundation.

**AMENDMENT**

Moved Cr. Morgan, seconded Cr. Sheppard

That the motion be amended by adding after the words "Curtin Aged Persons Foundation" the following:

*“, subject to:*

- (1) the Chief Executive Officer confirming the Town's interests are protected by the resolution and providing advice of same to all elected members; and*
- (2) the matter being referred back to Council for further consideration in the event of any elected members expressing disquiet to the Chief Executive Officer on the resolution provided by Minter Ellison.”*

Carried 10/1

The amended motion was put.

**COUNCIL RESOLUTION**

**That Council adopt the resolution provided by Minter Ellison relating to the dissolution of the Curtin Aged Persons Foundation, subject to:**

- (1) the Chief Executive Officer confirming the Town's interests are protected by the resolution and providing advice of same to all elected members; and**
- (2) the matter being referred back to Council for further consideration in the event of any elected members expressing disquiet to the Chief Executive Officer on the resolution provided by Minter Ellison.**

Carried 10/1

**1.1.8 GRAFFITI CONTROL**

**File No:** E6.1  
**Author:** Mr S Tindale  
**Author Disclosure of Interest:** Nil  
**Report Date:** 16 July 2003  
**Senior Officer:** Mr S Tindale

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**SUMMARY**

A recommendation is made is to adopt a modified version of the Town of Mosman Park's policy for the control of graffiti on private property.

Subject to the adoption of the policy, funds of approximately \$20,000 may be set aside from any additional carried forward surplus from the 2002/2003 financial year in order to fund the graffiti removal service.

**STATUTORY ENVIRONMENT**

Nil.

**POLICY IMPLICATIONS**

Adoption of the recommendation will result in a new Council policy.

**STRATEGIC IMPLICATIONS**

Council's strategic plan envisages "*A safe, clean and attractive town.*"

**FINANCIAL IMPLICATIONS**

Given that the proposed policy may not take effect until the second quarter of the new financial year, an estimate of \$20,000 seems appropriate. For a full year of operation, a figure of \$30,000 is considered to be more realistic.

As the amount has not been budgeted, it can only be funded from an additional carried forward surplus from last year's operations (yet to be found), by running a deficit budget or by pruning back expenditure in another area.

Whichever option is chosen, an absolute majority is required.

**BACKGROUND**

Several months ago Cr Sheppard raised his concern at the proliferation of graffiti - particularly along the Stirling Highway frontage and on the fences and walls of private properties. As Stirling Highway forms a boundary of the Town of Cottesloe, the presence of graffiti does little to enhance the image or first impressions of the town.

Historically the Town of Cottesloe has confined its graffiti removal service to its own infrastructure with Westrail, Main Roads WA and Western Power all having their own graffiti removal regimes.

As Westrail, Main Roads WA and Western Power don't have a staff presence in the district, Council staff are frequently called upon by the residents of Cottesloe to act as intermediaries in reporting instances of graffiti vandalism to the responsible authorities.

We also receive complaints concerning graffiti on private property. Dealing with these complaints requires a great deal of diplomacy from Council staff, as private interests are involved. Complainants expect their complaints to be acknowledged and those property owners who bear the brunt of graffiti vandalism don't really need to be reminded of their ongoing war against repeated graffiti attacks.

### **CONSULTATION**

Acknowledging that the Town of Cottesloe has a problem, the matter was taken up with the WESROC Executive in order to gauge the extent of the problem in the Western Suburbs and also to determine whether some combined graffiti response effort might be in order.

### **STAFF COMMENT**

The matrix shows that Cottesloe and Peppermint Grove are alone in not having a free graffiti removal service for private properties amongst the six local governments that make up the Western Suburbs.

The Town of Cottesloe currently uses specialist staff from the Town of Mosman Park to remove graffiti from Town of Cottesloe property.

The relationship has been relatively amicable although seasonal demand and the availability of staff has, on the odd occasion, created some problems. We have been assured that these problems have now been overcome.

If we were to extend the relationship with the Town of Mosman Park to the removal of graffiti from private property, the Town of Mosman Park's graffiti removal policy should be adopted by Cottesloe to ensure that there is no confusion at the operational level.

The Town of Mosman Park's policy (adapted to Cottesloe's policy format and somewhat modified) follows in the Officer Recommendation.

If Council chooses not to adopt the private graffiti removal policy, then the onus will fall back on to individuals within the community to take care of their "own" problems. This is not a bad thing for Council staff, as it will consume less of their time and effort.

It saves Council money - albeit at the expense of those residents who place a high value on the town's appearance.

The downside is that in the absence of a planned graffiti removal response, Cottesloe may well become the preferred target for graffiti vandals. The "pleasure" of being a graffiti vandal comes mainly from seeing the results of one's tag day after day and being recognised for it by others.

There is little to be gained in attempting to refer the problem up to the State Government. It has pulled back on the commitments of previous governments to the graffiti problem in the face of higher priorities (health, education, police etc.).

Discussions with local police and neighbouring Council staff indicate that we could be doing things smarter from a response point of view, but the deeper problems are not easily tackled (e.g. the meaningful prosecution of juveniles).

The question therefore simply reduces to whether the Town of Cottesloe wants a free private graffiti removal service or not.

## **VOTING**

Absolute Majority

## **OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION**

Moved Cr Miller, seconded Cr Furlong

### **That Council:**

- (1) **Adopt the following policy for the control of graffiti on private and commercial property:**

#### **“TOWN OF COTTESLOE**

#### **GRAFFITI VANDALISM**

##### **(1) OBJECTIVE**

To provide a service to clean, remove or cover incidents of graffiti vandalism to private or commercial property in Cottesloe within limited financial constraints.

##### **(2) PRINCIPLES**

Rapid removal of graffiti will:

- Restore private or commercial property to a condition that directly protects the property's financial, amenity and aesthetic values and indirectly protects the town's overall image.
- Discourage further acts of graffiti vandalism by detracting from the perpetrators' sense of fame or achievement.

##### **(3) ISSUES**

- Maintaining a safe, clean and attractive town.
- Expense to the community in addressing, or not addressing, graffiti vandalism.
- Working with neighbouring local governments to reduce the incidence of graffiti vandalism in the Western Suburbs.

**(4) POLICY**

The Town of Cottesloe will provide a free graffiti response service to the residents of Cottesloe subject to the following:

- (a) The Town of Cottesloe will clean, remove or cover all graffiti on buildings, fences and structures that are within or constitute boundaries of all reserves under the care and control of the Town of Cottesloe including but not limited to all parks, reserves, public access ways and road reserves.
- (b) Where the structure is a fence, wall or building on a shared boundary with a private property or reserve under the care and control of another authority, the adjacent landowner must provide permission for the graffiti response to be carried out prior to the cleaning, removing, or covering activity.
- (c) Where the structure is a fence, wall or building on a shared boundary with a private property or reserve under the care and control of another authority, the adjacent landowner will indemnify the Town of Cottesloe against all actions, claims, damages, costs and expenses whatsoever resulting from the graffiti response activity.  
Note: This does not include workers compensation cover of Council Staff or Councillors.
- (d) Photographic records will be kept of all graffiti incidents. These will be forwarded to the Police Service where necessary.
- (e) The Town of Cottesloe will endeavour to respond to all reported incidents of graffiti vandalism within 24 hours of notification and the receipt of written permission to respond.
- (f) Where information leads to a successful prosecution of a graffiti vandal, the informant is eligible for a \$500 reward.

**RESOLUTION NO: 1.1.8/2003**  
**ADOPTION DATE: 28 July, 2003**  
**REVIEW DATE: July, 2011”**

- (2) Set aside funds of approximately \$20,000 from any additional carried forward surplus from the 2002/2003 financial year in order to fund the graffiti removal service;**
- (3) Refer the matter back to Council for further consideration in the event that such funds cannot be found.**

Absolute Majority Attained, Carried 10/1

**1.1.9 REVIEW OF THE WALGA MODEL CODE OF CONDUCT**

**File No:** X4.1  
**Author:** Mr S Tindale  
**Author Disclosure of Interest:** Nil  
**Report Date:** 16 July 2003  
**Senior Officer:** Mr S Tindale

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**SUMMARY**

A recommendation is made to oppose the changes to the Local Government Act proposed by the Technical Working Group.

**STATUTORY ENVIRONMENT**

Local Government Act

**POLICY IMPLICATIONS**

Council currently has

**STRATEGIC IMPLICATIONS**

Council's Strategic Plan

**FINANCIAL IMPLICATIONS**

Nil.

**BACKGROUND**

The WA Local Government Association is in the process of reviewing its Model Code of Conduct for Local Government. The Model Code, which was produced in response to the requirements of the *Local Government Act 1995*, has been adopted by most local governments with varying degrees of amendment.

The Model Code of Conduct review is being undertaken by a Technical Working Group consisting of representatives from the Association, Local Government Managers Australia and the Department of Local Government and Regional Development.

One of the key issues identified by the Working Group in preliminary consultation with Councils was the lack of enforceability of current Local Government Codes of Conduct. As a consequence, the Working Group has recommended that a minimum Code of Conduct be enshrined into regulations to the *Local Government Act*. This position has been supported by the Minister for Local Government and the Parliamentary Joint Standing Committee on Delegated Legislation.

Proposed Code of Conduct regulations have now been developed by the Working Group. It should be noted that the provisions contained within the regulations are conceptual only. They are designed to stimulate discussion and debate, with the objective of reaching a direction forward for Local Government on this important issue.

A discussion paper on the regulations has also been prepared which includes a proposed set of ethical principles and a copy of the draft regulations. The paper was dispatched to all elected members with the CEO's monthly report for June so that each elected member had extra time to consider the potential impact of the proposed regulations.

A copy of the discussion paper can be electronically downloaded from the WA Local Government Association's website which can be found at the following address:  
[http://www.walga.asn.au/policy/governance/governance\\_index.htm](http://www.walga.asn.au/policy/governance/governance_index.htm)

Should the Code of Conduct regulations be adopted, they will be mandatory and have application to all local governments within Western Australia, thereby achieving uniform minimum standards of behaviour for elected members and committee members.

The Working Group has recommended that the provisions of the regulations be enforced through a proposed disciplinary framework for local government, which includes a Disciplinary Tribunal. This framework is presently under development and remains the subject of ongoing consultation with local government.

The Working Group has also suggested that the proposed Code of Conduct regulations have application to elected members and committee members, but not employees. For employees, it has recommended that a separate Code of Conduct be developed and linked to contracts of employment. Breaches of the employee Code of Conduct would be dealt with by the CEO or designated senior officers via the performance management process. Breaches of the Code by the CEO would be dealt with by the Council.

Comments on draft regulations have been invited from all Councils by 1 August, 2003.

All submissions received will be considered by the Governance Policy Team with a view to developing a representative position for Local Government. This will then be submitted to state Council for endorsement prior to being referred to the Minister for Local Government and Regional Development.

Should there be a sufficient level of interest in the proposed Code of Conduct regulations, the Association will consider holding a series of information forums in various regional centres. At this stage, it is also planned to hold an information forum on the draft regulations and the Local Government Disciplinary Tribunal at Local Government Week this year.

## **CONSULTATION**

Nil.

## **STAFF COMMENT**

The discussion paper has some topical interest with respect to the recent debate over the closure of a portion of Jarrad Street and public perceptions of a conflict of interest amongst Councillors. Parts 5, 6 and 7 of the discussion paper relate.



In my view local government is fast reaching the stage where its over-regulation will soon see it becoming dysfunctional in terms of delivering good government. Ever-increasing bureaucracy (rules and regulations) tends to divert the focus away from “good” outputs to “good” inputs.

At the risk of over-simplification, a focus on inputs rather than outputs invariably undermines the overall efficiency and effectiveness of government. When governments become inefficient, privatisation or contracting-out occurs in the somewhat vain hope that the risk of corruption is better handled by the less regulated private sector!

The State Records Act, new Residential Design Codes, Building Energy Efficiency Codes etc. are all well-intentioned but are demanding more bureaucratic controls than ever before in an environment where there is a clamour for reduced rates and taxes. While more checks and balances may make it easier to catch those that are basically corrupt, for most elected members those same checks and balances are only going to be huge demotivators.

Why stand for Council if one’s behaviour is going to be open to constant challenge?

Ian Temby QC, has spoken to the subject of corruption in the public service and in his view that codes of conduct should not generally contain sanctions i.e. be turned into regulations. Codes of Conduct are meant to encapsulate good organisational behaviour and should not be legislated for.

Unfortunately WA legislators seem to lean towards over-regulation and the public has generally become accustomed to it.

## **VOTING**

Simple Majority

## **OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION**

Moved Cr Miller, seconded Cr Furlong

**That Council advise the WA Local Government Association of the Town of Cottesloe’s general opposition to an enforceable minimum Code of Conduct on the grounds that the costs of enforcement have yet to be demonstrated as exceeding the benefits to be gained.**

Carried 11/0

**1.2 ENGINEERING****1.2.1 BEACH - TREES AND BUILDINGS**

**File No:** E2.2, E2.7, E2.8  
**Author:** Mr M Doig  
**Author Disclosure of Interest:** Nil  
**Report Date:** 15 July, 2003  
**Senior Officer:** Mr S Tindale

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**SUMMARY**

A recommendation is made to take no further action on the matter.

**STATUTORY ENVIRONMENT**

Local Government Act  
Beach Local Law.

**POLICY IMPLICATIONS**

Nil

**STRATEGIC IMPLICATIONS**

Nil

**FINANCIAL IMPLICATIONS**

Nil

**BACKGROUND**

In April Council resolved:

*That administration be requested to prepare a full report in relation to the damage/destruction of trees adjacent to the Indiana Tea House and adjacent to the North Cottesloe Café site; the report to include options for prosecution and/or seeking compensation and appropriate consultation with government agencies.*

**CONSULTATION**

The proprietors of the Indiana Tea House and Barchetta have been informed of Council's resolution and have provided written responses.

**STAFF COMMENT**

There are two sites involved with different circumstances.

(1) Indiana Tea House Site

Upon being advised that lopping was in progress, Council's Works Supervisor attended the site at 9.30 am on the day. The lopping was stopped immediately although the contractors had completed most of the lopping by that time. After learning that the lessee had engaged the contractor and reviewing extent of the work completed, the contractors were permitted to complete the tree they were working on.

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The proprietors of the Indiana have advised that they have maintained the trees for two and a half years and that the trees in question have been trimmed previously, as they tend to obstruct the walkway and dual use path. The decision to remove the two trees was made on the day in order to resolve the problem. They also make the point that it was felt the removal of two small trees would open up the frontage to discourage vandalism and unlawful use of the verandah areas.

The explanations given are reasonable, particularly as the trees and Indiana Tea House are located on a separate reserve created for the development and clause 15.8 of the lease provides:

*"The lessee must maintain that part of the Premises surrounding building in a tidy condition including but not limited to providing proper care for any grass, trees or plants on the Premises."*

In these circumstances Council is not in a position to consider legal action. All that is required is for the lessees to liaise with staff before undertaking such works in the future.

(2) Barchetta Site

At the Barchetta site, the trees are on the adjacent recreation reserve and were the subject of the following conditions Western Australian Planning commission.

Condition 8 A photographic record of the site and surrounding area being provided to the Town of Cottesloe:

- (a) before demolition;
- (b) between demolition and construction; and
- (c) completion of the construction process.

Condition 9 The surrounding vegetation shall not be disturbed by the demolition or construction process. Should any vegetation be proposed to be disturbed, application for such is to be submitted to the Western Australian Planning Commission for its approval prior to vegetation removal or otherwise.

Council Planning section received copies of the photographs in accordance with the condition of approval.

Following completion of the development, it was noted that landscaping had been removed from the reserve abutting the development site. The Manager, Development Services requested a meeting with staff from the Department for Planning and Infrastructure in early December, 2002 to discuss this matter. However, it was not until early March 2003 that two staff members from the Department for Planning and Infrastructure met on-site with the Manager, Development Services. At the meeting in March 2003, the Department for Planning and Infrastructure staff accepted the clearing and cutting of the vegetation that had occurred and decided not to take any further action.

**VOTING**

Simple Majority

**OFFICER RECOMMENDATION**

That Council receive the written responses and staff report relating to the unauthorised pruning of trees adjacent to the Indiana Tea House and Barchetta and take no further action.

**COMMITTEE AMENDMENT NO. 1**

That Council write to the lessees of Indiana Tea House and request a variance in the agreement that requires the lessee to liaise with Council staff prior to undertaking of any pruning of vegetation on the lease area.

**COMMITTEE AMENDMENT NO. 2**

That Council write to Mr Gamble of Barchetta expressing concern at the unlawful tree lopping, requesting that he show cause why he should not be prosecuted and reminding him that he should not remove any vegetation again.

**COMMITTEE RECOMMENDATION**

Moved Cr Miller, seconded Cr Furlong

- (1) That Council write to the lessees of Indiana Tea House and request a variance in the agreement to require the lessee to liaise with Council staff prior to undertaking of any pruning of vegetation on the lease area.
- (2) That Council write to Mr Gamble of Barchetta expressing concern at the unlawful tree lopping, requesting that he show cause why he should not be prosecuted and reminding him that he should not remove any vegetation again.

**AMENDMENT**

Moved Cr Utting, seconded Cr Sheppard

That more serious action be taken against the perpetrators of the vegetation damage.  
Lost 1/10

**PROCEDURAL RESOLUTION**

Moved Cr Miller, seconded Cr Sheppard,

That the motion be now put.

Carried 7/4

**COUNCIL RESOLUTION**

- (1) That Council write to the lessees of Indiana Tea House and request a variance in the agreement to require the lessee to liaise with Council staff prior to undertaking of any pruning of vegetation on the lease area.**
- (2) That Council write to Mr Gamble of Barchetta expressing concern at the unlawful tree lopping, requesting that he show cause why he should not be prosecuted and reminding him that he should not remove any vegetation again.**

Carried 10/1

**1.2.2 COTTESLOE BEACH PYLON**

**File No:** E2.14  
**Author:** Mr M Doig  
**Author Disclosure of Interest:** Nil  
**Report Date:** 9 July, 2003  
**Senior Officer:** Mr S Tindale

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**SUMMARY**

In August 2000 Cottesloe Council resolved to apply have the Cottesloe Beach concrete pylon listed under the Heritage Act as a valuable icon of Cottesloe.

As part of the process, the Department of Land Administration has asked if Council would be prepared to accept a managed reserve over the pylon site in order to formalise the proposed heritage listing.

**STATUTORY ENVIRONMENT**

Heritage Act  
Land Act.

**POLICY IMPLICATIONS**

Nil

**STRATEGIC IMPLICATIONS**

Nil

**FINANCIAL IMPLICATIONS**

Nil

**BACKGROUND**

In April 2003 the Heritage Council of WA advised that it had entered the Cottesloe Beach Pylon into the State Register of Heritage Places on an interim basis. As the pylon is located offshore, the Heritage Council also requested DOLA to create a crown land title for the parcel of land (sea bed) surrounding the pylon.

Council and its insurers have been discussing the very complex liability issues for many years and after advising Council that they could not obtain public liability cover, it was eventually obtained and is still in place. The insurers have been informed of the proposed vesting and have advised that they doubt if the acceptance of the "managed reserve" would change the risk.

**CONSULTATION**

Nil

**STAFF COMMENT**

Council built the structure in the 1930s and replaced the spire in the 1996 after storm damage. Recent reports indicate that the base structure is severely undercut as a

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result of wave action and corrosion of the steel reinforcement. As integrity of the remaining structure is unknown, the future of the structure is uncertain. One view is that it could be toppled by severe storm action but there is no evidence to support this theory. If it were to happen Council would be faced with the difficult task of making the area safe.

**VOTING**

Simple Majority

**OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION**

Moved Cr Miller, seconded Cr Furlong

**That Council advise the Department of Land Administration that Council would be prepared to accept a managed reserve over the Cottesloe Beach pylon site in order to formalise the proposed heritage listing.**

Carried 8/3

**1.2.3 STATION STREET SUMP - PARKING OPTION**

**File No:** E15.9  
**Author:** Mr M Doig  
**Author Disclosure of Interest:** Nil  
**Report Date:** 10 July, 2003  
**Senior Officer:** Mr S Tindale

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**SUMMARY**

To consider a concept for the future provision of a two level parking station in the Town Centre in order to better utilise the space above a major drainage basin, conceal the drainage basin, increase parking availability both in the short and long term, together with the rationalisation of assets to fund the project. The design concept is at the stage where it could be advertised for public comment.

A recommendation is made to defer a decision pending exploration of other options.

**STATUTORY ENVIRONMENT**

Nil

**POLICY IMPLICATIONS**

Nil

**STRATEGIC IMPLICATIONS**

The concept has strategic importance, as it would provide parking in the Town Centre and be a hedge against the possible loss of much of the existing parking in Railway Street and Brixton Street, all of which is on land under the control of Westrail.

**FINANCIAL IMPLICATIONS**

The design concepts were paid for in 2002/3. If Council decides to progress the concept, the full cost of detailed design has been quoted at \$29,500.

**BACKGROUND**

In November 2002 (item C104) Council resolved to engage consultants to:

- (1) *prepare conceptual plans and an artist's impression of a two-storey car park on the Station Street sump site; and*
- (2) *provide a valuation for the sale of the existing car park on the corner of Station Street and Railway Street as a mixed-use development.*
- (3) *prepare conceptual plans and an artist's impression of a park on the Station Street Sump site.*

Council reached this decision in November after considering the following background information:

In 1998, Council sought advice on the commercial viability of the Council-owned land in Station Street and then resolved to seek expressions of interest for its potential development.

Two expressions of interest were received – one from the BP/McDonalds group and one from Uzbek Pty Ltd. The former related to the construction of a retail outlet with associated parking, toilet and community facilities while the latter offered three options based on the construction of a major car park with or without an office development of one or two stories.

The advice received from Chesterton International regarding the potential for development of the subject land demonstrated that it would not be commercially viable for Council to improve the land. The advice was based on the high cost of constructing a platform over the existing sump, which had to be retained as part of the drainage system.

It is a matter of history that the BP/McDonalds proposal floundered because of public opposition and that BP subsequently tried to salvage the development proposal.

In July 2002 Council resolved not to proceed with the acquisition and sale of land to BP for the purpose of redeveloping the service station site on the corner of Stirling Highway and Station Street.

Instead Council resolved that:

*“...an investigation be made of alternative uses of the Station Street sump site that fits the long term strategic development of Cottesloe and its town centre.”*

As part of the investigation, the feasibility of constructing a two-storey car park over the Station Street sump has been examined.

A thorough investigation of alternative uses of the Station Street sump site that fits the long term strategic development of Cottesloe and its town centre has not been made.

Council does not have a particular strategic vision for the “village” but Council’s strategic plan does make reference to the following under the heading of town planning.

Define, enhance and preserve the following precincts: Marine Parade (commercial and residential); Napoleon Street and Town Centre; Heritage; Recreational and Residential.

There has been some discussion about relocating the Council depot or the Council offices to Station Street but that discussion has only served to complicate rather than simplify matters. The relocation of the depot into the “village” would undoubtedly be controversial and the relocation of the Council offices raises the issue of what to do with the Civic Centre. Neither of the proposed relocations figure as a high priority for Cottesloe residents – particularly in the absence of value adding that can be easily recognised.

The issue has therefore been reduced to one of what can the Town of Cottesloe do to add value to the Town Centre area in the short to medium term.

Car parking is tight within the town centre area. At times Council has waived or reduced development charges associated with on-site car parking requirements in the Town Centre – presumably because Council has been convinced that developers are unable to make a contribution and/or Council does not have a parking project that it can be seen to be spending the money on. The construction of a new car park for \$2m will undoubtedly provide sufficient reason to ensure that parking contributions are fully levied with any new development.

The new medical centre in the town centre is putting heavy car parking pressure on Forrest Street. Properly designed, a new car park over the Station Street sump may alleviate the pressure on Forrest Street in an orderly manner.

There is no guarantee that the parking area in Railway Street on the western side will always be available. It is currently leased from Westrail by the Town of Cottesloe and may be affected by proposed east/west linkages to a realigned Curtin Avenue.



All day parking is a problem for resident businesses. Currently, Council's rangers turn a blind eye to anyone overstaying the 4-hour time limit in the 60-bay Station Street car park.

The Grove does not provide all-day parking and despite the vacant car bays, Stirling Highway seems to be a real barrier to pedestrian movements between the Grove Shopping Centre and Napoleon Street. The barrier no doubt impacts on car parking within the village – particularly for those who see safety as a significant consideration where walking is involved.

As previously advised, the Station Street sump does not lend itself to a normal commercial development because of the capital cost of putting a platform over the sump. The land only had value for BP when joined with the Stirling Highway frontage. If Council were to acquire the freehold title to the portion of the sump land that is currently held as a reserve, then it would have to pay \$285,000 for the privilege. The payment of \$285,000 would constitute a dead loss for absolutely no gain in the absence of a buyer.

By constructing a two-storey car park over the sump, Council can realise the value of the land without paying for the land itself (existing freehold land excluded). The consulting engineers have indicated that the average cost per car bay could be as low as \$15,361 per car bay. "Guesstimates" of the current value of a car bay in Station Street suggest that the real value is somewhere around \$32,000 per bay. This figure is what the Town of Cottesloe would expect a developer to pay if they were unable to provide on-site parking adjacent to Station Street.

To fund the construction of the car park, it is proposed that the existing 60-bay car park in Station Street be sold for development as a mixed residential development. A local developer has expressed a strong interest (to the extent of providing concept plans and submitting a funding proposal) in developing the land.

Naturally due process would need to be followed in listing the land for sale – either by tender or auction. The proceeds from the sale of the land may only be sufficient to construct the ground floor of the car park. Then again, the sale proceeds may be sufficient to construct the two storey version, plus much-needed public toilets under the car park ramp.

So that Council has a firmer understanding of what might be achieved, it is recommended that a valuation of the existing Station Street car park be obtained. Conceptual plans and an artist's impression of the proposed car park would also help in terms of presenting a proposal to the community, before any firm commitment is made to proceed.

The provision of car parks and public toilets are core areas of responsibility for the Town of Cottesloe.

## **CONSULTATION**

The subject of a car park over the Station Street sump was broached at a special meeting of the Cottesloe Business Association late last year.

## **STAFF COMMENT**

The prime purpose in owning this valuable site and having control of the adjacent Main Roads WA site is to provide a storm water compensating basin of sufficient size to protect the Town Centre in extreme storm conditions. However it should also be possible to find a secondary role such as decked parking, mixed parking and commercial use, or parkland.

(1) **Drainage Requirements**

The Station Street compensating basin has a capacity of 2,680 cubic metres and is by far the largest in Cottesloe. It is designed to serve a total area of 6.24 ha, of which 3.057 hectares is road verge and pavement and most of this is Stirling Highway. The remaining catchment area is a mixture of commercial and residential land.

In various scenarios for storms of 1 in 10 year intensity, the storage required is estimated to be a maximum of 1,122 cubic metres. Storms of up to 1 in 100 years require an estimated maximum of 2,894 cubic metres. The current capacity may appear conservative but Station Street is the lowest point in the district and if all else fails many of the commercial premises and Stirling Highway would otherwise be vulnerable to flooding. The base of the drainage basin is less than 2 metres above sea level.

In practice we have found that during severe storm conditions there is an additional overflow to Stirling Highway from side streets and other catchments in both Claremont and Peppermint Grove. When the compensating basin under the library car park in Peppermint Grove fills, or the gully grates on the east side of the highway are blocked, a large volume of additional water is directed to Station Street.

The new basin was severely tested in a storm in 1995, very soon after it had been doubled in size, and filled to about 70% of capacity. In January 2000 it reached an estimated 60% capacity and again in March 2003 it reached 50%. It has also been noted that this basin collects far more road grime and litter than any other. We presume that this is predominantly rubber and grease from the volume of traffic using Stirling Highway, although it is possible that some town centres traders may use the gully grates in the lanes as wash down points. While it is unlikely to ever be called upon, there is also an emergency overflow discharge line to the sump from the adjacent sewer pumping station to provide a line of relief if the system fails.

(2) **Park or Playground Option**

The suggestion that the drainage area be considered as a park has raised some interesting issues. To date there has been no discussion on the recreational use envisaged and the local demand for a park is not known. A children's playground for example may utilise up to half the basin area whereas a screened area for a few traders and staff to eat lunch could probably be accommodated in a far smaller area without compromising the function of the drainage basin to the same degree.

It would be necessary to raise any playground or park by three metres, or to road level, in order to totally avoid surface pollution. Perhaps an option would be to raise the site by say 1.5 metres and accept that the site may occasionally flood. Depending on the level created, contours and even wind direction surface pollution over the raised area would probably be significantly reduced, even if occasional inundation occurs. This would certainly not be an ideal playground situation and given the alternative sites available, would be a poor investment for Council. The risk of flooding in the Town Centre in extreme conditions would increase in direct proportion to any reduction of drainage

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capacity. At the other end of the cost scale Council could consider a concealed buffer tank system ten times the size of the system built in Broome Street. The cost of a full buffer tank system of this size could be anywhere between \$700K and \$900K. Unless an efficient gross pollutant trap and oil filtration system was also incorporated, such a system would be very vulnerable to silt build up with a sharp loss of infiltration rate and increased risk.

The concept depicts a buffer system with a capacity of say 500 cubic metres in order to accommodate regular rainfall together with grassed swale at a higher level to provide a reserve capacity of say 800 cubic metres. Development cost would be in the order of \$500,000. In all, the holding capacity and infiltration would be reduced by 50 %. Annual maintenance costs would obviously need to be increased in order to maintain the necessary infiltration rate.

(3) **Parking Options**

Decked parking is another option, as there is always a high demand for convenient parking in the town centre. It has the advantage of utilising the air space and concealing the site without compromising the drainage capacity and maintenance requirements. In addition it provides a hedge against the loss of Town Centre parking, much of which is currently under the control of Westrail. The Railway Street road reserve between Forrest Street and Jarrad Street and Brixton Street, south of Jarrad Street are only 10 metres wide. In order to provide additional parking, Council leases land on the west side of both streets from Westrail. There is also no guarantee that the car park in Jarrad Street area will always be available in its current form as some of the West Coast Highway crossing options suggest it be utilised for road purposes.

The concept plan depicts two levels with 57 generous sized bays on the ground level and a further 58 bays on the upper level. If a single deck car park was built the number of bays could be increased to 70 as there would be no need to set aside space for ramps.

The design has not been taken beyond a concept stage and detailed costing has not been carried out. The current "guesstimate" would be \$1,800,000 for the complete two deck parking area as depicted in the concept, or \$1,000,000 for a single deck.

(4) **Funding by Sale of Other Land**

For the purpose of this exercise it has been proposed that Council fund the construction by selling the car park at the corner of Railway Street and Station Street. Recent sales evidence, based on the property at the corner of Railway Street and Jarrad Street, suggests that the value of four lots, totalling 1754m<sup>2</sup>, would be in the order of \$2,200,000. This estimate is based on the fact that the Vivian Plumbing site of 1,277m<sup>2</sup> sold for \$1,600,000 or \$1,253 per m<sup>2</sup>. The Station Street land could have a higher value as it is close to other commercial properties and is more distant from the rail crossing and Jarrad Street traffic. The former 'Kentucky Fried Chicken' site at the corner of Forrest Street and Stirling Highway sold for \$2,850,000 or \$1381 m<sup>2</sup>.

By comparison, in July 2002 the Valuer General used a value of \$940m<sup>2</sup> when calculating the value of a portion of the sump under discussion. This figure was

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discounted to \$570 to take into account the cost of decking in order to achieve any useful additional purpose. The value of the whole of the existing sump site would therefore be approximate \$839,000, as it exists. While the sump has functional value to the Town, the reality is that the commercial value is zero unless it can be utilised in some way.

It has previously been suggested that the 610m<sup>2</sup> portion belonging to Main Roads WA has a value of approximately \$285,000. Council could counter by suggesting that provision for drainage of Stirling Highway is inadequate and that Main Roads WA should acquire more land for drainage purposes or compensate Cottesloe.

If the potential sale of the depot site were closer to resolution, Council could borrow in order to fund the car park development on a temporary basis. There may well be other funding options, but to date none have emerged from previous public advertising and professional enquiries.

(5) **Commercial Interest**

Representatives of APSL, Development Managers, attended the June meeting of the Works and Corporate Services Committee to outline the services they are able to provide in order to coordinate developments on behalf of multiple interests. It is understood that they are now working on the concept with BP Australia and that a submission to Council is now being prepared.

## **SUMMARY**

A single deck car park would cost approximately \$1.4M and provide approximately 70 bays (or 24 more bays than the current facility at Railway Street with a value of \$30K for each bay or \$720K in total) and after the sale of land would yield a surplus of approximately \$800K. If the foundation and piers were adequately sized, the upper deck could be built if/when other parking is lost or there is a genuine demand for customer parking. This could mean a lengthy period at a later date when the ground floor was unavailable during construction.

The two parking decks could be built for approximately \$2.1M and provide 115 bays (69 more than at present and valued at approximately \$2M) and yield a cash surplus of \$100K. If there is a real shortage of customer parking this could provide the Town Centre with a significant boost.

## **VOTING**

Simple Majority.

## **OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION**

Moved Cr Miller, seconded Cr Furlong

**That Council defer the decision to invite public comment on the design concept for a two level 115 bay car park over the drainage basin in Station Street and**

**the potential sale of the existing 46 bay car park to fund the project until other development options have been explored.**

Carried 11/0

**1.3 FINANCE****1.3.1 STATUTORY FINANCIAL STATEMENTS FOR THE PERIOD ENDING 30 JUNE, 2003**

**File No:** C7.14  
**Author:** Mr A Lamb  
**Author Disclosure of Interest:** Nil  
**Period Ending:** 30 June, 2003  
**Senior Officer:** Mr S Tindale

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**SUMMARY**

The purpose of this report is to present the Operating Statement, Statement of Assets and Liabilities and supporting financial information for the period ending 30 June, 2003, 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 attached statements are subject to change for accrued expenses and income and other year-end adjustments and will be superseded by the annual financial statements once these have been audited.

The Local Government (Financial Management) Regulations 1996 provide that a local government is to prepare monthly financial reports in such a form as it considers appropriate and that it is to prepare quarterly, or triannual, reports in a prescribed form. The practice has been to meet the quarterly or triannual, reporting requirements monthly.

The Regulations also provide that a local government need not prepare a quarterly or tri-annual report for the period ending on 30 June if before that date the Council resolves that such a report is not necessary. This part of the regulations is provided

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to save the need to produce two sets of statements for 30 June and the possible confusion of differing figures in each. It is suggested though that as the audited statements are often not produced until some months following the end of the financial year, the current practice of producing 30 June statements to the July meeting of Council is still worthwhile.

As requested, some charts have been included this month and perhaps members would like to see other changes.

**VOTING**

Simple Majority

**OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION**

Moved Cr Miller, seconded Cr Furlong

**That Council receive the Operating Statement, Statement of Assets and Liabilities and supporting financial information for the period ending 30 June, 2003, as submitted to the July meeting of the Works and Corporate Services Committee.**

Carried 11/0

**1.3.2 SCHEDULE OF INVESTMENTS AND SCHEDULE OF LOANS FOR THE PERIOD ENDING 30 JUNE, 2003**

**File No:** C7.14  
**Author:** Mr A Lamb  
**Author Disclosure of Interest:** Nil  
**Period Ending:** 30 June, 2003  
**Senior Officer:** Mr S Tindale

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**SUMMARY**

The purpose of this report is to present the Schedule of Investments and Schedule of Loans for the period ending 30 June, 2003, 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**

As will be noted from the Schedule of Investments on page 38 of the June Financial Statements, \$519,421.96 was invested as at June 30, 2003. Of this \$511,696.38 was reserved and so constituted restricted funds. 4.01% was invested with the National Bank, 56.17% with Home Building Society and 39.82% with Bankwest.

It will be noted from the balance sheet on page 7 that in addition to the investments detailed on page 38, and noted above, \$622,059 was in an investment call account and \$49,613 was in the standard call account. The interest rates on these accounts varies depending on the balance. The investment call account rates vary between 0.01% and 4.45% (balances between \$50,000 and \$100,000 attract a rate of 4%. A balance between \$100,000 and \$250,000 attracts 4.4%, and \$250,000 or more attracts a rate of 4.45% so we generally try to keep the balance of this call account over \$100,000). The standard call account rates range between 0.01% and 3.6% and the aim is to keep the balance in this account as low as practicable and only sufficient to meet payments.



The large balance in the investment call account is to cover expected payment requirements.

The Schedule of Investments Statement will be modified for future reports to include all cash, except for petty cash, and show its location and the rate of interest.

**VOTING**

Simple majority.

**OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION**

Moved Cr Miller, seconded Cr Furlong

**That Council receive the Schedule of Investments and Schedule of Loans for the period ending 30 June, 2003, as submitted to the June 2003 meeting of the Works and Corporate Services Committee.**

Carried 11/0

**1.3.3 ACCOUNTS FOR THE PERIOD ENDING 30 JUNE, 2003**

**File No:** C7.8  
**Author:** Mr A Lamb  
**Author Disclosure of Interest:** Nil  
**Period Ending:** 30 June, 2003  
**Senior Officer:** Mr S Tindale

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**SUMMARY**

The purpose of this report is to present the List of Accounts for the period ending 30 June, 2003, to Council.

**STATUTORY ENVIRONMENT**

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

**POLICY IMPLICATIONS**

Nil

**STRATEGIC IMPLICATIONS**

Nil

**FINANCIAL IMPLICATIONS**

Nil

**BACKGROUND**

The List of Accounts is presented monthly.

**CONSULTATION**

Nil

**STAFF COMMENT**

Significant payments brought to Council's attention include:

- \$19,579.49 to WA Local Government Super Plan for employee super contributions.
- \$17,381.02 to Marley Family Trust trading as K& F Concrete for various pavement jobs (not remove and install rights of way as indicated on the List of Accounts)
- \$15,310.60 to Western Metropolitan Regional Council for transfer station fees
- \$19,085.00 to Watts and Woodhouse for legal fees relating to town planning appeals
- \$42,689.02 to Wasteless for rubbish collection charges.
- \$65,046.95 and \$41,661.98 for staff payroll for June.

**VOTING**

Simple Majority

**OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION**

Moved Cr Miller, seconded Cr Furlong

**That Council receive the List of Accounts for the period ending 30 June, 2003, as submitted to the June 2003 meeting of the Works and Corporate Services Committee.**

Carried 11/0

**1.3.4 PROPERTY AND SUNDRY DEBTORS REPORTS FOR THE PERIOD  
ENDING 30 JUNE, 2003**

**File No:** C7.9  
**Author:** Mr A Lamb  
**Author Disclosure of Interest:** Nil  
**Period Ending:** 30 June, 2003  
**Senior Officer:** Mr S Tindale

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**SUMMARY**

The purpose of this report is to present the Property and Sundry Debtors Reports for the period ending 30 June, 2003, to Council.

**STATUTORY ENVIRONMENT**

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

**POLICY IMPLICATIONS**

Nil

**STRATEGIC IMPLICATIONS**

Nil

**FINANCIAL IMPLICATIONS**

Nil

**BACKGROUND**

The Property and Sundry Debtors Reports are presented monthly.

**CONSULTATION**

Nil

**STAFF COMMENT**

The Sundry Debtors report on page 37 of the June Financial Statements shows a balance of \$91,952.07 as at 30 June, 2003. Of this \$72,893.44 relates to June.

**VOTING**

Simple majority.

**OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION**

Moved Cr Miller, seconded Cr Furlong

**That Council:**

- (1) Receive and endorse the Property Debtors Report for the period ending 30 June, 2003; and**
- (2) Receive the Sundry Debtors Report for the period ending 30 June, 2003.**

Carried 11/0

**DEVELOPMENT SERVICES COMMITTEE MEETING HELD ON 21 JULY 2003**

The meeting agreed to deal with the item concerning No. 321 Marion Street first.

**1.4 PLANNING****1.4.1 NO 321 (LOT 50) MARMION STREET - TWO STOREY DWELLING**

<b>File No:</b>	<b>321 Marmion Street</b>
<b>Author:</b>	<b>Lilia Palermo</b>
<b>Attachments:</b>	<b>Location Plan Correspondence from Applicant (2) Submissions (2) Plans &amp; Elevations</b>
<b>Author Disclosure of Interest:</b>	<b>Nil</b>
<b>Report Date:</b>	<b>14 July, 2003</b>
<b>Senior Officer:</b>	<b>Mr S Sullivan</b>
<b>Property Owner:</b>	<b>Mr &amp; Mrs Layton-Smith</b>
<b>Applicant:</b>	<b>Overman &amp; Zuideveld P/L</b>
<b>Date of Application:</b>	<b>21 May, 2003</b>
<b>Zoning:</b>	<b>Residential</b>
<b>Use:</b>	<b>P - A use that is permitted under this Scheme</b>
<b>Density:</b>	<b>R20</b>
<b>Lot Area:</b>	<b>481m<sup>2</sup></b>
<b>M.R.S. Reservation:</b>	<b>N/A</b>

**SUMMARY**

The applicant is seeking to build a new two storey house with two boundary walls on the northern boundary. A submission was received from the owner of No. 323 Marmion Street. Given the assessment that has been undertaken, the recommendation is to approve the application with conditions.

**STATUTORY ENVIRONMENT**

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

**POLICY IMPLICATIONS**

N/A.

**HERITAGE LISTING**

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

- Municipal Inventory N/A
- National Trust N/A

## APPLICATION ASSESSMENT

### AREAS OF NON-COMPLIANCE

#### Town of Cottesloe Town Planning Scheme No 2 - Text

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

#### Town Planning Scheme Policy/Policies

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

#### Residential Design Codes

Design Element	Acceptable Standards	Provided	Performance Criteria Clause
3 – Boundary Setbacks	Setback to northern boundary from garage and family room 1.5 m	Nil	Clause 3.3.2
3 – Boundary Setbacks	Setback to Southern boundary from lower south wall 1.5m	1.0m – 1.5m	Clause 3.3.1
9 – Design for Climate	Overshadowing of adjoining lot 25%	31%	Clause 3.9.1

## STRATEGIC IMPLICATIONS

N/A.

## FINANCIAL IMPLICATIONS

N/A.

## CONSULTATION

### REFERRAL

#### Internal

- Building
- Engineering
- Health

#### External

N/A.

### ADVERTISING OF PROPOSAL

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

The advertising consisted of:

- Letter to Adjoining Property Owners

### **Submissions**

There were 5 letters sent out. There was 1 submission received, which was an objection, is circulated separately from this report. A summary of the submission is reproduced below:

#### No. 323 Marmion Street

The owners have raised concerns in regards to the following:

- The effect of the proposed boundary wall on the amount of natural light accessing the room opposite the wall;
- The effect of the boundary wall on the outlook from the room on No. 323 Marmion Street, opposite the proposed wall;
- Potential implications in case of any future redevelopment on No. 323 Marmion Street.

### **BACKGROUND**

The subject property is located on the western side of Marmion Street. The applicant seeks to demolish the existing single storey weather board and iron dwelling and to construct a new two storey brick and metal residence. The site is gradually rising from the front to the rear of the lot. The site is also sloping down from the north-eastern corner towards the southern boundary.

### **STAFF COMMENT**

#### **BOUNDARY WALL**

A boundary wall is proposed on the northern boundary to the garage and family room. The walls are separated by a distance of 2.5m. The enclosure is to be used for locating the air-conditioning equipment.

Clause 3.3.2 of the Design Codes states the following:

*“Except where otherwise provided for in an adopted Local planning Policy, walls built up to a boundary behind the front setback line within the following limits,*

- ii In areas coded R 20 and R25 , walls not higher than 3.0m with an average of 2.7m up to 9m in length up to one side boundary.”*

The total length and height of the proposed boundary walls do not comply with the acceptable development standards, as it exceeds the permissible average height of 2.7m and also the length of wall exceeds the 9m. It is necessary to consider the performance criteria (P2), which states:

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

- *Make effective use of space; or*
- *Enhance privacy; or*
- *Otherwise enhance the amenity of the development; and*



- *Not have any significant adverse effect on the amenity of the adjoining property; and*
- *Ensure that direct sun to major openings to habitable rooms and outdoor living areas of adjoining properties is not restricted.”*

In addition, Council has resolved to prepare a Streetscape Policy that has the intent of requiring boundary setbacks throughout the Scheme Area in order to preserve streetscape character and minimise the impact on neighbouring properties.

Council is also required to consider Clause 5.1.2(f) of the Town Planning Scheme text which states:

#### **5.1.2 General**

*Notwithstanding the specific provisions of this Scheme in considering a proposed development, Council shall have regard to and may impose conditions relating to the following -*

.....

- (f) *the location and orientation of a building or buildings on a lot in order to achieve higher standards of daylighting, sunshine or privacy or to avoid visual monotony in the street scene as a whole;*

The applicant submitted a letter together with the application stating the following:

#### *“Design Element 3 – Boundary Setback*

- *Boundary walls to three metres high built onto north boundary wall. Two panels each approximately six metres long located on south of adjacent residence does not affect shadowing of that lot;*
- *All other boundary setbacks conform to code requirements”.*

There are three openings on the southern wall to the house on No. 325 Marmion Street, facing the proposed boundary walls on No 321 Marmion Street. The wall of No. 325 Marmion Street is set back approximately 1.47m from that boundary and has eaves to within 0.71m of the boundary.

The proposed garage boundary wall is located towards the front of the subject property and is not likely to affect the amenity of the adjoining property. The opening facing the front portion of the boundary wall is a small, highlight window to the main bedroom, which is not the main source of light and ventilation to that room. The room has a major opening at the front of the house.

The second opening on the southern wall of the adjoining residence is a window to a bathroom. The view from this room is towards the proposed small courtyard between the two portions of the boundary wall, which is to be used for the storing of the air-conditioning equipment. If there is to be any impact, it would be from any noise that may be generated from the operation of the air-conditioning equipment.

Council received an objection from the adjoining property owner stating that the amenity of the third opening directly opposite the proposed rear boundary wall will be adversely impacted, due to reduced ventilation and the amount of natural light accessing the living room. The distance between the boundary wall and the roof eaves of the adjoining property would be too small to let sufficient amount of natural light into the living room.

- It can be argued that the proposed boundary wall does make effective use of space, however it is considered that the proposal would have a negative impact on the adjoining property. To ensure that the proposal complies with the performance criteria of Residential Design Codes outlined above it is recommended that the proposed boundary wall to the family room be set back 1.5m from the lot boundary in accordance with the Residential Design Codes.

It is considered that the portion of the proposed boundary wall to the garage at the front of the property does satisfy the performance criteria for the following reasons:

- The boundary wall does make effective use of space and may enhance privacy;
- Direct sun to major openings to habitable rooms of the adjoining property would not be restricted;
- There will not be any significant adverse effects on the amenity of the adjoining property.

It is considered that the amenity of the street would not be negatively affected by the proposal.

Therefore it is recommended that the variation to the side setback to the proposed garage be approved.

### **Boundary Setbacks**

The applicant proposes a variation to one of the boundary setbacks. As the required setback outlined in Table 2a of the Residential Design Codes have not been met, the relevant performance criteria must be satisfied, which states:

*P1 – Buildings setback from boundaries other than street boundaries so as to:*

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

A 3.5m portion of the Lower Southern Wall is proposed to have a setback of 1m. The required setback under the Residential Design Codes is 1.5m. The applicant provided the overshadowing diagram showing the potential overshadowing of the

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adjoining property by the southern wall, which exceeds the 25% allowed in accordance with the Residential Design Codes.

It is considered that requiring the applicant to comply with the 1.5m setback for the 3.5 portion of the Southern Wall would not significantly improve the overshadowing situation on the adjoining property.

It is considered that the proposed reduced setback of the portion of the Southern Wall satisfies the requirements of the performance criteria in the following way:

- Reduction of the required setback of the portion of the Southern Wall at the lower level of the proposed building does not contribute to the increased overshadowing of the adjoining property;
- Reduced setback does not affect access to the direct sun by the proposed building, adjoining properties and appurtenant open spaces
- Reduced setback does not affect ventilation being available to the adjoining properties;
- The Southern Wall as proposed assists in ameliorating the impacts of building bulk on adjoining property and might assist in protecting privacy between the adjoining properties.

Therefore the administration recommends that the variation be approved.

### **Solar Access**

It is stated in the design codes that it is acceptable to have an overshadowing of no more than 25% of the adjoining lot on land coded R20. The overshadowing is calculated without regard for any building on the adjoining land but taking into account its natural ground levels. The proposed development overshadows the adjoining property by approximately 31%.

As the development does not meet the acceptable development standard the applicant is required to demonstrate that the development meets the performance criteria set out in DE3.9.1 of the Residential Design Codes, which states the following:

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

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

As identified earlier, Council is also required to consider the impact of the overshadowing under Clause 5.1.2(f) of the Town Planning Scheme text, which has been reproduced earlier in the report.

The following is stated by the applicant in the letter to Council addressing the Design Elements of the Residential Design Codes dated 21 May 2003:

- “- *The shadow cast by a 1.8 metre fence represents 21.5 per cent of adjacent site area;*
- *The house has been designed so that there is no increase in overshadowing to outdoor living area to rear of existing dwelling;*
  - *Minor additional overshadowing occurs where the existing dwelling is located;*
- Conclusion: the impact of additional overshadowing of the adjacent lot has been kept to a minimum and located so as to create minimum interference.”*

Currently there is no information in regards to the type of openings located on the northern side of the adjoining property 319 Marmion Street, which would be overshadowed by the proposed new two storey residence on 321 Marmion Street.

Notwithstanding the fact that there was no submission received from the owners of the affected adjoining property and also taking into account the applicant's response to the relevant Design Element quoted above, additional information from the applicant and further investigation by Council's officers are required to ensure that the amenity of the adjoining property would not be detrimentally affected.

Councillors will be advised of the outcome of further investigation of this matter prior to the Development Services Committee.

## **CONCLUSION**

It is recommended that the proposed development be approved subject to conditions addressing the:

- (a) boundary wall to the family room; and
- (b) air-conditioning equipment area.

and pending the outcome of further investigations and additional information being submitted by the applicant in regards to the issue of overshadowing of the adjacent property.

## **VOTING**

Simple Majority

## **OFFICER RECOMMENDATION**

That Council:

- (1) GRANT its Approval to Commence Development for the Two Storey Dwelling at No 321 (Lot 50) Marmion Street, Cottesloe in accordance with the plans submitted on 21 May, 2003, subject to the following conditions:
  - (a) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.
  - (b) Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve, rights of way or adjoining properties and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the working drawings.

- (c) The external profile of the development as shown on the approved plans, not being changed whether by the addition of any service plant, fitting, fixture, or otherwise, except with the written consent of Council.
- (d) The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining, or nearby neighbours, following completion of the development.
- (e) The applicant applying to the Town of Cottesloe for approval by the Manager, Engineering Services, to construct a new crossover, where required, in accordance with the local law.
- (f) Air conditioning plant and equipment is to be installed as far as practicable from the boundary of adjoining properties or in such a manner as to ensure that sound levels emitted from equipment shall not exceed those outlined in the Environmental Protection (Noise) Regulations 1997.
- (g) Any front boundary fencing to the site being of an "Open Aspect" design and the subject of a separate application to Council.
- (h) Revised plans being submitted for approval by the Manager, Development Services, showing the northern boundary wall of the family room being set back 1.5m from the side boundary in accordance with the provisions of the Residential Planning Codes.

(2) Advise the submitters of this decision.

### **COMMITTEE COMMENT**

Manager, Development Services addressed the Committee meeting regarding the impact of overshadowing. He advised that there may be a need to contact the neighbours to the south to show them the revised plan. Mayor Rowell stated that Nos. 319 and 323 will have the same issues of overshadowing when developed. The revised plans tabled at the meeting were accepted and condition (h) was then deleted.

### **COMMITTEE RECOMMENDATION**

Moved Cr Furlong, seconded Cr Walsh

That Council:

- (1) GRANT its Approval to Commence Development for the Two Storey Dwelling at No 321 (Lot 50) Marmion Street, Cottesloe in accordance with the plans submitted on 21 May, 2003 and the revised plans received on 21 July, 2003, subject to the following conditions:
  - (a) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.
  - (b) Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve, rights of way or adjoining properties and the gutters and downpipes used for the

disposal of the stormwater runoff from roofed areas being included within the working drawings.

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

#### **AMENDMENT**

Moved Cr. Walsh, seconded Cr. Utting

That the amendment be amended by the addition of the following:

*"(h) Revised plans being submitted for approval by the Manager, Development Services, showing the northern boundary wall of the family room being set back 1.5m from the side boundary in accordance with the provisions of the Residential Planning Codes."*

Lost 2/9

#### **AMENDMENT NO. 2**

Moved Cr. Utting, seconded Cr. Jeanes

That the item be referred back to the Development Services Committee for further consideration.

Carried 11/0

#### **COUNCIL RESOLUTION**

**That the item be referred back to the Development Services Committee for further consideration.**

Carried 11/0

**1.4.2 NO 9 (LOT 1) LILLIAN STREET - 2 STOREY DWELLING PLUS BASEMENT**

**File No:** 9 Lillian Street  
**Author:** Mr D Heymans  
**Attachments:** Location Plan  
 Correspondence from Applicant  
 Submission (1)  
 Plans & Elevations  
**Author Disclosure of Interest:** Nil  
**Report Date:** 11 July, 2003  
**Senior Officer:** Mr S Sullivan  
  
**Property Owner:** Sandra Grist  
  
**Applicant:** Ariane Prevost Architect  
**Date of Application:** 4 June 2003  
  
**Zoning:** Residential  
**Use:** P - A use that is permitted under this Scheme  
**Density:** R20  
**Lot Area:** 489m<sup>2</sup>  
**M.R.S. Reservation:** N/A

**SUMMARY**

The purpose of this report is to seek Council approval for the development of a two storey single house plus basement. Given the assessment that has been undertaken, the recommendation is to Defer the Application.

**STATUTORY ENVIRONMENT**

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

**POLICY IMPLICATIONS**

- Building Heights Policy No 005

**HERITAGE LISTING**

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

**APPLICATION ASSESSMENT**

AREAS OF NON-COMPLIANCE

**Town of Cottesloe Town Planning Scheme No 2 - Text**

<b>Clause</b>	<b>Required</b>	<b>Provided</b>
N/A	N/A	N/A

**Town Planning Scheme Policy/Policies**

<b>Policy</b>	<b>Required</b>	<b>Provided</b>
005 – Wall height	6.0m	6.3m
Front Fencing Local Law	50% open Aspect	Solid
Street Tree Policy	Retain healthy trees	Remove healthy tree

**Residential Design Codes**

<b>Design Element</b>	<b>Acceptable Standards</b>	<b>Provided</b>	<b>Performance Criteria Clause</b>
3 – Boundary Setbacks	Setback to western boundary from entry wall lower level of 1.0m	Nil	Clause 3.3.2
3 – Boundary Setbacks	Setback to western boundary from upper bed 3 wall of 1.5m	1.4m	Clause 3.3.1
3 – Boundary Setbacks	Setback to western boundary from shade roof of 750mm	Nil	Clause 3.3.1
3 – Boundary Setbacks	Setback to eastern boundary from lower dining/living room wall of 1.1m	Nil	Clause 3.3.2
3 – Boundary Setbacks	Setback to eastern boundary from lower bed 1 wall of 1.5m	.9m	Clause 3.3.1
3 – Boundary Setbacks	Setback to eastern boundary from retaining wall of 1.0m	Nil	Clause 3.3.2
6 – Site Works	Filling of front setback area of greater than 0.5m	.8m	Clause 3.6.1
8 – Privacy	Visual privacy setback from western boundary to upper bed 3 of 4.5m	2.2m	Clause 3.8.1
8 – Privacy	Visual privacy setback from eastern boundary to upper family room of 6.0m	2.0m	Clause 3.8.1



Design Element	Acceptable Standards	Provided	Performance Criteria Clause
8 – Privacy	Visual privacy setback from eastern boundary to upper bed 4 balcony of 7.5m	1.5m	Clause 3.8.1
8 – Privacy	Visual privacy setback from western boundary front terrace of 7.5m	2.5m	Clause 3.8.1

**STRATEGIC IMPLICATIONS**

N/A.

**FINANCIAL IMPLICATIONS**

N/A.

**CONSULTATION**

REFERRAL

**Internal**

- Building
- Engineering
- Health

**External**

N/A.

ADVERTISING OF PROPOSAL

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

The advertising consisted of:

- Letter to Adjoining Property Owners

**Submissions**

There were 6 letters sent out. There was 1 submission received, which was an objection. Details of the submission received is set out below:

No. 7 Lillian Street

The owners objected to the following points:

- The development will block out the morning easterly sun;
- The windows to the stairwell overlook their principal outdoor living area and their internal living area, they would like the stair well windows to be opaque
- The air conditioner unit is proposed to be located close to the outdoor living area and also their entrance to the main internal living area;

**BACKGROUND**

The site is one of two lots (9 & 11 Lillian Street) that were given subdivision approval on the 3 July 2002. The applicant has lodged two development applications on behalf of different owners for similar two storey houses. This lot is the western lot of the two and it slopes from the rear of the block down to the front by approximately 2m.

**STAFF COMMENT****Building Height – Policy No. 005**

Council's Planning Policy No. 005 states that in addition to the height restrictions outlined in the Scheme, which are calculated from the centre of the site, Council may measure the height of a building at any point on the site to avoid any adverse impact on adjoining neighbours. Variations to the height limits may be given in circumstances where the amenity of the area is not unreasonably diminished.

Assessment of this application has shown that the building does not conform to this policy at the front of the site, which slopes down from the rear, as the wall height limit is exceeded by about 300 mm (refer attached plans).

The administration believes that the building should be reduced by 300mm to reduce the impact of the building on adjoining properties. The building will also have a negative impact on the streetscape as the additional building bulk will be visible from the street and will be considerably greater than other developments in the area.

The additional building bulk at the front of the property will be exacerbated by the proposed solid fencing in the front setback and filling of the front setback area. The administration believes that the combination of all these factors will create a development that is out of character with the open aspect streetscape that currently exists and will set a negative precedent of closed front setback areas with buildings that are over height.

Therefore the administration recommends that the wall height of the building be reduced to RL 34.0m in accordance with Council's Policy No. 005.

**Boundary Walls**

A garage boundary wall at the basement level and a boundary wall to the dining and living rooms on the ground floor are proposed on the eastern boundary. The owner of 11 Lillian Street has not objected to the boundary wall and the proposed development at 11 Lillian Street has an abutting boundary wall.

Clause 3.3.2 of the Design Codes states that, except where otherwise provided for in an adopted Local Planning Policy, it may be acceptable to build up to a boundary where the parapet wall abuts an existing or simultaneously constructed wall of similar or greater dimension. However, Council has resolved to prepare a Streetscape Policy that will enforce boundary setbacks throughout the Scheme Area in order to preserve streetscape character.

Notwithstanding the above, enforcing a setback between the houses will significantly limit the development potential of the site. Concern with this type of development stem from instances where approvals have been given in the past for single houses

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joined by a parapet but only one of the dwellings constructed. However the adjoining property at No. 11 Lillian Street proposes to construct a simultaneous boundary wall.

In addition the applicant has stated that the boundary walls proposed will make effective use of space on a narrow site.

Therefore the administration recommends that the proposed undercroft garage boundary wall and the ground level dining boundary wall on the eastern boundary be approved as outlined in the plans submitted.

The entry boundary wall on the western boundary does not meet the acceptable development standard of the codes as the codes only allow for 1 boundary wall on 1 boundary. Therefore this wall needs to comply with the relevant performance criteria for this clause which state:

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

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

The administration believes that this proposed boundary wall does not fulfil the above performance criteria as it will have a detrimental impact on the neighbour's amenity.

### **Shade Cover on Boundary**

The applicant has proposed a shade cover on the western boundary. Clause 3.3.1 A1 (iv) of the Residential Design Codes states that eaves or other overhangs should not project more than 750mm into the setback area or be closer than 750mm to the boundary.

As this shade overhang doesn't comply with the acceptable development standard it needs to fulfil the relevant performance criteria.

The administration believes that the shade overhang will have a detrimental impact on the amenity of the adjoining property at No. 7 Lillian Street and therefore recommends that the shade overhang be setback from the boundary in accordance with the Residential Design Codes.

### **Boundary Setbacks**

The applicant proposes two variations to setbacks as outlined in the Residential Design Codes.

A variation is being sought to the setback requirement for the bed 3 wall (upper level) on the western side, as per Table 2a of the Residential Design Codes, the required setback is 1.5 metres. However, the proposed setback to bed 3 is 1.4m and as the

setback does not comply with the acceptable development standard of the codes then the relevant performance criteria need to be addressed which state:

*P1 - Buildings setback from boundaries other than street boundaries so as to:*

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

The administration considers that the proposed 1.4 metre setback to the western boundary does not fulfil the performance criteria as the wall will cause greater overshadowing of the adjoining outdoor living area at No. 7 Lillian Street, particularly in the morning.

The adjoining neighbour has objected to overshadowing of their outdoor living area and as the applicant is requesting a variation to the setback on this boundary that will directly affect overshadowing of the adjoining properties courtyard it is believed it is reasonable not to allow for a variation in this instance.

Therefore the administration recommends that the variation in this instance not be approved.

A second variation is being sought to the setback requirement for the bedroom 1 wall (lower level) on the eastern side, as per Table 2a of the Residential Design Codes, the required setback is 1.5 metres. However, the proposed setback to bed 1 is 0.9m and as the setback does not comply with the acceptable development standard of the codes then the relevant performance criteria (listed above) need to be addressed.

The administration considers that the proposed 0.9 metre setback to the eastern boundary fulfils the performance criteria as the adjoining property to the east is setback from the boundary by 1.5m and there will be no detrimental impact on sunlight, privacy or ventilation to the adjoining property.

Therefore the administration recommends that the variation in this instance be approved.

### **Filling**

The applicant is proposing to terrace the front setback area of the lot with filling up to 800 mm above natural ground level in the north eastern corner of the front terrace.

The Acceptable Development Standard for clause 3.6.1 of the Residential Design Codes state that:

*“Excavation or filling between the street alignment and building, or within 3 metres of the street alignment, whichever is the lesser, not exceeding 0.5m”*

As this development does not comply with the acceptable development standard of the codes then it is necessary to comply with the performance criteria (P1) for this clause which state:

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

The administration believes that the terracing of the front setback area above 500mm will not retain the visual impression of the natural level of the site and will set a negative precedent in the area allowing for front setback areas to be filled and have a detrimental impact on adjoining neighbours through the location of possible retaining walls.

Therefore the administration recommends that the front terrace finished floor level be reduced to RL 27.9m.

### **Visual Privacy**

Under the Design Codes visual privacy setbacks are required to habitable areas with the potential for overlooking into adjoining properties. Where the acceptable setback standards are not met, compliance with the performance standards set out in clause 3.8.1 must be demonstrated. The clause states that new developments must:

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

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

The cone of vision applied to bedroom 3 window indicates that there is the potential to overlook the adjoining property at 7 Lillian Street on the western side. This overlooking is not of a concern as it falls onto a small section of the rear yard which is not the principal outdoor living area and therefore it is deemed to be acceptable under the above performance criteria.

The cone of vision applied to the upper family room window and the balcony for bedroom 4 indicates there is potential to overlook the adjoining property at 11 Lillian Street on the eastern side. This overlooking is not of concern as it falls onto the proposed two storey wall, of 11 Lillian Street, which has no major openings to habitable rooms. Therefore it is deemed to be acceptable under the above performance criteria.

The cone of vision applied to the front terrace area indicates that there is potential to overlook the adjoining property at 7 Lillian Street. This overlooking is of little concern as it falls onto the front setback area of the adjoining property, in addition it is recommended that the level of the terrace area be reduced which will then alleviate any privacy concerns.

**Front Fence**

The proposed front fence on the western boundary in the 6 metre building setback area is proposed to be solid. Council's local front fence law states that solid fences within the front setback area shall be no higher than 900mm, however in this instance the proposed wall is 1800mm high.

The administration believes that the walls will create a closed aspect streetscape which is not in keeping with the existing streetscape which is open aspect and also contradicts the intent of the fencing law.

Therefore the administration recommends that the wall be modified so as to comply with Council's Front Fence Local Law.

**Street Trees & Crossover**

The location of the proposed driveway and associated crossover will require the removal of a healthy street tree on the verge. Council's Engineering Services have recommended that the street tree be retained as it is in good health, however the applicant has written a letter justifying why the street tree should be removed, refer attached letter.

Notwithstanding clause 4.14 of Council's Street Tree Policy states that

*" As the priority in most instances would be to retain the street tree, the developer should be advised of any conflict and requested to amend the application design to resolve the conflict accordingly."*

Furthermore clause 3.5.4 of the Residential Design Codes state that driveways should be located so as to avoid street trees, or, where this is unavoidable, the street trees replaced by Council at the applicants cost

Therefore administration recommends that the tree should be retained and the applicant submit revised plans to relocate the crossover.

**Driveway**

In addition the grade of the driveway has been calculated to be 1:4.7, however Council's Engineering Services recommends a grade of 1:5, which is in accordance with the Australian Standard for minimum driveway grades. A 1:5 grade is still of concern as bottoming out can still occur at this grade.

Therefore the administration recommends that revised plans be submitted demonstrating transitions to the driveway and that bottoming out will not occur. This should be done without increasing the height of the building and the heights should be in accordance with Council's Policy No. 005.

**Submissions**

The owners of No. 7 Lillian Street objected to a number of issues, refer submissions section of report.

The owners requested that the stair windows be opaque to restrict overlooking into their outdoor living area and internal living area. The codes do not regulate the

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privacy from windows to non-habitable windows, however Clause 5.1.2 (f) of the Town of Cottesloe Town Planning Scheme No. 2 states that:

*“The location and orientation of a building in order to achieve or buildings in order to achieve higher standards of daylighting, sunshine or privacy.....”*

The administration believes that as the stair windows directly overlook the outdoor living area of No. 7 Lillian Street then it is reasonable to request that the windows be opaque.

In relation to the location of A/C units a suitable condition has been imposed to control the location of A/C units.

The owner also objected to overshadowing of their outdoor living area by the proposed development from the easterly sun, particularly in the mornings. The Residential Design Codes stipulate that overshadowing is calculated from the north at the winter solstice, there are no provisions to regulate access to daylight from the east.

However Council's Town Planning Scheme No. 2 does have a number of general amenity clauses that Council shall have regard to, in particular clause 5.1.2 (f) which is outlined above which enables Council to impose conditions to achieve higher levels of daylighting if it is deemed to be appropriate.

In this instance the administration believes that daylighting in the morning periods, particularly during winter, to the outdoor living area of No. 7 Lillian Street will be affected by the proposed development at No. 9. However the building at No. 7 Lillian Street already causes their own courtyard to be overshadowed around midday through to the afternoon, during winter, from the location of 2 storey walls to the north and west of the courtyard.

If the blocks were oriented east - west then it would be reasonable for Council to impose conditions requiring daylighting to be maintained from the north at the winter solstice.

However as these blocks are oriented north - south it is unreasonable to impose conditions requiring the proposed development to be setback further. This report has already recommended that the walls on the western boundary should comply with the acceptable development standards and that the building be modified so as to comply with Council's Policy No. 005 - Building heights.

Therefore the administration recommends that the location of the building not be changed, however the administration has recommended that other aspects of the development, particularly the height of the building at the front of the property be reduced and that the setback of the walls on the western boundary comply with the Residential Design Codes.

## **CONCLUSION**

The administration recommends that the application be deferred until the August Council meeting so the applicant can address the following areas of non compliance,

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gradient of driveway, height of building, retention of street tree and open aspect fencing.

**VOTING**

Simple Majority

**OFFICER RECOMMENDATION**

That Council:

- (1) Defer consideration of the application for Approval to Commence Development submitted by Ariane Prevost Architect for the 2 Storey Dwelling plus basement at No 9 (Lot 1) Lillian Street, Cottesloe.
- (2) Request that the applicant submit revised plans incorporating the following changes to the proposed development:
  - (a) The finished floor level of the terraced area being reduced to RL 27.9m;
  - (b) The wall height of the proposed development being modified to RL 33.97m to comply with the requirements of the Town of Cottesloe Town Planning Scheme Policy No. 5;
  - (c) The front boundary fence being modified to provide an "Open Aspect Fence" in accordance with Council's local law; and
  - (d) The gradient of the driveway being modified to an acceptable gradient demonstrating that bottoming out will not occur in accordance with the Australian Standards and subject to condition (2) (b)
  - (e) The crossover being relocated so as to retain the existing street tree;
  - (f) The height of the entry parapet wall being reduced on the western boundary;
  - (g) The shade overhang on the western boundary being setback from the boundary by 750mm in accordance with the Residential Design Codes; and
  - (h) The existing lot being subdivided and a new certificate of title being issued for the proposed lots prior to the issue of a building licence.
- (3) Advise the submitters of this decision.

**COMMITTEE COMMENT**

The majority of the Committee supported the removal of the street trees as they were considered to be inappropriate due to their type and appearance.

Mayor Rowell moved that the application be approved subject to parts (1), (2)(a), (b) and (e) being removed and the remaining matters being incorporated as conditions of planning approval.

The Manager of Development Services was requested to prepare an approval for circulation to prior to the July Council meeting.



**COMMITTEE RECOMMENDATION**

- (1) That the Manager, Development Services prepare an approval for the two storey dwelling plus basement at No. 9 (Lot 1) Lillian Street, Cottesloe for consideration at the July Council meeting.
- (2) The approval incorporate the following special conditions:
  - (a) The front boundary fence being modified to provide an "Open Aspect Fence" in accordance with Council's local law;
  - (b) The gradient of the driveway being modified to an acceptable gradient demonstrating that bottoming out will not occur in accordance with the Australian Standards;
  - (c) The height of the entry parapet wall being reduced on the western boundary;
  - (d) The shade overhang on the western boundary being setback from the boundary by 750 mm in accordance with the Residential Design Codes; and
  - (e) The existing lot being subdivided and a new certificate of title being issued for the proposed lots prior to the issue of a building licence.

**MEMO WITH AMENDED RECOMMENDATION – CIRCULATED 24 JULY, 2003**

An amended officer recommendation was circulated to elected members.

*Cr Sheppard declared a proximity interest in this item and left the meeting at 10.15 pm. He did not participate in the debate or vote on the matter.*

**OFFICER AMENDED RECOMMENDATION**

Moved Cr Furlong, seconded Cr Walsh

That Council:

- (1) GRANT its Approval to Commence Development for the 2 Storey House plus Basement at No 9 (Lot 1) Lillian Street, Cottesloe in accordance with the plans submitted on 4 June 2003, subject to the following conditions:
  - (a) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.
  - (b) Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve, rights of way or adjoining properties and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the working drawings.
  - (c) The external profile of the development as shown on the approved plans, not being changed whether by the addition of any service plant, fitting, fixture, or otherwise, except with the written consent of Council.

- (d) The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining, or nearby neighbours, following completion of the development.
- (e) The applicant applying to the Town of Cottesloe for approval by the Manager, Engineering Services, to construct a new crossover
- (f) Air conditioning plant and equipment is to be installed as far as practicable from the boundary of adjoining properties or in such a manner as to ensure that sound levels emitted from equipment shall not exceed those outlined in the Environmental Protection (Noise) Regulations 1997;
- (g) The front boundary fence being modified to provide an "Open Aspect Fence" in accordance with Council's local law;
- (h) The gradient of the driveway being modified to an acceptable gradient demonstrating that bottoming out will not occur in accordance with the Australian Standards;
- (i) Revised plans being submitted for approval by the Manager, Development Services, showing:
  - (i) The height of the entry parapet wall being reduced on the western boundary; and
  - (ii) The shade overhang on the western boundary being setback from the boundary by 750mm in accordance with the Residential Design Codes;
- (j) The existing lot being subdivided and a new certificate of title being issued for the proposed lots prior to the issue of a building licence.

(2) Advise the submitters of this decision.

#### **AMENDMENT**

Moved Cr. Walsh, seconded Mayor Rowell

That the motion be amended by the addition of the following to (i):

*"(iii) The windows to the stairwell being of obscure glass."*

Carried 10/0

The amended motion was put.

#### **COUNCIL RESOLUTION**

**That Council:**

- (1) **GRANT its Approval to Commence Development for the 2 Storey House plus Basement at No 9 (Lot 1) Lillian Street, Cottesloe in accordance with the plans submitted on 4 June 2003, subject to the following conditions:**

- (a) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.
  - (b) Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve, rights of way or adjoining properties and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the working drawings.
  - (c) The external profile of the development as shown on the approved plans, not being changed whether by the addition of any service plant, fitting, fixture, or otherwise, except with the written consent of Council.
  - (d) The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining, or nearby neighbours, following completion of the development.
  - (e) The applicant applying to the Town of Cottesloe for approval by the Manager, Engineering Services, to construct a new crossover
  - (f) Air conditioning plant and equipment is to be installed as far as practicable from the boundary of adjoining properties or in such a manner as to ensure that sound levels emitted from equipment shall not exceed those outlined in the Environmental Protection (Noise) Regulations 1997;
  - (g) The front boundary fence being modified to provide an "Open Aspect Fence" in accordance with Council's local law;
  - (h) The gradient of the driveway being modified to an acceptable gradient demonstrating that bottoming out will not occur in accordance with the Australian Standards;
  - (i) Revised plans being submitted for approval by the Manager, Development Services, showing:
    - (ii) The height of the entry parapet wall being reduced on the western boundary;
    - (ii) The shade overhang on the western boundary being setback from the boundary by 750 mm in accordance with the Residential Design Codes; and
    - (iii) The windows to the stairwell being of obscure glass.
  - (j) The existing lot being subdivided and a new certificate of title being issued for the proposed lots prior to the issue of a building licence.
- (2) Advise the submitters of this decision.

Carried 10/0

*Cr Sheppard returned to the meeting at 10.17 pm.*

**1.4.3 NO 11 (LOT 2) LILLIAN STREET - 2 STOREY DWELLING PLUS BASEMENT**

**File No:** 11 Lillian Street  
**Author:** Mr D Heymans  
**Attachments:** Location Plan  
 Correspondence from Applicant  
 Plans & Elevations  
**Author Disclosure of Interest:** Nil  
**Report Date:** 15 July, 2003  
**Senior Officer:** Mr S Sullivan

**Property Owner:** Mrs M Palandri

**Applicant:** Ariane Prevost  
**Date of Application:** 4 June 2003

**Zoning:** Residential  
**Use:** P - A use that is permitted under this Scheme  
**Density:** R20  
**Lot Area:** 487m<sup>2</sup>  
**M.R.S. Reservation:** N/A

**SUMMARY**

The purpose of this report is to seek Council approval for the development of a two storey single house plus basement. Given the assessment that has been undertaken, the recommendation is to defer the application.

**STATUTORY ENVIRONMENT**

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

**POLICY IMPLICATIONS**

- Building Heights Policy No 005

**HERITAGE LISTING**

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

**APPLICATION ASSESSMENT**

## AREAS OF NON-COMPLIANCE

**Town of Cottesloe Town Planning Scheme No 2 - Text**

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

**Town Planning Scheme Policy/Policies**

Policy	Required	Provided
5 – Wall height	6.0m	6.3m
Front Fencing Local Law	50% open aspect	Solid
Street tree policy	Retain healthy trees	Remove a healthy tree

**Residential Design Codes**

Design Element	Acceptable Standards	Provided	Performance Criteria Clause
3 – Boundary Setbacks	<b>Setback to western boundary from upper west wall of 2.7m</b>	1.5m	Clause 3.3.1
3 – Boundary Setbacks	<b>Setback to eastern boundary from lower dining / living room wall of 1.5m</b>	1.0m	Clause 3.3.1
3 – Boundary Setbacks	<b>Setback to eastern boundary from upper bed 2 &amp; 3 wall of 1.6m</b>	1.5m	Clause 3.3.1
8 – Privacy	Visual privacy setback from eastern boundary to upper bed 3 of 4.5m	2.5m	Clause 3.8.1
8 – Privacy	Visual privacy setback from eastern boundary to upper bed 5 windows of 4.5m	3.2m	Clause 3.8.1
8 – Privacy	Visual privacy setback from western boundary to front balcony No. 2 of 7.5m	5.4m	Clause 3.8.1

**STRATEGIC IMPLICATIONS**

N/A.

**FINANCIAL IMPLICATIONS**

N/A.

**CONSULTATION**

## REFERRAL

**Internal**

- Building
- Engineering
- Health

**External**

N/A.

## ADVERTISING OF PROPOSAL

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

The advertising consisted of:

- Letter to Adjoining Property Owners

**Submissions**

There were 6 letters sent out. No submissions were received.

**BACKGROUND**

The site is one of two lots (9 & 11 Lillian Street) that were given subdivision approval on the 3 July 2002. The applicant has lodged two development applications on behalf of different owners for similar two storey houses. This lot is the eastern lot of the two and it slopes from the rear of the block down to the front by approximately 2m.

**STAFF COMMENT****Building Height – Policy No. 005**

Council's Planning Policy No. 005 states that in addition to the height restrictions outlined in the Scheme, which are calculated from the centre of the site, Council may measure the height of a building at any point on the site to avoid any adverse impact on adjoining neighbours. Variations to the height limits may be given in circumstances where the amenity of the area is not unreasonably diminished.

Assessment of this application has shown that the building does not conform to this policy at the front of the site, which slopes down from the rear, as the wall height limit is exceeded by about 300 mm (refer attached plans).

The administration believes that the building should be reduced by 300mm to reduce the impact on adjoining properties. The building will also have a negative impact on the streetscape as the additional building bulk will be visible from the street and will be considerably greater than other developments in the area.

The additional building bulk at the front of the property will be exacerbated by the proposed solid fencing in the front setback and filling of the front setback area. The administration believes that the combination of all these factors will create a development that is out of character with the open aspect streetscape that currently

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exists and will set a negative precedent of closed front setback areas with buildings that are overheight.

Therefore the administration recommends that the wall height of the building be reduced in accordance with Council's Policy No. 005

### **Boundary Walls**

A cellar boundary wall at the basement level and a boundary wall to the entry at the ground level are proposed on the western boundary. The owner of 9 Lillian Street has not objected to the boundary wall.

Clause 3.3.2 of the Design Codes states that, except where otherwise provided for in an adopted Local Planning Policy, it may be acceptable to build up to a boundary where the parapet wall abuts an existing or simultaneously constructed wall of similar or greater dimension. However, Council has resolved to prepare a Streetscape Policy that will enforce boundary setbacks throughout the Scheme Area in order to preserve streetscape character.

Notwithstanding the above the administration believes that enforcing a setback between the houses will significantly limit the development potential of the site. In addition the adjoining property at No. 9 Lillian Street proposes to construct a simultaneous boundary wall which is in compliance with the acceptable development standard mentioned above. The applicant has also stated that the boundary walls proposed will make effective use of space on a narrow site and there are no objections from both owners of 9 & 11 Lillian Street.

Therefore the administration recommends that the proposed undercroft garage boundary wall and the ground level dining boundary wall on the eastern boundary be approved as outlined in the plans submitted.

### **Boundary Setbacks**

The applicant proposes three variations to setbacks as outlined in the Residential Design Codes.

A variation is being sought to the setback requirement for the western wall (upper level) on the western side, as per Table 2A of the Residential Design Codes, the required setback is 2.7 metres. However, the proposed setback is 1.5 m and as the setback does not comply with the acceptable development standard of the codes then the relevant performance criteria need to be addressed which state:

*P1 - Buildings setback from boundaries other than street boundaries so as to:*

- *Provide adequate direct sun and ventilation to the building;*
- *Ensure adequate direct sun and ventilation being available to adjoining properties;*
- *Provide adequate direct sun to the building and appurtenant open spaces;*
- *Assist with the protection of access to direct sun for adjoining properties;*

- *Assist in ameliorating the impacts of building bulk on adjoining properties; and*
- *Assist in the protecting privacy between adjoining properties.*

The administration considers that the proposed 1.5 metre setback to the western boundary does not fulfil the performance criteria for the following reasons:

- Will reduce adequate sunlight and ventilation to the proposed courtyard at No. 9 Lillian Street;
- Does not assist in ameliorating the impact of building bulk as the wall will be approximately 24m in length and about 6.5m high;

The applicant has stated that both parties (9 & 11 Lillian Street) have agreed to the setbacks proposed and have no objections. However the applicant has not provided any justification why council should give a variation in this instance in accordance with the performance criteria outlined above.

As the variation does not meet the requirements of the performance criteria the administration recommends that the variation to the setback not be approved.

A second variation is being sought to the setback requirement for the Dining / Living Room wall (lower level) on the eastern side, as per Table 2A of the Residential Design Codes, the required setback is 1.5 metres. However, the proposed setback is 1.0m and as the setback does not comply with the acceptable development standard of the codes then the relevant performance criteria (listed above) need to be addressed.

The administration considers that the proposed 1.0 metre setback to the eastern boundary fulfils the performance criteria for the following reasons:

- Adequate sunlight and ventilation to the subject lot and adjoining property at No. 13 Lillian Street will be provided;
- The proposed wall is not setback 1.0m for its entire length, approximately half of the wall complies with the required setback;
- The wall is on the ground floor and therefore will assist in ameliorating the impact of building bulk; and
- The adjoining property has a similar finished floor level.

Therefore the administration recommends that the variation in this instance be approved.

A third variation is being sought to the setback requirement for the wall to bed 2 & 3 (upper level) on the eastern side, as per Table 2A of the Residential Design Codes, the required setback is 1.6 metres. However, the proposed setback to the eastern wall is 1.5m.

The administration considers that the proposed 1.5 metre setback to the eastern boundary does not fulfil the performance criteria for the following reasons:

- The proposed wall is about 6.6m in height and 11.0 metres long and will not ameliorate the impact of building bulk on the adjoining property at No. 13 Lillian Street;



- The wall will reduce sunlight and ventilation to the subject lot and adjoining lot;
- The adjoining property at No. 13 has a number of windows on the western side of the building; and
- To increase the setback to 1.6m will not have any impact on the proposed development.

As the variation does not meet the requirements of the performance criteria the administration recommends that the variation to the setback not be approved.

### **Visual Privacy**

Under the Design Codes visual privacy setbacks are required to habitable areas with the potential for overlooking into adjoining properties. Where the acceptable setback standards are not met, compliance with the performance standards set out in clause 3.8.1 must be demonstrated. The clause states that new developments must:

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

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

The cone of vision applied to the upper bedroom 3 window indicates that there is the potential to overlook the adjoining property at 13 Lillian Street on the eastern side. This overlooking is of a concern as it falls onto the principle outdoor living area and therefore it is deemed to be acceptable under the above performance criteria.

The applicant has stated that the overlooking can be justified as the adjoining outdoor living area at No. 13 Lillian Street is screened by trees and an existing pergola covered with shade cloth which restricts overlooking. In addition the applicant has also stated that the adjoining owner has an extensive backyard for possible use as outdoor living areas.

Notwithstanding the administration believes that even though the overlooking only encroaches about 1 metre in the adjoining outdoor living area setting back the window a further 0.5m from the eastern boundary would make the window comply with the acceptable development standard and alleviate any future conflict.

Therefore the administration recommends that this window be modified so as to comply with the acceptable development standards of the codes.

The cone of vision applied to the upper bedroom 5 windows (1 on the southern side and 1 on the northern side) indicates there is potential to overlook the adjoining property at 13 Lillian Street on the eastern side. The overlooking from the northern window is of concern as it falls onto the principal outdoor living area of 13 Lillian Street. The southern window is not of a concern as it falls on the rear yard of 13 Lillian Street which is not used for outdoor living purposes

As the affect from this window is the same as that from Bed 3 the administration believes that a minor modification to this window will make this window comply with the acceptable development standard of the codes and would alleviate any future concerns.

Therefore the administration recommends that the northern window to bed 5 be modified so as to comply with the acceptable development standards of the codes.

The cone of vision applied to the 2<sup>nd</sup> balcony at the front of the property indicates that there is potential to overlook the adjoining property at 9 Lillian Street. This overlooking is of little concern as it falls onto the front setback area of the adjoining property. In addition the neighbour at No. 9 has not objected to the overlooking.

Therefore it is recommended that this variation be approved.

### **Front Fence**

The proposed front fence on the western and eastern boundaries in the 6 metre building setback area are proposed to be solid. Council's local front fence law states that solid fences within the front setback area shall be no higher than 900mm, however in this instance the proposed walls are 1800mm high.

The administration believes that the walls will create a closed aspect streetscape which is not in keeping with the existing streetscape which is open aspect and also contradicts the intent of the fencing law.

Therefore the administration recommends that the walls be modified so as to comply with Council's Front Fence Local Law.

### **Street Tree & Crossover**

The location of the proposed driveway and associated crossover will require the removal of a healthy street tree on the verge. Council's Engineering Services have recommended that the street tree be retained as it is in good health, however the applicant has written a letter justifying why the street tree should be removed, refer attached letter.

Notwithstanding clause 4.14 of Council's Street Tree Policy states that

*" As the priority in most instances would be to retain the street tree, the developer should be advised of any conflict and requested to amend the application design to resolve the conflict accordingly."*

Furthermore clause 3.5.4 of the Residential Design Codes state that driveways should be located so as to avoid street trees, or, where this is unavoidable, the street trees replaced by Council at the applicants cost

Therefore administration recommends that the tree should be retained and the applicant submit revised plans to relocate the crossover.

**Driveway**

In addition the grade of the driveway has been calculated to be 1:4.7, however Council's Engineering Services recommends a grade of 1:5, which is in accordance with the Australian Standard for minimum driveway grades. A 1:5 grade is still of concern as bottoming out can still occur at this grade.

Therefore the administration recommends that revised plans be submitted demonstrating transitions to the driveway and that bottoming out will not occur. This should be done without increasing the height of the building and the heights should be in accordance with Council's Policy No. 005.

**CONCLUSION**

The administration recommends that the application be deferred until the August Council meeting so the applicant can address the following areas of non compliance, gradient of driveway, height of building, retention of street tree and open aspect fencing as it will be necessary to do a redesign of the proposed house.

**VOTING**

Simple Majority

**OFFICER RECOMMENDATION**

That Council:

- (1) Defer consideration of the application for Approval to Commence Development submitted by Ariane Prevost for the 2 Storey Dwelling plus basement at No 11 (Lot 2) Lillian Street, Cottesloe; and
- (2) Request that the applicant submit revised plans incorporating the following changes to the proposed development:
  - (a) The wall height of the proposed development being modified to RL 32.96m to comply with the requirements of the Town of Cottesloe Town Planning Scheme Policy No. 5;
  - (b) The front boundary fence being modified to provide an "Open Aspect Fence" in accordance with Council's local law;
  - (c) The gradient of the driveway being modified to an acceptable gradient demonstrating that bottoming out will not occur in accordance with the Australian Standards and subject to condition (2)(a)
  - (d) The crossover being relocated so as to retain the existing street tree; and
  - (e) The existing lot being subdivided and a new certificate of title being issued for the proposed lots prior to the issue of a building licence.

**COMMITTEE COMMENT**

Conditions (1), (2)(a) and (d) be removed and a new condition be added to prevent overlooking from bedrooms 3 and 5 (north facing).

The Manager of Development Services was requested to prepare an approval for circulation to prior to the July Council meeting.

**COMMITTEE RECOMMENDATION**

- (1) That the Manager, Development Services prepare an approval for the two storey dwelling plus basement at No. 11 (Lot 2) Lillian Street, Cottesloe for consideration at the July Council meeting.
- (2) The approval incorporate the following special conditions:
  - (i) The front boundary fence being modified to provide an "Open Aspect Fence" in accordance with Council's local law;
  - (ii) The gradient of the driveway being modified to an acceptable gradient demonstrating that bottoming out will not occur in accordance with the Australian Standards;
  - (iii) The existing lot being subdivided and a new certificate of title being issued for the proposed lots prior to the issue of a building licence; and
  - (iv) The upper floor windows to bedrooms 3 and 5 (north facing) being modified to avoid overlooking into the adjoining property by either:
    - Being built 1.65m above FFL; or
    - Being glazed with fixed obscure glazing; or
    - Being repositioned.

**MEMO WITH AMENDED RECOMMENDATION – CIRCULATED 24 JULY, 2003**

A memo with an amended recommendation was circulated to elected members.

**OFFICER AMENDED RECOMMENDATION & COUNCIL RESOLUTION**

Moved Cr Furlong, seconded Cr Walsh

**That Council:**

- (1) **GRANT its Approval to Commence Development for the 2 Storey House plus Basement at No 11 (Lot 2) Lillian Street, Cottesloe in accordance with the plans submitted on 4 June, 2003, subject to the following conditions:**
  - (a) **All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.**
  - (b) **Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve, rights of way or adjoining properties and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the working drawings.**
  - (c) **The external profile of the development as shown on the approved plans, not being changed whether by the addition of any service plant, fitting, fixture, or otherwise, except with the written consent of Council.**

- (d) The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining, or nearby neighbours, following completion of the development.
- (e) The applicant applying to the Town of Cottesloe for approval by the Manager, Engineering Services, to construct a new crossover
- (f) Air conditioning plant and equipment is to be installed as far as practicable from the boundary of adjoining properties or in such a manner as to ensure that sound levels emitted from equipment shall not exceed those outlined in the Environmental Protection (Noise) Regulations 1997;
- (g) The front boundary fence being modified to provide an “Open Aspect Fence” in accordance with Council’s local law;
- (h) The gradient of the driveway being modified to an acceptable gradient demonstrating that bottoming out will not occur in accordance with the Australian Standards;
- (i) Revised plans being submitted for approval by the Manager, Development Services, showing:
  - (v) The upper floor windows to bedrooms 3 and 5 (north facing) being modified to avoid overlooking into the adjoining property by either:
    - Being built 1.65m above FFL; or
    - Being glazed with fixed obscure glazing; or
    - Being repositioned.
- (j) The existing lot being subdivided and a new certificate of title being issued for the proposed lots prior to the issue of a building licence.

Carried 11/0

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**1.4.4 NO 157 (LOT 21) BROOME STREET - 2 STOREY DWELLING PLUS BASEMENT**

<b>File No:</b>	<b>157 Broome Street</b>
<b>Author:</b>	<b>Mr D Heymans</b>
<b>Attachments:</b>	<b>Location Plan Correspondence from Applicant Submissions x (1) Plans &amp; Elevations</b>
<b>Author Disclosure of Interest:</b>	<b>Nil</b>
<b>Report Date:</b>	<b>15 July, 2003</b>
<b>Senior Officer:</b>	<b>Mr S Sullivan</b>
<b>Property Owner:</b>	<b>Mrs D Gurney</b>
<b>Applicant:</b>	<b>Icon</b>
<b>Date of Application:</b>	<b>30 April 2003</b>
<b>Zoning:</b>	<b>Residential</b>
<b>Use:</b>	<b>P - A use that is permitted under this Scheme</b>
<b>Density:</b>	<b>R30</b>
<b>Lot Area:</b>	<b>303.51m<sup>2</sup></b>
<b>M.R.S. Reservation:</b>	<b>N/A</b>

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**SUMMARY**

The purpose of this report is to seek Council approval for the development of a two storey single house. Given the assessment that has been undertaken, the recommendation is to Approve the Application.

**STATUTORY ENVIRONMENT**

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

**POLICY IMPLICATIONS**

N/A.

**HERITAGE LISTING**

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

**APPLICATION ASSESSMENT**

AREAS OF NON-COMPLIANCE

**Town of Cottesloe Town Planning Scheme No 2 - Text**

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

**Town Planning Scheme Policy/Policies**

Policy	Required	Provided
Front Fence Local Law	50% open aspect	Solid Fence

**Residential Design Codes**

Design Element	Acceptable Standards	Provided	Performance Criteria Clause
3 – Boundary Setbacks	<b>Setback to northern boundary from upper WIR of 2.1m</b>	2.0m	Clause 3.3.1
8 – Privacy	Visual privacy setback from northern boundary to upper bed 1,2 & 3 of 4.5m	4.0m	Clause 3.8.1

**STRATEGIC IMPLICATIONS**

The driveway location may adversely impact on Council's drainage system in this section of Broome Street. Further the development may be flooded as a consequence of the levels proposed.

**FINANCIAL IMPLICATIONS**

N/A.

**CONSULTATION**

## REFERRAL

**Internal**

- Building
- Engineering
- Health

**External**

McDonald Affleck Engineers

## ADVERTISING OF PROPOSAL

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

The advertising consisted of:

- Letter to Adjoining Property Owners

**Submissions**

There were 4 letters sent out. There was 1 submission received, which was an objection. Details of the submission received is set out below:

No. 161 Broome Street

The owners object to the following points:

- The glare from the zincalume roof;
- The type of canopy to be erected over the courtyard is not detailed;
- The type of boundary wall that will be constructed; and
- They do not want to incur any costs in relation to the fencing.

**BACKGROUND**

The site is one of two lots (157 & 157A Broome Street) that have been given subdivision approval by the Western Australian Planning Commission. The applicant has lodged two development applications on behalf of different owners for similar two storey houses with basements. This lot is the northern lot of the two and it slopes from the rear of the block down to the front by approximately 2m.

The lot is located in a flood prone area where the verge directly in front of this lot had a surface sump until recently. This has now been modified by the installation of underground storage tanks. The location of a crossover over this area needs careful consideration taking into account the impact on storm water storage.

In addition the current applicant was advised by Council on the 24 March 2003 of the following points:

- The level for calculation of building height will be RL 14.7;
- That the developer will need to agree to provide an indemnity to protect the Town of Cottesloe from any claim for flood damage should any portion of the building be built below RL 14.6;
- That a memorial be placed upon the title warning prospective purchasers of the potential for flooding;
- Given the potential for flooding Council strongly recommends that undercroft garages not be constructed.

Council received an application on the 30 April 2003, for a 2 storey house on the subject lot with an undercroft garage.

**STAFF COMMENT****Boundary Setbacks**

The applicant proposes a variation to setbacks as outlined in the Residential Design Codes.

A variation is being sought to the setback requirement for the WIR wall (upper level) on the northern side, as per Table 2A of the Residential Design Codes, the required setback is 2.1 metres. However, the proposed setback is 2.0m and as the setback does not comply with the acceptable development standard of the codes then the relevant performance criteria need to be addressed which state:



*P1 - Buildings setback from boundaries other than street boundaries so as to:*

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

The administration considers that the proposed 2.0 metre setback to the northern boundary fulfils the performance criteria for the following reasons:

- the adjoining property is setback from the front boundary by about 18m and as a result the subject wall only impacts on the front setback area of the adjoining property at 161 Broome Street;
- does not reduce sunlight or ventilation on the subject lot or the adjoining lot.

Therefore the administration recommends that the variation in this instance be approved.

### **Visual Privacy**

Under the Design Codes visual privacy setbacks are required to habitable areas with the potential for overlooking into adjoining properties. Where the acceptable setback standards are not met, compliance with the performance standards set out in clause 3.8.1 must be demonstrated. The clause states that new developments must:

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

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

The cone of vision applied to the upper floor bedroom windows indicates that there is the potential to overlook the adjoining property at 161 Broome Street on the northern side. The required setback is 4.5m, however the applicant is proposing a 4.0m setback measured from the outside of the window.

The overlooking is not of a concern as it falls onto a small area of land between the fence and the building of the adjoining lot and does not have a detrimental impact on the adjoining neighbour. In addition the adjoining neighbour has not raised any issue in relation to this matter.

Therefore the administration recommends that this variation be approved.

**Undercroft Garage**

An undercroft garage is proposed for this development with a finished floor level of RL 12.3m, which is below the minimum level (RL 14.6m) recommended by Council to avoid flooding.

Council previously advised the applicant that any portion of the building below RL 14.6m would require the developer to agree to provide an indemnity to protect the Town of Cottesloe from any claim for flood damage should any portion of the building be built below RL 14.6. In addition Council advised that undercroft garages are not recommended.

In addition the grade of the driveway has been calculated to be 1:4.7, however Council's Engineering Services recommends a grade of 1:5, which is in accordance with the Australian Standard for minimum driveway grades. A 1:5 grade is still of concern as bottoming out can still occur at this grade.

Therefore the administration recommends that revised plans be submitted demonstrating transitions to the driveway and that bottoming out will not occur.

**Crossover**

The applicant submitted plans to Council illustrating the proposed crossover, refer attached, however Council's Engineering Services advised that the proposal was unacceptable and provided the applicant with an alternative design that took into account the associated drainage sump and existing crossovers.

The plan designed by Engineering Services has been assessed by Council's consulting engineer who made the following comments on the plan:

- The driveways as proposed will affect the volume of storage provided in the shallow sump over the buffer tanks detrimentally;
- We recommend that any reduction in volume be made up in other nearby locations with turkey nest dams similar to those already constructed elsewhere.
- The location of the driveways should therefore be close as possible to the proposed lot boundaries;
- Care must be taken with the design levels of the driveways so as not to compromise the buffer tanks below.

Engineering Services have stated that alterations to the existing sump can be made to address the issues raised by the consultant.

Therefore the administration recommends that the crossovers be constructed as per the diagram prepared by Engineering Services dated 4 July, 2003.

**Front Fence**

The applicant has proposed a solid front fence in the front set back area. Council's front fence local law states that a solid front fence may be constructed to a maximum height of 900 mm. The applicant has provided no justification for a solid front fence and the administration believes that a solid front fence in the front setback area will set a negative precedent reducing the open aspect nature of the streetscape in this area.

Therefore the administration recommends that the front fence be modified to comply with Council's local law.

## **CONCLUSION**

The proposed development be approved subject to the following conditions.

## **VOTING**

Simple Majority

## **OFFICER RECOMMENDATION**

That Council:

- (1) GRANT its Approval to Commence Development for the 2 Storey House at No 157A (Lot 21) Broome Street, Cottesloe in accordance with the plans submitted on 30 April 2003, subject to the following conditions:
  - (a) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.
  - (b) Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve, rights of way or adjoining properties and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the working drawings.
  - (c) The external profile of the development as shown on the approved plans, not being changed whether by the addition of any service plant, fitting, fixture, or otherwise, except with the written consent of Council.
  - (d) The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining, or nearby neighbours, following completion of the development.
  - (e) The applicant applying to the Town of Cottesloe for approval by the Manager, Engineering Services, to construct a new crossover, where required, in accordance with the local law.
  - (f) Air conditioning plant and equipment is to be installed as far as practicable from the boundary of adjoining properties or in such a manner as to ensure that sound levels emitted from equipment shall not exceed those outlined in the Environmental Protection (Noise) Regulations 1997
  - (g) the owner, prior to the issue of a building licence:
    - (i) entering into a legal agreement with Council, binding them, their heirs & successors in title, indemnifying Council against any claims in relation to flooding of the basement or land;
    - (ii) placing a memorial on the title stating that the basement and the land may be subject to flooding;
  - (h) The existing lot being subdivided and a new certificate of title being issued for the proposed lots prior to the issue of a building licence.

- (i) Revised plans being submitted for approval by the Manager, Development Services, showing:
  - (i) the front boundary fence being modified to provide an "Open Aspect Fence".
  - (II) the gradient of the driveway being modified so as to demonstrate that no bottoming out will occur in accordance with the Australian Standards.
- (2) Advise the submitters of this decision.

### COMMITTEE COMMENT

Manager, Development Services addressed the meeting in regards to the drainage, compensation claims and flood problems. Condition (e) was modified to address this issue.

The following information was presented to Council by Memo on 21 July 2003:

Council received some late correspondence from the adjoining owner at No. 161 Broome Street, refer attached.

In addition the following comments are made in relation to the submission received from the new owners of the subdivided front lot at No. 155 Broome Street (which has not yet been created) in relation to the development at No. 157A Broome Street.

The owners of 155 Broome Street wanted the boundary wall increased in height to 2.0m to avoid overlooking, the applicant later advised that this would be acceptable. The administration believes that as long as the boundary wall is behind the front setback line then this solution would be acceptable also.

In addition the owners of 155 Broome Street also objected to the passageway windows overlooking their proposed outdoor living area. The applicant has responded to these concerns stating that these windows are from non-habitable spaces and therefore are in accordance with the R Codes.

Notwithstanding clause 5.1.2 of the Town of Cottesloe Town Planning Scheme No. 2 states that Council shall have regard to and may impose conditions relating to number of general amenity concerns. In particular clause (f) states that:

*"The location and orientation of a building on a lot in order to achieve higher standards of daylighting, sunshine or privacy or to avoid visual monotony in the street scene as a whole."*

The administration believes that these windows will have an adverse impact on any proposed development to the south particularly on a courtyard gaining access to the northern sunlight. The administration has consistently imposed conditions requiring windows to non-habitable rooms to be either glazed opaque or the sill height being 1650 mm above FFL.

Therefore the administration recommends that the passageway windows on the southern side be either glazed opaque, or the sill height increased to 1650mm above FFL.

The owner of 155 Broome Street also was concerned about overshadowing of the proposed front lot at No. 155 Broome Street, which has been given subdivision approval, however the lot has not been created yet. The codes state that the acceptable level of overshadowing of adjoining lots with a coding of R 30 is 35% at the winter solstice. Calculation of the overshadowing of 155 Broome Street shows that 33% of the adjoining lot will be overshadowed.

The administration does not believe in this instance that a higher level of daylighting be imposed as the proposed lot at No. 155 is only 277m<sup>2</sup> in size and that any development on 157A Broome Street would be expected to take advantage of the northern sun, this invariably will result in overshadowing of the adjoining lot to the south. In this instance the overshadowing is within the acceptable development standard of the codes and this is deemed to be a sufficient level of daylighting.

As a result of these recommendations the officer recommendation in the report should be modified to read as follows:

#### **OFFICER RECOMMENDATION**

That Council:

- (1) GRANT its Approval to Commence Development for the 2 Storey House plus Basement at No 157 (Lot 21) Broome Street, Cottesloe in accordance with the plans submitted on 30 April 2003, subject to the following conditions:
  - (a) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.
  - (b) Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve, rights of way or adjoining properties and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the working drawings.
  - (c) The external profile of the development as shown on the approved plans, not being changed whether by the addition of any service plant, fitting, fixture, or otherwise, except with the written consent of Council.
  - (d) The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining, or nearby neighbours, following completion of the development.
  - (e) The applicant applying to the Town of Cottesloe for approval by the Manager, Engineering Services, to construct a new crossover based on the draft design dated 4 July 2003
  - (f) Air conditioning plant and equipment is to be installed as far as practicable from the boundary of adjoining properties or in such a manner as to ensure that sound levels emitted from equipment shall not

exceed those outlined in the Environmental Protection (Noise) Regulations 1997;

- (g) the owner, prior to the issue of a building licence:
  - (i) entering into a legal agreement with Council, binding them, their heirs & successors in title, indemnifying Council against any claims in relation to flooding of the basement or land;
  - (ii) placing a memorial on the title stating that the basement and the land may be subject to flooding;
- (h) Revised plans being submitted for approval by the Manager, Development Services, showing:
  - (i) the front boundary fence being modified to provide an "Open Aspect Fence"; and
  - (ii) the upper floor windows to the passageway on the southern side being modified to prevent overlooking by either:
    - being built 1.65m above FFL; or
    - being glazed with fixed obscure glazing.
- (i) The existing lot being subdivided and a new certificate of title being issued for the proposed lots prior to the issue of a building licence.

(2) Advise the submitters of this decision.

#### **COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION**

Moved Cr Furlong, seconded Cr Walsh

#### **That Council:**

- (1) **GRANT its Approval to Commence Development for the 2 Storey House plus Basement at No 157 (Lot 21) Brome Street, Cottesloe in accordance with the plans submitted on 30 April 2003, subject to the following conditions:**
  - (a) **All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.**
  - (b) **Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve, rights of way or adjoining properties and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the working drawings.**
  - (c) **The external profile of the development as shown on the approved plans, not being changed whether by the addition of any service plant, fitting, fixture, or otherwise, except with the written consent of Council.**
  - (d) **The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining, or nearby neighbours, following completion of the development.**

- (e) The applicant applying to the Town of Cottesloe for approval by the Manager, Engineering Services, to construct a new crossover based on the draft design dated 4 July 2003
  - (f) Air conditioning plant and equipment is to be installed as far as practicable from the boundary of adjoining properties or in such a manner as to ensure that sound levels emitted from equipment shall not exceed those outlined in the Environmental Protection (Noise) Regulations 1997;
  - (g) the owner, prior to the issue of a building licence:
    - (i) entering into a legal agreement with Council, binding them , their heirs & successors in title, indemnifying Council against any claims in relation to flooding of the basement or land;
    - (ii) placing a memorial on the title stating that the basement and the land may be subject to flooding;
  - (h) Revised plans being submitted for approval by the Manager, Development Services, showing:
    - (i) the front boundary fence being modified to provide an “Open Aspect Fence”; and
    - (ii) the upper floor windows to the passageway on the southern side being modified to prevent overlooking by either:
      - being built 1.65m above FFL; or
      - being glazed with fixed obscure glazing.
  - (i) The existing lot being subdivided and a new certificate of title being issued for the proposed lots prior to the issue of a building licence.
- (2) Advise the submitters of this decision.

Carried 11/0

**1.4.5 NO 157A (LOT 21) BROOME STREET - 2 STOREY HOUSE PLUS BASEMENT**

**File No:** 157A Broome Street  
**Author:** Mr D Heymans  
**Attachments:** Location Plan  
Correspondence from Applicant  
Submissions x (1)  
Plans & Elevations  
**Author Disclosure of Interest:** Nil  
**Report Date:** 15 July, 2003  
**Senior Officer:** Mr S Sullivan  
  
**Property Owner:** Sharon Johns  
  
**Applicant:** Icon  
**Date of Application:** 30 April 2003  
  
**Zoning:** Residential  
**Use:** P - A use that is permitted under this Scheme  
**Density:** R30  
**Lot Area:** 303.51m<sup>2</sup>  
**M.R.S. Reservation:** N/A

**SUMMARY**

The purpose of this report is to seek Council approval for the development of a two storey single house plus basement. Given the assessment that has been undertaken, the recommendation is to Approve the Application.

**STATUTORY ENVIRONMENT**

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

**POLICY IMPLICATIONS**

N/A.

**HERITAGE LISTING**

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

**APPLICATION ASSESSMENT**

AREAS OF NON-COMPLIANCE



**Town of Cottesloe Town Planning Scheme No 2 - Text**

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

**Town Planning Scheme Policy/Policies**

Policy	Required	Provided
Front Fence Local Law	50% open aspect	Solid Fence

**Residential Design Codes**

Design Element	Acceptable Standards	Provided	Performance Criteria Clause
3 – Boundary Setbacks	<b>Setback to southern boundary from upper floor bath &amp; passageway of 2.0m</b>	1.57m	Clause 3.3.1
3 – Boundary Setbacks	<b>Setback to northern boundary from upper WIR of 2.1m</b>	1.5m	Clause 3.3.1
8 – Privacy	Visual privacy setback from northern boundary to upper bed 1,2 & 3 of 4.5m	4.0m	Clause 3.8.1

**STRATEGIC IMPLICATIONS**

The driveway location may adversely impact on Council's drainage system in this section of Broome Street.

Further the development may be flooded as a consequence of the levels proposed.

**FINANCIAL IMPLICATIONS**

N/A.

**CONSULTATION**

## REFERRAL

**Internal**

- Building
- Engineering
- Health

**External**

McDowell Affleck Engineers

## ADVERTISING OF PROPOSAL

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

The advertising consisted of:

- Letter to Adjoining Property Owners

### **Submissions**

There were 4 letters sent out. There were 1 submissions received, which was an objection. Details of the submissions received are set out below:

#### No. 155 Broome Street

The owners were concerned about the following points:

- That the passageway windows on the southern elevation be modified to prevent overlooking onto 155 Broome Street;
- That a solid wall be constructed between 157A Broome Street and 155 Broome Street to a height of 2.0m to prevent overlooking from the raised terrace area;
- That overshadowing of the proposed courtyard for 155 Broome Street be taken into account.

### **BACKGROUND**

The site is one of two lots (157 & 157A Broome Street) that have been given subdivision approval by the Western Australian Planning Commission. The applicant has lodged two development applications on behalf of different owners for similar two storey houses with basements. This lot is the southern lot of the two and it slopes from the rear of the block down to the front by approximately 2m.

The lot is located in a flood prone area where the verge directly in front of this lot had a surface sump until recently. This has now been modified by the installation of underground storage tanks. The location of a crossover over this area needs careful consideration taking into account the impact on storm water storage.

In addition the current applicant was advised by Council on the 24 March, 2003 of the following points:

- The level for calculation of building height will be RL 14.7;
- That the developer will need to agree to provide an indemnity to protect the Town of Cottesloe from any claim for flood damage should any portion of the building be built below RL 14.6;
- That a memorial be placed upon the title warning prospective purchasers of the potential for flooding;
- Given the potential for flooding Council strongly recommends that undercroft garages not be constructed.

Council received an application on the 30 April 2003, for a 2 storey house on the subject lot with an undercroft garage.

### **STAFF COMMENT**

#### **Boundary Setbacks**

The applicant proposes two variations to setbacks as outlined in the Residential Design Codes.

A variation is being sought to the setback requirement for the WIR wall (upper level) on the northern side, as per Table 2A of the Residential Design Codes, the required setback is 2.1 metres. However, the proposed setback is 1.5m and as the setback does not comply with the acceptable development standard of the codes then the relevant performance criteria need to be addressed which state:

*P1 - Buildings setback from boundaries other than street boundaries so as to:*

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

The administration considers that the proposed 1.5 metre setback to the northern boundary fulfils the performance criteria for the following reasons:

- The adjoining property is being constructed at the same time by the same applicant taking into account both neighbours issues;
- The adjoining property at No. 157 Broome Street is setback 1.57m from the boundary and therefore there will be no adverse impact on sunlight or ventilation to both properties.

Therefore the administration recommends that the variation in this instance be approved.

A second variation is being sought to the setback requirement for the bath wall (upper level) on the southern side, as per Table 2A of the Residential Design Codes, the required setback is 2.0 metres. However, the proposed setback is 1.57m and as the setback does not comply with the acceptable development standard of the codes then the relevant performance criteria need to be addressed, as outlined above.

The administration believes that the proposed 1.57 metre setback to the southern boundary fulfils the performance criteria for the following reasons:

- The wall does not adversely impact on the amount of sunlight and ventilation to the subject lot or the adjoining lot;
- The majority of the upper southern wall is setback 2.55m, which is over the requirement and part of the wall is located 3.8m from the boundary which significantly ameliorates the impact of building bulk;

Therefore the administration recommends that the variation in this instance be approved.

**Visual Privacy**

Under the Design Codes visual privacy setbacks are required to habitable areas with the potential for overlooking into adjoining properties. Where the acceptable setback standards are not met, compliance with the performance standards set out in clause 3.8.1 must be demonstrated. The clause states that new developments must:

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

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

The cone of vision applied to the upper floor bedroom windows indicates that there is the potential to overlook the adjoining property at 157 Broome Street on the northern side. The required setback is 4.5m, however the applicant is proposing a 4.0m setback measured from the outside of the window.

The overlooking is not of a concern as it falls onto a small area of land between the fence and the building of the adjoining lot and does not have a detrimental impact on the adjoining neighbour as the wall has no major openings to habitable rooms. In addition the adjoining property is being developed at the same time and there are no concerns from the adjoining neighbour.

Therefore the administration recommends that this variation be approved.

**Undercroft Garage**

An undercroft garage is proposed for this development with a finished floor level of RL 12.7m, which is below the minimum level (RL 14.6m) recommended by Councils Engineer to avoid flooding.

Council previously advised the applicant that any portion of the building below RL 14.6m would require the developer to agree to provide an indemnity to protect the Town of Cottesloe from any claim for flood damage should any portion of the building be built below RL 14.6. In addition Council advised that undercroft garages are not recommended.

Notwithstanding the administration recommends that the undercroft be approved subject to an indemnity being provided by the applicant.

**Crossover**

The applicant submitted plans to Council illustrating the proposed crossover, refer attached, however Council's Engineering Services advised that the proposal was unacceptable and provided the applicant with an alternative design that took into account the associated drainage sump and existing crossovers.

The plan designed by Engineering Services has been assessed by Council's consulting engineer who made the following comments on the plan:

- The driveways as proposed will affect the volume of storage provided in the shallow sump over the buffer tanks detrimentally;
- We recommend that any reduction in volume be made up in other nearby locations with turkey nest dams similar to those already constructed elsewhere.
- The location of the driveways should therefore be close as possible to the proposed lot boundaries;
- Care must be taken with the design levels of the driveways so as not to compromise the buffer tanks below.

Engineering Services have stated that alterations to the existing sump can be made to address the issues raised by the consultant.

Therefore the administration recommends that the crossovers be constructed as per the diagram prepared by Engineering Services dated 4 July 2003.

### **Front Fence**

The applicant has proposed a solid front fence in the front set back area. Council's front fence local law states that a solid front fence may be constructed to a maximum height of 900mm. The applicant has provided no justification for a solid front fence and the administration believes that a solid front fence in the front setback area will set a negative precedent reducing the open aspect nature of the streetscape in this area.

Therefore the administration recommends that the front fence be modified to comply with Council's local law.

### **CONCLUSION**

The proposed development be approved subject to the following conditions.

### **VOTING**

Simple Majority

### **OFFICER RECOMMENDATION**

That Council:

- (1) GRANT its Approval to Commence Development for the 2 Storey House plus Basement at No 157A (Lot 21) Brome Street, Cottesloe in accordance with the plans submitted on 30 April 2003, subject to the following conditions:
    - (a) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.
    - (b) Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve, rights of way or adjoining properties and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the working drawings.
    - (c) The external profile of the development as shown on the approved plans, not being changed whether by the addition of any service plant, fitting, fixture, or otherwise, except with the written consent of Council.
-

- (d) The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining, or nearby neighbours, following completion of the development.
  - (e) The applicant applying to the Town of Cottesloe for approval by the Manager, Engineering Services, to construct a new crossover, where required, in accordance with the local law.
  - (f) Air conditioning plant and equipment is to be installed as far as practicable from the boundary of adjoining properties or in such a manner as to ensure that sound levels emitted from equipment shall not exceed those outlined in the Environmental Protection (Noise) Regulations 1997;
  - (g) the owner, prior to the issue of a building licence:
    - (i) entering into a legal agreement with Council, binding them , their heirs & successors in title, indemnifying Council against any claims in relation to flooding of the basement or land;
    - (ii) placing a memorial on the title stating that the basement and the land may be subject to flooding;
  - (h) Revised plans being submitted for approval by the Manager, Development Services, showing the front boundary fence being modified to provide an "Open Aspect Fence"; and
  - (i) The existing lot being subdivided and a new certificate of title being issued for the proposed lots prior to the issue of a building licence.
- (2) Advise the submitters of this decision.

### COMMITTEE COMMENT

Condition (e) be amended to read as follows, based on the comments made in item 1.3:

*"(e) The applicant applying to the Town of Cottesloe for approval by the Manager, Engineering Services, to construct a new crossover based on the draft design dated 4 July, 2003."*

### COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Furlong, seconded Cr Walsh

**That Council:**

- (1) **GRANT its Approval to Commence Development for the 2 Storey House plus Basement at No 157A (Lot 21) Brome Street, Cottesloe in accordance with the plans submitted on 30 April, 2003, subject to the following conditions:**
  - (a) **All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.**
  - (b) **Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve, rights of way or adjoining properties and the gutters and downpipes used for**

- the disposal of the stormwater runoff from roofed areas being included within the working drawings.
- (c) The external profile of the development as shown on the approved plans, not being changed whether by the addition of any service plant, fitting, fixture, or otherwise, except with the written consent of Council.
  - (d) The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining, or nearby neighbours, following completion of the development.
  - (e) The applicant applying to the Town of Cottesloe for approval by the Manager, Engineering Services, to construct a new crossover, based on the draft design dated 4 July, 2003.
  - (f) Air conditioning plant and equipment is to be installed as far as practicable from the boundary of adjoining properties or in such a manner as to ensure that sound levels emitted from equipment shall not exceed those outlined in the Environmental Protection (Noise) Regulations 1997;
  - (g) The owner, prior to the issue of a building licence:
    - (i) entering into a legal agreement with Council, binding them , their heirs & successors in title, indemnifying Council against any claims in relation to flooding of the basement or land;
    - (ii) placing a memorial on the title stating that the basement and the land may be subject to flooding;
  - (h) Revised plans being submitted for approval by the Manager, Development Services, showing the front boundary fence being modified to provide an “Open Aspect Fence”; and
  - (i) The existing lot being subdivided and a new certificate of title being issued for the proposed lots prior to the issue of a building licence.
- (2) Advise the submitters of this decision.

Carried 11/0

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**1.4.6 NO 22 (LOT 32) GRANT STREET - RENOVATION TO EXISTING 3 LEVEL HOUSE**

**File No:** 22 Grant Street  
**Author:** Mr D Heymans  
**Attachments:** Location Plan  
 Plans & Elevations  
 Correspondence from Applicant  
 Submission (1)

**Author Disclosure of Interest:** Nil  
**Report Date:** 15 July, 2003  
**Senior Officer:** Mr S Sullivan

**Property Owner:** John Woodward

**Applicant:** John Woodward  
**Date of Application:** 4 June 2003

**Zoning:** Residential  
**Use:** P - A use that is permitted under this Scheme  
**Density:** R30  
**Lot Area:** 678m<sup>2</sup>  
**M.R.S. Reservation:** N/A

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### SUMMARY

The purpose of this report is to seek Council approval for the redevelopment of an existing three level dwelling. Given the assessment that has been undertaken, the recommendation is to Approve the Application.

### STATUTORY ENVIRONMENT

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

### POLICY IMPLICATIONS

- Building Heights Policy No 005

### HERITAGE LISTING

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

### APPLICATION ASSESSMENT

#### AREAS OF NON-COMPLIANCE



**Town of Cottesloe Town Planning Scheme No 2 - Text**

Clause	Required	Provided
5.1.1 – Wall Height Limit	6.0m	8.0m

**Town Planning Scheme Policy/Policies**

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

**Residential Design Codes**

Design Element	Acceptable Standards	Provided	Performance Criteria Clause
2 – Setbacks	Front setback of 4.0m	5.6m	Clause 3.2.1
8 – Privacy	Visual privacy setback from garage roof to northern boundary of 7.5m	Nil	Clause 3.8.1

**STRATEGIC IMPLICATIONS**

N/A.

**FINANCIAL IMPLICATIONS**

N/A.

**CONSULTATION**

## REFERRAL

**Internal**

- Building
- Engineering
- Health

**External**

N/A.

## ADVERTISING OF PROPOSAL

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

The advertising consisted of:

- Letter to Adjoining Property Owners

**Submissions**

There were 4 letters sent out. There was 1 submission received, which was an objection. Details of the submission received is set out below:

No. 197 Grant Street

The owner objected to the possibility of overlooking onto his property from the proposed deck on top of the garage.

**BACKGROUND**

The subject property is located on the northern side of Grant Street. Currently there is an existing 3 level house with extensive balconies. The applicant wishes to renovate and modify the existing dwelling by altering some of the roof design, significant internal alterations, modify balcony areas, extensions to the 6.0m setback line and an architectural entry feature to Grant Street.

**STAFF COMMENT****Building Height – Clause 5.1.1**

Clause 5.1.1 of the Town of Cottesloe Town Planning Scheme No. 2 states that there is a height limit of 6.0m to the wall height, which is calculated from the centre of the site. Clause 5.1.1 also states that variations may be permitted in the case of extensions to existing buildings.

It should be noted that significant parts of the existing dwelling do not comply with the current height restrictions.

Assessment of the application has shown that the proposed architectural entry feature, which has a wall height of about 8.0m, does not comply with the 6.0m wall height limit prescribed under the scheme. Notwithstanding, the existing wall on the upper floor on the eastern side of the development is of a similar height at its highest point, and the existing roof is higher than the proposed architectural feature.

The administration considers that the proposed architectural feature will not adversely impact on any of the adjoining properties as it faces the street, does not project any higher than the existing roof and will not reduce sunlight or ventilation to any adjoining properties.

Therefore the administration recommends that the height of the architectural feature be approved.

**Front Boundary Setback**

The applicant proposes a front setback for the entry architectural feature of 5.6m. The Residential Design Codes, which were implemented in October 2002 changed the front setback requirement for land coded R30 from 6.0m to 4.0m. At the October 2002 Council meeting Council made a resolution stating that

“When assessing applications for Development Approval, Council will:

- (a) generally insist on:
  - (i) A 6.0m setback for residential development in the District, which does not include averaging”

The proposed setback is 5.6m, however the required setback is 6.0m. Council has consistently sought conformity with a 6.0m setback with no averaging.

The administration believes that as Grant Street acts as a view corridor to the ocean for properties fronting Grant Street any incursion into the 6.0m front setback line has the potential to adversely affect views, particularly as the structure is over 8.0m in height and does not conform to Council's height requirements. Council has consistently applied a 6.0m setback to the locality and to alter the 6.0m setback requirement at this stage would set a negative precedent.

In addition Council has engaged a consultant to prepare a streetscape study that will reinstate the 6.0m front setback requirement. The consultant has prepared a draft policy which is being reviewed by the administration currently. It is expected that the final draft will be presented to Council in August for consent to advertise.

Therefore the administration recommends that the entry architectural feature be located behind the 6.0m setback line.

### **Visual Privacy**

Under the Design Codes visual privacy setbacks are required to habitable areas with the potential for overlooking into adjoining properties. Where the acceptable setback standards are not met, compliance with the performance standards set out in clause 3.8.1 must be demonstrated. The clause states that new developments must:

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

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

The cone of vision applied to the proposed single garage roof area (which abuts the northern boundary) indicates that there is the potential to overlook the adjoining back yard at 193 Broome Street. The adjoining neighbour has objected to this overlooking as it is their principal outdoor living area.

The applicant has since submitted a revised plan showing screening to a height of 1.8m. The adjoining neighbour has indicated verbally that this is acceptable, however as this has not been formally agreed to it is important to apply a condition requiring the screening to be provided.

Therefore the administration recommends that the garage roof be screened so as to avoid overlooking into the adjoining property.

In addition the cone of vision applied to the deck on the ground floor level and the family room on the ground floor level indicate that there is the potential to overlook the adjoining property on the western side. However assessment of this overlooking shows that this is of little concern as it falls on the adjoining two storey wall which has no major openings and on the front balcony at No. 18 Grant Street. The codes state

that overlooking of the front area is acceptable. It should be noted that the majority of houses in the area overlook each other's front balconies.

**CONCLUSION**

The proposed development be approved subject to the following conditions.

Further investigation is being carried out in relation to the number of storeys. Further comments will be made to the Committee.

**VOTING**

Simple Majority

**OFFICER RECOMMENDATION**

That Council:

- (1) GRANT its Approval to Commence Development for the Renovation to existing 3 level house at No 22 (Lot 32) Grant Street, Cottesloe in accordance with the plans submitted on 4 June 2003, subject to the following conditions:
  - (a) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.
  - (b) Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve, rights of way or adjoining properties and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the working drawings.
  - (c) The external profile of the development as shown on the approved plans, not being changed whether by the addition of any service plant, fitting, fixture, or otherwise, except with the written consent of Council.
  - (d) The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining, or nearby neighbours, following completion of the development.
  - (e) The right of way located at the side, adjacent to the property, being paved and drained to the satisfaction of the Manager, Engineering Services, details of the proposed works being submitted in accordance with Council guidelines and approved prior to the commencement of works.
  - (f) Any front boundary fencing to the site being of an "Open Aspect" design and the subject of a separate application to Council.
  - (g) Air conditioning plant and equipment is to be installed as far as practicable from the boundary of adjoining properties or in such a manner as to ensure that sound levels emitted from equipment shall not exceed those outlined in the Environmental Protection (Noise) Regulations 1997.
  - (h) Revised plans being submitted for approval by the Manager, Development Services, showing:

- (i) the entry wall located near the front boundary being set back 6.0m from the front boundary;
  - (ii) the garage roof being screened to prevent overlooking into the adjoining property.
- (2) Advise the submitters of this decision.

### **COMMITTEE COMMENT**

Having regard to a late submission from the applicant requesting the single garage to be deleted and replaced with a hardstand car bay, condition (h)(ii) was amended to reflect this.

### **COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION**

Moved Cr Furlong, seconded Cr Walsh

#### **That Council:**

- (1) **GRANT its Approval to Commence Development for the Renovation to existing 3 level house at No 22 (Lot 32) Grant Street, Cottesloe in accordance with the plans submitted on 4 June 2003, subject to the following conditions:**
- (a) **All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.**
  - (b) **Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve, rights of way or adjoining properties and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the working drawings.**
  - (c) **The external profile of the development as shown on the approved plans, not being changed whether by the addition of any service plant, fitting, fixture, or otherwise, except with the written consent of Council.**
  - (d) **The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining, or nearby neighbours, following completion of the development.**
  - (e) **The right of way located at the side, adjacent to the property, being paved and drained to the satisfaction of the Manager, Engineering Services, details of the proposed works being submitted in accordance with Council guidelines and approved prior to the commencement of works.**
  - (f) **Any front boundary fencing to the site being of an "Open Aspect" design and the subject of a separate application to Council.**
  - (g) **Air conditioning plant and equipment is to be installed as far as practicable from the boundary of adjoining properties or in such a manner as to ensure that sound levels emitted from equipment shall**
-

not exceed those outlined in the Environmental Protection (Noise) Regulations 1997.

- (h) Revised plans being submitted for approval by the Manager, Development Services, showing:
  - (i) the entry wall located near the front boundary being set back 6.0m from the front boundary;
  - (ii) the single garage abutting the northern boundary and upper level link to the roof of the garage being deleted and a hard standing parking space be provided in lieu thereof.
- (2) Advise the submitters of this decision.

Carried 11/0

### 1.4.7 NO. 32 (LOT 104) LOMA STREET - RETENTION OF UNAUTHORISED WALL

**File No:** 32 Loma Street  
**Author:** Mr D Heymans  
**Attachments:** Correspondence from Owner – 23/06/03  
**Author Disclosure of Interest:** Nil  
**Report Date:** 10 July, 2003  
**Senior Officer:** Mr S Sullivan

**Property Owner:** Syd Lodge

**Applicant:** Syd Lodge  
**Date of Application:** 24 June 2003

**Zoning:** Residential  
**Use:** N/A  
**Density:** R20  
**Lot Area:** 450m<sup>2</sup>  
**M.R.S. Reservation:** N/A

#### SUMMARY

A secure solid garden wall, 2.5m high (above the footpath) has been constructed at the above address without Council approval. Council previously resolved that the wall be modified so as not to be 1.8m above footpath level. The applicant is now requesting that Council accept the wall as constructed.

#### STATUTORY ENVIRONMENT

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

#### POLICY IMPLICATIONS

N/A.

#### HERITAGE LISTING

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

#### APPLICATION ASSESSMENT

##### AREAS OF NON-COMPLIANCE

##### Town of Cottesloe Town Planning Scheme No 2 - Text

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

**Town Planning Scheme Policy/Policies**

<b>Policy</b>	<b>Required</b>	<b>Provided</b>
N/A	N/A	N/A

**Residential Design Codes**

<b>Design Element</b>	<b>Acceptable Standards</b>	<b>Provided</b>	<b>Performance Criteria Clause</b>
N/A	N/A	N/A	N/A

**STRATEGIC IMPLICATIONS**

N/A.

**FINANCIAL IMPLICATIONS**

N/A.

**CONSULTATION**

REFERRAL

**Internal**

N/A.

**External**

N/A.

**ADVERTISING OF PROPOSAL**

The application was not required to be advertised.

**BACKGROUND**

The subject land is on the corner of Loma and Marmion Streets. Council originally approved plans for a two storey dwelling on the site in March 2001 subject to the rear courtyard being reduced to a relative level of 10.80 and the boundary wall along Marmion Street being reduced in height to 1.8m measured from the footpath. Similar plans were subsequently granted approval under delegated authority in August 2001 with a 1.8m boundary fence but a rear courtyard level of 11.00. Construction on the house has recently been completed.

In December 2002, administration was advised by a Councillor that an additional garden wall had been unlawfully constructed on the site. Following confirmation through a site visit.

The wall in question is a solid rendered masonry wall and has been constructed 1.5m inside the approved boundary wall on Marmion Street. The approved boundary wall is 1.75m in height however, the unlawful wall is 2.54m in height (measured from the footpath level). Approximately 700mm of the solid wall is viewable above the boundary wall.

Assessment of the wall against the provisions of the Residential Design Codes indicated that it was not contrary to any required standard. The main issue with the



wall was its impact upon the streetscape in this locality. Council was concerned about the impact of the height of the wall on the Marmion Street boundary as demonstrated by its original decision in 2001.

The administration recommended the following options to Council:

- Require the wall to be removed; or
- Require the wall to be modified; or
- Accept the wall as it has been constructed.

The item was dealt with by Council at its meeting on the 24 March 2003, where Council advised the owner of No. 32 (Lot 704) Loma Street that:

- (1) It is not prepared to support the departure from the approved plans for the unauthorised fence located 1.5m from the Marmion Street boundary and north of the existing dwelling; and
- (2) It requires the unauthorised fence to be modified so that it is not higher than 1.8m above the abutting Marmion Street footpath level.

### **STAFF COMMENT**

The owner subsequently responded to Council on the 24 June 2003 and requested that Council acknowledge the screen was built without approval and agrees to take no further action on the subject.

The owner has provided justification, refer attachment, for this course of action which is outlined below:

- That the applicant was wrongly informed to lodge a planning application to keep the wall, however the applicant was later advised that no retrospective approval could be granted;
- The wall conformed to the provisions of the R codes;
- If the wall was removed and an application was lodged for planning approval there would be no reason to refuse it, as all requirements would have been met.

The report to Council clearly identified that there were 3 options available to deal with this application and none of them suggested retrospective approval. It was considered by the administration that the wall conformed to the Residential Design Codes, however the wall was considered to have a negative impact on the streetscape and therefore the Council required the wall to be modified as per its resolution on the 24 March 2003. If Council received an application for such a wall it would be the subject of an independent assessment and the final decision would be made by Council, however it can be assumed that the same concerns in relation to the adverse impact on the streetscape would be an issue.

### **CONCLUSION**

Given the above report, it is recommended that Council makes a determination in relation to the unauthorised wall. In this regard Council may choose one of the following options:

- Take legal action to get the wall modified in accordance with Council's previous resolution;

- Take legal action to get he wall removed;
- Accept the wall as it has been constructed and take no further action.

**VOTING**

Simple Majority

**OFFICER RECOMMENDATION**

For determination by Council.

**COMMITTEE COMMENT**

The Committee believed that the unauthorised work did not impact on the amenity of the locality and therefore, have recommended that no further action be taken on this matter.

**COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION**

Moved Cr Furlong, seconded Cr Walsh

**That Council accept the secure solid garden wall as constructed at No. 32 Loma Street and take no further action.**

Carried 11/0

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**1.4.8 NO. 7 ROSENDO STREET – UNAUTHORISED WORKS - TUKURUA**

<b>File No:</b>	<b>7 Rosendo street</b>
<b>Author:</b>	<b>Mr S Sullivan</b>
<b>Attachments:</b>	<b>Correspondence from HCWA - 20/06/03</b>
<b>Author Disclosure of Interest:</b>	<b>Nil</b>
<b>Report Date:</b>	<b>14 July, 2003</b>
<b>Senior Officer:</b>	<b>Mr S Tindale</b>

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**SUMMARY**

Work has been carried out on the property known as Tukurua, which should have been the subject of Council's Approval to Commence Development. Council needs to determine what action it intends to take in relation to this matter.

It is recommended that the owner of the property be advised that whilst Council supports the upgrading of the building known as Tukurua:

- the work undertaken on Tukurua required Council's Approval to Commence Development, which was not obtained and therefore, the owner has carried out work in breach of the provisions of the Town Planning Scheme ;
- Council will not take any action in relation to the current unauthorised works; and
- should any further work be undertaken without Council's approval, then Council will consider taking legal action for the breach of the Town Planning Scheme.

**STATUTORY ENVIRONMENT**

Town of Cottesloe Town Planning Scheme No. 2  
Heritage of Western Australia Act 1990

**POLICY IMPLICATIONS**

Nil.

**STRATEGIC IMPLICATIONS**

Enforcement of the provisions of a Town Planning Scheme are critical in terms of achieving the objectives of the Town Planning Scheme. Unauthorised work can lead to an undermining of the Town Planning Scheme.

Council is required to determine the extent of the breach of the Town Planning Scheme and what action should be taken in relation to that breach.

**FINANCIAL IMPLICATIONS**

If Council serves a notice requiring rectification work or resolves to commence legal action, then there will be legal costs involved. This will depend upon the action taken by Council.

**BACKGROUND**

The property known as Tukurua is listed in Schedule 1 - Places Of Natural Beauty And Historic And Objects Of Historical Or Scientific Interest in the Town Planning Scheme text.

The property is also on the State Register of Heritage Places. Staff have been advised that the owner has not referred the current work to the Heritage Council, as required in the Heritage Act

The development site and the adjoining vacant sites have been the subject of separate development applications over the years, but they have not proceeded.

On the 14 February, 2003, Ms Janine McDonald carried out an inspection of the property in response to work that was being carried out on the property. An application for Approval to commence Development had not been lodged by the owner of the land before work had commenced.

Further discussion took place on the 21 February, 2003 when Mr Smith was advised that the works constituted development. He advised that he had legal advice that the works were maintenance and did not require the Local Authorities approval.

On the 28 February 2003, a letter was sent to Mr Smith advising that the works constituted development under section 6 and that he should have had planning approval for those works and that a contravention of the Scheme had occurred.

Various options were presented including meeting with the Manager, Development Services to discuss the matter further.

A meeting was held between Mr Conal O'Toole, Mr Les Stein and the Manager, Development Services. The purpose of the meeting was to discuss the work being carried out by the owner on the property. It was argued by Mr Stein that the works being undertaken were maintenance and Council approval was not required.

An undertaken was given for:

- (1) a list of works being submitted for works being undertaken on the property by the owner; and
- (2) a copy of Mr Stein's legal opinion to be provided to the Council in relation to the works being undertaken.

On the 24 March, Mr Smith provided Council with a copy of the list of works scheduled for the property, however, a copy of the legal opinion had not been received.

Legal advice was sought on this matter from Council's solicitors. The advice received was that the works being undertaken by the property owner constituted works that required approval under section 6.2 of the Town Planning Scheme text. Clause 6.2 states as follows:

## *6.2 WRITTEN CONSENT OF THE COUNCIL*

*6.2.1 No person shall without the consent in writing of the Council commence or carry out or permit or suffer the commencement or carrying out of any development on in or in relation to any First Schedule place, building or object and without in any way limiting the generality of the foregoing shall not:*

- (a) *clear, excavate or fill any land;*
- (b) *fell, remove, kill or irreparably damage any tree;*
- (c) *erect any fence;*
- (d) *commence or carry out any renovation, modification, refitting, decoration or demolition of any building;*
- (e) *alter or remove any building or object or any part thereof.*

As the development had proceeded without the necessary approvals, the owner was in breach of the Town Planning Scheme.

This matter was raised informally with the Development Services Committee at its May, 2003 meeting.

A letter was sent off to Mr O'Toole on the 14 July advising him of the breach of the Town Planning Scheme text and that this matter was to be raised at the July meeting of Council.

On the same day, the Manager, Development Services met with the owner of Tukurua and advised him of the issues concerning the unauthorised works being undertaken and that the matter was to be referred to the July round of meetings.

On the 15 July, 2003, the Council's Building Surveyor and Manager, Development Services met on-site with Mr Smith concerning work that was being carried out on the south-western corner of the building. Due to the condition of the building in that corner, more extensive restoration is required, including the strapping of the corner of the building to prevent any lateral movement. This may be undertaken to support the corner walls. However, it is not known at this stage whether the remedial work on this corner of the building will be carried out straight away or left till the other works are carried out.

#### **STAFF COMMENT**

The renovation of Tukurua is a matter that Council and the community would support. However, the work undertaken by Mr Smith constitutes development under the Town Planning Scheme and therefore, should have had Council approval before the works commenced. By carrying out these works without Council approval, the owner is in breach of the Town Planning Scheme. Council does not have retrospective powers to approve the unauthorised work. The matter now rests with Council to determine what action should be taken in relation to this matter.

The schedule of works listed by Mr Smith is contained in his letter of the 24 March, 2003. The current works have included:

- replacing the existing roof;
- re-building two chimneys;
- replacing windows; and
- placing new shades to windows on the northern elevation;

In discussions with Mr Smith on the 14 July, he has advised that the current works will cease in the next week or two and that further restoration work is planned for September/October. These proposed works would include work being carried out on the western face of the building, including work on the verandahs.

He has been requested to formally lodge an application for the works planned in September/October so that he does not place himself of being in breach of the Town Planning Scheme.

The options open to Council include:

- (a) prosecuting the owner for the unauthorised work;
- (b) serving a notice to remove the unauthorised works; or
- (c) take no further action.

In relation to the unauthorised work, it is suggested that Council:

- (1) notes the work undertaken; and
- (2) not take any further action.

The work being undertaken would achieve the objective of Part 6 of the Town Planning Scheme that is, to preserve and conserve the building.

However, it should be made clear to the owner that any further work that comes within the control of the Town Planning Scheme must have the approval of Council before those works can commence. If those works commence without the necessary approvals and having been advised of the need for that approval, it places Council in the invidious position of considering taking legal action, on work that it would support.

#### **VOTING**

Simple Majority

#### **OFFICER RECOMMENDATION**

That Council advise the owner of No. 7 Rosendo Street:

- (1) That whilst Council supports the upgrading of the building known as Tukuruu:
  - (a) Council's Approval to Commence Development was required to be obtained before the work had commenced.
  - (b) The owner has carried out those works in breach of the provisions of the Town Planning Scheme.
  - (c) Council will not take any action in relation to the current unauthorised works; and
  - (d) Should any further work be undertaken without the necessary approvals, then the Chief Executive Officer is authorised to issue a Notice under the Town Planning and Development Act to prevent any further unauthorised works being carried out.
- (2) That as he is contemplating further work to be carried out on the building, he is to obtain the necessary Planning and Building approvals before the work commences.
- (3) The application for Council's Planning Consent should include detailed information including, but not limited to the following:
  - (a) Supporting documentation;

- (b) Detailed schedule of works outlining the work to be undertaken on the property; and
  - (c) Detailed plans and elevations;
- (4) Advise the Heritage Council of its decision.

**COMMITTEE COMMENT**

A letter from the owner was received on 17 July after the report was completed requesting that this matter be deferred to the next round of meetings. The Committee were of the opinion that this matter should be dealt with at this round of meetings.

The Committee requested a further part be added to the approval advising the owner that no planning fees will be charged for next planning application received for this property.

**COMMITTEE RECOMMENDATION**

Moved Cr Furlong, seconded Cr Walsh

That Council advise the owner of No. 7 Rosendo Street:

- (1) That whilst Council supports the upgrading of the building known as Tukuru:
  - (a) Council's Approval to Commence Development was required to be obtained before the work had commenced.
  - (b) The owner has carried out those works in breach of the provisions of the Town Planning Scheme.
  - (c) Council will not take any action in relation to the current unauthorised works; and
  - (d) Should any further work be undertaken without the necessary approvals, then the Chief Executive Officer is authorised to issue a Notice under the Town Planning and Development Act to prevent any further unauthorised works being carried out.
- (2) That as he is contemplating further work to be carried out on the building, he is to obtain the necessary Planning and Building approvals before the work commences.
- (3) The application for Council's Planning Consent should include detailed information including, but not limited to the following:
  - (a) Supporting documentation;
  - (b) Detailed schedule of works outlining the work to be undertaken on the property; and
  - (c) Detailed plans and elevations;
- (4) Advise the Heritage Council of its decision.
- (5) Advise the property owner that, as the property is listed in Schedule 1 of the Town Planning Scheme, it will not charge the owner any Planning Application

fees for the next application made for this property, which is to further renovate Tukurua.

### **AMENDMENT**

Moved Cr. Cunningham, seconded Cr. Robertson

That the motion be amended by the deletion of (a), (b), (c), & (d) from paragraph (1).

Lost 5/6

The substantive motion was put.

### **COUNCIL RESOLUTION**

**That Council advise the owner of No. 7 Rosendo Street:**

- (1) That whilst Council supports the upgrading of the building known as Tukurua:
  - (a) Council's Approval to Commence Development was required to be obtained before the work had commenced.**
  - (b) The owner has carried out those works in breach of the provisions of the Town Planning Scheme.**
  - (c) Council will not take any action in relation to the current unauthorised works; and**
  - (d) Should any further work be undertaken without the necessary approvals, then the Chief Executive Officer is authorised to issue a Notice under the Town Planning and Development Act to prevent any further unauthorised works being carried out.****
- (2) That as he is contemplating further work to be carried out on the building, he is to obtain the necessary Planning and Building approvals before the work commences.**
- (3) The application for Council's Planning Consent should include detailed information including, but not limited to the following:
  - (a) Supporting documentation;**
  - (b) Detailed schedule of works outlining the work to be undertaken on the property; and**
  - (c) Detailed plans and elevations;****
- (4) Advise the Heritage Council of its decision.**
- (5) Advise the property owner that, as the property is listed in Schedule 1 of the Town Planning Scheme, it will not charge the owner any Planning Application fees for the next application made for this property, which is to further renovate Tukurua.**

Carried 11/0



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**1.4.9 NO 2 (LOT 121) SALVADO STREET – PROPOSED CHANGE OF USE FROM SINGLE HOUSE (PROPERTY KNOWN AS LE FANU) TO STORE ROOM**

**File No:** 2 Salvado  
**Author:** Mr S Sullivan  
**Attachments:** Application for Planning Approval Form  
Correspondence from McLeods – 02/05/03  
Correspondence from HCWA – 26/06/03

**Author Disclosure of Interest:** Nil  
**Report Date:** 15 July, 2003  
**Senior Officer:** Mr S Tindale

**Property Owner:** Francis Drake-Brockman

**Applicant:** McLeods - Barrister and Solicitors  
**Date of Application:** 7 May, 2003

**Zoning:** Residential  
**Use:** To be determined  
**Density:** R30  
**Lot Area:** 1492m<sup>2</sup>  
**M.R.S. Reservation:** N/A

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**SUMMARY**

The application is to change the use of the property known as Le Fanu from a Single House to what is referred to in the application as a "storeroom".

The property is listed on the State Register of Heritage Places and in Schedule 1 - Places Of Natural Beauty And Historic And Objects Of Historical Or Scientific Interest of the Town Planning Scheme text.

The property is also listed on the State Register of Heritage Places. Heritage Council advice has been received not supporting the application.

Advice is being sought from Council's solicitors and a further detailed report is to be submitted to the Development Services Committee.

**PROPOSAL**

The application is to convert the existing heritage listed building into a storeroom – refer to copy of letter dated 2 May 2003 from McLeods.

**STATUTORY ENVIRONMENT**

- Town of Cottesloe Town Planning Scheme No 2
- Heritage of Western Australia Act 1990

**POLICY IMPLICATIONS**

N/A.

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**HERITAGE LISTING**

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

**STRATEGIC IMPLICATIONS**

N/A.

**FINANCIAL IMPLICATIONS**

An appeal against the decision of Council may cost approximately \$3,000 to \$20,000.

**CONSULTATION**

REFERRAL

**Internal**

N/A.

**External**

- Heritage Council
- Legal Advice

ADVERTISING OF PROPOSAL

The application was not required to be advertised.

**BACKGROUND****Supporting Information from Applicant**

The property at No. 2 Salvado Street has been on Schedule 1 - Places Of Natural Beauty And Historic And Objects Of Historical Or Scientific Interest since 1988.

The owner has lodged an application for Planning Consent for a change in land use for the conversion of the house to a storeroom. A letter from solicitors representing the owner sets out the reasons why the owner has sought to obtain that approval – refer to letter.

**Heritage Council Advice**

The application was referred to the Heritage Council as required by the Heritage of Western Australia Act 1990. The matter has been considered by the Heritage Council and they have not supported the change in use from "residence " to "store". The reasons are outlined in their letter dated 26 June 2003.

**STAFF COMMENT**

The applicants are seeking approval for a change in land use from "...residential use to a store room." Due to the unusual nature of the application, legal advice has been sought in relation to the proposed land use in the Residential Zone.

**CONCLUSION**

Further comments will be made to the Development Services Committee following receipt of the legal advice on this application.

**VOTING**

Simple Majority

**OFFICER RECOMMENDATION**

That a further report will be submitted by the Manager, Development Services following the receipt of legal advice on the application.

**COMMITTEE COMMENT**

The Mayor is of the opinion that the Heritage Council should advise the owners not Council and the Heritage Council should be handling this building.

Cr Cunningham would like to assist the owner and suggested the owner put in an application for planning approval, charge no application fees, provide the Architect at our cost.

Mayor Rowell would like Council to meet with the owner and Heritage Council.

Add condition (3) – write to owner to arrange a meeting with Councillors with the Mayors signature on the letter.

The following additional information was presented to Council:

**STAFF COMMENT**

The applicants are seeking approval for a change in land use from "...residential use to a store room."

The existing residential use is a "single house" as defined in the Residential Design Codes and is listed in Table 1 – Zoning Table as a permitted use.

A store room is not defined in the Scheme nor is it listed in Table 1 – Zoning Table as a land use.

Clause 3.3 states as follows:

*3.3 Table No. 1: Zoning Table indicates the several uses permitted by this Scheme in various Zones, such uses being determined by cross reference between the list of "Use Classes" on the left-hand side of the Table and the list of "Zones" on top of the Table. The symbols used in the cross reference in Table 1 have the following meanings -*

- P* - *A use that is permitted under this Scheme.*
- AA* - *A use that is not permitted unless special approval is granted by the Council.*
- IP* - *A use that is not permitted unless such use is incidental to the predominant use as decided and approved by Council.*
- X* - *A use that is not permitted.*

*If the use of land for a particular purpose is not specifically mentioned in the Zoning Table and cannot reasonably be determined as falling within the interpretation of one of the use classes, the Council may -*

- (a) determine that the use is not consistent with the objectives and purpose of the particular zone and is, therefore, not permitted, or*
- (b) determine by absolute majority that the proposed use may be consistent with the objectives and purpose of the zone and thereafter follow the advertising procedures of Clauses 7.1.4 to 7.1.6 in considering an application for approval to commence development.*

The proposed change in use of the converted house as outlined in the application is for a store room. To determine whether this proposed change in use is permissible in a particular zone, the first part of Clause 3.3 requires Council is to consider Table 1 – Zoning Table of the Town Planning Scheme text.

Table 1 – Zoning Table of the Town Planning Scheme sets out the various Use Classes cross-referenced to the various zones in the District – refer to copy circulated separately from this report. Of the 52 Use Classes listed in this table, there is no Use Class referred to as a store room.

A "Warehouse" is the closest Use Class for a store room. A "warehouse" is defined in the Scheme Text as follows:

*Warehouse - means a building wherein goods are stored and may be offered for sale by wholesale;*

A warehouse is a building that is used to store goods.

It is discretionary that those goods may be offered for sale by wholesale.

The applicants letter states that it is proposed to use the Le Fanu for the storage of goods. Legal advice has advised that "goods" has previously been defined as "moveable personal property". Therefore, based on the details contained within the submission and the provisions of the Town Planning Scheme, the best description for the proposed change in land use, is from a Single House to a Warehouse. A warehouse, based on Table 1 of the Scheme text, is a prohibited land use in the Residential Zone. Therefore, the application must be refused.

Alternatively, if it is decided by Council that the proposed use does not fall within the definition of Warehouse or any other land use in the Zoning Table, then it is required to consider the following provisions of Clause 3.3:

*If the use of land for a particular purpose is not specifically mentioned in the Zoning Table and cannot reasonably be determined as falling within the interpretation of one of the use classes, the Council may -*

- (a) determine that the use is not consistent with the objectives and purpose of the particular zone and is, therefore, not permitted, or*
- (b) determine by absolute majority that the proposed use may be consistent with the objectives and purpose of the zone and thereafter follow the advertising procedures of Clauses 7.1.4 to 7.1.6 in considering an application for approval to commence development.*

The purpose and intent of the Residential Zone is set out in section 3.4.1(a) of the Town Planning Scheme text, which is reproduced below:

*The purpose and intent of the Residential Zone is to promote a residential environment in any particular locality compatible with the maximum residential density permissible in that locality and with the desire of the inhabitants for Cottesloe to retain its quiet residential character. Development will be guided and controlled by the Development Guide Map, the Residential Planning Codes and the variations thereto as well as the amenity provisions contained in Part V - General Provisions of the Scheme.*

It is considered that a building used for storage purposes only, does not contribute to the residential environment of the locality. Further, the proposed development would not be in keeping with the Amenity provisions of the Town Planning Scheme text. Clause 5.1.2(b) of Part V of the Town Planning Scheme text states the following:

#### *5.1.2 General*

*Notwithstanding the specific provisions of this Scheme in considering a proposed development, Council shall have regard to and may impose conditions relating to the following -*

- (a) ...*
- (b) the need for preservation of existing trees or areas or buildings of architectural or historical interest;*

This building is listed in Schedule 1 - Places Of Natural Beauty And Historic And Objects Of Historical Or Scientific Interest of the Town Planning Scheme text. Clause 6.1.1 states the following:

#### *6.1 FIRST SCHEDULE PLACES BUILDINGS AND OBJECTS*

- 6.1.1 The Council considers that the places of natural beauty, and historic buildings, and objects of historic or scientific interest listed in Schedule 1 should be conserved and preserved.*

Therefore, it is considered that the use of the building is not consistent with the intent and purpose of the Residential Zone and therefore,

Further, it is considered that converting the house to a store room would not conserve the cultural heritage significance of the building.

#### **CONCLUSION**

Le Fanu is one of three heritage buildings located in close proximity to each other. The others being Belvedere (restored) and Tukurua (currently in the process of being restored). All three have been determined to be of state and local significance.

The proposed change in use seeks to undermine the cultural heritage significance of the property by changing the associated use of the property from an approved use (single house) to a warehouse use (store room).

The application is for a proposed use that is prohibited in the Zoning Table of Town Planning Scheme or a use that does not meet the requirements of Clause 3.3(a). Therefore, the application is required to be refused.

In spite of the preceding comments, any change should result in the development achieving an outcome that helps conserve the building based on the Scheme's heritage provisions. This proposed change does not support the intent of the Town Planning Scheme.

#### **VOTING**

Simple Majority

#### **OFFICER RECOMMENDATION**

That Council:

- (1) Notes the building located at No. 2 Salvado Street – known as Le Fanu – is a building that is considered to be of Cultural Heritage Significance to the State and to the Town of Cottesloe.
- (2) Hereby REFUSES its Approval to Commence Development for the change in use of the single house to a store room at No. 2 (Lot 121) Salvado Street, as set out in the letter dated 2 May, 2003 and application submitted on 7 May, 2003 as:
  - (a) The proposed use:
    - (i) as a store room can only be classified as a "Warehouse" use based on the Use Classes listed in Table 1 – Zoning Table and the definition of a "Warehouse" contained in the No. 2 Town Planning text; and
    - (ii) based on (i) above, a "Warehouse" is a prohibited use in the Residential Zone.
  - (b) The proposed use, if it is not a "warehouse", is a use that is not consistent with the objectives and purpose of the Residential Zone as required by

Clause 3.3 of the Town Planning Scheme text and therefore, based on the provisions of Clause 3.3(a), the proposed use is not a permitted use.

- (c) The change in the use of this property, which has been determined to be of State and Local Cultural Heritage Significance, is considered to be inappropriate as:
  - (i) the change in use from "residence" to "store" is not considered a compatible use and does not constitute an appropriate response to the established cultural heritage significance of the place; and
  - (ii) having regard to the cultural heritage significance of the property, the proposed change in use from "residence" to "store" will not result in a conservation outcome for the property.

(3) Advise the Heritage Council of Council's decision.

### **COMMITTEE COMMENT**

The Committee believed that a meeting should be arranged with the owner of the property to discuss the further of Le Fanu.

### **COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION**

Moved Cr Furlong, seconded Cr Walsh

That Council:

- (1) Notes the building located at No. 2 Salvado Street – known as Le Fanu – is a building that is considered to be of Cultural Heritage Significance to the State and to the Town of Cottesloe.
- (2) Hereby REFUSES its Approval to Commence Development for the change in use of the single house to a store room at No. 2 (Lot 121) Salvado Street, as set out in the letter dated 2 May, 2003 and application submitted on 7 May, 2003 as:
  - (a) The proposed use:
    - (i) as a store room can only be classified as a "Warehouse" use based on the Use Classes listed in Table 1 – Zoning Table and the definition of a "Warehouse" contained in the No. 2 Town Planning text; and
    - (ii) based on (i) above, a "Warehouse" is a prohibited use in the Residential Zone.

Carried 11/0

The Manager, Development Services advised that the owner had written a letter requesting the matter be withdrawn from the Agenda.

The Mayor ruled that the vote had been taken and it was too late.

**1.4.10 NO 9 (LOT 24) GRANT STREET - RE-APPROVAL FOR DEMOLITION OF A CATEGORY 3 LISTED DWELLING**

**File No:** 9 Grant Street  
**Author:** Mr D Heymans  
**Author Disclosure of Interest:** Nil  
**Report Date:** 9 July, 2003  
**Senior Officer:** Mr S Sullivan

**Property Owner:** Peter Rattigan

**Applicant:** Peter Rattigan  
**Date of Application:** 11 June 2003

**Zoning:** Residential  
**Use:** P - A use that is permitted under this Scheme  
**Density:** R30  
**Lot Area:** 739m<sup>2</sup>  
**M.R.S. Reservation:** N/A

**SUMMARY**

The applicant seeks to renew an existing approval for demolition. Given the assessment that has been undertaken, the recommendation is to approve the application.

**STATUTORY ENVIRONMENT**

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

**POLICY IMPLICATIONS**

N/A.

**HERITAGE LISTING**

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

**APPLICATION ASSESSMENT****AREAS OF NON-COMPLIANCE****Town of Cottesloe Town Planning Scheme No 2 - Text**

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



**Town Planning Scheme Policy/Policies**

<b>Policy</b>	<b>Required</b>	<b>Provided</b>
N/A	N/A	N/A

**Residential Design Codes**

<b>Design Element</b>	<b>Acceptable Standards</b>	<b>Provided</b>	<b>Performance Criteria Clause</b>
N/A	N/A	N/A	N/A

**STRATEGIC IMPLICATIONS**

N/A.

**FINANCIAL IMPLICATIONS**

N/A.

**CONSULTATION**

REFERRAL

**Internal**

N/A.

**External**

N/A.

ADVERTISING OF PROPOSAL

The application was not required to be advertised.

**BACKGROUND**

The applicant previously gained planning approval for demolition of the dwelling at No. 9 Grant Street on the 26 September 2002. The approval expires on the 26 September 2003 and the applicant would like to gain a new approval.

**STAFF COMMENT**

The administration normally deals with re-approvals under delegated authority, however any demolitions relating to buildings on the Municipal Inventory are required to be referred to Council.

The administration believes that as the applicant is seeking to renew the planning approval for demolition of the existing building, which has been previously approved, approval should be granted again.

**CONCLUSION**

That approval to demolish the existing dwelling be granted subject to the following conditions.

**VOTING**

Simple Majority

**OFFICER & COMMITTEE RECOMMENDATION**

Moved Cr Furlong, seconded Cr Walsh

That Council GRANT its Approval to Commence Development for the house at No 9 (Lot 24) Grant Street, Cottesloe in accordance with the plans submitted on 11 June, 2003, subject to the following conditions:

- (1) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13. - Construction sites.
- (2) A photographic record of the existing residence being submitted to Council prior to a Demolition Licence being issued.

**AMENDMENT**

Moved Mayor Rowell, seconded Cr. Furlong

That the motion be amended by adding the words "*demolition of the*" after the words "*Development for the*".

Carried 11/0

The amended motion was put.

**COUNCIL RESOLUTION**

**That Council GRANT its Approval to Commence Development for the demolition of the house at No 9 (Lot 24) Grant Street, Cottesloe in accordance with the plans submitted on 11 June, 2003, subject to the following conditions:**

- (1) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13. - Construction sites.**
- (2) A photographic record of the existing residence being submitted to Council prior to a Demolition Licence being issued.**

Carried 11/0

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**1.4.11 REQUEST FOR REMOVAL OF HERITAGE LISTINGS FROM NOS. 58 FORREST STREET AND 62 BROOME STREET**

**File No:** 58 Forrest Street and 62 Broome Street  
**Attachment(s):** Letter from owner  
**Author:** Mr S Sullivan  
**Author Disclosure of Interest:** Nil  
**Report Date:** 16 July, 2003  
**Senior Officer:** Mr S Tindale

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**SUMMARY**

A letter has been received from the owner of Nos. 58 Forrest Street and 62 Broome Street to remove the various heritage listing from these properties.

A further report is being prepared for consideration by the Development Services Committee.

**STATUTORY ENVIRONMENT**

Town of Cottesloe Town Planning Scheme No. 2  
Heritage of Western Australia Act 1990

**POLICY IMPLICATIONS**

Nil

**STRATEGIC IMPLICATIONS**

Further comments will be made.

**FINANCIAL IMPLICATIONS**

Nil.

**BACKGROUND**

The following list identifies the various documents that a property may be contained within, for each of the properties.

**No. 58 Forrest Street**

- State Register of Heritage Places N/A
- TPS No 2 N/A
- Town Planning Scheme Policy No 12 N/A
- Draft Heritage Strategy Report (Proposed John Street Precinct) Essential
- Municipal Inventory (1995) Category 2
- Draft Municipal Inventory (2002) Category 2
- National Trust N/A
- Australian Heritage Commission – Register of National Estate N/A

**No. 62 Broome Street**

- State Register of Heritage Places N/A
  - TPS No 2 -Schedule 1 N/A
  - Town Planning Scheme Policy No 12 Yes
-

- Draft Heritage Strategy Report N/A
- Municipal Inventory (1995) Category 2
- Draft Municipal Inventory (2002) Category 2
- National Trust N/A
- Australian Heritage Commission – Register of National Estate N/A

### **STAFF COMMENT**

Further time is required to complete this item and a further report will be circulated prior to the Development Services Committee meeting.

### **VOTING**

Simple Majority

### **OFFICER RECOMMENDATION**

A further report will be prepared by the Manager, Development Services on this matter.

### **COMMITTEE COMMENT**

Mayor Rowell advised that he has inspected No. 62 Broome Street and the property has no original garden, carpet, some original windows. Has not been in No. 58 Forrest Street.

Cr Furlong advised that he thinks that the Municipal Inventory Listing is up to the owner of the property.

Cr Miller advised that the Municipal Inventory is just a list of buildings that may have some heritage significance and is for purpose of records and should not affect the sale or sale price of the property.

Cr Jeanes has seen both properties and understands the owners problems in relation to renting out the property. Council should allow another development to the rear of the property.

Mayor Rowell advised that he supports No. 62 Broome Street being taken off the Municipal Inventory and all lists relating to heritage value and No. 58 Forrest to remain on the Municipal Inventory subject to review by Council.

Manager, Development Services advised that we set another category just so that we have a historical record of what was on the site.

The following additional information was sent to elected members by Memo:

### **BACKGROUND**

The following comments are made:

Both properties were identified as a Category 2 building in the 1995 Municipal Inventory report. The buildings were seen to be important to the District for Architectural or Historical reasons, not of state importance. A copy of the

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assessment sheets for each of those properties is attached. The review of the Municipal Inventory has occurred by different Consultants and they have confirmed that the building classification of a Category 2 are appropriate.

The Municipal Inventory is a database, compiled under the Heritage of Western Australia Act 1990. It will provide a historical record (photograph) of the property as well as supporting written information. It is hoped that this information will eventually be placed on Council's website as a valuable resource of the history of the District.

The database also provides Council and the community with information in relation to the importance that these properties have to the District.

No. 62 Broome Street is listed in Town Planning Scheme Policy No. 12 - Places Of Cultural Heritage Significance. The Town Planning Scheme Policy has been prepared under the Town Planning Scheme provisions and Cultural Heritage Significance is used in terms of the District, as distinct from state significance.

This property is included in proposed Town Planning Scheme Amendment No. 30. This purpose of this amendment is to include additional properties on Schedule 1 of the Town Planning Scheme text, that have been considered to be of heritage value to the District. This proposed amendment has reached the stage where it is about to be made available for public comment. At the end of the submission period, Council will be required to review the submissions received during that submission period and decide whether to permit the amendment to proceed or proceed in a modified format.

An application to subdivide the site, which included demolition was rejected by the Western Australian Planning Commission as the site was under-sized. The application was not supported by Council.

No. 58 Forrest Street is proposed to be included in the proposed John Street Heritage Precinct. It was classified as a building that was essential to the character of the precinct.

However, the decision of Council not to proceed with Amendment No. 33 has resulted in it not being possible to introduce these character areas through the Town Planning Scheme. Coupled with the character area provisions, were the Residential Conservation and Development Guidelines that had been developed to guide residential development in these areas.

No. 58 Broome Street was not included in Town Planning Scheme Policy No. 12 as the property was located within the John Street Heritage area.

An application to convert the four units into two on No. 58 Forrest Street has been supported by Council. Further, an application to subdivide the site into two lots, with two units being retained on each lot has also been supported by Council.

#### **STAFF COMMENT**

The owner of the two properties has requested:

- the removal of any heritage listing;
- that both buildings be approved for demolition; and

- the sites be permitted to be re-developed.

There has been no formal application for Planning Consent lodged for the demolition of both properties.

Cultural heritage significance is a matter that can be controlled under a Town Planning Scheme. cultural heritage significance in this instance, relates to a decision being made under the Town Planning Scheme as distinct from decisions to be made under the Heritage of Western Australia Act 1990.

Council's Planning Consent is required for the demolition of any house within the District. When considering that application, Council is required to give consideration to Clause 5.1.2(b) of the Town Planning Scheme text which states the following:

*5.1.2 General*

*Notwithstanding the specific provisions of this Scheme in considering a proposed development, Council shall have regard to and may impose conditions relating to the following -*

- (a) ...*
- (b) the need for preservation of existing trees or areas or buildings of architectural or historical interest;*

In order to determine whether there is a need to preserve a building, Council has had regard to Schedule 1 - Places Of Natural Beauty And Historic And Objects Of Historical Or Scientific Interest, Town Planning Scheme Policy No. 12 and the Municipal Inventory.

The Manager, Development Services does not have any delegated authority to approve the demolition of any building that is listed in Schedule 1, Town Planning Scheme Policy No. 12 and the Municipal Inventory. All applications are referred to Council for determination.

Work has been undertaken over the years in terms of defining what buildings or places are of heritage significance to the District. These have been the compilation of the 1995 Municipal Inventory, the draft Heritage Report of 2001 and the review of the Municipal Inventory (2002). Apart from these documents, the Town Planning Scheme has Schedule 1 - Places Of Natural Beauty And Historic And Objects Of Historical Or Scientific Interest.

Based on the independent information that has been prepared over the years on these two properties, the consultants have concluded that these two properties are of cultural heritage significance to the District.

If Council is concerned with the quality of information that has been provided in relation to the two properties, then a third opinion could be obtained before a decision is made on the request.

Heritage and the introduction of character areas are becoming more of an issue over the years. This has been highlighted by the changing structure of legislation in recent

years with the introduction of the Model Scheme Text and the Residential Design Codes.

The Model Scheme Text sets out the structure for new Town Planning Schemes and includes a very detailed section on heritage places and heritage areas.

The new Residential Design Codes now have a Design Element section on Streetscape, which allows Local Authorities to develop Local Planning Policies to guide development in streets or areas of a District. Section 2.1.1 of the Codes sets out the General Objectives of the Codes, which Council is required to have regard to (Clause 2.1.3). Clause 2.1.1(vi) states the following:

General Objectives

*The Codes have the following objectives:*

*2.1.1 Objectives for Residential Development*

...

*(vi) to encourage the conservation of buildings with heritage value;*

This objective was not part of the previous Residential Planning Codes.

Whilst the legislation has progressed, the issues of incentives, education etc, which were identified in the draft Heritage Report 2001, are still trailing behind. A working party at the state level has been formed to progress these issues.

The planning issue before Council is whether these building are of architectural or historical interest to the District.

Having regard to the information contained in the various reports and the provisions of Clause 5.1.2(b), it is considered that the listings should be retained and demolition not be permitted should an application be received.

It is not possible to give demolition approval as there has been no formal application made for those properties. However, for the reasons listed in the preceding paragraphs, it is recommended that the applicant be advised that Council is not supportive of the demolition of both properties.

## **VOTING**

Simple Majority

Whilst the legislation has progressed, the issues of incentives, education etc, which were identified in the draft Heritage Report 2001, are still trailing behind. A working party at the state level has been formed to progress these issues.

The planning issue before Council is whether these building are of architectural or historical interest to the District.

Having regard to the information contained in the various reports and the provisions of Clause 5.1.2(b), it is considered that the listings should be retained and demolition not be permitted should an application be received.

It is not possible to give demolition approval as there has been no formal application made for those properties. However, for the reasons listed in the preceding paragraphs, it is recommended that the applicant be advised that Council is not supportive of the demolition of both properties.

#### **OFFICER RECOMMENDATION**

That Council advise the owner of No. 58 Forest Street and No. 62 Broome Street that:

- (1) Both properties have been identified as being of significant heritage value to the District; and
- (2) It is not prepared to support the demolition of those buildings if an application is made.

#### **COMMITTEE COMMENT**

The majority of the Committee were of the opinion that the property at No. 62 Broome Street did not have sufficient heritage value to warrant preservation and has recommended that this property be removed from any listings.

It was considered that No. 58 Broome Street be not removed from any listings.

#### **COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION**

Moved Cr Furlong, seconded Cr Walsh

**That Council:**

- (1) **Advise the owner of No. 58 Forrest Street and No. 62 Broome Street that:**
  - (a) **Council is prepared to remove No. 62 Broome Street from all heritage lists; and**
  - (b) **Council is not prepared to remove No. 58 Forrest Street from any heritage lists until a review is carried out by Council.**
- (2) **Request the Manager, Development Services to commence the necessary action to remove No. 62 Broome Street from any heritage list.**

Carried 8/3



**1.4.12 DELEGATION TO MANAGER DEVELOPMENT SERVICES**

**File No:** X4.6  
**Author:** Mr S Sullivan  
**Author Disclosure of Interest:** Nil  
**Report Date:** 3 July, 2003  
**Senior Officer:** Mr S Tindale

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**SUMMARY**

A Notice of Motion was received from Cr Cunningham concerning the delegation relating to the Manager, Development Services.

It is recommended that rather than change the current delegation arrangements, the status quo remain.

**STATUTORY ENVIRONMENT**

Town Planning and Development Act

**POLICY IMPLICATIONS**

Nil.

**STRATEGIC IMPLICATIONS**

Those applications that are minor, could be addressed through conditions of approval, resolved through discussions with neighbours or have expired, should be dealt with by the administration. The intended purpose of the current delegation is to allow Council to focus on matters of substance such as major developments that are of a controversial nature or developments that cannot be resolved through mediation by staff.

The framework for that decision making process is set out in the delegation policy, which is reviewed on a yearly basis or as a consequence of change. For instance, the gazettal of the new Residential Design Codes occurred in October, 2002. A review of the delegation occurred in November, 2002, following the introduction of the Residential Design Codes.

**FINANCIAL IMPLICATIONS**

Nil

**BACKGROUND**

The following is the Notice of Motion from Cr Cunningham for the July Development Services Committee:

*That Council implement an administrative policy for the exercise of delegated authority by the Manager, Development Services, which provides for:*

- (1) In respect of the exercise by the Manager, Development Services of delegated authority in relation to Planning Approvals (including re-approval of expired Planning Approvals) the manager shall notify all Councillors each alternate*

*Friday of the manager's intended delegated approvals for that fortnight which in the absence of objections will be made the following Thursday.*

- (2) *In the event prior to the following Thursday that at least 2 Councillors notify the manager of their objection to his proposed decision the manager will refrain from making the decision and instead refer the matter with the manager's recommendation for decision to the next full council meeting via the Development Services Committee.*

## **BACKGROUND**

Cr Cunningham has provided the following background information:

*A similar procedure to this has operated successfully at other Councils for many years. It allows the majority of proposed delegated approvals to proceed unhindered, but provides a mechanism to hold items brought to the attention of Councillors by electors, to be held for further scrutiny if it is adjudged by more than one Councillor to be a valid concern.*

*Other aspects with the delegation of authority to the Manager Development Services being Item 10.1.11 of the May Council Meeting which should be discussed by Councillors are as follows:*

- (1) *This first aspect is that of Cr Morgan, that the Council should not be delegating to anybody other than the CEO. i.e. It could be ultra vires and could become an issue at an appeal on this basis.*

*However it would then be left up to the CEO to in turn delegate to the MDS.*

- (2) *In the May Item 10.1.11 under the heading of Register No. 6 Item (1) 'Extent of Delegation', the first three bullets points could give the false impression to an informed observer that delegated approval of such substantial items are common and therefore smaller seemingly less important matters should be allowed to pass through without due consideration of the issues.*

*The items listed as included are:*

- \* Development relating to single houses (these could be two storey and contentious);*
- \* Additional dwelling (it would be extremely rare to find an additional dwelling being allowed to be developed anywhere on any lot in Cottesloe which met the requirements for delegated approval);*
- \* No more than two grouped dwellings or multiple dwellings (the same comments as above apply here);*

*In the event that such items did meet the requirements to enable delegated approval, then they would be included in the fortnightly Friday list and if unchallenged, would go through unhindered and in an expedited manner. However the point is made that to list these items as being delegated could appear to be misleading.*

- (3) *Under item (3) (c) (i) the Council is delegating approval of new applications where the previous planning approval has expired, and worse still in (ii)*

*Council is delegating approval of new applications for Planning Approval where variations are incorporated to the original expired approvals. This of course will include Planning Approvals which were contentious and scraped through the old Council even though we appear to have a change of 'attitude' with the election of 5 new members.*

*It remains to be clarified or determined if delegated authority has been granted by Council for those expired applications to which there were valid objections from neighbours and/or other electors at the time that the original planning approval was granted.*

*If this were the case such applications (particularly with changes made to them as allowed in the delegation resolution in May) could be given delegated approval even if they contain many aspects of non-compliance with the TPS and/or the R-Codes.*

*The process proposed will introduce a way of retaining control without stopping the process when it is working well.*

*Apparently in State Parliament all proposed Statutory Legislation has to sit for 14 Days and if only one member objects by moving a 'disallowance motion', then it must be subjected to full debate.*

*The proposed tried and proven system would still allow most proposed delegated items to proceed unhindered, but will net a few which could otherwise be our lament.*

## **STAFF COMMENT**

The following comments are made in response to the points raised in the background information of the Notice of Motion:

### **Point 1**

It has been confirmed through legal advice and advice from the Department of Local Government that the power for delegation to staff to make a determination on a development application is through the powers set out in Clause 7.10 of the No. 2 Town Planning Scheme Text (which is made under the Town Planning and Development Act) and not the Local Government Act.

Clause 7.10.1 is very specific in that the delegation is from Council to a Standing Committee or to officers of the Council. There are no powers for the officer to then delegate those powers in turn, to another officer, unlike the Local Government Act.

### **Point 2**

The delegation is clear in terms of those matters that the Manager, Development Services or the Chief Executive Officer can make a decision in relation to. When making a decision, the staff are required to consider all the issues and give them proper consideration before arriving at a decision on the application as if they were the Council, including the imposition of conditions of approval.

There are examples of developments that could have been approved by the Manager, Development Services under delegated authority, but have been referred to Council for determination.

For instance, the development at No. 46 Lyons Street was referred to the June meeting of Council for determination by Council. The development was approximately 1.5% over the 25% overshadowing requirements. The adjoining neighbours were seeking a higher standard of daylighting. Staff could not broker a resolution between the two parties and the application was subsequently referred to Council for approval. It was approved without any change to the officer's recommendation.

### **Point 3**

The purpose of the delegation is to allow the Manager, Development Services to deal with an application previously approved by Council on the basis that the issues raised during that process, had been dealt with by Council.

Where an approval has expired or the owners are seeking an approval of plans already approved by Council with changes, they are required to undergo the full notification process to seek an approval. This includes re-notification of the adjoining property owners, if it is a development that requires that process to be undertaken.

A recent example relates to the proposed three storey development at No. 138 Marine Parade (corner Eileen Street). This proposal was previously approved by Council. Whilst the plans could have been approved by the Manager, Development Services, the changes to the plans were of concern to staff. The application was then referred to the Design Advisory Panel for comment and then to June Council meeting for determination. The application was then delegated to the Manager, Development Services for determination.

The issue of whether the previous plans were approved by the "previous Council" is not a proper planning consideration. Any decision should be based on the merits of the proposal.

### **Proposed Change to Process**

The current delegation process allows those developments which are not controversial, to be processed quickly.

The proposed change to the process will involve:

- staff having to prepare additional reports on the application that are to be dealt with under delegated authority;
- delays in the decision making process by a further week while the proposed delegated applications are advertised internally to Councillors; and
- if the application is "called in" by two Councillors, depending upon when the application is called in, a delay of up to 4-5 weeks while the application is referred to the next meeting of Council.

The current delegation process has been working well as there have been very few complaints raised following the issue of an approval under delegated authority.

There has been only one legal challenge to a decision made under delegated authority by staff in the last nine years. This related to a privacy screen erected at No. 103 Grant Street. The approval was challenged through the District Court where the owner of No. 105 Grant Street sought to obtain an injunction against that decision. This application for an injunction was dismissed.

The same decision has been challenged in a complaint to the Minister for Planning and Infrastructure under section 18(2) of the Town Planning and Development Act. The investigation has been carried out and it is expected that the matter will be considered by the Minister for Planning and Infrastructure at the end of July.

### **CONCLUSION**

The introduction of the Residential Design Codes has resulted in two changes to the approval process.

Firstly, the applicant is now required to submit a detailed report in support of the variations they are seeking to the Acceptable Standards in the Residential Design Codes. This allows the neighbours to view the reasons for the variations.

Secondly, following the close of the submission period, the applicant is now required to be provided with a copy of any submissions that are received by Council and be provided with a seven day period to provide a report on the submissions received.

Based on the grounds for comment/objection and the response to that submission, staff would then determine whether the application would be referred to Council for determination or dealt with under delegated authority.

Whilst this allows both parties to be better informed, it has further extended the length of time for the decision making process.

It is recommended that the current delegation process be continued as:

- the process has been working well;
- there have been very few complaints received following the issue of an approval under the delegated approval process;
- the proposed process will result in an additional report writing process; and
- there could be delays of up to an additional one week or four to five weeks in the approval process as a consequence of the call in powers.

### **VOTING**

Simple Majority

### **COUNCILLOR'S NOTICE OF MOTION**

That Council implement an administrative policy for the exercise of delegated authority by the Manager, Development Services, which provides for:

- (1) In respect of the exercise by the Manager, Development Services of delegated authority in relation to Planning Approvals (including re-approval of expired Planning Approvals) the manager shall notify all councillors each alternate Friday of the manager's intended delegated approvals for that fortnight which in the absence of objections will be made the following Thursday.
- (2) In the event prior to the following Thursday that at least 2 Councillors notify the manager of their objection to his proposed decision the manager will refrain from making the decision and instead refer the matter with the manager's recommendation for decision to the next full council meeting via the Development Services Committee.

**OFFICER RECOMMENDATION**

That Council reaffirm the delegation process to the Manager Development Services and the Chief Executive Officer, as set out in Item 10.1.11 of Council's May 2003 meeting.

**COMMITTEE COMMENT**

The Chairperson permitted Cr Cunningham to address the meeting.

After hearing Cr Cunningham speak, the Committee decided that there might be some merit in simplifying the business generally put before the Committee - particularly if it was accompanied by a "call in" process as a checks and balances mechanism.

**COMMITTEE RECOMMENDATION**

Moved Cr Furlong, seconded Cr Walsh

That administration investigate the delegation of more powers to the Manager, Development Services together with a "call in" process.

**AMENDMENT**

Moved Cr. Morgan, seconded Cr. Cunningham

That the motion be amended by deleting the words "together with" and substituting the words "and forthwith adopt".

Carried 6/5

The amended motion was put.

**COUNCIL RESOLUTION**

**That administration investigate the delegation of more powers to the Manager, Development Services and forthwith adopt a "call in" process.**

Carried 6/5

**1.4.13 DESIGN ADVISORY PANEL – APPOINTMENT OF MEMBERS FOR THE PERIOD JUNE 2003 TO JUNE 2005**

**File No:** D1.1  
**Author:** Mr S Sullivan  
**Author Disclosure of Interest:** Nil  
**Report Date:** 10 June, 2003  
**Senior Officer:** Mr S Tindale

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**SUMMARY**

To make a determination on membership of the Design Advisory Panel for the period of June 2003 to June 2005.

**STATUTORY ENVIRONMENT**

Nil.

**POLICY IMPLICATIONS**

Nil.

**STRATEGIC IMPLICATIONS**

Nil.

**FINANCIAL IMPLICATIONS**

Each member of the Design Advisory Panel is paid \$100 per year.

**BACKGROUND**

The two year term for the Design Advisory Panel expired in May 2003, and in accordance with the Terms of Reference, Council was required to seek expression of interest from the members of the public wishing to participate in the Panel.

The Design Advisory Panel currently consists of six members and four deputy members. All members have indicated their interest in continuing to be part of the Panel.

An article in 'The Post' newspaper in the 'Cottesloe Council News' section sought an expression of interest from those persons interested in serving on the Council's Design Advisory Panel. The closing date for expressions of interest was Wednesday, 11 June 2003. At the time of the preparation of this report item, there were no additional expressions of interest.

The report indicated that other forms of advertising was to occur, however the recommendation did not clearly explain the advertising required. Consequently the only advertising carried out was the article in 'The Post'. Council needs to decide if further advertising is required.

**STAFF COMMENT**

Circulated separately was a list of the membership of the Design Advisory Panel. The matter of the composition of the Design Advisory Panel is submitted for Council determination.

**VOTING**

Simple Majority

**OFFICER RECOMMENDATION**

That Council:

- (1) That the following persons be appointed members of the Design Advisory Panel for the period from June 2003 to June 2005:

....., ....., ....., ....., ....., .....

- (2) That the following persons be appointed deputy members of the Design Advisory Panel for the period from June 2003 to June 2005:

....., ....., ....., ....., .....

**COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION**

Moved Cr Furlong, seconded Cr Walsh

**That Council:**

- (1) **That the following persons be appointed members of the Design Advisory Panel for the period from June 2003 to June 2005:**

- (a) **Mr Simon Rodrigues;**
- (b) **Mr Paul Rossen;**
- (c) **Mr Tony Brand;**
- (d) **Mr George Gaschk;**
- (e) **Mr Paul Jones; and**
- (f) **Mr Adrian Fini.**

- (2) **That the following persons be appointed deputy members of the Design Advisory Panel for the period from June 2003 to June 2005:**

- (a) **Mr Wayne Dodd;**
- (b) **Mr Kris Wiacek;**
- (c) **Mr Trevor Saleeba; and**
- (d) **Ms Lisa Goff.**

- (3) **That Mr Fulvio Prainito be thanked for his expression of interest to be a member of the Design Advisory Panel.**

Carried 11/0



**1.4.14 NO 23A (LOT 19) ERIC STREET - TWO STOREY HOUSE**

**File No:** 23A Eric Street  
**Author:** Mr Daniel Heymans  
**Author Disclosure of Interest:** Nil  
**Report Date:** 16 July, 2003  
**Senior Officer:** Mr S Sullivan  
  
**Property Owner:** Napolen Pty Ltd, Michlange Pty Ltd  
  
**Applicant:** Dean Humphrey  
**Date of Application:** 4 June, 2003  
  
**Zoning:** Residential  
**Use:** P - A use that is permitted under this Scheme  
**Density:** R30  
**Lot Area:** 328m<sup>2</sup>  
**M.R.S. Reservation:** N/A

**SUMMARY**

The applicant is seeking to demolish an existing single storey duplex dwelling and build a new two storey house.

An assessment of the application has occurred. However, it has not been possible to finalise the report on the proposal, including a review of the submissions. A further report will be prepared on the application and circulated to the Development Services Committee.

**STATUTORY ENVIRONMENT**

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

**POLICY IMPLICATIONS**

N/A.

**HERITAGE LISTING**

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

**APPLICATION ASSESSMENT**

AREAS OF NON-COMPLIANCE

**Town of Cottesloe Town Planning Scheme No 2 - Text**

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

**Town Planning Scheme Policy/Policies**

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

**Residential Design Codes**

Design Element	Acceptable Standards	Provided	Performance Criteria Clause
N/A	N/A		N/A

**STRATEGIC IMPLICATIONS**

N/A

**FINANCIAL IMPLICATIONS**

N/A

**CONSULTATION**

REFERRAL

**Internal**

- Building
- Engineering
- Health

**External**

N/A.

**ADVERTISING OF PROPOSAL**

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

The advertising consisted of:

- Letter to Adjoining Property Owners

**Submissions**

There were 7 letters sent out. There were 3 submissions received, of which 3 were objections.

**CONCLUSION**

A detailed report outlining the assessment of the proposal and comment on the submissions will be submitted prior to the Development Services Committee.

**VOTING**

Simple Majority

**OFFICER RECOMMENDATION**

A further report is being prepared and will be circulated to Council before the meeting.

**ADDITIONAL INFORMATION**

The following additional information was submitted to Council as part of a memo from the Manager of Development Services, dated 18 July 2003.

**APPLICATION ASSESSMENT**

## AREAS OF NON-COMPLIANCE

**Town of Cottesloe Town Planning Scheme No 2 - Text**

Clause	Required	Provided
5.1.1 – Ridge Height	35.55m	35.87m
5.1.1 – Wall Height	33.05m	33.07m

**Town Planning Scheme Policy/Policies**

Policy	Required	Provided
Front Fence Local Law	50% open aspect	Solid

**Residential Design Codes**

Design Element	Acceptable Standards	Provided	Performance Criteria Clause
3 – Boundary Setbacks	Setback to western boundary from upper west wall of 3.6m	1.54	Clause 3.3.1
3 – Boundary Setbacks	Setback to eastern boundary from upper east wall of 6.4m	Nil – 2.5m	Clause 3.3.1
3 – Boundary Setbacks	Setback to southern boundary from upper south wall of 1.2m	Nil	Clause 3.3.2
4 – Open Space	Percentage of open space required 45%	44.6%	Clause 3.4.1

<b>Design Element</b>	<b>Acceptable Standards</b>	<b>Provided</b>	<b>Performance Criteria Clause</b>
8 – Privacy	Visual privacy setback from eastern boundary to upper dining room window of 6.0m	3.8m	Clause 3.8.1
8 – Privacy	Visual privacy setback from western boundary to upper family room window of 6.0m	1.5m	Clause 3.8.1
8 – Privacy	Visual privacy setback from western boundary to front balcony of 7.5m	1.5m	Clause 3.8.1

**STRATEGIC IMPLICATIONS**

N/A

**FINANCIAL IMPLICATIONS**

N/A

**CONSULTATION**

REFERRAL

**Internal**

- Building
- Engineering
- Health

**External**

N/A.

## ADVERTISING OF PROPOSAL

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

The advertising consisted of:

- Letter to Adjoining Property Owners

**Submissions**

There were 7 letters sent out. There were 3 submissions received, of which 3 were objections. Details of the submissions received are set out below:

No. 21 Eric Street

The owners objected to the following:

- That the building is bulky and oversized;
- That the height of the building is excessive;
- That the upper level window facing west be removed or modified to prevent overlooking;
- That the front balcony be screened to prevent overlooking of the of 21 Eric Street;
- That the windows down the western side of the building all have sill heights of 1.65m or be obscure glazing;
- Would like the existing boundary fence between 23 and 21 Eric Street be retained, however if it changed would like it to be lower than 1.8m and of white face brick facing 21 Eric Street;
- That the proposed front wall be modified to an open aspect fence in accordance with Council' fencing law.

No. 23B Eric Street

The owner objected to the following:

- That the development comply with the minimum open space requirement;
- That the proposed development will place the unit at No. 23B in total shade;
- Proposed bed 1 window is within the fire separation area and should not be allowed;
- That the proposed limestone cladding on the existing garage parapet wall will encroach over the strata boundary;
- The eastern 2-storey high limestone pillar constructed on the boundary will visually detract from the entry of 23B, it should be setback from the boundary;
- Concerned if the weatherboard cladding meets the fire regulations;
- That access to the site is not sufficient for a 4-bedroom house;
- That the building comply with Council's height regulations;
- That the building be constructed during normal working hours and that no encroachment of 23B occurs.

No. 25A Eric Street

The owners objected to the following:

- That the upstairs balcony comply with the setback requirements;
- That the front fence be 50% open aspect; and
- That the building comply with Council's height restrictions;
- That if the development is not in full compliance it may affect the development potential and values of 25 Eric Street in relation to ocean views and overshadowing.

**BACKGROUND**

The subject property is located on the southern side of Eric Street. It is one for two strata's located on the lot, however both have their own individual site areas with no common area. There are two existing attached dwellings and this application seeks to construct a second level to the front dwelling.

**STAFF COMMENT****Building Height - Clause 5.1.1**

Clause 5.1.1 calculates the 6.0m wall height and 8.5m ridge height controls from the centre of the site. Assessment of this application has shown that the proposal does not comply with the height controls.

The applicant is proposing a wall height of 33.07m, however the maximum wall height permissible is 33.05m, and a proposed ridge height of 35.5m, however the maximum permissible ridge height is 35.87m.

Notwithstanding the above clause` 5.1.1 states that Council may grant a variation in the case of extensions to existing buildings.

The surrounding neighbours have objected to the height of the building generally and requested Council to impose the height controls. The administration believes that as the neighbours have raised concerns in relation to the height of the development it would be reasonable to require the proposed development to comply with the height controls, particularly as the wall height will only require a minor variation and the change to the roof will only require a small reduction in the roof pitch to enable the roof to comply.

Therefore the administration recommends that the proposed development be modified to comply with the height controls outlined in clause 5.1.1 of the Town of Cottesloe Town Planning Scheme No. 2

### **Front Boundary Setback**

The applicant proposes a front setback of 5.2m with the front balcony protruding into the 6.0m setback line. The Residential Design Codes, which were implemented in October 2002 changed the front setback requirement for land coded R30 from 6.0m to 4.0m. At the October 2002 Council meeting Council made a resolution stating that:

“When assessing applications for Development Approval, Council will:

- (a) generally insist on:
  - (i) A 6.0m setback for residential development in the District, which does not include averaging”

The proposed setback is 5.2m, however the required setback is 6.0m. Council has consistently sought conformity with a 6.0m setback with no averaging.

The administration believes that as Eric Street acts as a view corridor to the ocean for properties fronting Eric Street any incursion into the 6.0m front setback line has the potential to adversely affect views, particularly as the balcony is on the 2<sup>nd</sup> level. Council has consistently applied a 6.0m setback to the locality and to alter the 6.0m setback requirement at this stage would set a negative precedent.

In addition Council has engaged a consultant to prepare a streetscape study that will reinstate the 6.0m front setback requirement. The consultant has prepared a draft policy which is being reviewed by the administration currently. It is expected that the final draft will be presented to Council in August for consent to advertise.

Therefore the administration recommends that the balcony be modified so that it is located behind the 6.0m setback line.

**Boundary Setbacks**

The applicant proposes three variations to setbacks as outlined in the Residential Design Codes.

A variation is being sought to the setback requirement for the upper western wall. As per Table 2A of the Residential Design Codes, the required setback is 3.6 metres. However, the proposed setback is 1.54m, as the development does not comply with the acceptable development standard then it is necessary to fulfil the relevant performance criteria which states:

*P1 - Buildings setback from boundaries other than street boundaries so as to:*

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

If the major openings of this wall were modified so as not to constitute a major opening, as they are also in contradiction of the privacy provisions outlined below, then the required setback would be 1.8m.

This setback also doesn't comply with the acceptable development standard, however the administration considers that the wall does comply with the performance criteria for the following reasons:

- The wall does not affect sunlight or ventilation to the subject lot or the adjoining lot at No. 21 Eric Street;
- The additional building bulk is ameliorated as the adjoining properties driveway runs down the eastern boundary with No. 23A Eric Street;
- Privacy of the adjoining neighbour is affected, however the administration is recommending that the areas of overlooking be addressed in accordance with the acceptable development standards for privacy.

Therefore the administration recommends that this variation be approved.

A second variation is being sought to the setback requirement for the upper eastern wall. As per Table 2A of the Residential Design Codes, the required setback is 6.4m metres. However, the proposed setback is a nil setback to a 2.5m setback, as the development does not comply with the acceptable development standard then it is necessary to fulfil the relevant performance criteria outlined above.

The owner of 23B has objected to the architectural feature being located on the boundary and wishes it to be set of the boundary, however the adjoining neighbours

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have not directly objected to the setback of the building on the western side apart from the architectural feature.

The Residential Design Codes introduced in October 2002 now calculate setbacks from the defined site area of each development and in this case it constitutes the strata boundary on the western side of the driveway. However the existing single storey section of the building has been built to the previous setback requirements and as the garage was built on the boundary. The proposed upper floor is setback further from the boundary than the garage at the front of the property. At the rear of the property a portion of the new upper floor is closer to the boundary than the existing ground floor wall.

The administration believes that setting back the upper floor section of the building 6.4m as required by the current codes would be unreasonable, particularly as the driveway for No. 23B acts as a buffer between No. 23A and No. 25 on the eastern boundary (the setback to No. 25 Eric Street is approximately 4.5m). The administration believes that as the rear section of the eastern wall sits directly above the existing lower level, for the most part, that it doesn't have a negative impact on the adjoining neighbours at No. 25 Eric Street.

In relation to the front part of the eastern wall the administration believes that the architectural feature and the alfresco area be setback 1.5m from the eastern boundary as this wall does not contain major openings and if this was considered a separate wall then the required setback for this portion of wall would be 1.5m.

The administration recommends that the alfresco area and the architectural feature be setback 1.5m from the eastern boundary.

A third variation is being sought to the setback requirement for the upper southern wall. As per Table 2A of the Residential Design Codes, the required setback is 1.2m metres. However, the proposed setback is a nil setback, as the development does not comply with the acceptable development standard then it is necessary to fulfil the relevant performance criteria outlined above.

The rear neighbour at No. 23B Eric Street has objected to the overshadowing of his unit by the proposed development. The overshadowing plan illustrates that the proposed development will overshadow a proportion of the roof area of No. 23B Eric Street, however the amount of overshadowing is only 16% of the rear lot, which is well within the 35% permissible overshadowing level. In addition the overshadowing does not affect the main outdoor living area at the rear of the property and would have minimal impact on windows as there are no windows facing north.

In addition the administration believes that the building bulk will be ameliorated as the lower levels of the two buildings are currently joined and that from the rear yard of 23B Eric Street the 2<sup>nd</sup> storey extension would not have a detrimental impact.

Furthermore setting back the building the required 1.2m setback would not alter the affect on the property at No. 23 B Eric Street, as the overshadowing of the building would be marginally reduced.



Therefore the administration recommends that the proposed variation to the setback be approved.

### **Open Space**

Clause 3.4.1 of the Residential Design Codes state that in areas coded R30 45% of a lot shall be open space. The applicant is proposing to have 44.6% of open space in this instance. This results in 1.4m<sup>2</sup> of additional building that does not meet the acceptable development standard. The administration believes that as the majority of ground floor building already exists and the minor additions to the front of the property do not adversely affect the amenity of adjoining properties. In addition requiring 1.4m<sup>2</sup> of building to be deleted in this instance would not greatly reduce any affect on amenity of adjoining properties. Therefore the administration recommends that the variation in this instance be approved.

### **Visual Privacy**

Under the Design Codes visual privacy setbacks are required to habitable areas with the potential for overlooking into adjoining properties. Where the acceptable setback standards are not met, compliance with the performance standards set out in clause 3.8.1 must be demonstrated. The clause states that new developments must:

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

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

The cone of vision applied to the upper floor family room window on the western boundary indicates that there is the potential to overlook the adjoining property at No. 21 Eric Street. This overlooking is a concern as it falls onto the entry area of the adjoining property. This can easily be overcome, however by either increasing the sill height of the window to 1.65m above the FFL or requiring the window to have opaque glazing. The applicant has stated that they would like to retain the window and they would be willing to reduce its size or partially screen it. The adjoining neighbours have objected to the window overlooking their entry area.

The administration believes that this window does not comply with the relevant performance criteria and therefore that it needs to be modified as stated above.

The cone of vision applied to the upper floor dining room window on the eastern boundary indicates there is potential to overlook the adjoining property at 25 Eric Street. This overlooking is a concern as it falls a number of habitable windows on the adjoining residence. This can easily be overcome, however by either increasing the sill height of the window to 1.65m above the FFL or requiring the window to have opaque glazing.

The adjoining neighbour has not directly objected to this window, however the administration believes that this window will have a detrimental impact on the privacy of No. 25 Eric Street and therefore the window should be modified as outlined above.

The cone of vision applied to the western side of the front balcony indicates there is the potential to overlook the adjoining property at 21 Eric Street. This overlooking is of concern as it falls onto the adjoining properties front entry area. This can easily be overcome, however by screening the balcony to a height of 1.65m above the FFL.

### **Front Fence**

The proposed front fence on the western boundary in the 6 metre building setback area is proposed to be solid. Council's local front fence law states that solid fences within the front setback area shall be no higher than 900mm, however in this instance the proposed walls are 1800mm high.

The administration believes that the walls will create a closed aspect streetscape, which is not in keeping with the existing open aspect streetscape.

Therefore the administration recommends that the walls be modified so as to comply with Council's Front Fence Local Law.

### **Submissions**

The owners of 21 Eric Street objected to all the windows down the western side of the building stating that they wanted them to all be opaque or above 1.65m from the FFL. All of the windows on the western side do conform to the requirements of the codes.

In addition they have also raised concerns in relation to the boundary fence between No's. 23 & No. 21 Eric Street. Council does not control boundary fencing between neighbours and agreement between the neighbours will have to be reached. Generally a 1.8m fence is seen as a sufficient fence.

The owner of No. 23B Eric Street was concerned if the window to bed 1 and the weatherboard cladding met the fire requirements, this will be assessed at the building licence stage of the development.

The owner also objected to the cladding of the existing garage parapet wall. This matter should be dealt with by the owners of 23A & B Eric Street as permission to enter the driveway of 23B Eric Street would be required to carry out any work. The administration believes that if this is not granted then this work would not be able to be carried out, also a surveyor would be required to determine the exact location of the boundary.

Furthermore a standard condition will be placed on the approval requiring the applicant to comply with construction times. Access to the site has been assessed by Council's engineering staff and is considered to be acceptable.

### **CONCLUSION**

The proposed development be approved subject to the following conditions.

### **VOTING**

Simple Majority

**OFFICER RECOMMENDATION**

That Council:

- (1) GRANT its Approval to Commence Development for the 2 Storey extension to the existing duplex at No 23A (Lot 19) Eric Street, Cottesloe in accordance with the plans submitted on 13 June 2003 and 3 July 2003, subject to the following conditions:
  - (a) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.
  - (b) Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve, rights of way or adjoining properties and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the working drawings.
  - (c) The external profile of the development as shown on the approved plans, not being changed whether by the addition of any service plant, fitting, fixture, or otherwise, except with the written consent of Council.
  - (d) The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining, or nearby neighbours, following completion of the development.
  - (e) Air conditioning plant and equipment is to be installed as far as practicable from the boundary of adjoining properties or in such a manner as to ensure that sound levels emitted from equipment shall not exceed those outlined in the Environmental Protection (Noise) Regulations 1997
  - (f) Revised plans being submitted for approval by the Manager, Development Services, showing:
    - (i) the front boundary fence being modified to provide an "Open Aspect Fence".
    - (ii) the upper floor dining room window on the eastern side being modified to avoid overlooking into the adjoining property by either:
      - being built 1.65m above FFL; or
      - being glazed with fixed obscure glazing.
    - (iii) the upper floor family room window on the western side being modified to avoid overlooking into the adjoining property by either:
      - being built 1.65m above FFL; or
      - being glazed with fixed obscure glazing.
    - (iv) the front balcony being screened on the western side to prevent overlooking of the adjoining property;
    - (v) the wall height of the dwelling being reduced to 33.05m AHD;

- (vi) the roof ridge height of the dwelling being reduced to 35.55m AHD;
- (vii) the building being setback 6.0m from the front boundary;
- (viii) the alfresco wall and the architectural feature on the eastern boundary being setback 1.5m from the boundary;

(2) Advise the submitters of this decision.

### **COMMITTEE COMMENT**

In response to a query from the Committee, the Manager Development Services addressed the meeting and advised that there were no plot ratio controls. Further, development was controlled by open space, height controls and building setbacks.

The recommendation addressed the concerns of the neighbours in relation to the windows and balcony. Conditions relating to the front and side setback of the building were also proposed so as to reduce the impact of the building on the neighbours.

Mayor Rowell expressed concern that the site is going to be over developed and the windows to the east will be overlooking.

### **COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION**

Moved Cr Furlong, seconded Cr Walsh

#### **That Council:**

- (1) **GRANT its Approval to Commence Development for the 2 Storey extension to the existing duplex at No 23A (Lot 19) Eric Street, Cottesloe in accordance with the plans submitted on 13 June, 2003 and 3 July, 2003, subject to the following conditions:**
  - (a) **All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.**
  - (b) **Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve, rights of way or adjoining properties and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the working drawings.**
  - (c) **The external profile of the development as shown on the approved plans, not being changed whether by the addition of any service plant, fitting, fixture, or otherwise, except with the written consent of Council.**
  - (d) **The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining, or nearby neighbours, following completion of the development.**

- (e) Air conditioning plant and equipment is to be installed as far as practicable from the boundary of adjoining properties or in such a manner as to ensure that sound levels emitted from equipment shall not exceed those outlined in the Environmental Protection (Noise) Regulations 1997
  - (f) Revised plans being submitted for approval by the Manager, Development Services, showing:
    - (i) the front boundary fence being modified to provide an “Open Aspect Fence”.
    - (ii) the upper floor dining room window on the eastern side being modified to avoid overlooking into the adjoining property by either:
      - being built 1.65m above FFL; or
      - being glazed with fixed obscure glazing.
    - (iii) the upper floor family room window on the western side being modified to avoid overlooking into the adjoining property by either:
      - being built 1.65m above FFL; or
      - being glazed with fixed obscure glazing.
    - (iv) the front balcony being screened on the western side to prevent overlooking of the adjoining property;
    - (v) the wall height of the dwelling being reduced to 33.05m AHD;
    - (vi) the roof ridge height of the dwelling being reduced to 35.55m AHD;
    - (vii) the building being setback 6.0m from the front boundary;
    - (viii) the alfresco wall and the architectural feature on the eastern boundary being setback 1.5m from the boundary;
- (2) Advise the submitters of this decision.

Carried 11/0

## 1.5 HEALTH

### 1.5.1 CONTRACT - THE COLLECTION OF WASTE & RECYCLABLES

**File No:** D15.1  
**Attachments:** TOC - Contract Review Letter dated 19/06/03  
Contractors Response Letter dated 10/07/03  
**Author:** Ms R Levett  
**Author Disclosure of Interest:** Nil  
**Report Date:** 14 July, 2003  
**Senior Officer:** Mr S Sullivan

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#### SUMMARY

The purpose of this report is to consider an extension of The Collection of Waste & Recyclables Contract in accordance with the following Clause 3.2 of the Contract, and to recommend that the Term of the Contract be extended for a further five (5) years:

#### *3.2 Council's Option to Extend*

*If the Council, prior to the expiration of the period specified in clause 3.1, gives at least three (3) months' (but not earlier than six (6) months') written notice of the Council's intention to continue the Term for a further five (5) years, the Term shall, by the operation of this clause, be extended for a further period of five (5) years from 30 November 2003 on the same terms and conditions as contained in this Contract, with the exception of clauses 3.1, 5.2.1(b), 5.4 and this clause 3.2, and with such other amendments as may be agreed by the Council and the Contractor.*

#### STATUTORY ENVIRONMENT

Providing the Council is satisfied it has met the provisions of Clause 3.2 of the Contract, as outlined above, it is not required to invite tenders for this service. The requirement to publicly invite tenders in accordance with the following provisions was satisfied in 1998:

- (1) 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.
- (2) 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 \$50,000.

#### POLICY IMPLICATIONS

Nil.

#### STRATEGIC IMPLICATIONS

Waste Minimisation Strategy 2002

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The strategy focuses on the philosophy of 'waste to resource' and the minimisation of waste generated by the householder. The kerbside recycling collection, which requires the separation of waste by the householder for further processing, is therefore an integral part of the strategy.

### FINANCIAL IMPLICATIONS

The Schedule of Rates provided by the contractor, WasteLess, in the original tender document for years 6 – 10 of the contract did not show any provision for an increase in rates for the second term of the contract. The only provision for an increase in rates is outlined in Clause 18.5 Price Adjustment, the annual adjustment for rise and fall in costs based on relevant indices published by the Australian Bureau of Statistics.

The revised Schedule of Fees for 2003/2004 has been provided by the contractor. Should Council wish to extend the Term of the Contract, the contractor has offered to apply this increase over a two year period if required.

	<b>New Rate</b>	<b>Old Rate</b>	<b>Over 2 Yrs</b>	<b>Per Annum</b>
Domestic Rubbish	0.6512	0.6105	0.6308	\$114,806
Domestic Recycling	0.6227	0.5838	0.6032	\$109,782
Commercial Waste	0.7105	0.6661	0.6883	\$25,978
Commercial Recycling	0.8896	0.8341	0.8618	\$4,487
Litter Bins	1.5064	1.4123	1.4593	\$51,200
1100L Bins	9.4894	8.896	9.1927	\$5,500
New Services	10.676	10.008	10.342	\$2,000
Customer Services	218.985	205.306	212.145	\$10,500

### BACKGROUND

The Environmental Health Officer has met with the contractor, WasteLess, to discuss the possibility of extending the Term of the Contract. A list of items along with suggested amendments to the contract has been compiled, refer Attachment 1, and forwarded to the contractor for comment. The amendments are considered to be minor and therefore, can be agreed to between the Council and the contractor.

The contractor has advised that they wish to extend the Term of the Contract and has agreed to all of the suggested amendments, refer to Attachment 2, with the exception of items 1 to 5 of Other Matters where further discussion is required.

### STAFF COMMENT

Council has the option to either extend the existing contract with WasteLess or it may invite tenders for a new service. The Town's current waste collection service has been very successful and it is recognised that it provides residents with a high level of service. The service is user friendly and achieves a very high participation rate of 85% - 95% for recycling, providing a substantial diversion of waste from landfill.

The major challenges ahead for the waste industry are in the disposal and re-use of waste rather than the method of collection. In order to achieve further diversion of

waste from landfill, it will require an alternative method of disposing of waste. As this is the role of the Western Metropolitan Regional Council, it is not directly relevant to the renewal of the Waste & Recycling Collection Contract.

WasteLess has provided a very satisfactory level of service since the commencement of the contract in November, 1998. The dedicated Customer Service Line receives the majority of calls from residents, reducing the impact on Council's Customer Service staff. Most matters are responded to within 24 hours.

There have been no major accidents or breaches of safety requirements. All minor accidents and occupational safety matters have been addressed immediately by the contractor to the satisfaction of the Environmental Health Officer and other parties.

Based on research into the cost of providing the waste collection service, there is little, if any, benefit to Council in tendering for the provision of this service for a further five years. The current rates charged are very competitive. It is therefore recommended that Council support an extension of the Term of the Contract for a further five (5) year period with the proposed increase being applied over two (2) years.

## **VOTING**

Simple Majority

## **OFFICER & COMMITTEE RECOMMENDATION**

Moved Cr Furlong, seconded Cr Walsh

That Council:

- (1) Supports the extension of the existing Collection of Waste & Recyclables Contract with WasteLess for a further five (5) years in accordance with Clause 3.2 of the contract, subject to the satisfactory agreement of all amendments by the Chief Executive Officer and WasteLess;
- (2) Supports the most recently proposed increase in rates being applied over a two (2) year period commencing 1 July, 2003.
- (3) Authorise the Chief Executive Officer to write to WasteLess advising of Council's intention to extend the Term of the Contract for a further period of five (5) years and arrange the preparation and execution of the amended contract.

## **AMENDMENT**

Moved Cr. Utting, seconded Cr. Strzina

That the motion be amended by the addition of paragraph (4) as follows:

- "(4) Investigate the additional cost of contractors placing bins inside the property boundary line."*



Lost 5/6

The original motion was put.

**COUNCIL RESOLUTION**

**That Council:**

- (1) Supports the extension of the existing Collection of Waste & Recyclables Contract with WasteLess for a further five (5) years in accordance with Clause 3.2 of the contract, subject to the satisfactory agreement of all amendments by the Chief Executive Officer and WasteLess;**
- (2) Supports the most recently proposed increase in rates being applied over a two (2) year period commencing 1 July, 2003.**
- (3) Authorise the Chief Executive Officer to write to WasteLess advising of Council's intention to extend the Term of the Contract for a further period of five (5) years and arrange the preparation and execution of the amended contract.**

Carried 11/0

**1.5.2 VERGE GREEN AND BULK WASTE COLLECTION**

**File No:** D15.4  
**Attachment(s):** Area Map  
**Author:** Ms R Levett  
**Author Disclosure of Interest:** Nil  
**Report Date:** 16 July, 2003  
**Senior Officer:** Mr S Sullivan

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**SUMMARY**

The purpose of this report is to review the verge green and bulk waste collection service, and to recommend that tenders be invited for the following service for two (2) years from 2004 to 2005:

- (a) six (6) annual green waste collections conducted two monthly;
- (b) two (2) annual bulk waste collections conducted simultaneously with the green waste collection for two services; and
- (c) the district be divided into three (3) areas as shown on the attached map.

**STATUTORY ENVIRONMENT**

There is a requirement to publicly invite tenders in accordance with the following provisions:

- (1) 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.
- (2) 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 \$50,000.

**POLICY IMPLICATIONS**

Nil.

**STRATEGIC IMPLICATIONS**

Waste Minimisation Strategy 2002.

The strategy promotes the reuse of green and organic waste on site and encourages the development of systems to divert organic waste from landfill. The kerbside collection of green waste and the mulching service are consistent with the strategy.

**FINANCIAL IMPLICATIONS**

Current budget allocation of \$60,000 for Verge Green and Bulk Waste Collection.

**BACKGROUND**

The current Verge Green and Bulk Waste Collection service consists of:

- (a) five green waste collections conducted two monthly over ten months;
- (b) one green waste mulching service conducted during the remaining two month period; and

- (c) two bulk waste collections conducted simultaneously with the green waste collection for two services.

Green and bulk waste collection is conducted by B & N Waste and green waste mulching is conducted by Complete Greenwaste Services. Community feedback in relation to the quality of service and customer relations has been extremely positive with a number of residents personally expressing their appreciation of the service.

However, whilst feedback has indicated that residents are satisfied with the level of service provided, there have been problems with completing each of the services within the designated timeframe and with the type of material placed out for mulching.

### **STAFF COMMENT**

The mulching service was provided as a result of a six month trial undertaken in 2000. It was felt that the trial was sufficiently successful to introduce the service as part of the verge green and bulk waste collection service.

Despite the significant environmental benefits that on site mulching provides, the problems experienced are outlined as follows:

- Incorrect material placed out on verge – e.g. palms, weeds, lawn clippings that can't be chipped in a small machine.
- Material placed out incorrectly – e.g. material placed in bags and in tangled heaps takes more time to process.
- Poor weather – rain creates dangerous conditions for operators and public and wet material blocks chipper.
- Worksafe requirements – 3 operators now required for safety purposes adding to the overall cost.
- Back up equipment - small operators unable to provide equipment in the event of a breakdown.
- Time taken to complete service – area unsightly and verges deteriorate.
- Increased customer complaints – staff time required to respond to calls.
- Excessive cost – cannot justify benefits against high cost of service.

Green waste collected from the verge is processed and composted off site and is therefore still considered to be an environmentally acceptable solution. For the reasons outlined above, it is recommended that the mulching service be discontinued in favour of a green waste collection in 2004/2005.

The level of community satisfaction has been greater with the green and bulk waste collection. The problems experienced have been identified as follows:

- Incorrect material placed out on verge – e.g. green waste placed in plastic bags and bulk waste placed out for the green waste collection.
- Time taken to complete service – area unsightly and verges deteriorate.
- Vehicle replacement – material is loaded by hand into a side loading vehicle to avoid verge damage. In the event of a breakdown, replacement vehicles are limited.

The majority of concerns are associated with the time taken to complete the service. Previously the district was divided into four areas. It was later reduced to two in order to reduce the amount of time that rubbish was out on the streets. However, with the

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increased volume of material being placed out during a green and bulk waste collection, it is not possible to clear the larger areas within the specified timeframe. There are two options that may be considered:

- (1) Select a tenderer with the capacity to supply additional plant and collect material using a bobcat. This option will be substantially more expensive and will result in some damage to verges but will minimize the time material is out on the streets.
- (2) Divide the district into smaller areas to ensure material can be collected within the timeframe allocated. This option will allow the flexibility to select the preferred tenderer at a lower cost and minimise customer complaints, although material will be out on the streets for at least an extra week.

It is recommended that Council adopt the option to divide the district into smaller areas. The suggested number of areas is three (3), to be divided as shown on Attachment 1. Should Council proceed with this option, residents will be advised of the change through the Cottesloe News and in the revised information leaflets.

As material is being placed out incorrectly, the information leaflets will also be reviewed to clarify the type of material that can be placed on the verge.

## **VOTING**

Simple Majority

*Cr Robertson left the meeting room at 10.55 pm and returned at 10.56pm.*

## **OFFICER & COMMITTEE RECOMMENDATION**

Moved Cr Furlong, seconded Cr Walsh

That Council:

- (1) Provide a Green and Bulk Waste Verge Collection Service to residential properties for 2004/2005 consisting of:
  - (a) six (6) green waste collections conducted two monthly;
  - (b) two (2) bulk waste collections conducted simultaneously with the green waste collection for two services;
- (2) Supports the division of the district into three (3) areas as shown on the attached map.
- (3) Invite tenders for the Green and Bulk Waste Collection Service to commence in January, 2004 for a period of two years to 30 December, 2005.

## **AMENDMENT**

Moved Mayor Rowell, seconded Cr. Morgan

That the motion be amended by deleting “*six (6)*” in paragraph (1)(a) and substituting with “*four (4)*”.

Carried 11/0

The amended motion was put.

**COUNCIL RESOLUTION**

**That Council:**

- (1) Provide a Green and Bulk Waste Verge Collection Service to residential properties for 2004/2005 consisting of:**
  - (a) four (4) green waste collections conducted two monthly;**
  - (b) two (2) bulk waste collections conducted simultaneously with the green waste collection for two services;**
- (2) Supports the division of the district into three (3) areas as shown on the attached map.**
- (3) Invite tenders for the Green and Bulk Waste Collection Service to commence in January, 2004 for a period of two years to 30 December, 2005.**

Carried 11/0

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

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

**MEETING CLOSURE**

The Mayor announced the closure of the meeting at 10.55 pm.

CONFIRMED: MAYOR ..... DATE: ...../...../.....

**Map to go in here**