

TOWN OF COTTESLOE



FULL COUNCIL MEETING

MINUTES

**ORDINARY MEETING OF COUNCIL
HELD IN THE
COUNCIL CHAMBERS, COTTESLOE CIVIC CENTRE
109 BROOME STREET, COTTESLOE
7.00 PM, MONDAY, 28 JULY, 2008**

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1 DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS

The Mayor announced the meeting opened at 7.07 pm.

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

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

Standing Orders 12.1 and 21.5 read as follows:

Members to Rise

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

Suspension of Standing Orders

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

OFFICER RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Strzina, seconded Cr Dawkins

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

Carried 10/0

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

Mayor Kevin Morgan
Cr Jay Birnbrauer
Cr Greg Boland
Cr Daniel Cunningham
Cr Jo Dawkins
Cr Bryan Miller
Cr Victor Strzina
Cr John Utting

Cr Jack Walsh
Cr Ian Woodhill

Officers in Attendance

Mr Stephen Tindale	Chief Executive Officer
Mr Graham Patrick	Manager Corporate Services/Deputy CEO
Mr Andrew Jackson	Manager Planning & Development Services
Miss Kathryn Bradshaw	Executive Assistant

Apologies

Cr Patricia Carmichael	
Mr Geoff Trigg	Manager Engineering Services

Leave of Absence (previously approved)

Nil

3 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

4 PUBLIC QUESTION TIME

Nil

5 APPLICATIONS FOR LEAVE OF ABSENCE

Moved Mayor Morgan, seconded Cr Strzina

That Cr Carmichael's request for leave of absence from the August round of meetings be granted.

Carried 10/0

Moved Cr Cunningham, seconded Mayor Morgan

That Cr Cunningham's request for leave of absence from the August and September round of meetings be granted.

Carried 10/0

6 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

Moved Cr Birnbrauer, seconded Cr Walsh

The Minutes of the Ordinary Meeting of Council held on Monday, 23 June, 2008 be confirmed.

Carried 10/0

7 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

The Mayor announced that the Town's esteemed Chief Executive Officer, Mr Stephen Tindale has resigned and will take effect from 24 October to take up the role of the Chief Executive Officer at the City of Subiaco. This appointment reflects that their gain is going to be our loss. The Mayor noted that Mr Tindale has very astutely assisted the Town over the past few years in a wide range of areas, particularly providing improvements to community consultation processes and the strategic plan. The Mayor said that in that time a significant number of long standing and contentious issues have been laid to rest and Mr Tindale has provided a very strong and positive image for this Council. The Mayor added Mr Tindale had personally been of great assistance to him in the conduct of the operations of this Council.

The Mayor announced that as an item of urgent business for tonight, Council will putting in place a process to recruit a new Chief Executive Officer.

The Mayor also advised the Council that two Council forums will be held shortly on redevelopment proposals for the Sea View Golf Club and the North Cottesloe Surf Life Saving Club.

8 PUBLIC STATEMENT TIME

Mr Matthew Young, 16 Edith Street, Perth – Item 11.1.1 No. 69 (Lot 13) Napier Street – Additions to an Existing Dwelling Listed on the Town's Municipal Heritage Inventory (Category 2)

Mr Young advised he was in support of the officer's recommendation. The matter has been back and forth a few times and they have now come to an acceptable solution.

Mr Young said that any concerns over shadowing have been resolved, especially as the height has been pushed down half a metre. He stated the design is as conservative as possible, particularly when compared to the existing structure which is a tall carport with a high pitched roof. In closing Mr Young said the design will have a minimal overshadowing effect due to the flat roof with consideration being taken into account for both winter and summer sun.

Mr Mike Gallagher, 18 Albion Street – Item 12.1.6 Cottesloe Rugby Club Lease Renewal

Mr Gallagher addressed Council as a resident of Cottesloe and the president of the Cottesloe Rugby Club. The lease is due to be renewed and he is in support of the renewal. Mr Gallagher said the club has a rich and proud tradition and has been located in Cottesloe for 115 years and all members value the location the club has and being part of the Town. He urged Council to support the lease and that the club's committee is ready to sign.

Mr Paul Callander, 22 Margaret Street – Item 12.2.2 Removal of Street Tree – Margaret Street

Mr Callander advised he was back to address Council again on this matter. He noted that the tree which was removed has been replaced by a 'twig' and is to the right hand side of the verge which will not impede on any views.

Mr Callander also noted that the sign has not been installed and he wanted to know what the outcome would be from the petition they presented to Council at the last meeting. He asked Council how are they going to proceed with this matter and that some feedback would be appreciated.

The Mayor advised the matter was an item for discussion and it would be dealt with shortly. The meeting might be closed during the debate if the content of legal advice received was to be discussed.

9 PETITIONS/DEPUTATIONS/PRESENTATIONS

Nil

10 REPORTS OF COMMITTEES AND OFFICERS

The agenda items were dealt with in the following order: Items 11.1.1 and then 11.1.2 and 11.1.3 enbloc of the Development Services Committee. Items 12.1.6 and 12.2.2 of the Works and Corporate Services Committee. Items 10.1.1 and 10.2.1 of the Officer Reports and the remaining items in numerical order.

10.1 CHIEF EXECUTIVE OFFICER**10.1.1 SEA VIEW GOLF CLUB - LEASE VARIATION & LOAN AGREEMENT**

File No:	SUB/235
Attachment(s):	<u>Loan Agreement</u> <u>Variation of Lease</u>
Author:	Mr Stephen Tindale
Author Disclosure of Interest:	Nil
Report Date:	25 July, 2008
Senior Officer:	Mr Stephen Tindale

SUMMARY

At last month's Council meeting it was decided to provide access to the Sea View Golf Club for a self-supporting loan from the Town of Cottesloe in the amount of \$380,000 to be funded by the Western Australian Treasury Corporation and repaid over a period of fifteen years.

Legal documentation has now been prepared to give effect to Council's decision and a Council resolution authorising the Mayor and CEO to execute the documents is now required.

BACKGROUND

As advised at last month's Council meeting, the loan is to be used for the purpose of upgrading the Sea View Golf Club's reticulation system.

Two documents have been prepared (see attachments).

The first is a Loan Agreement which is quite straightforward and has been accepted by the Club.

The second is a variation to the existing Lease Agreement which puts the Club in default of the lease agreement in the event that it fails to repay a loan instalment to the Town on time.

The variation is intended to 'encourage' the Club to repay the loan instalments on time rather than create a set of circumstances where the Club might come to trespass on the goodwill of Council in tolerating late loan repayments for protracted periods of time.

The Club supports the variation to the Lease Agreement but has asked for confirmation that a default on any loan repayment will be treated in the same way as default on Money Payable under Clause 24.1 of the lease agreement.

Clause 24.1 of the lease agreement provides in part that:

An Event of Default occurs if ... the Lessee fails to pay to the Lessor any Money Payable on the due date for payment; and fails to pay that Money Payable within 40 Business Days of service of a notice of demand by the Lessor on the Lessee demanding payment of the Money Payable;

In other words the Club has asked for confirmation that it will not be in default of the lease agreement simply for being one day late in the repayment of a loan instalment and that provisions of Clause 24.1 of the lease agreement will apply.

Confirmation has been sought from Council's legal adviser in this regard but has yet to be received.

CONSULTATION

N/A.

STAFF COMMENT

In the event that confirmation is received, no amendment to the legal documents will be required. In the event that confirmation is not received then a further minor amendment will need to be made to the Lease Agreement.

Rather than delay the execution of the legal agreements by up to a month for want of a potentially minor adjustment, it is recommended that the CEO and Mayor be authorised to sign and execute the documents subject to the receipt of the legal advice and an agreement being reached with the Sea View Golf Club.

POLICY IMPLICATIONS

Council's self-supporting loan policy is shown below.

LOANS - SELF-SUPPORTING

OBJECTIVE

To inform organisations, seeking assistance from Council for the raising of a loan, of Council's requirements.

PRINCIPLE

Organisations seeking Council assistance for the raising of a loan must be able to satisfy Council that they can service the loan.

ISSUES

Many community groups, such as sporting clubs, rely on membership subscriptions and voluntary help to maintain their financial viability. Council must be satisfied that the borrower is able to meet its loan repayment commitments before agreeing to raise a loan.

POLICY

Organisations seeking assistance from Council to raise a loan shall:

- be an incorporated body
- provide a copy of the last three years' audited trading and balance sheet statements;
- agree to enter into a Deed of Agreement for the period of the loan repayments;

- provide whatever security or guarantees that Council considers appropriate to ensure that the loan is repaid;
- insure and keep insured premises where the premises are security over repayment of a loan;
- pay all costs associated with the preparation and stamping of legal documents concerned with the raising of the loan;
- provide a copy of the minutes of a legally constituted meeting of the organisation showing the formal resolution agreeing to the raising of the loan;
- provide any other information that Council requires.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

A self-supporting loan will have no direct financial impact on the Town of Cottesloe. The principal and interest components of the loan are to be repaid in full by the Sea View Golf Club.

VOTING

Simple Majority

DECLARATION OF INTEREST

Mayor Morgan, Cr Strzina and Cr Walsh declared an interest of impartiality as members of the Sea View Golf Club.

10.1.1 OFFICER RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Cunningham, seconded Cr Miller

That Council authorise the CEO and Mayor to sign and execute the Loan Agreement and the Variation of Lease subject to the receipt of legal advice and an agreement being reached with the Sea View Golf Club in respect of the operation of Clause 24.1 of the Lease Agreement.

Carried 10/0

10.2 MANAGER CORPORATE SERVICES

10.2.1 LIBRARY TENDER

File No: SUB/547
Attachment(s): [Library Tender Document](#)
Author: Mr Graham Pattrick
Author Disclosure of Interest: Nil
Report Date: 24 July, 2008
Senior Officer: Mr Stephen Tindale

SUMMARY

A request has been made by the Library Project Steering Committee to advertise the tender for the new library. A recommendation is attached to support this action.

STATUTORY ENVIRONMENT

Section 3.57 of the *Local Government Act 1995* provides:-

3.57. Tenders for providing goods or services

- (1) A local government is required to invite tenders before it enters into a contract of a prescribed kind under which another person is to supply goods or services.
- (2) Regulations may make provision about tenders.

Extracts from the relevant regulations of the *Local Government (Functions and General) Regulations 1996* are as follows.

11. Tenders to be invited for certain contracts

- (1) Tenders are to be publicly invited according to the requirements of this Division before a local government enters into a contract for another person to supply goods or services if the consideration under the contract is, or is expected to be, more, or worth more, than \$100 000
- ...

14. Requirements for publicly inviting tenders

- (1) When regulation 11(1), ... requires tenders to be publicly invited, Statewide public notice of the invitation is to be given...
- (2a) If a local government —
 - (a) is required to invite a tender; ...

the local government must, before tenders are publicly invited, determine in writing the criteria for deciding which tender should be accepted.

- (3) The notice, whether under subregulation (1) or (2), is required to include —
 - (a) a brief description of the goods or services required;
 - (b) particulars identifying a person from whom more detailed information as to tendering may be obtained;
 - (c) information as to where and how tenders may be submitted; and
 - (d) the date and time after which tenders cannot be submitted...

15. Minimum time to be allowed for submitting tenders

(1) If the notice is published in the newspaper as part of giving Statewide public notice, the time specified in the notice as the time after which tenders cannot be submitted has to be at least 14 days after the notice is first published in the newspaper as part of giving Statewide public notice...

18. Choice of tender

(1) A tender is required to be rejected unless it is submitted at a place, and within the time, specified in the invitation for tenders.

(2) A tender that is submitted at a place, and within the time, specified in the invitation for tenders but that fails to comply with any other requirement specified in the invitation may be rejected without considering the merits of the tender...

(4) Tenders that have not been rejected under subregulation (1), (2), or (3) are to be assessed by the local government by means of a written evaluation of the extent to which each tender satisfies the criteria for deciding which tender to accept and it is to decide which of them it thinks it would be most advantageous to the local government to accept.

(4a) To assist the local government in deciding which tender would be the most advantageous to it to accept, a tenderer may be requested to clarify the information provided in the tender.

(5) The local government may decline to accept any tender...

For the purposes of this tender, the Shire of Peppermint Grove will be acting on the behalf of the Town of Cottesloe and the Town of Mosman Park.

POLICY IMPLICATIONS

Item 1.7.4 of the Town of Cottesloe's *Purchasing* policy requires the following:-

Tender Criteria

The Town of Cottesloe shall, before tenders are publicly invited, determine in writing the criteria for deciding which tender should be accepted.

The evaluation panel shall be established prior to the advertising of a tender and include a mix of skills and experience relevant to the nature of the purchase.

For Requests with a total estimated (Ex GST) price of:

- Between \$40,000 and \$99,999, the panel must contain a minimum of 2 members; and \$100,000 and above, the panel must contain a minimum of 3 members.

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

BACKGROUND

In May 2007 the Town of Cottesloe passed the following resolution:-

10.3.7 COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Furlong

- (1) Accept the results of the community consultation process.
- (2) Authorise the Library Project Steering Committee to progress to the detailed planning and design stage subject to:
 - (a) The Shire of Peppermint Grove providing the Town of Cottesloe with sufficient comfort that there are no outstanding issues relating to land for the proposed library site that may have an adverse financial impact on the Town of Cottesloe.
 - (b) Agreement being reached amongst the three local governments on cost sharing arrangements.
 - (c) A preliminary report during the initial part of the planning and design stage be provided to Council on maximising the ESD initiatives in the design and the additional financial cost and environmental benefits of each such initiative.
- (3) Consider the inclusion of \$100,000 funding for consultants fees for the library project in the budget for 2007/2008.

Carried 10/1

In relation to part (2) of the May 2007 resolution, significant progress has been made with the implementation of parts (a), (b) and (c).

Land

The CEO of the Shire of Peppermint Grove has advised that the Peppermint Grove Bowling Club has now relinquished any hold that it had over the bowling club land.

As a result, action is now underway to adjust the boundaries of various parcels of land.

The adjustments include:-

1. the excision of a 5 metre strip of land along the Stirling Highway frontage for road-widening purposes,
2. the inclusion of the whole of the proposed library building site, shire offices and community rooms in the Shire of Peppermint Grove's reserved land which is set aside for 'Municipal Purposes', and
3. redrawing the existing 'A' class reserve boundaries to facilitate the above.

The Minister for Planning & Infrastructure has yet to sign-off on the proposal to adjust boundaries but as soon as she does, a three week consultation phase on the proposed changes is to be undertaken with any submissions that are received being laid before the State Parliament for a period of 14 days pending parliamentary approval.

In the meantime the Bowling Club still has a damages claim afoot against the Shire of Peppermint Grove.

The Town of Cottesloe and the Town of Mosman Park have not been joined in this legal action.

CONSULTATION

Nil

STAFF COMMENT

At its March 2008 meeting, Council agreed to appoint the Mayor and CEO to a Tender Preparation Sub Committee reporting to the Shire of Peppermint Grove for the purpose of identifying selection criteria and weightings to be assigned to the tender selection criteria for the construction of the proposed new library.

It also agreed to appoint the Mayor and CEO to a Tender Evaluation Panel reporting to the three local governments for the purpose of making a recommendation on the preferred tenderer to each member local government.

The Library Project Steering Committee has now recommended the advertising of the tender for the construction of the new library notwithstanding the fact that the land tenure issue remains unresolved. To overcome the land tenure difficulty, two significant amendments have been made to the tender documents.

Firstly, under 1.1 *'Conditions of Tendering'* Clause 6.5 *'Acceptance of Tender'* a disclosure has been made in the tender document that the land has not yet been appropriately vested in the Shire of Peppermint Grove and that as a consequence tenders will not be accepted until such time as the land is appropriately vested in the Shire. The Shire's liability for not accepting a tender (because of this constraint relating to the vesting of the land) is also significantly limited by the operation of the same clause.

Secondly, because there may well be delays in resolving the land tenure issue, the extension of the tender validity period has been dealt with in the *'Form of Tender - Alternative Tender Bid'* and Clause 6 on the Form *'Additional Information Required with the Tender'*.

To sum up, the attached document incorporates the amendments to the tender documentation that were requested by the Tender Preparation Sub-committee and a Council decision to proceed is now required

Once tenders are received, they will be considered by the Tender Evaluation Panel which as advised previously, includes the Mayor and the CEO.

VOTING

Simple majority

10.2.1 OFFICER RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Dawkins

That Council endorse the advertising of the tender for the construction of the proposed new library and advise the Library Project Steering Committee of this decision.

Carried 10/0

11 DEVELOPMENT SERVICES COMMITTEE MEETING HELD ON 21 JULY 2008**11.1 PLANNING****11.1.1 NO. 69 (LOT 13) NAPIER STREET – ADDITIONS TO AN EXISTING DWELLING LISTED ON THE TOWN'S MUNICIPAL HERITAGE INVENTORY (CATEGORY 2)**

File No: 1477
Author: Ed Drewett
Author Disclosure of Interest: Nil
Report Date: 15 July 2008
Senior Officer: Mr Andrew Jackson

Property Owner: Mr and Mrs B Girdwood

Applicant: Mr C Henly (Co-Praxis Architects)
Date of Application: 5 June 2008 (Amended 15 July 2008)

Zoning: Residential
Use: P - A use that is permitted under this Scheme
Density: R20
Lot Area: 809m²
M.R.S. Reservation: N/A

SUMMARY

This application has been assessed specifically in the context of the property's heritage significance in addition to the relevant provisions of Town planning Scheme No. 2 and the Residential Design Codes.

The current plans have evolved following detailed discussions between the applicant, the Town's staff and on advice from the Town's Heritage Advisor, to ensure that the design and extent of works are appropriate for a property of local heritage significance and which addresses all development requirements.

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

PROPOSAL

To consider a two-storey contemporary addition to an existing single-storey house listed on the Town's Municipal Inventory (Category 2), with a small gazebo in the rear garden.

A double carport is proposed to be demolished and replaced with a double garage, store and foyer at ground level, with two bedrooms, a balcony, library/retreat and ensuite above. A sloped angled 'box' structure is also proposed at the rear of the new addition to act as a skylight, together with an open-aspect fence and gate along the front boundary.

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

Proposed heritage incentives policy under draft LPS3.

HERITAGE LISTING

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

STRATEGIC IMPLICATIONS

Heritage is recognised as a cornerstone of the character and amenity of Cottesloe which Council aims to foster through the planning process and related measures.

FINANCIAL IMPLICATIONS

N/A.

CONSULTATION**Internal**

- Building – has no concern.
- Engineering – recommends standard conditions.

External

N/A.

Advertising

The application was advertised in accordance with TP2, which consisted of six letters to adjoining property owners. One submission was received.

Mrs MP & AM Clark, 67 Napier Street

- *The proposal will impact on the northern side of our home where there are two adult-occupied bedrooms, one of which is for a senior citizen who receives great enjoyment from the morning sun shining into her room.*
 - *At the time our building plans were submitted we were not allowed to build any closer than 7.5m although our original plans were for a 5m frontage. As we were required to amend our design in-keeping with Council's requirements, we consider that all Cottesloe residents should be treated equally.*
 - *The proposed 5m frontage next door will impact 2.5m onto the light that currently falls on the northern side of our home.*
 - *We removed trees from this side of our property because it was blocking the light into our front rooms and also lowered the front vegetation to allow maximum sunshine on that face of our home.*
-

- *During construction of the common boundary brick fence in co-operation with the then owners of the next door property, the height of the fence was set at 9m to the rear of the block in consideration of the neighbours wanting to build a two-storey addition that would not have impacted on our northern side.*
- *We wish Council to reconsider the proposed boundary setbacks.*

Comment on submission

As assessed below, while the neighbours' comments can be appreciated, the proposal actually complies with the RDC in terms of permitted overshadowing, which means that shadow cast can't be relied upon as a basis to not support the proposal or to alter the design. Also, it is observed that the neighbours' dwelling is characterised by eaves, an awning structure to the side and roller shutters to the front, all of which shade their dwelling in any case.

The consideration of setbacks is set out below and again, while the neighbours' comments are acknowledged, the historical 7.5m setback no longer applies and the proposal is assessed as performing acceptably in relation to the existing dwelling and streetscape.

Municipal Heritage Inventory

This property is classified in the MHI as Category 2, which is defined as:

High level of protection appropriate: provide maximum encouragement to the owner under the Town Planning Scheme to conserve the significance of the place. Photographically record the place prior to any major redevelopment or demolition.

The MHI description of the place is:

An early cottage which contributes to the streetscape. Old well on property.

DRAFT LOCAL PLANNING SCHEME NO. 3

No changes are proposed to the zoning of this lot, while the proposed LPS3 continues and strengthens Council's heritage approach.

APPLICANT'S JUSTIFICATION

The applicant has provided a letter in support of the application and the main points are summarised below:

- *The proposal takes into account the existing streetscape so as to maintain the amenity of the area;*
- *The proposed extension will improve the current building and make it more suitable for modern family living. In this way we foresee we have increased the longevity of the current streetscape.*
- *The variations are negligible and mainly due to non-compliance of the existing building. Where at all possible new work exceeds the standards required today.*

- *The extension will have minimal impact on both the streetscape and adjacent blocks and will contribute positively to the ongoing renewal of the area.*

ASSESSMENT

Following an initial assessment the applicant was requested to submit revised plans to address heritage considerations and the requirements of the Residential Design Codes more fully, and agreed to this.

Orientation

The existing dwelling is located on a desirable north-south orientated lot between Bird Street and Curtin Avenue. Single-storey houses abut the lot, although a two-storey development has recently been built opposite.

Setbacks

The side and rear setbacks are in accordance with the Residential Design Codes.

The length of the proposed 2-storey addition along the western elevation has been reduced to 9m requiring only a 1.1m setback from the western boundary under the RD Codes, whereas a 1.372m setback is proposed on the ground floor and a 1.1m to 1.372m curved setback is proposed on the upper floor. The relatively low height of the proposed addition together with the proposed setbacks will reduce any significant impact on the adjoining property.

Furthermore, the eastern elevation of the adjoining property has only one bedroom window facing the boundary as the other windows are pertaining to two bathrooms and a WC and all these windows are currently shaded by a permanent awning structure to the dwelling on that lot.

The applicant is seeking a variation to Council's requirement for a 6m front setback (Council Resolution 28/10/02), as a 5.35m setback is proposed to the new double garage (wings), and setbacks of 5.03m and 5.25m are proposed to the upper-floor bedroom 2 and balcony respectively.

However, the existing dwelling has a minimum front setback of 4.73m and this portion of the building will therefore sit proud of the proposed addition projecting 0.625m in front of the proposed garage and 0.305m in front of the upper-floor bedroom.

In this respect it is observed that a number of other older properties in the vicinity also have reduced front setbacks and Napier Street itself has a particularly wide verge, which further reduces the visual impact of the proposed addition on the existing streetscape.

In this overall context the proposed setbacks are assessed as acceptable.

Heritage Considerations

The proposed addition, whilst modern in design, does not affect the structural integrity of the existing dwelling and generally meets Council's heritage objectives to conserve and preserve buildings of historic interest.

The Town's Heritage Advisor has commented that the bulk and mass of the addition has been suitably reduced from the initial plans, hence is now more sympathetic to the original cottage while presenting a contemporary face to the street.

The Architects have been responsive to making these heritage improvements without unduly compromising the design objectives and a balanced result has been achieved by this liaison.

Height

The proposed addition complies with the height requirements of TPS2.

The average natural ground level for the lot has been determined at RL 100.35 (based on the average of four corners method of calculation due to the proximity of the existing dwelling at the centre of the lot).

The maximum permitted height for the proposed flat roof is RL: 107.35, whereas the proposed flat roof portion of the addition has a maximum RL of 106.14 (1.21m below that permitted).

Furthermore, the proposed skylight structure which projects above the flat roof has an RL of 107.05 which is well below the maximum RL of 108.35 permitted to the top of a pitched roof.

The impact of the proposed addition on the adjoining property to the west is also reduced due to the difference in existing ground levels between the two properties.

The height of the two-storey wall at the centre of the proposed western elevation will be only 4.967m above the neighbour's existing ground level at this point.

Fencing

A relatively low and open-aspect fence and gate is proposed along the front boundary of the lot which complies with Council's Fencing Local Law. The side portions of the existing fence remain unchanged.

Residential Design Codes requirements

The proposed additions comply in all other aspects with the Residential Design Codes.

In particular, it should be noted that although the adjoining owner has expressed concern regarding possible loss of light to north-facing bedroom windows on their lot, an overshadowing diagram submitted by the applicant demonstrates that the proposal is fully compliant with the RD Codes and that the proposed addition will not restrict the northern light.

CONCLUSION

Various additions to the existing dwelling, including a modest-sized rear extension and double carport have previously been approved and constructed on this lot and so the existing dwelling does not remain entirely intact.

The proposed additions are supported by the Town's Heritage Advisor and the less than 6m front setback is considered to have a negligible impact on the streetscape or the integrity of the existing dwelling and can be supported in the circumstances.

Overall, the proposal is well-designed and predominantly complies, especially in terms of height.

The process of liaison with the Heritage Advisor has succeeded in an enhanced outcome and design which would otherwise be readily supportable. Only standard conditions of approval are required.

VOTING

Simple Majority

COMMITTEE COMMENT

Committee supported the retention of the heritage house and the contemporary additions in the context of the streetscape. Committee also noted that the shadow situation complied with the RDC as acceptable and due to this as well as the northern orientation there was not a basis for concern.

There was some discussion regarding the front setback of the additions which overall was supported given that it was greater than the existing residence, had already been increased and would not directly affect the neighbour or streetscape.

There was also some discussion regarding the balcony and bin store which Committee was content to be referred to in an advice note for more detailed design. This is because the balcony is only a small amenity balcony to a private bedroom and faces to the front yard/street, and the bin store is intentionally integrated into the complying front fencing design.

DECLARATION OF INTEREST

Cr Boland declared a proximity interest due to residing directly across the road from the property and left the meeting at 7.21 pm

11.1.1 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Walsh, seconded Cr Dawkins

That Council GRANT its Approval to Commence Development for the proposed additions at No. 69 (Lot 13) Napier Street, Cottesloe, in accordance with the plans submitted on 18 July 2008, subject to the following conditions:

- (a) All construction work shall be carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.
- (b) Stormwater runoff from the driveway or any other paved portion of the site shall not be discharged onto the street reserve or adjoining properties, and the gutters and downpipes used for the disposal of stormwater runoff from roofed areas shall be included within the working drawings for a building licence.
- (c) The external profile of the development as shown on the approved plans shall not be changed, whether by the addition of any service plant, fitting, fixture or otherwise, except with the written consent of Council.
- (d) The applicant applying to the Town of Cottesloe for approval from the Manager Engineering Services to modify the existing crossover or to construct any new crossover in accordance with the relevant local law.
- (e) The applicant complying with the Town of Cottesloe Policies and procedures for Street Trees (February 2005) where the development requires the protection or pruning of existing street trees.

Advice Note:

At Building Licence stage the architect is requested to provide adequate details to the satisfaction of the Manager Development Services regarding the design of the bin store area and any screening treatment to the balcony,

Carried 7/2

Mayor Morgan requested that the votes be recorded:

For: Mayor Morgan, Cr Cunningham, Cr Dawkins, Cr Miller, Cr Strzina Cr
Walsh, Cr Woodhill

Against: Cr Birnbrauer, Cr Utting

Cr Boland returned to the meeting at 7.30 pm

11.1.2 SEXUAL SERVICES ACT – CONSIDERATION OF PLANNING CONTROLS

File No: Sub/683
Author: Ms Delia Neglie / Mr Andrew Jackson
Author Disclosure of Interest: Nil
Report Date: 2 July 2008
Senior Officer: Mr Andrew Jackson

SUMMARY

- The Prostitution Amendment Act 2008 was recently passed by State Parliament to update the existing Prostitution Act 2000 and create the Sexual Services Act. It is expected to be proclaimed later this year.
- The updated legislation will decriminalise the keeping of brothels, to be referred to as *sexual service businesses*. It will provide a structured system of control that was not previously possible, including certification of businesses, control over the health and welfare of prostitutes (*sex workers*), police powers and planning. The planning control of *sexual service businesses* is to be undertaken by local government through local planning schemes.
- The Act designates a *sexual service business* as a use not listed in a local planning scheme zoning table until the scheme is amended to include appropriate provisions. Scheme amendments are intended under the guidance of State Government policy. In this regard the Western Australian Planning Commission (WAPC) has prepared a draft policy which is currently being advertised for local government and stakeholder comment.
- Council's Town Planning Scheme No. 2 (TPS2) and draft Local Planning Scheme No. 3 (LPS3) do not at present specifically address *sexual service businesses*. Until the Schemes are amended, there is discretion to allow such uses if consistent with zone objectives.
- It is appropriate that Council considers its position on the matter before the legislation and WAPC policy become effective.

STATUTORY ENVIRONMENT

- The Prostitution Amendment Act 2008 (No. 13 of 2008) was assented to on 14 April 2008. This Amendment Act updates and renames the original legislation (Prostitution Act 2000) as the *Sexual Service Act 2008* (and updates other Acts as a result, eg the Liquor Control Act). While the Act has been passed, it will not come into operation until it is proclaimed, at a date yet to be determined but anticipated in late 2008.
- The amended Act requires the location of brothels to be regulated by local Council's through the planning system. TPS2 and LPS3 may be amended to address the matter.

POLICY IMPLICATIONS**State Policy**

- The WAPC has prepared a draft planning policy to guide councils in the administration of the Act and in amending local planning schemes.

- The Policy is open for comment by local government and stakeholders until 15 August 2008.
- It is intended that finalisation of the policy will coincide with proclamation of the Act.

Local Policy

- Council may wish to consider a local planning scheme policy in relation to the use classes *sexual service business*, *individual sex workers* and *small owner-operated businesses*, as an interim measure pending amendment of the scheme(s) and/or to supplement the scheme(s) if necessary.

STRATEGIC IMPLICATIONS

- None of the Town's strategic planning instruments deal directly with this matter.
- Incorporation into TPS2 or LPS3 may give rise to some strategic expression in the scheme or related local planning policy.

FINANCIAL IMPLICATIONS

- There are no particular financial implications for the Town stemming from the legislation or WAPC policy.

DISCUSSION

Prostitution Amendment Act

- The Prostitution Law Reform Working Group was established in 2006 to identify and report on the *broad principles upon which prostitution reform should be based* in WA. The Working Group's findings were published in January 2007 and recommended a *minimalist decriminalised model* based on the New Zealand Act. The key recommendations covered issues relating to:
 - Certification;
 - Planning;
 - Health Safety and Working Conditions;
 - Police Powers; and
 - Proposed Legislation.
 - The Prostitution Amendment Act is based on the Working Group's recommendations. The Act seeks to regulate brothels (which involves earning from others).
 - The term prostitution is removed from the legislation and replaced with *sex worker*. A brothel is referred to as a *sexual service business*, which requires certification by the Department of Racing Gaming and Liquor (DRGL). A *sexual service business* means *the business of providing, or arranging the provision of, a commercial sexual act*.
 - The Act does not require certification for sexual service businesses comprising one or two independently-operating workers, referred to as an *individual sex worker* and a *small owner-operated business* respectively.
 - Local Government schemes will be required to regulate the use and development of land for *sexual service businesses*, which will require planning approval. Section 21X and 21Y of the Bill relate specifically to planning matters.
-

- Section 21X enables well-run premises existing prior to September 2006 to receive planning approval from the CEO of the DRGL, to enable their continued operation. This would not apply to Cottesloe as there are no known existing premises within the district.
- Section 21Y(1) requires that until councils have amended their local schemes, they *must* consider development applications for *the purpose of a sexual service business* –
 - (a) *as if that purpose is a use that is not permitted unless the responsible authority has exercised its discretion by granting planning approval; and*
 - (b) *in exercising its discretion, also have regard to whether the business –*
 - (i) *is likely to cause a nuisance to ordinary members of the public using the area in which the land is situated; and*
 - (ii) *is incompatible with the existing character or use of the area in which the land is situated.*
- The purpose of sub-clause (b) is to ensure that councils base planning decisions on proper planning considerations rather than moral attitudes and ... *seek only to reasonably regulate rather than prohibit such businesses from operating* (Working Group report p22).
- Once a planning scheme has been amended to include *sexual service businesses*, the above provision will cease to have effect (as per Section 21Y (2)).
- Also, the operation of an individual sex worker or a small owner-operated business in a residence would in planning terms be subject to approval as a home occupation; which is currently the case, as prostitution itself is not illegal.

General Correspondence

- Council has received correspondence from Colin Barnett MLA for Cottesloe and various family-focused community groups urging not to accept the new legislation. The *Festival of Light Australia* suggests that local government authorities *work together to influence any proposed planning scheme to ensure that they retain maximum freedom* to refuse development applications. They have recently circulated to local governments their submission on the draft WAPC policy.

Approaches of Other Councils

- Various councils, including the Cities of Wanneroo, Nedlands and Subiaco, have resolved not to permit the uses in their local authority area.
- The City of Subiaco, for example, is proposing a scheme amendment to include *sexual service businesses* as a use class whereby it is not considered consistent with the objectives of any of the zones, which all include a residential component and it is therefore proposed to be not permitted throughout the City.
- The City of Melville scheme already addresses such businesses, which are able to be approved at Council's discretion in Industrial Precincts, but not permitted in other zones. The City proposes an amendment to the home occupation provisions of its scheme to prevent individual sex workers or small businesses from operating as home occupations.

WAPC Draft Policy

- The draft Policy proposes that *sexual service businesses* will be:

- prohibited in residential or similar zones, including mixed use areas, in respect of business required to be certified;
 - where such businesses are not required to be certified, Council will *determine the application*;
 - permitted in light, service or general industrial zones; and
 - discretionary in other zones and should be advertised for public comment prior to determination.
- Those premises not required to be certified are *individual sex workers* and *small owner-operated businesses*. In residential zones, these could operate as home occupations. The policy implies this, but does not elaborate with any policy provisions or guidance for Councils.
 - The act defines an *individual sex worker* as *a person who solely owns and carries on a sexual service business* —
 - (a) *involving the provision of a commercial sexual act by that person only; and*
 - (b) *where that person has full control over his or her individual earnings from taking part in commercial sexual acts;*
- Whereas a *small owner-operated business* means a *sexual service business* –
- (a) *in which not more than two sex workers work; and*
 - (b) *where each of those sex workers has full control over his or her individual earnings from taking part in commercial sexual acts.*
- The draft Policy also proposes that local government should have regard to a number of matters in assessing an application for planning approval for a *sexual service business*, including:
 - *proximity to sensitive uses ...e.g. schools, child care;*
 - *adequacy of parking for staff and clients;*
 - *adequacy of access and egress to and from the premises;*
 - *appropriate hours of operation compatible with the locality;*
 - *the provision of a waiting room or reception facilities to remove the need for clients to wait outside the premises;*
 - *the nature of signage proposed;*
 - *the degree to which the premises are well lit or lighting is provided to give security to staff and clients;*
 - *proximity to compatible uses, for example, with similar hours of operation, or noise or traffic impacts; and*
 - *privacy in relation to other uses overlooking the premises.*

TPS2 & LPS3

- TPS2 does not define *sexual service businesses* or any similar use. At present, any such business would be regarded as a *use not listed* in the same manner as required by the legislation, and subject to clause 3.3 of TPS2. This states that if a use ... *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.*

- Council therefore has discretion to decide whether or where such an unlisted use may be permitted, and must advertise a development application before determining the proposal. A discretionary decision (i.e. refusal or approval with conditions) would be open to review (appeal).
- Proposed LPS3 follows the Model Scheme Text which at present also has no use corresponding to *sexual service businesses*. Uses not listed, or which *cannot reasonably be determined as falling within the type, class or genus of activity of any other use class*, would be subject to Clause 4.4.3, which states that Council *may*
 - (a) *determine that the use is consistent with the objectives of the particular zone and is therefore permitted;*
 - (b) *determine that the use may be consistent with the objectives of the particular zone and thereafter follow the notice procedures of clause 9.4 in considering an application for planning approval; or*
 - (c) *determine that the use is not consistent with the objectives of the particular zone and is therefore not permitted.*
- Proposed LPS3 does include the standard use class *restricted premises*, which relates to sex shop-type premises rather than sexual services, and is defined as:
premises used for the sale by retail or wholesale, or the offer for hire, loan or exchange, or the exhibition, display or delivery of —
 - (a) *publications that are classified as restricted under the Censorship Act 1996;*
 - (b) *materials, compounds, preparations or articles which are used or intended to be used primarily in or in connection with any form of sexual behaviour or activity.*

STAFF COMMENT

WAPC Policy

- The Policy is open for comment by local government and stakeholders until 15 August 2008.
- There is no basic objection to the policy in terms of the relevant planning considerations necessary due to the legislation which has been passed. It is considered, however, that comment is warranted regarding a number of matters.
- While the policy indicates that sexual service businesses would not be permitted in residential and mixed use zones, it appears to ignore other zones in which residential uses may be allowed. For example, under TPS2, whilst the Business zone is neither a mixed use nor a residential zone, residential uses are possible at Council's discretion. Also, under LPS3 for example, the objectives of the Foreshore Centre zone includes reference to mixed uses but it is not necessarily a mixed use zone. It is unclear whether this would be considered a mixed use zone in the context of the Policy. If the policy was more specific in this regard, perhaps referring to zones in which mixed use is the intention would remove any doubts.
- Another consideration is the permissibility of *individual sex workers* and *small owner-operated businesses* in residential zones. As mentioned above, the policy requires that for such proposals, Council *will determine the application*.
- This implies that they could be permitted as home occupations. The Working Group paper on which the legislation is based supports this. It states (page 19)

that *it will always be difficult to regulate individual sex workers, particularly those working from private residences and not working with others as part of an established business. ...The Working Group notes that such premises would still be subject to council controls, such as requirements for approval to operate a business from home.*

- The policy does not, however, go on to provide guidance to councils on the possible means of regulating *individual sex workers* and *small owner-operated businesses* either as home occupations or otherwise.
- In addition, the Working Group paper indicated that the WAPC had committed to amending the Model Scheme Text (MST) to provide councils with further guidance in amending its local planning schemes. The Policy does not, however, make mention of the MST.
- It is considered that Council should make a submission to the WAPC regarding these matters.

Implications of Legislation and WAPC Policy for Schemes

- From a planning point of view the legislation would make it easier for Council to regulate a *sexual service business* should one locate in Cottesloe. At present it can be extremely complicated to initiate compliance action against an alleged brothel given its illegal status.
- Until Council's Scheme is amended, Council would be required to consider any application it received for a *sexual service business* as an unlisted use in accordance with the Act and the WAPC policy, as outlined above; i.e. exercise discretion.
- It is unclear whether Section 21Y (1) of the Act or the clause relating to unlisted uses in the Scheme would prevail. The difference is significant, as TPS2 and LPS3 allow Council to consider a use to be not permitted if it is not in accordance with zone objectives, whereas the Act provision is not so specific. A legal opinion on the matter would be useful when/if Council was to receive an application for planning approval.
- Relying on Section 21Y (1) for any length of time could leave Council open to appeals to the State Administrative Tribunal, although the WAPC policy would assist a council's position.
- Council therefore needs to consider whether to amend TPS2 and/or LPS3. The life of TPS2 is limited but the expected time before gazettal of LPS3 is not definite and some 12 months away. Unless Council would like to retain the flexibility of Section 21Y (1), it may be appropriate to initiate amendments to both Schemes given that Council's decisions would be open to appeal. An amendment to LPS3 may be effected as a modification when submitting it for final approval.
- Another factor to consider is whether to initiate the amendments to the Schemes prior to the finalisation of the WAPC Policy. Either way, it is likely that the WAPC would hold any amendments in abeyance until the Policy is gazetted. Pre-empting the Policy could, however, ensure that Council's amendment is one of the first "in-line" to be considered.
- Council may wish to address home occupations with regard to an *individual sex worker* or a *small owner-operated business*. Both TPS2 and LPS3 include provisions for home occupations within a definition. The two types of uncertified

sexual service businesses may be able to be considered a home occupation by complying with certain provisions, such as no employees, no signage and restricted area. The one provision that may require attention is that requiring no increase in traffic.

- It needs to be considered whether Council wishes to exclude these uses from the definition of home occupations, as the City of Melville is proposing, or control them in some other way. Other means would include defining them separately and including them in the zoning table separately from the generic *sexual service business* definition.
- A consideration is that because certification is not required; such applications are unlikely to be received by Council. The value in regulating is for compliance purposes should an unauthorised home occupation cause nuisance.
- Any Scheme amendment could cover the following:
 - include *sexual services* as a defined use class in the zoning table;
 - may include appropriate provisions relating to any of those matters to which Council is required to have regard to by the Policy, such as operating hours and parking; and
 - may include definitions for *individual sex worker* and *small owner-operated business* and regulate these through the zoning table and/or through other provisions such as the home occupation provisions if considered necessary.
- Any amendment would need to be based on planning principles rather than on moral grounds, to be accepted by the WAPC.
- A number of zones under TPS2 are neither residential nor mixed use zones, including the Town Centre, Foreshore Centre and Hotel zones. Residential uses are, however, allowable with Council's discretion in each of these zones, except the Hotel zone. The draft WAPC policy indicates that in these zones, sexual service businesses would be at Council's discretion. As mention above in the discussion about the WAPC policy, this matter is unclear. On planning grounds, it may be possible to exclude sexual service businesses from all the TPS2 zones, except the Hotel zone, on the basis that they allow residential uses.

Overall Conclusions

- A submission to the WAPC regarding draft Planning Bulletin No. 90 is warranted given a number of shortcomings, including a need for more specific reference to the intent of zones, in order to remove any doubt as to which zone may be considered to be mixed use; guidance regarding uncertified uses and home occupations; and reference to the MST.
- Council ought to consider whether it wishes to amend TPS2 at this stage or whether to only modify LPS3 and rely on the Act in the meantime. Relying on the Act will open Council decisions up for appeal. It should be kept in mind; however, that the WAPC may have a glut of such Scheme Amendments to deal with, whereby there may be a period after the Act is proclaimed during which an amendment would not have been finalised.
- The content of any amendment is indefinite without more guidance from the WAPC policy and given the above proposed submission on the draft Policy. There is a danger that an amendment granted final approval may be against the intent of the Policy. It was the intent of the Prostitution Reform Working Group that the

WAPC would oversee the process to ensure that any amendments are based on planning grounds.

- Guidance from Council is requested regarding whether to prepare an amendment to TPS2 or whether to await the finalisation of the WAPC Policy.

VOTING

Simple Majority

COMMITTEE COMMENT

Committee discussed the matter generally and considered that the exclusion of sexual services via the town planning scheme would be appropriate for the further report.

Hence Committee saw that the officer recommendation could be streamlined by and expanding point (2) and deleting point (3), subject to appropriate wording, which the Manager Development Services provided.

- (1) Authorise staff to make a submission on the WAPC draft Planning Bulletin No. 90 indicating support the proposed policy subject to it:
 - (a) removing any doubt as to which zone may be considered a mixed- use zone, by reference to the intent of zones;
 - (b) providing guidance regarding uncertified businesses in residential areas as home occupations or otherwise; and
 - (c) including reference to amendment of the Model Scheme Text to reflect the legislation and policy.
- (2) Support a further report from staff regarding amendment options and details for Town Planning Scheme No. 2 or Local Planning Scheme No. 3, following finalisation of the WAPC Policy, with a view to excluding sexual services altogether (including home occupation type operations) and having regard to any relevant information from WALGA on the matter.

OFFICER RECOMMENDATION

That Council:

- (1) Authorise staff to make a submission on the WAPC draft Planning Bulletin No. 90 indicating support the proposed policy subject to it:
 - (a) removing any doubt as to which zone may be considered a mixed- use zone, by reference to the intent of zones;
 - (b) providing guidance regarding uncertified businesses in residential areas as home occupations or otherwise; and
 - (c) including reference to amendment of the Model Scheme Text to reflect the legislation and policy.

- (2) Support a further report from staff regarding amendment options and details for Town Planning Scheme No. 2 or Local Planning Scheme No. 3, following finalisation of the WAPC Policy.
- (3) Indicate to staff the extent and direction of planning control which Council considers appropriate to regulate the town planning dimension of sexual services in accordance with the legislation and WAPC policy.

11.1.2 COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Walsh, seconded Cr Dawkins

That Council:

- (1) **Authorise staff to make a submission on the WAPC draft Planning Bulletin No. 90 indicating support the proposed policy subject to it:**
 - (a) **removing any doubt as to which zone may be considered a mixed-use zone, by reference to the intent of zones;**
 - (b) **providing guidance regarding uncertified businesses in residential areas as home occupations or otherwise; and**
 - (c) **including reference to amendment of the Model Scheme Text to reflect the legislation and policy.**
- (2) **Support a further report from staff regarding amendment options and details for Town Planning Scheme No. 2 or Local Planning Scheme No. 3, following finalisation of the WAPC Policy, with a view to excluding sexual services altogether (including home occupation type operations) and having regard to any relevant information form WALGA on the matter.**

Carried 10/0

11.1.3 LPS3 ENQUIRY BY DESIGN – REPORT ON COST IMPLICATIONS TO COUNCIL

File No: Sub/719 & Sub/720
Author: Mr Andrew Jackson
Author Disclosure of Interest: Nil
Report Date: 14 July 2008
Senior Officer: Mr Stephen Tindale

INTRODUCTION

- This report is to inform Council and gain any necessary direction regarding the cost implications of the intended Enquiry by Design (EbD) consultation exercise under proposed Local Planning Scheme No. 3 (LPS3).
- Pursuant to LPS3 Council is committed to undertaking, jointly with the Department for Planning and Infrastructure (DPI), an EbD to examine particular aspects of the beachfront and railway land areas in the context of their settings.
- The EbD is an important initiative to address the outstanding matters for resolution in LPS3 so that it can be finalised.

STATUTORY ENVIRONMENT

The EbD is pivotal to the successful finalisation of LPS3.

STRATEGIC IMPLICATIONS

The EbD is an important community consultation initiative about key issues facing the Town as identified in Council's Future Plan.

POLICY IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

As herein.

DISCUSSION

Funding Sources

- The EbD is being funded primarily by the DPI from the *Local Government Assistance Programme* which has set-aside an amount in the order of \$100,000.
- This reflects the complex scope and resource-intensive nature of an EbD exercise, with heavy reliance on consultants, a great deal of prior preparation and all the associated organisational costs.
- The Town has not budgeted specifically for the EbD but is contributing substantial staff time and administrative resources absorbed into operational budgets.
- However, the Town is also assembling a team of support consultants to assist the EbD as part of its task.
- In addition, the Town is considering commissioning visual material to feed into the process.
- These inputs have significant cost implications for the Planning Department's budget or as may be supplemented by Council.

- Council may wish to set limits on expenditure or direct the re-allocation of funds should the current budget capacity be exceeded.

Current Budget

- The 2008-2009 Town Planning Budget provides for the following expenditure:

<i>Item</i>	<i>\$</i>
Contractors & Consultants	168,000
Scheme Review	50,000
<i>Total</i>	<i>218,000</i>

- An earlier budget estimate indicated that over time, the implementation of LPS3 and related matters in terms of studies, structure planning, concept plans, design guidelines and polices could easily cost another \$100,000 or more.
- Some of this was linked with the intended EbD, although not dedicated to that distinct activity.

Consultants & Costs

- The core urban design consultants and their co-consultants are to be funded from the DPI budget, which is anticipated to consume most of that amount.
- Some of the administrative costs and materials costs (eg mapping) may also be funded from this budget or within DPI operations.
- The additional support consultants and preparation costs contemplated by the Town include and could generate costs as follows:

<i>Input</i>	<i>Est. \$K</i>
Project Advisor	45
Town Planner/Urban Designer	15
Communications & Consultation	25
Specialist Consultants x 6	30
3D modelling	15
Venue, catering, consumables	5
<i>Total</i>	<i>135</i>

- This estimate is conservative and likely to be exceeded due to the typical drawn-out completion phase of EbD exercises and determination of the outcomes – ie \$150K would not be unrealistic, depending on the circumstances.
- On the other hand, some savings may be possible, but at the expense of a best-practice process and strong representation of Council's points of view on the various planning aspects to be examined.

Financial Implications

- Whilst LPS3 and the EbD are top priorities for Council, they demand most of the present planning activities budget.
- Depending on a range of variables this may impact on the ability to fund other desirable planning activities, project staff and consultants and hence curtail those endeavours.

- As the EbD deals with the beachfront/foreshore area as well as the railway land/Curtin Ave/Town Centre area. It will cover, at a preliminary level, a large proportion of the potential implementation costs forecast for LPS3.
- Also, as given the statutory timeline LPS3 is likely to receive final approval closer to the end of this financial year, the need ongoing expenditure on implementation (eg structure planning of other Development Zones) may not arise until the next financial year or longer.

Conclusion

- The EbD is a vital exercise to engage stakeholders, resolve outstanding planning matters and advance the creation of LPS3.
- An EbD is typically a costly exercise by way of funding, resources, time and materials, and is a consultancy-driven activity.
- Hence the major expenditure involved for the LPS3 EbD is justified, and can be largely accommodated by the current Planning budget.
- This will, however, constrain the budget for other purposes and require monitoring to see if any supplementary funding is required.
- At this stage it is not recommended that the detailed arrangements for the EbD be compromised, and economies may be able to be achieved as the program is put into place.

VOTING

Simple Majority

COMMITTEE COMMENT

Committee supported the report and that it was part of the practical arrangements for the Enquiry by Design, for noting by Council at this stage, as the detailed arrangements for the EBD are presently being finalised and Council will be updated in that regard when everything is confirmed,

11.1.3 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Walsh, seconded Cr Dawkins

That Council:

- (1) **Note this advice about the cost of mounting the EbD and the funding from both the DPI programme and the Town's budget, and support continuation of the arrangements accordingly at this stage.**
- (2) **Support in-principle the possible need to consider supplementing the Planning budget for the current or future financial years in the interest of the finalisation and implementation of LPS3.**

Carried 10/0

Mr Jackson left the meeting at 7.32 pm and did not return.

**12 WORKS AND CORPORATE SERVICES COMMITTEE MEETING HELD ON
22 JULY 2008****12.1 ADMINISTRATION****12.1.1 NO. 91 MARINE PARADE – INDIANA'S REDEVELOPMENT PROPOSAL**

File No: PRO/2414
Author: Mr Stephen Tindale
Author Disclosure of Interest: Nil
Report Date: 17 July, 2008
Senior Officer: Mr Stephen Tindale

SUMMARY

A recommendation is made to grant consent to the lessor of Indiana's to proceed with a redevelopment proposal subject to certain conditions being met to improve the public amenity of the building.

STATUTORY ENVIRONMENT

Nil.

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Nil.

BACKGROUND

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

A revised and much reduced redevelopment proposal has now been submitted.

Development Proposal

The proposal consists mainly of internal works which includes partitions, a kitchen upgrade, a reconfigured bar area, the creation of a single level floor and bi-fold doors opening to the existing deck.

Externally, a relatively small increase in the cool-room and service/loading entry in the south west corner is proposed.

It is also proposed to extend the deck to cover the western half of the circular void above the lower kiosk and toilets level (see attachment).

All of this is within the current lease area and no increase in the number of patrons is proposed.

The applicant has suggested that in exchange for approval to the external works the lessee would upgrade the lower level toilets and then hand-over the cleaning of them to the Town.

Lease Conditions

Clause 16.1 of the lease agreement provides that "...the Lessee must not make any alteration or addition to or demolish any part of the Premises without the prior consent of the Lessor..."

Clause 16.2 provides that "... in giving consent to any alteration, the Lessor may impose any condition, including, but not limited to, a condition that ... requires the Lessee to carry out other work to or in the Premises as a consequence of the alteration, addition, demolition or installation requested by the Lessee; but in regard to the installation, alteration or addition of partitioning within the Premises, the consent of the Lessor may not be unreasonably withheld."

Clause 15.1 requires that the "...Lessee must at its own cost repair and maintain the whole of the Premises in good, clean and tenantable repair, order and condition to the satisfaction of the Lessor..."

Following the receipt of legal advice Council resolved at its May 2008 meeting to:-

Require the lessee, in conformity with clause 15.1 of the lease, to repair and maintain the toilets and immediate surrounds in good, clean and tenantable repair, order and condition to the satisfaction of the Environmental Health Officer with a minimum of a three times per day clean during the period from November 1st to March 31st and at least a once a day clean at all other times.

On the 8th July 2008 the Manager of Corporate Services dispatched the following correspondence to ITH (WA) Pty Ltd.

Your attention is drawn to the inadequacy of the maintenance of the public toilets forming part of the above premises.

Under the lease to your company, the toilets are required to be maintained by the lessee, but throughout your company's occupation of the premises, the toilets have not been maintained to the required standard of cleanliness. The Maintenance Schedule under the lease may only require the lessee to clean the public toilets daily however:

- (a) clause 15.1 of the lease requires the lessee to 'repair and maintain the whole of the Premises in good, clean and tenantable repair, order and condition to the satisfaction of the Lessor'; and
- (b) clause 15.2 provides -

'Without limiting the generality of clause 15.1, the Lessee must carry out the maintenance programme specified in the Maintenance Schedule' (my emphasis).

The Maintenance Schedule specifies particular work to be carried out daily, weekly, annually and at five year intervals. Cleaning of public toilets is listed under the daily requirements.

The Maintenance Schedule does nothing more than specify a minimum requirement. The base requirement is in clause 15.1. Accordingly, your company is required to keep the public toilets in a good and clean condition at all times.

To address public concerns the Town has supplemented the cleaning of the toilets by carrying out additional cleaning at its own costs. The Town is not prepared to continue to do this when ongoing lessee maintenance of the toilets in a good and clean condition is an obligation under the lease.

Your assistance in resolving this matter in an amicable way will be very much appreciated. If you wish to discuss the Town's requirements, please contact me on (08) 9285 5060.

Planning Process

In dealing with the development application (which has yet to be put before Council) the Town acts in relation to its planning powers as distinct from its powers as Lessor of the premises.

As the application is on land under a Metropolitan Region Scheme (MRS) reservation (for Parks and Recreation) the Western Australian Planning Commission (WAPC) is the determining authority. The Town's role is to refer the application to the WAPC and following assessment to provide a recommendation, including any conditions.

Before that, the Town as vestee/custodian of the reserved land has to consent to the making of the application which is achieved by the CEO signing Form 1.

The Form 1 should then also be signed by the Department of Land Information on behalf of the Crown, which the applicant arranges so that it can be submitted.

Referral by the Town of the proposal to the Heritage Council of WA (HCWA) is another step, due to the location of the premises in the Cottesloe Beach Precinct, which is interim-listed for State heritage purposes.

Advertising under Town Planning Scheme No. 2 does not directly apply to MRS applications, however, the Town's practice is to advertise in the normal manner in order to inform relevant parties and consider any feedback as part of its assessment and recommendation. Advertising in the public interest in accordance with Council's consultation policy is an alternative approach.

CONSULTATION

Nil

STAFF COMMENT

The CEO has indicated that he will not sign the Form 1 to be dispatched to the WAPC until Council has assessed the proposal in its role as Lessor of the premises and has reached an agreement with the Lessee on any conditions that might be imposed on the Lessor in relation to any requirement for additional work under Clause 16.2 of the lease agreement.

In relation to the development proposal, the following preliminary comments have been made by Council's planning staff.

- No objection is seen to the proposed internal alterations, subject to detailed plans being submitted.
- No objection is seen to the proposed bi-fold doors or the deck extension in itself, in order to allow better access to and use of deck, provided there is no increase in the approved number of patrons.
- No objection is made to the proposed small cool-room/service area addition as it would have minimal impact.
- The proposed extension to the deck area may be a concern if it is found to significantly affect the amenity (natural lighting and ventilation in particular) of the kiosk area below, depending on detailed design and other improvements which might be made to the lower level.

Overall, in-principle support is given to the upgrading of the premises internally, the enhancement of the building's relationship to the street and the increase in ancillary facilities.

However, some issues require closer examination.

Public Toilets

The Town of Cottesloe has put the Lessee on notice that responsibility for the cleanliness and maintenance of the toilets rests squarely with the Lessee.

Any proposed upgrade to the toilets would obviously be aimed at lessening the ongoing cleaning and maintenance requirement which is currently the Lessee's responsibility.

The question that begs itself is why should the Town of Cottesloe bear the future ongoing costs of cleaning and maintenance when under the requirements of the current lease agreement it is obviously in the best interests of the Lessee to upgrade the toilets in order to reduce the Lessee's ongoing costs under the existing lease arrangements?

Furthermore, as improved and well-maintained public toilets could only be the benefit of the Lessee's presence and operations, it is difficult to understand why the Lessee would resist taking the initiative to upgrade them and the responsibility for maintenance, in order to enhance the amenity of the overall premises, avoid complaints from any patron users of those facilities and in the interest of its long-term

establishment and any future proposals. Overcoming this ongoing problem and gaining the resultant goodwill with both Council and the community would surely be worth the relatively minor expenditure.

In order to remain consistent with Council's May resolution and the correspondence subsequently dispatched to the Lessee, it is recommended that Council require the Lessee to upgrade of the toilets as additional works provided for under Clause 16.2 of the lease agreement. Failing an agreement, consent from the Town of Cottesloe should be withheld for all but the internal partitioning works.

Partial Filling of the Void over the Kiosk Area

The partial filling of the void over the kiosk area will affect public amenity to some degree, depending on detailed design and treatments. In considering the principle of allowing the decking it should not be assumed that amenity will be "ruined", as the urban design of the existing lower level kiosk area already leaves a lot to be desired. Rather, it may be necessary to ensure that by careful attention to design aspects such as light, ventilation, security, legibility and ambience, the amenity of the kiosk may be acceptable or even improved.

Indeed, in addition to the upgrade of the public toilets, the Lessee could fairly easily upgrade this lower level area to the advantage of all, by way of materials, finishes, landscaping, lighting and signage. That would be a reasonable expectation of Council in exchange for its support to the proposal under the lease agreement and development application process. Ideally this should now be negotiated up-front and reflected in written commitments, amended plans and recommended conditions of planning approval.

Council's guidance is required in determining whether the magnitude of the potential loss of public amenity is sufficient to warrant community consultation under Council's *Community Consultation* policy.

In other words, is the loss of public amenity likely to be more than offset by the proposed improvements to the public toilets and/or the overall presentation of the building to the public.

If public consultation is to be undertaken, then it is recommended that it be undertaken sooner rather than later (i.e. not when considering the development application at a later date). This is because the WAPC is the determining authority for the development application and is less likely to be bound by public comment than perhaps the Council.

Two optional recommendations are made below. The first expedites development approval. The second requires community consultation to be undertaken.

VOTING

Simple Majority

OFFICER RECOMMENDATION 1

That Council:

- (1) Requires ITH (WA) Pty Ltd to upgrade the public toilets to the satisfaction of the Town of Cottesloe as an additional work under Clause 16.2 of the lease agreement.
- (2) Refuses to grant consent under Clause 16.2 in the event that no agreement can be reached on the upgrade of the public toilets.
- (3) Requires, subject to agreement being reached on the additional work, including supplementary detailed design of the proposed deck extension and complementary upgrading of the lower level kiosk area, to the Manager of Development Services to process the Development Application without further referral to Council.

OFFICER RECOMMENDATION 2

That Council:

- (1) Requires ITH (WA) Pty Ltd to upgrade the public toilets to the satisfaction of the Town of Cottesloe as an additional work under Clause 16.2 of the lease agreement.
- (2) Refuses to grant consent under Clause 16.2 in the event that no agreement can be reached on the upgrade of the public toilets.
- (3) Requires, subject to agreement being reached on the additional work, including supplementary detailed design of the proposed deck extension and complementary upgrading of the lower level kiosk area, the development proposal to be advertised for public comment under Council's *Community Consultation* policy.
- (4) Requires any community comments received to be referred back to Council as part of the Development Application process.

12.1.1 COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Strzina

That Council:

- (1) Requires ITH (WA) Pty Ltd to upgrade the public toilets to the satisfaction of the Town of Cottesloe as an additional work under Clause 16.2 of the lease agreement.**
- (2) Refuses to grant consent under Clause 16.2 in the event that no agreement can be reached on the upgrade of the public toilets.**
- (3) Requires, subject to agreement being reached on the additional work, including supplementary detailed design of the proposed deck extension and complementary upgrading of the lower level kiosk area, the development proposal to be simultaneously referred to the Design Advisory Panel and advertised for public comment under Council's *Community Consultation* policy.**

- (4) **Requires any comments received from the Design Advisory Panel and any community comments received to be referred back to Council as part of the Development Application process.**

Carried 10/0

12.1.2 VLAMINGH MEMORIAL

File No: SUB/212
Author: Mr Stephen Tindale
Author Disclosure of Interest: Nil
Report Date: 16 July, 2008
Senior Officer: Mr Stephen Tindale

SUMMARY

A recommendation is made to undertake community consultation on a proposed relocation of the Vlamingh Memorial to Cottesloe Beach.

STATUTORY ENVIRONMENT

Nil.

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

To be ascertained.

BACKGROUND

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

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

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

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

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

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

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

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

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

CONSULTATION

Council's *Community Consultation* policy would indicate that this is a site specific project that requires community consultation by way of an advertisement in a local newspaper at the very least.

STAFF COMMENT

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

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

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

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

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

In the author's experience, which involves a daily commute to and from work along Curtin Avenue, very few motorists stop on Curtin Avenue to look at the Vlamingh Memorial (in fact none that I can recall). Pedestrians and cyclists using the dual use

pathway are more likely to stop but once they have done so, there is little reason to do so again.

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

VOTING

Simple Majority

OFFICER RECOMMENDATION

That Council undertake community consultation on a proposed relocation of the Vlamingh Memorial to Cottesloe Beach.

Cr Birnbrauer left the meeting at 8.42 pm

Cr Birnbrauer returned to the meeting at 8.44 pm

Cr Birnbrauer and Mr Patrick left the meeting at 8.45 pm

12.1.2 COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Cunningham

That Council undertake community consultation on:

- (1) the proposed removal of the existing Vlamingh Memorial obelisk and tourist directional sign; and**
- (2) if the removal is supported, whether the Town should install a new Vlamingh Memorial plaque at Cottesloe Beach.**

Carried 8/1

12.1.3 SIGNS IN NO 2 CARPARK

File No: SUB/198
Author: Mr Graham Pattrick
Author Disclosure of Interest: Nil
Report Date: 9 July, 2008
Senior Officer: Mr Stephen Tindale

SUMMARY

A report is presented outlining the action taken to address the issue of too many signs in the No 2 Car Park. A recommendation is made to accept this report.

STATUTORY ENVIRONMENT

Nil

POLICY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

BACKGROUND

A request was made at the June meeting of Council to examine the level of signage at the Number 2 Car Park and a report was requested to provide ways to rationalise the signage to improve the amenity of the location.

The introduction of the three hour limit in the No 2 Car Park was approved by Council on 17 December 2007. It was introduced as part of Council's wider strategy in controlling the anti-social behaviour that is prevalent during the summer months, especially on weekends. The parking in No 1 Car Park was also extended to a three hour limit anytime from the prior 8 AM – 6 PM. The signs were installed in early January 2008 and have been operational since that date.

CONSULTATION

Nil

STAFF COMMENT

The incidences of anti-social behaviour have been dramatically reduced and this has been largely attributable to the introduction of the 3 hour parking restriction in both car parks. Prior to the introduction of the 3 hour limit in No 2 Car Park, the Rangers observed that hotel patrons would congregate in the car park. They continued to consume alcohol, party on and generally create a disturbance to well after midnight. This had effect of disturbing the quiet amenity of the nearby residents. This also led to a large amount of broken glass, empty alcohol containers and other litter being left

behind for council workers to clean up the following day. The Works Supervisor indicates that there has been a noticeable reduction in rubbish to clean up since the 3 hour limit was introduced.

The Rangers have reported that before the 3 hour limit was introduced, No 2 Car Parks was still relatively full at 9pm on busy Sunday evenings during the summer months. It is noted that since the change, there is less than 50% occupancy at 9.00pm in the car park even on extremely busy nights. As a consequence this has had the corresponding effect of reducing the amount of anti-social behaviour and demonstrates that the three hour time limit is effective.

It is a recognised fact that the summer season commences at the beginning of October and concludes at the end of the following April, essentially this is for a period of 7 months and incorporates the summer holidays for schools and higher education institutions. It has been noted by the Rangers that on most weekends with fine weather that No 2 car Park is usually filled to capacity by mid afternoon and the 3 hour restriction has the effect of self regulating and managing the car park usage. The Rangers essentially enforce the 3 hour limits on Sunday evenings during the summer season in conjunction with the 9.00pm lock out from both hotels as a means to help control anti social behaviour.

When the 3 hour limit was posted in early January 2008, it was decided as a temporary measure to introduce other regulatory signs such as "No Stopping" as a means to demonstrate to motorists that there had been a change in parking regulations.

Recently, 16 signs have been removed. The reliance on 'No Stopping' signage has reverted back to the standard yellow painted lines on the car park surface.

When the signage for the 3 hour limit was installed it was done so in such a manner to comply with the legal requirements of Australian Standards in relation to parking sign installation. It is a requirement that the motorist be informed of where the restricted time zones start and cease, otherwise any enforcement would have no legal standing if those signs were not compliant with the required standards.

Prior to the installation of the additional signage, there were already 4 signs on the verge between Bryan Way and No 2 Car Park and continuing up to the John Black Dune Park. The Council has a policy and obligation to preserve this reserve from vehicle access and damage. It should be noted that these signs need to be in place as there is no other way of informing the motoring public of the "No Stopping" restrictions applicable to the road and verge.

The 3 large blue and white signs placed at the entry points to the car park are there to inform motorists that in the first instance there had been a change to the parking times in the car park. The primary function of those signs is to inform the motoring public that there is a 3 hour restriction in that car park that is in effect for 24 hours a day.

A comparison was made to the parking signage in No 1 Car Park, the major difference between the two car parks is in the manner the way they have been

designed and constructed. No 1 Car Park has a smaller capacity (137 bays as opposed to 353bays) and has no medians, trees and light poles installed within the car park area as it is the case with No 2 Car Park. No1 Car Park has a continuous and un-interrupted 3 hour zone, whereas in No2 Car Park the parking zones are allocated in packets of bays separated by medians and internal access roads.

On previous occasions the Rangers often noted that many visitors to the beach front commented on the lack of parking during the summer period and referred to the car parks being full. With the introduction of the 3 hour limit there has now been a more significant increase in the rate of vehicle turn over and parking opportunities for the public.

Initially when the 3 hour limit was introduced, the Rangers managed the parking for the first 2 weeks by cautioning motorists that there had been a change to the parking restrictions. Following that introduction period, infringements were issued and as the summer season progressed the number of infringements issued declined to 5 or 6 for each Sunday night. This demonstrated that most of the public were aware of the 3 hour limit and did indeed adhere to those restrictions.

The council provided for a permit system to the employees of the hotels and all other business establishment so those staff are exempted from the 3 hour limit. This was done in consultation with those business proprietors in order to alleviate any unfair impost to them or their staff. The overall comment from all those consulted is that the 3 hour limit is a welcome change to the parking management strategy of the Town. Some have even passed on the comment that they feel that it has enhanced their business growth.

Comments noted from the Police, council depot staff and residents in the nearby vicinity all reflect that there has been a significant and noticeable reduction in anti social behaviour, litter and hoon driving.

With the removal of 16 signs, most of which were concentrated in two small areas, one of which was at the northern end near Bryan Way and the other around the central access road from Marine Parade. There is now a more open aspect to the car park and those remaining signs are the minimum amount left to comply with the required standards and spread around the large arena of No 2 Car Park.

The Council is at all times aware of the sensitivity of the impact that anti social behaviour has on the residents and strives to combat the increasing incidents of crime. The introduction of the 3 hour limit has demonstrated a significant decrease of reported anti social incidents and this has been confirmed by the Western Australian Police Service. Regular meetings with the Police, Council Rangers and Managers, hotel representatives and concerned residents have all indicated that there are decreasing anti social incidents. To that effect, Council has determined that the 3 hour restriction has a positive effect on the community and as such the time limit will remain in No2 Car Park.

VOTING

Simple majority

12.1.3 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Strzina

That Council accept the report.

Carried 9/0

12.1.4 ASSIGNMENT OF WASTE AND RECYCLING CONTRACT

File No: SUB/568
Author: Ms Ruth Levett
Author Disclosure of Interest: Nil
Report Date: 14 July, 2008
Senior Officer: Mr Stephen Tindale

SUMMARY

A recommendation is made to authorise the Mayor and CEO to sign and execute a Deed of Assignment for the Waste and Recyclables Contract from Trum Pty Ltd to Transpacific Cleanaway Pty Ltd.

STATUTORY ENVIRONMENT

Providing the Council is satisfied it has met the provisions of the Collection of Waste and Recyclables Contract Part VI, Section 23 Assignment and Subcontracting and Part VII, Section 33 Bank Guarantee, the contract may be assigned.

The requirement under the *Local Government Act 1995* (Section 3.57) to publicly invite tenders was satisfied in 1998 and is not required for the purpose of assigning the contract where the contract contains assignment provisions.

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

An assignment of the contract does not permit a review of charges and therefore there are no financial implications associated with the current collection rates charged in assigning the contract.

It has been agreed that all reasonable legal costs associated with the assignment of the contract are to be borne by the assignee, Transpacific Cleanaway Pty Ltd.

BACKGROUND

Transpacific Industries Group Ltd, parent company of Transpacific Cleanaway Pty Ltd, recently announced that, effective of 30th May 2008, they acquired the business and assets of Trum Pty Ltd trading as Roads & Robinson Rubbish & Recycling who currently provide the waste and recycling collection service for the Town of Cottesloe. Accordingly Transpacific Industries Group Ltd is seeking the assignment of the waste and recyclables contract.

The contract contains provision for the assignment of the contract and Transpacific have provided a draft Deed of Assignment for consideration. A copy of the Deed is attached. Comment from the Town's legal representatives, Mcleods Barristers &

Solicitors, has been sought and subject to minor modification, they have advised that they “see no reason why the Town should not execute the Deed of Assignment”.

CONSULTATION

Nil.

STAFF COMMENT

With regard to the comments from McLeods, the following matters have been raised and resolved:

- (a) *The expiry of the extended term of contract should be 29 November 2008 not 30 November 2008.*

The contract has been extended for a period of five (5) years from the 30 November 2003 and will therefore expire on 29 November 2008. This date will be corrected on the Deed of Assignment.

- (b) *Under clause 7.7 each party is required to bear their own legal costs in relation to the Deed. It is usual in a situation such as this where the principal of a contract bears no responsibility for an assignment of the contract and only agrees to consent to it, for the assignor or assignee to cover any legal costs that the principal incurs as a consequence of the assignment. Accordingly, it is recommended that the Town request that clause 7.7 be changed to provide for either the assignee or the assignor to pay for the Town’s reasonable legal costs in regard to the assignment.*

Transpacific have confirmed in writing that they will meet all reasonable legal costs incurred by Council in relation to the assignment of the contract and clause 7 7 will be amended to reflect this.

- (c) *Depending on what the Town’s usual processes are in executing documents of this kind, you may require the execution clause to be changed to provide for the affixing of the Town’s seal.*

It is standard practice to affix the Town’s seal to the original contract. It is not necessary to affix the seal to the Deed of Assignment.

In addition to these matters, the inclusion of the Recycling Company of WA Pty Ltd on the Deed of Assignment when it has since been liquidated, is questioned.

The Town of Cottesloe entered into a contract with Trum Pty Ltd trading as Roads & Robinson Rubbish & Recycling and the Recycling Company of WA Pty Ltd in 1998 who together traded as WasteLess. In 2005 the Recycling Company of WA Pty Ltd was liquidated and advice was sought on the implications for the contract.

The Town was advised that under the original contract, Trum Pty Ltd and Recycling Company of WA Pty Ltd had joint and several obligations to perform the contract. Accordingly, Trum Pty Ltd remained bound by the contract and entitled to its benefit despite the liquidation of Recycling Company of WA Pty Ltd. Therefore, consent to assign under the contract was not necessary.

Transpacific have agreed that as the Recycling Company of WA Pty Ltd no longer exists they cannot be a signatory or indeed a party to the Deed of Assignment and a revised Deed of Assignment has now been prepared.

Section 8 of the Deed of Assignment refers to the Bank Guarantee of \$50,000 currently held by Council as security for the performance of the contract. Transpacific Cleanaway Pty Ltd has confirmed in the Deed that a replacement bank guarantee will be provided on the same terms upon execution of the Deed.

The sale of the business from Trum Pty Ltd to Transpacific Cleanaway Pty Ltd will not affect the service delivery in any way and it is proposed that the trading name will continue as Roads & Robinson Rubbish & Recycling until the expiry of the contract in November 2008.

It is therefore recommended that Council supports the Deed of Assignment with the agreed amendments outlined in this report.

VOTING

Simple Majority

12.1.4 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Strzina

That Council:

- (1) Supports the assignment of the existing Collection of Waste & Recyclables Contract from Trum Pty Ltd to Transpacific Cleanaway Pty Ltd in accordance with Clause 23 of the contract; and**
- (2) Authorises the Mayor and the Chief Executive Officer to sign and execute the amended Deed of Assignment.**

Carried 9/0

12.1.5 BOKASHI BUCKET PROMOTION

File No: SUB/368
Author: Ms Ruth Levett
Author Disclosure of Interest: Nil
Report Date: 16 July, 2008
Senior Officer: Mr Stephen Tindale

SUMMARY

The purpose of the report is to propose the use of Bokashi Buckets as an additional means of home composting for residents and to recommend the purchase of a bulk lot of bins for sale through the Council. It is also recommended that a new charge for Bokashi Buckets is introduced.

STATUTORY ENVIRONMENT

Nil.

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Funds have been allocated in the 2008-2009 budget for promotional initiatives. It is proposed that these funds be used for the initial purchase of the buckets. The income received from the sale of the buckets will cover this expenditure.

The cost of \$75.00 inc. GST will be added to Fees and Charges in the budget for the purchase of a Bokashi bucket starter kit and \$10.00 for a 3kg bag of Eco Bokashi.

BACKGROUND

Due to the environmental impact of organic waste in landfills investigation was undertaken into the potential to further reduce the amount of organic waste from the waste stream and to find a practical and convenient alternative to the garden compost system. The Bokashi Bucket is a small portable composting system that can compost all food waste including meats.

A quotation for the supply and delivery of Bokashi Buckets has been obtained and the cost for a starter kit consisting of 1 x 20 litre Bokashi Bucket and 1kg of Eco Bokashi powder will be \$75.00 including GST. The cost of a 3kg bag of Eco Bokashi powder is \$10.00 including GST.

An initial purchase of one pallet load of 96 buckets will be \$7,200 with a possible slight variation for the increase in cost of fuel. A minimal supply of Eco Bokashi will be purchased as it can be delivered with the pellet at no extra cost for transporting.

CONSULTATION

Nil.

STAFF COMMENT

The Bokashi Bucket is a revolutionary fermentation process that turns kitchen waste into a rich soil conditioner. It is a practical and convenient alternative to the garden compost system. The Bokashi system employs microorganisms to anaerobically break down food scraps without the use of heat. A brochure is attached for information.

The Bokashi system requires a 20 litre specially designed bucket that can be stored in the home or office kitchen. Fermented grain/powder containing microbes is sprinkled over the food scraps to commence the fermentation process. After approximately two weeks in the anaerobic environment the compressed food waste will have been broken down sufficiently to be added directly to the garden or to an outdoor compost facility. There are no odours associated with the Bokashi Bucket.

The benefits of the Bokashi Bucket are:

- Food scraps are converted to a useful product
- Nutrients are returned to the soil
- Promotes healthy plant and vegetable growth
- Adds to water retention capacity of soil
- Reduces watering requirements
- Eliminates the need for chemical or inorganic fertilisers
- Reduces methane gas production by diverting from landfill
- Easy and user friendly to manage in the home or office

The Western Metropolitan Regional Council is about to embark on the trial of the Anaeco Dicom facility at Brockway Transfer Station where the Town's general waste will be converted to compost. The promotion of Bokashi Buckets will not impact adversely on the trial. It is estimated that only a minimal percentage of household food waste will be diverted from this process. No commercial food waste will be diverted and there is greater benefit to the resident to return food waste to the garden.

The Bokashi Bucket has been trialled by the Earth Carers who have been promoting the use of the buckets for some time. However, the bins are currently sold only from shops such as the Environment Centre or on the internet for between \$90.00 and \$99.00. It is proposed to launch the promotion of the Bokashi Buckets during the Living Smart Program being delivered to the Cottesloe community in August/September 2008. The Living Smart Program covers a range of topics including energy, water, transport, organic gardening and waste and is an ideal time to introduce the Bokashi Bucket promotion. It is proposed to make the buckets available at a wholesale price to residents for the first twelve months of the promotion. Depending on the success of the promotion further consideration can be given to continuing the offer.

It is recommended that the Bokashi Bucket promotion is supported with a review of the promotion after twelve months and that a charge of \$75.00 inc. GST for a Bokashi starter kit and \$10.00 for a 3kg bag of Eco Bokashi be added to fees and charges schedule of the budget.

VOTING

Simple Majority

12.1.5 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Strzina

That Council:

- (1) **Supports the promotion of Bokashi Buckets to the community with a review of the promotion in twelve months time;**
- (2) **The Administration be authorised to purchase the Bokashi Buckets and Eco Bokashi powder and offer for sale to residents on a cost recovery basis;**
- (3) **A charge for the Bokashi Bucket starter kit of \$75.00 including GST and 3kg Eco Bokashi powder of \$10.00 including GST be added to the Fees and Charges schedule of the 2008/2009 budget.**

Carried 9/0

12.1.6 COTTESLOE RUGBY CLUB LEASE RENEWAL

File No: PUB/1
Attachment(s): [Amended Aerial View of Site](#)
Author: Mr Graham Pattrick
Author Disclosure of Interest: Nil
Report Date: 30 June 2008
Senior Officer: Mr Stephen Tindale

SUMMARY

A recommendation is made to authorise the Mayor and CEO to sign a lease agreement between the Town of Cottesloe and the Cottesloe Rugby Club (Inc.)

STATUTORY ENVIRONMENT

Section 3.58 of the *Local Government Act 1995* applies.

3.58. Disposing of property

(1) In this section -

dispose ~ includes to sell, lease, or otherwise dispose of, whether absolutely or not;

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

(2) Except as stated in this section, a local government can only dispose of property to -

(a) the highest bidder at public auction; or

(b) the person who at public tender called by the local government makes what is, in the opinion of the local government, the most acceptable tender, whether or not it is the highest tender.

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

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

(i) describing the property concerned;

(ii) giving details of the proposed disposition; and

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

and

(b) it considers any submissions made to it before the date specified in the notice and, if its decision is made by the council or a committee, the decision and the reasons for it are recorded in the minutes of the meeting at which the decision was made.

(4) The details of a proposed disposition that are required by subsection (3)(a)(ii) include -

- (a) the names of all other parties concerned;
- (b) the consideration to be received by the local government for the disposition; and
- (c) the market value of the disposition as ascertained by a valuation carried out not more than 6 months before the proposed disposition.

(5) This section does not apply to -

- (a) a disposition of land under section 29 or 29B of the *Public Works Act 1902*;
- (b) a disposition of property in the course of carrying on a trading undertaking as defined in section 3.59;
- (c) anything that the local government provides to a particular person, for a fee or otherwise, in the performance of a function that it has under any written law; or
- (d) any other disposition that is excluded by regulations from the application of this section.

Regulation 30 of the *Local Government (Functions and General) Regulations 1996* says;

30. Dispositions of property to which section 3.58 of Act does not apply

(1) A disposition that is described in this regulation as an exempt disposition is excluded from the application of section 3.58 of the Act.

(2) A disposition of land is an exempt disposition if -

- (a) the land is disposed of to an owner of adjoining land (in this paragraph called **the transferee**) and -
 - (i) its market value is less than \$5 000; and
 - (ii) the local government does not consider that ownership of the land would be of significant benefit to anyone other than the transferee;
 - (b) the land is disposed of to a body, whether incorporated or not -
 - (i) the objects of which are of a charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature; and
 - (ii) the members of which are not entitled or permitted to receive any pecuniary profit from the body's transactions;
 - (c) the land is disposed of to -
 - (i) the Crown in right of the State or the Commonwealth;
 - (ii) a department, agency, or instrumentality of the Crown in right of the State or the Commonwealth; or
 - (iii) another local government or a regional local government;
 - (d) it is the leasing of land to an employee of the local government for use as the employee's residence;
-

(e) it is the leasing of land for a period of less than 2 years during all or any of which time the lease does not give the lessee the exclusive use of the land;

(f) it is the leasing of land to a medical practitioner (as defined in section 3 of the *Medical Act 1894*) to be used for carrying on his or her medical practice; or

(g) it is the leasing of residential property to a person.

(2a) A disposition of property is an exempt disposition if the property is disposed of within 6 months after it has been

(a) put out to the highest bidder at public auction, in accordance with section 3.58(2)(a) of the Act, but either no bid is made or any bid made does not reach a reserve price fixed by the local government;

(b) the subject of a public tender process called by the local government, in accordance with section 3.58(2)(b) of the Act, but either no tender is received or any tender received is unacceptable; or

(c) the subject of Statewide public notice under section 3.59(4), and if the business plan referred to in that notice described the property concerned and gave details of the proposed disposition including

(i) the names of all other parties concerned;

(ii) the consideration to be received by the local government for the disposition; and

(iii) the market value of the disposition as ascertained by a valuation carried out not more than 12 months before the proposed disposition.

(2b) Details (*see section 3.58(4) of the Act*) of a disposition of property under subregulation (2a) must be made available for public inspection for at least 12 months from the initial auction or tender, as the case requires.

(3) A disposition of property other than land is an exempt disposition if

(a) its market value is less than \$20 000; or

(b) it is disposed of as part of the consideration for other property that the local government is acquiring for a consideration the total value of which is not more, or worth more, than \$50 000.

In accordance with Regulation 30 (2) (b) Council may deal directly with the Cottesloe Rugby Club on this matter without the restrictions of Section 3.58 of the Local Government Act.

POLICY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

The new arrangement will result in rates revenue being approximately \$1,237pa less than the rent paid.

BACKGROUND

When this matter was put before the October 2006 meeting a map was tabled showing the area that was proposed to be leased to the Rugby Club. It was felt that it might be prudent to keep the lease at 5 or 10 years so that Council could retain flexibility over the freehold land into the future. It was also proposed that the lease be confined to the club house and car park and that a separate fee be charged for ground hire.

Concerns were also raised by Council members in relation to the differences in the wording of similar clauses for both the Rugby Club lease and the Tennis Club lease which was also being considered at the time. The differences were to be checked with Council's legal advisers.

As a result a decision was made to defer any further consideration of the leases to allow staff to consider and report back on:

- (1) The consistency of clauses within both leases;
- (2) A reduced term and area for the Rugby Club;
- (3) A ground rental for the Rugby Club;
- (4) An exemption for sporting clubs from FESA Levy; and
- (5) The inclusion of a requirement within the leases requiring the clubs to provide Council with a copy of their annual audited financial statements.

These matters are addressed below:

The consistency of clauses within both leases;

Both leases were prepared by McLeods.

There are additional clauses in the Cottesloe Rugby Club lease in section 7 Insurance (7.6 Settlement of Claim and 7.7 Lessor as Attorney) and section 22 Assignment, subletting and charging (22.2 Lessor's consent to assignment and subletting; 22.3 Consents of assignee supplementary; and, 22.5 Costs for assigning and subletting).

The only other significant difference between the tennis club and the rugby club leases is that the rates bill for the tennis club is discounted by an amount of 80% which ensured that their rates bill didn't exceed their previous rental.

There is consistency between the two lease agreements in that changes in lease income derived from the two clubs will now be driven by changes in the value of the land as determined by the Valuer General from time to time.

A reduced term and area for the Rugby Club;

This was discussed with the CEO and the Manager Corporate Services. It was felt that in the absence of any specific plans for the land, it would be difficult to justify any significant change to existing lease arrangements. The development potential of the land was not identified by Council when settling its *Future Plan*.

A ground rental for the Rugby Club;

As part of the change the club will not be charged a ground rental as they did in the past. The rates bill calculation is now based on the value of the whole of the land and replaces the ground rental that the club have paid historically. This avoids any change to arbitrarily derived fees and the conflict that can occur from time to time.

An exemption for sporting clubs from FESA Levy;

This has been investigated by the Rates Officer and it is not possible to gain an exemption for sporting clubs (or any non-profit body) from the FESA levy. This is a State Government decision and out of the Town's jurisdiction.

The inclusion of a requirement within the leases requiring the clubs to provide Council with a copy of their annual audited financial statements.

An amendment has been made to the lease so that a clause requesting the annual financial statements from the club is included.

CONSULTATION

During the previous process to determine the treatment for the tennis club lease contact was also made with several other local governments including Mosman Park, Peppermint Grove, Claremont, Subiaco, Cambridge and Vincent to determine how they treated their sporting club leases.

The Manager of Corporate Services had several meetings with Michael Gallagher, President of the Cottesloe Rugby Club. He has reviewed the document and was happy with the lease.

STAFF COMMENT

The application of full rates to the rugby club would result in a decrease from \$4,404 in rent for the clubhouse and field to \$3,167 in rates (excluding ESL) for 2007/2008.

It is important to note that other local governments in the region treat individual clubs based on their unique circumstances. The best example is the Town of Vincent where each club has a negotiated arrangement based on a combination of the level of council financial involvement in ground maintenance, historical agreements and type of premises.

The committee of the rugby club is satisfied with the proposed lease as it provides long term security and does not have an adverse impact on the finances of the club. The term of the lease has been set at 21 years.

VOTING

Simple Majority

OFFICER RECOMMENDATION

That Council authorise the Mayor and CEO to sign the proposed lease agreement for a period of 21 years between the Town of Cottesloe and the Cottesloe Rugby Club (Inc.).

12.1.6 COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Strzina

That Council authorise the Mayor and CEO to sign the proposed lease agreement for a period of 21 years between the Town of Cottesloe and the Cottesloe Rugby Club (Inc.) subject to the lease plan being amended to exclude Harvey Field.

Carried 10/0

12.2 ENGINEERING

12.2.1 NATURAL AREAS MANAGEMENT PLAN

File No: SUB/620
Author: Ms Jade Hankin
Author Disclosure of Interest: Nil
Report Date: 1 July, 2008
Senior Officer: Mr Stephen Tindale

SUMMARY

A draft report entitled 'Cottesloe Natural Areas Management Plan' has been prepared by Ecoscape Consulting for the Town of Cottesloe. As part of the process to finalise and implement the report, a four week public review period is required to give the community and relevant stakeholders an opportunity to comment on the content of report.

It is recommended that Council receive the draft management plan and release it for a four week public comment period.

STATUTORY ENVIRONMENT

Nil

POLICY IMPLICATIONS

The adoption of the final management plan may have implications for various Council policies such as Residential Verges, Street Trees and Streetscape. These will be addressed as the plan is implemented.

STRATEGIC IMPLICATIONS

One of the dynamic priorities contained within Council's Future Plan is to develop a District Environmental Management Plan.

FINANCIAL IMPLICATIONS

Council has allocated \$25,000 in the 2008/2009 budget for the implementation of priority works identified in the management plan.

Applications for external grant funding to match this amount are currently being prepared in order to increase the quantity and scope of works planned.

BACKGROUND

In November 2007 expressions of interest were sought to obtain the services of an environmental consultancy to develop a Natural Areas Management Plan (NAMP) for the Town of Cottesloe.

The overarching aim of the NAMP was as follows:

To identify those areas in the Town of Cottesloe that are to be managed as natural areas and to provide guidelines and priorities for their management with a view to protecting, preserving and enhancing local biodiversity.

In December 2007, after expressions of interests were sought and assessed, Ecoscape Consulting Pty Ltd was engaged by the Town of Cottesloe to prepare a NAMP for the district.

In January 2008, a steering committee was formed consisting of the Ecoscape project team, several Town of Cottesloe staff and several members of Cottesloe Coastcare Association (CCA) to coordinate progress of the management plan.

Several stages were completed to reach the formulation of a draft management plan.

These included Ecoscape staff working together with CCA to map all natural areas utilising the vast amount of knowledge CCA members have of the local vegetation.

A workshop was also held with relevant stakeholders including Town of Cottesloe staff members, CCA members, coastal officers and local residents to establish goals and objectives for future natural areas management and to determine priority areas for future works within the region.

The draft NAMP produced covers an assessment of the social and physical environment; a management framework; prioritisation and strategies for existing and potential natural areas; and comprehensive guidelines for implementation of works with projected cost analysis within Cottesloe. These were the requirements specified and agreed upon within the initial brief.

CONSULTATION

A review of the draft plan has been undertaken by Town of Cottesloe staff and CCA to ensure there are no major omissions in the report. Minor alterations were made and both parties expressed willingness to release the report for a four week public comment period.

A four week public comment period is required to obtain the views and opinions of the community and relevant stakeholders on the content of the NAMP.

STAFF COMMENT

The finalisation of the management plan and the implementation of recommendations outlined within it will need to be considered in line with the climate change scenarios outlined in the report *Vulnerability of the Cottesloe Foreshore to the Potential Impacts of Climate Change* produced for the Town of Cottesloe by consultants Coastal Zone Management in June 2008.

After the four week public review period Ecoscape will be required to address concerns raised on issues deemed significant (in conjunction with Town of Cottesloe staff) and ensure all requirements are met.

A final report will then be submitted to Council for final adoption.

VOTING

Simple Majority

12.2.1 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Strzina

That Council receive the draft 'Cottesloe Natural Areas Management Plan' and release it for a four week public comment period.

Carried 9/0

12.2.2 REMOVAL OF STREET TREE – MARGARET STREET

File No: PRO/2223
Attachment(s): [Amended Deed of Settlement](#)
Author: Mr Stephen Tindale
Author Disclosure of Interest: Nil
Report Date: 16 July, 2008
Senior Officer: Mr Stephen Tindale

SUMMARY

A recommendation is made to sign a Deed of Settlement relating to the removal of a street tree on the verge at 2 Margaret Street.

STATUTORY ENVIRONMENT

Legal advice on the range of options available to Council in terms of prosecuting an action for the removal of a street tree was tabled at last month's Council meeting.

A copy is attached and the advice remains unaltered.

There was a suggestion that the Town's *Local Government Property Local Law* could provide a further alternative in dealing with this matter. The Property Local Law only provides for offences in regard to 'local government property' which is defined in clause 1.2 of the *Local Government Property Local Law*. The definition excludes a thoroughfare and so it cannot be used in this situation.

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

The proposed settlement will offset, to a large degree, the expense of legal advice received on this matter while at the same time conferring a benefit on the Town of Cottesloe.

BACKGROUND

A last month's Council meeting Cr Boland presented a petition signed by 66 petitioners regarding the illegal removal of a street tree at 2 Margaret Street.

The text of the petition was as follows:

We the undersigned hereby petition the Town of Cottesloe in respect of the illegal removal of a mature Rottnest Island Tea Tree at 2 Margaret Street, Cottesloe. We would like to have the resident responsible for the illegal removal of the tree prosecuted to the fullest extent of the law by the Cottesloe Town Council. We would also like a sign erected on the front of 2 Margaret St (similar to the sign on Hamersley St) erected to state "Destruction of Community tree. This tree has been cut down to

obtain views. This sign will remain until the replaced tree has grown to the height of the original tree”.

At the same meeting and in response to the petition Council passed the following resolution:

That Council:

- (1) Immediately install a suitably worded sign on the verge.
- (2) Authorise the CEO to mediate a solution with the tree removalist and the tree removalist’s client requiring;
 - the recovery of costs associated with the replacement of the tree with the largest available Rottneest Island Tea Tree, and
 - compensation of \$5,000.
- (3) Remove the sign once the replacement tree has been planted.
- (4) In light of any mediated solution, Council give further consideration to prosecuting to the fullest extent possible.

CONSULTATION

The CEO has had several discussions with the owners of 2 Margaret Street.

STAFF COMMENT

A photograph of the proposed sign was circulated by email to all elected members on 24th June 2008. Several Councillors expressed support for the proposed sign with one Councillor advising that residents of Margaret Street and/or the petitioners should be informed of what was being proposed.

Enquiries were then made as to the cost of supply for the sign. The Swan River Trust indicated that it would be in the order of \$3,700.

In the meantime the owners of 2 Margaret Street indicated their willingness to meet the cost of obtaining and planting a replacement tree. As a result, a decision was made to hold off on obtaining and installing the sign.

Following further discussions with the owners, a Deed of Settlement has now been prepared and is attached for Council’s consideration. It fulfils the intent and spirit of Council’s June 2008 resolution.

The Deed of Settlement is to remain confidential until such time as it is executed.

Its premature release may adversely affect any legal proceedings that the Council might contemplate in the event that the deed is not executed.

VOTING

Simple Majority

OFFICER RECOMMENDATION

That Council authorise the Mayor and CEO to execute the Deed of Settlement with the owners of 2 Margaret Street, Cottesloe relating to the removal/damage to a tree on the street verge.

COMMITTEE RECOMMENDATION

That Council authorise the Mayor and CEO to execute the Deed of Settlement (as amended by the Works and Corporate Services Committee) with the owners of 2 Margaret Street, Cottesloe relating to the removal/damage to a tree on the street verge.

AMENDMENT

Moved Mayor Morgan, seconded Cr Boland

That the following amendments be made to the Deed of Settlement:

- (1) At item 3 insert the word 'civil' before the word claim and the words 'in regard to any civil proceeding' after the word entitlement.**
- (2) At item 4 insert the word 'civil' before the word proceedings.**

Carried 8/2

AMENDMENT

Moved Cr Strzina, seconded Cr Miller

That item 5(b) of the Deed of Settlement be amended to read 'The legal and other costs and expenses in regard to negotiating, preparing, executing and performing its obligations under this Deed of the Town to a maximum of \$2,000.'

Carried 10/0

AMENDMENT

Moved Cr Utting, seconded Mayor Morgan

That the following condition be added to the recommendation:

Arrange for the stump of the removed tree to be eliminated to allow the replacement tree to be planted as near as possible to the southern side of where the original tree was located.

Carried 10/0

Mr Patrick left the meeting at 7.59 pm and returned to the meeting at 8.02 pm

AMENDMENT

Moved Cr Walsh, seconded Cr Utting

At item 2(b) remove the word 'Not'.

Lost 3/7

AMENDMENT

Moved Mayor Morgan, seconded Cr Strzina

That the following condition be added to the recommendation:

In the event that the owners do not agree to the amended Deed of Settlement within 14 days, Council immediately arrange for a suitably worded and sized sign to be installed on the verge.

Carried 8/2

AMENDMENT

Moved Cr Dawkins, seconded Cr Strzina

That Council request the CEO to provide a report to Council outlining a policy and/or procedure to better dissuade any unlawful removal of street trees be added to the recommendation.

Carried 9/1

AMENDMENT

Moved Mayor Morgan, seconded Cr Boland

That Council, through the CEO, collate and present a brief of evidence for legal advice to instigate the strongest prosecution against the perpetrators of the unlawful street tree removal.

Lost 2/8

AMENDMENT

Moved Cr Boland, seconded Mayor Morgan

That item G of the Deed of Settlement be deleted.

Carried 10/0

AMENDMENT

Moved Cr Boland, seconded Cr Walsh

That item E of the Deed of Settlement be deleted.

Lost 3/7

12.2.2 COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Strzina

That Council:

- (1) Authorise the Mayor and CEO to execute the Deed of Settlement (as amended by the Works and Corporate Services Committee) with the owners of 2 Margaret Street, Cottesloe relating to the removal/damage to a tree on the street verge, subject to:
 - (a) At item 3 insert the word 'civil' before the word 'claim' and the words 'in regard to any civil proceeding' after the word 'entitlement'.
 - (b) At item 4 insert the word 'civil' before the word 'proceedings'.
 - (c) Item 5(b) of the Deed of Settlement being amended to read 'The legal and other costs and expenses in regard to negotiating, preparing, executing and performing its obligations under this Deed of the Town to a maximum of \$2,000.'
 - (d) Item G of the Deed of Settlement being deleted.
- (2) Request that the stump of the removed tree be eliminated to allow the replacement tree to be planted as near as possible to the southern side of where the original tree was located.
- (3) Immediately arrange for a suitably worded and sized sign to be installed on the verge in the event that the owners do not agree to the amended Deed of Settlement within 14 days.
- (4) Request the CEO to provide a report to Council outlining a policy and/or procedure to better dissuade any unlawful removal of street trees.

Carried 9/1

Cr Boland requested that the votes be recorded:

For: Mayor Morgan, Cr Birnbrauer, Cr Cunningham, Cr Dawkins, Cr Miller,
Cr Strzina, Cr Utting, Cr Walsh, Cr Woodhill

Against: Cr Boland

12.2.3 LITTLE MARINE PARADE - SAND DUNE RECLAMATION

File No: SUB/472
Author: Mr Stephen Tindale
Author Disclosure of Interest: Nil
Report Date: 16 July, 2008
Senior Officer: Mr Stephen Tindale

SUMMARY

A recommendation is made to poll residents along Little Marine Parade on a proposal to remove an exotic garden that sits in the middle of remnant dune vegetation immediately opposite No. 180 Little Marine Parade.

STATUTORY ENVIRONMENT

The whole of the sand dune between Marine Parade and Little Marine Parade comprises part of a road reserve whose care, control and management is vested in the Town of Cottesloe.

POLICY IMPLICATIONS

Council's Policy on *Residential Verges* has some bearing on the matter. It is reproduced in full below.

RESIDENTIAL VERGES**(1) OBJECTIVE**

1. To develop an attractive and safe streetscape.
2. To discourage verge parking wherever alternatives exist.
3. To encourage owners and occupiers of premises to maintain their street verges.
4. To ensure that verge treatments comply with the Local Law relating to thoroughfares.
5. To ensure that verge developments are not hazardous to pedestrians, cyclists or motorists.
6. To encourage alternatives for verge treatments which remove or reduce the use of bore water, fertilisers, weedicides, pesticides and non-absorbent materials.
7. To encourage the use of indigenous plant species.

(2) PRINCIPLE:

1. The road reserve area is under the control of the Town of Cottesloe but owners and occupiers are encouraged to maintain street verges.
2. All developments on street verges must be safe at all times for the general public when using the road verge for normal, legal activities.
3. The Town of Cottesloe plus a range of Service Authorities will impact on the road reserve from time to time with infrastructure construction and maintenance activities.
4. With the reducing availability of mains water and bore water supplies, Council supports alternatives to reticulated verge lawns, particularly the use of indigenous plant species.

(3) ISSUES:

- (a) All verges are affected by intermittent construction activities, to improve paths, drainage and roads, as well as for the maintenance of public services e.g.; power, water, communications and sewer lines.
- (b) Landscape designs for the road verge must have compliance standards to ensure 'extreme' or dangerous treatments do not occur.
- (c) If plants larger than semi-prostrate species are to be planted, then the general maximum height allowed is 600mm, unless on a 40 metres wide road reserve where the maximum height is 1.5 metres, apart from street trees.
- (d) Verge treatments undertaken by owners or occupants do not include street trees. All street trees are installed and maintained by the Town of Cottesloe.
- (e) A permit is not needed for a grass lawn area.
- (f) Verge treatments are not approved for the purpose of providing extra parking space on the verge.
- (g) All verge treatments must comply with Council's Local Law "Activities on Thoroughfares and Trading in Thoroughfares and Public Places."
- (h) The construction of tree houses, tree swings and the installation of play structures is not considered appropriate within the road reserve due to safety issues.

(4) POLICY:**The Town's Responsibilities**

- 1. Inspection
Each verge development will be inspected by Engineering Services from time to time, to ensure that the development has been carried out in accordance with the foregoing Council Policy.
- 2. Breach
If any verge development does not comply with this policy, then the breach may be made good by the Town and the costs recovered from the owner or occupier.
- 3. Fees
The Town will not charge a fee for the inspection of verge developments.

The Owner's Responsibilities

- 1. Accept all costs involved in the construction of the verge development.
- 2. Keep the verge treatment in a safe and tidy condition.
- 3. Accept all liability in respect of damages to persons or property as a result of a verge development.
- 4. Accept that the verge remains a public space and may be traversed by the public as and when required.
- 5. Water or maintain the verge in such a manner as to not cause a nuisance to other people.

6. Accept that the improvements automatically become the property of the Town of Cottesloe.
7. Contact the Perth One Call System (Dial Before You Dig) on 1100 and locate all underground services prior to undertaking any works within the verge area and take all care to ensure that no damage is caused to underground services.

Species Selection

The Town of Cottesloe encourages the use of planting of native and in particular indigenous plants (plants naturally occurring within the Town of Cottesloe) within verge areas. Owners are free however to choose the species of plants planted within their verge and are not restricted to native or indigenous plants. All species of plants whether native or exotic must comply with the aforementioned clauses and be suitable for the location in which they are planted.

Procedure

No permit is required from Council for planting lawn on verges.

A permit is required for all other works in the verge such as garden beds, shrubs, kerbing, paving, retaining walls, pipelines and below ground reticulation systems. This shall be obtained by the owner/occupier submitting an application in writing with a sketch plan that shows the details of the proposal.

Landscape Design

Landscape designs must comply with the following conditions:

- i) Comply with the Local Law relating to Thoroughfares.
- ii) Provide adequate access to the letterbox for mail delivery.
- iii) Provide unobstructed pedestrian access to existing signs, water meter, telecom pit and manhole covers.
- iv) Where there is a bus stop, provide clear access of at least 1.2 metres wide around the bus stop, and between the footpath and the bus stop.
- v) Pathways through verge plants may be constructed of any solid material such as tree rings and stepping stones, providing they do not protrude above kerb level and are laid flush with the surrounding ground.
- vi) Height and placement of plants must not obstruct slight distance for pedestrians and road users.
- vii) On 20 metre wide road reserves, no plant shall exceed 600 mm in height. The same applies to intersections for sight clearance. On 40 metre wide road reserves, plants shall not exceed 600 mm in height 2 metres from the kerb line and from the property boundary. On these very wide road reserves plants are allowed up to 1.5 metres high in the centre of the verge width, ramping down to 600 mm high 2 metres from the kerb line and property boundary.
- viii) Paving of generally only one third of the residential verge area, including the crossover, is permitted. Verges adjacent to approved commercial premises may exceed this providing the area is broken up

- with landscaping to adjacent areas or around approved street trees. All brick paving must have a header course on all edges.
- ix) Retaining walls, rocks and sleepers are permitted only in special circumstances where difficult site conditions prevail.
 - x) All garden kerbing shall be flush with the ground surface unless around garden beds.
 - xi) Bollards, star iron pickets, stakes, spikes or other objects that could cause injury to the public are not permitted.
 - xii) Materials that may cause a hazard to the public are not permitted. This includes loose gravel and pea gravel. Rocks and earth mounding are permitted in garden beds.
 - xiii) Plants must not present a hazard to pedestrians e.g.; cactus, and will not include species classified as declared weeds by the Department of Agriculture's "Agriculture and Related Resources Protection Act (1976).
 - xiv) Any polythene or impervious layer laid beneath the surface must be pierced with sufficient number of holes to ensure adequate drainage without runoff.
 - xv) In new developments where verges are grassed, provision is to be made for the reticulation to be connected to the domestic water supply on completion of the dwelling. No valves or controllers for reticulation are permitted in the verge.
 - xvi) No fixed structures including those attached to trees e.g. cubby/tree houses, swings etc shall be permitted within the verge area.
 - xvii) Lighting or electrical cabling must be of low voltage (e.g. 12 volt) with all transformers, power supply and switching located within the adjacent property and not within the verge. Lighting must not cause a nuisance to neighbouring properties.
 - xviii) Council staff shall maintain a list of species suitable for use in the Town of Cottesloe, which can be considered for verge treatments. This list shall be modified as species prove to be unsuitable or when new species have a proven success rate.
 - ixx) Council staff can provide advice regarding verge developments using native and indigenous plants, particularly where reticulated lawn areas are being replaced with non-lawn, non reticulated or low water use species.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Nil.

BACKGROUND

A resident of Little Marine Parade has written to Council as follows:

I recently phoned your offices about the sand dune between Little Marine Parade and Marine Parade, noting that a sign had been erected by Council on the dune reading "protect dune vegetation" and was requested to write to you outlining my thoughts.

The above dune currently has a mixture of remnant dune vegetation and exotic species. A large section of it has been taken over by an adjacent resident and planted

with exotic plants, some of which are noxious. In addition there has been construction of paths, seating, walls, sculptures and other features in this area.

In my view the dune should be returned as close to its natural vegetation as possible, in line with the treatment of the dunes on the coastal side of Marine Parade and in the park area on the south side of Grant Street. The re-vegetation of this park area was a commendable project.

I also have concerns about the current use and state of the area of the dune referred to above. The 'facilities' in this area have not been constructed nor are they maintained by Council and appear, to me, to be potentially dangerous. It is clearly difficult for Council to exercise its 'duty of care' in such circumstances.

This area is used by young people at night (as it is not visible from Marine Parade) and I am concerned about anti-social incidents that may occur very close to the adjacent housing and what state this may leave it in (broken glass and other dangerous items) and the potential impact on children and other.

In summary, I would say that the dune has the potential to be returned to its natural condition and present a beautiful vista to both local residents and visitors. I would urge Council to take action in this regard.

CONSULTATION

Nil

STAFF COMMENT

Technically the verge in question does not fall within the ambit of the *Residential Verges* policy since this particular verge does not adjoin a residential property. However it is arguable that the spirit and intent of the policy should apply in this situation. The verge is part of a road reserve whose care, control and management is vested in the Town of Cottesloe and it is open to Council to remove and re-establish the area to its natural state or a modified form without community consultation – particularly since the existing works are unapproved.

However the developments that have occurred are largely out of sight and have not provoked any recent community debate – at least not in the last six years. It is more than likely that some of the residents of Little Marine Parade and surrounding streets will have a real attachment to the garden.

It should also be noted that Sabrina Hahn and Garry Heady judged the garden to be the Town of Cottesloe's Community Centenary Award winner in the *2007 Cottesloe Great Garden Awards Competition*.

Two nomination forms were received for the garden. The first described it as "It's the Secret Garden and is popular with parents and their children, many having morning teas and lunch there." The second described it as "A lovely garden that Don and Norma have created and maintain that the public like to sit in and children love to play in."

Special comment was made by the judges in relation to the garden's imaginative, waterwise and functional design. To sum up the judges said *"This is one of the best community waterwise gardens we have ever seen. A true garden for playing"*.

Rather than act with a heavy hand, it is recommended that Council undertake a poll of the residents of Little Marine Parade to see whether there is majority support for the retention of the garden. If there, is then Council could revisit the matter with a view to putting some basic controls in place to protect the surrounding amenity and safety of the area while ensuring that the park retains its essential quirkiness.

If the majority view is that it should go, then Council may want to authorise the CEO to remove the garden and re-establish the natural vegetation without further reference to Council.

VOTING

Simple Majority

OFFICER RECOMMENDATION

That Council:

- (1) Undertake a poll of the residents of Little Marine Parade to see whether there is majority support for the retention of the Little Marine Parade garden.
- (2) Authorise the CEO to remove the garden and in the event that there is no majority support and reinstate the area as near as possible to its original natural condition.
- (3) Represent the matter to Council in the event that there is majority support for the retention of the garden.

12.2.3 COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Strzina

That Council take no further action on this matter and advise the petitioner of same.

Carried 9/0

12.3 FINANCE**12.3.1 STATUTORY FINANCIAL STATEMENTS FOR THE PERIOD ENDING 30 JUNE 2008**

File No:	SUB/137
Author:	Mr Graham Pattrick
Author Disclosure of Interest:	Nil
Period Ending:	30 June 2008
Senior Officer:	Mr Stephen Tindale

SUMMARY

The purpose of this report is to present the Operating Statement, Statement of Assets and Liabilities and supporting financial information for the period ending 30 June 2008, to Council.

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

BACKGROUND

The Financial Statements are presented monthly.

CONSULTATION

Nil

STAFF COMMENT

The Operating Statement on page 2 of the Financial Statements shows a favourable variance between the actual and budgeted YTD operating surplus of \$687,481 as at 30 June 2008. Operating Revenue is ahead of budget by \$170,919 (2.21%). Operating Expenditure is \$234,441 (2.85%) less than budgeted YTD. A report on the variances in income and expenditure for the period ended 30 June 2008 is shown on page 7 and 8.

The main causes of the lower than anticipated expenditure are: COMMUNITY AMENITIES - lower than budgeted expenditure on contractors in the area of sanitation (\$30,772) and legal, consultant and contractor expenses for Town Planning be lower than forecast (\$237,915).

The Capital Works Program is listed on pages 17 & 18 and shows total expenditure of \$3,422,809 compared to YTD budget of \$5,972,363. The main difference is the postponement of the Civic Centre extension until the 2008/2009 financial year.

VOTING

Simple Majority

12.3.1 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Strzina

That Council receive the Operating Statement, Statement of Assets and Liabilities and supporting financial information for the period ending 30 June 2008, as submitted to the 22 July 2008 meeting of the Works and Corporate Services Committee.

Carried 9/0

12.3.2 SCHEDULE OF INVESTMENTS AND SCHEDULE OF LOANS FOR THE PERIOD ENDING 30 JUNE 2008

File No: SUB/150 & SUB/151
Author: Mr Graham Pattrick
Author Disclosure of Interest: Nil
Period Ending: 30 June 2008
Senior Officer: Mr Stephen Tindale

SUMMARY

The purpose of this report is to present the Schedule of Investments and Schedule of Loans for the period ending 30 June 2008, to Council.

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

BACKGROUND

The Schedule of Investments and Schedule of Loans are presented monthly.

CONSULTATION

Nil

STAFF COMMENT

The Schedule of Investments on page 13 of the Financial Statements shows that \$2,505,049.89 was invested as at 30 June, 2008

Reserve Funds make up \$2,496,955.79 of the total invested and are restricted funds. Approximately 67% of the funds are invested with the National Australia Bank, 23% with Home Building Society and 10% with BankWest.

The Schedule of Loans on page 14 shows a balance of \$220,384.02 as at 30 June, 2008. There is \$142,456.50 included in this balance that relates to self supporting loans.

VOTING

Simple Majority

12.3.2 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Strzina

That Council receive the Schedule of Investments and Schedule of Loans for the period ending 30 June 2008, as submitted to the 22 July 2008 meeting of the Works and Corporate Services Committee.

Carried 9/0

12.3.3 ACCOUNTS FOR THE PERIOD ENDING 30 JUNE 2008

File No: SUB/144
Author: Mr Graham Pattrick
Author Disclosure of Interest: Nil
Period Ending: 30 June 2008
Senior Officer: Mr Stephen Tindale

SUMMARY

The purpose of this report is to present the List of Accounts for the period ending 30 June 2008, to Council.

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

BACKGROUND

The List of Accounts is presented monthly.

CONSULTATION

Nil

STAFF COMMENT

The following significant payments are brought to your attention that are included in the list of accounts commencing on page 9 of the Financial Statements:

- \$46,612.50 to Street Furniture Australia for new public rubbish bins
 - \$12,893.38 to Synergy for
 - \$32,453.23 to WA Local Govt Super Fund for staff deductions
 - \$19,966.12 to Coda Studio for Station Street strategic project
 - \$14,967.27 to WA Local Govt Super Fund for staff deductions
 - \$10,461.69 to BCITF for payment of levies collected
 - \$15,133.22 to WA Local Govt Super Fund for staff deductions
 - \$11,935.00 to UHY Norton for interim audit & financial management review
 - \$17,200.00 to K J Morgan for elected member expenses for 2008
 - \$80,418.14 to FESA for 4th quarter levy payment
 - \$32,526.34 to B&N Waste for green waste collected in May 2008
 - \$27,840.51 to WA Treasury Corporation for loan repayment No 89
 - \$15,578.20 to Digital Mapping Solutions for Access Program renewal
-

- \$11,545.74 to WMRC for disposal and tipping fees
- \$43,276.06 to Trum P/L for waste collection
- \$10,285.00 to ID Consulting for census upgrade & id final payment
- \$62,287.50 to Street Furniture Australia for rubbish bins enclosures
- \$22,000.00 to New England Education & Research for WESROC report
- \$12,421.23 to WA Bluemetal/WA premix for rail ballast for Forrst Street
- \$19,508.87 to Roads 2000 for traffic control Curtin Ave
- \$10,296.00 to Civica for annual licence fees for 2008
- \$119,272.96 for staff payroll for June 2008

VOTING

Simple Majority

12.3.3 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Strzina

That Council receive the List of Accounts for the period ending 30 June 2008, as submitted to the 22 July 2008 meeting of the Works and Corporate Services Committee.

Carried 9/0

**12.3.4 PROPERTY AND SUNDRY DEBTORS REPORTS FOR THE PERIOD
ENDING 30 JUNE 2008**

File No: SUB/145
Author: Mr Graham Pattrick
Author Disclosure of Interest: Nil
Period Ending: 30 June 2008
Senior Officer: Mr Stephen Tindale

SUMMARY

The purpose of this report is to present the Property and Sundry Debtors Reports for the period ending 30 June 2008, to Council.

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

BACKGROUND

The Property and Sundry Debtors Reports are presented monthly.

CONSULTATION

Nil

STAFF COMMENT

The Sundry Debtors Report on pages 15 of the Financial Statements shows a balance of \$285,560.16 of which \$179,078.16 relates to the current month. The balance of aged debt greater than 30 days stood at \$106,482.00 of which \$96,410.50 relates to pensioner rebates that are being reconciled by the Senior Finance Officer.

Property Debtors are shown in the Rates and Charges analysis on page 16 of the Financial Statements and show a balance of \$252,683.38. Of this amount \$224,176.22 and \$14,164.06 are deferred rates and outstanding ESL respectively. As can be seen on the Balance Sheet on page 4 of the Financial Statements, rates as a current asset are \$30,909 in 2008 compared to \$194,351 last year.

VOTING

Simple Majority

12.3.4 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Strzina

That Council:

- (1) Receive and endorse the Property Debtors Report for the period ending 30 June 2008; and**
- (2) Receive the Sundry Debtors Report for the period ending 30 June 2008.**

Carried 9/0

Mr Patrick returned to the meeting at 8.47 pm

13 STRATEGIC PLANNING COMMITTEE MEETING HELD ON 23 JULY 2008**13.1 GENERAL****13.1.1 DRAFT ACTION PLAN REPORT**

File No:	SUB/108
Author:	Mr Stephen Tindale
Author Disclosure of Interest:	Nil
Report Date:	17 July, 2008
Senior Officer:	Mr Stephen Tindale

SUMMARY

Following the adoption in July 2007 of the *Future Plan 2006 – 2010* for the Town of Cottesloe, an *Action Plan* has been prepared and is now submitted for the consideration of the Committee.

BACKGROUND

The following strategies were identified by Council as priorities for 2007/08 at its July 2007 meeting.

- 1.2 Reduce beachfront hotel numbers to a sustainable level.
- 1.5 Identify increased opportunities to use existing facilities or provide new venues for formal community cultural events and activities.
- 2.1 Produce a draft Structure Plan for consultation purposes showing the sinking of the railway and realignment of Curtin Avenue together with 'what's possible' in terms of sustainable redevelopment and pedestrian and traffic links.
- 3.1 Develop the 'Foreshore Vision and Master Plan' in consultation with the community.
- 3.4 Introduce electronically timed parking.
- 4.1 Develop planning incentives for heritage properties.
- 5.1 Adopt a policy position on assets that have a realisable value such as the Depot and Sumps.
- 5.2 Subject to the satisfactory resolution of land tenure, design and funding requirements, progress the development of new joint library facilities.
- 5.5 Develop a long term asset management plan and accompanying financial plan.
- 6.1 Further improve the community consultation policy in recognition that there are different techniques for different objectives.

The *Action Plan* breaks each of these strategies down into individual actions which will ensure that the strategies are realised in a timely manner and that through meetings of the Strategic Planning Committee, Council is kept informed of overall progress in reaching the strategic objectives.

CONSULTATION

Nil

STAFF COMMENT

This agenda item represents an opportunity for committee members to review progress and provide informal feedback on where staff should be headed in terms of implementing individual actions.

At the last meeting of the Committee it was decided that the Committee should determine potential new Key Result Areas for the CEO for recommendation through to Council.

POLICY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

VOTING

Simple Majority

COMMITTEE COMMENT

It was agreed that the *Action Plan* should be augmented with tables showing the proposed actions for identified dynamic priorities.

Also that the *Action Plan* showing the proposed actions for identified dynamic priorities should be prepared and distributed as soon as possible rather than wait until the next Strategic Planning Committee meeting.

OFFICER RECOMMENDATION

- (1) That the Committee receive the updated *Action Plan* report and provide feedback to the CEO and senior staff present at the meeting on agreed modifications to the *Action Plan*.
- (2) That the Committee determine potential new Key Result Areas for the CEO for recommendation through to Council.
- (3) That Council receive the updated *Action Plan* report.

COMMITTEE RECOMMENDATION

That Council adopt the following strategies/dynamic priorities as priorities for 2008/09.

- 1.2 Reduce beachfront hotel numbers to a sustainable level.
- 1.5 Identify increased opportunities to use existing facilities or provide new venues for formal community cultural events and activities.

-
- 2.1 Produce a draft Structure Plan for consultation purposes showing the sinking of the railway and realignment of Curtin Avenue together with 'what's possible' in terms of sustainable redevelopment and pedestrian and traffic links.
 - 3.1 Develop the 'Foreshore Vision and Master Plan' in consultation with the community.
 - 3.4 Introduce electronically timed parking.
 - 4.1 Develop planning incentives for heritage properties.
 - 4.5 Consider undeveloped Government owned land for higher density development provided there is both public support and benefit for the Cottesloe community.
 - 5.1 Adopt a policy position on assets that have a realisable value such as the Depot and Sumps.
 - 5.2 Subject to the satisfactory resolution of land tenure, design and funding requirements, progress the development of new joint library facilities.
 - 5.3 Develop an integrated Town Centre plan to improve all aspects of the infrastructure of the Town Centre.
 - 5.6 Develop a long term asset management plan and accompanying financial plan.
 - 6.1 Further improve the community consultation policy in recognition that there are different techniques for different objectives.
 - DP1 Complete the Civic Centre additions and renovations on budget and on time.
 - DP2 Complete the adoption of Local Planning Scheme No. 3 including the preparation of all draft policies to a stage where they can be advertised for public comment.
 - DP3 Report on the proposed tasks identified in the Climate Change Vulnerability study and their impacts, priorities and applicability to the Town of Cottesloe
- (2) That Council receive the updated *Action Plan* report.

AMENDMENT

Moved Mayor Morgan, seconded Cr Walsh

That the dynamic priority DP2 be amended to read:

DP2 Complete the adoption of Local Planning Scheme No. 3 including the preparation of all draft policies to a stage where they have been informally advertised for public comment by the time of the adoption of the LPS3.

Carried 10/0

13.1.1 COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Walsh

That Council adopt the following strategies/dynamic priorities as priorities for 2008/09.

- 1.2 Reduce beachfront hotel numbers to a sustainable level.
 - 1.5 Identify increased opportunities to use existing facilities or provide new venues for formal community cultural events and activities.
 - 2.1 Produce a draft Structure Plan for consultation purposes showing the sinking of the railway and realignment of Curtin Avenue together with 'what's possible' in terms of sustainable redevelopment and pedestrian and traffic links.
 - 3.1 Develop the 'Foreshore Vision and Master Plan' in consultation with the community.
 - 3.4 Introduce electronically timed parking.
 - 4.1 Develop planning incentives for heritage properties.
 - 4.5 Consider undeveloped Government owned land for higher density development provided there is both public support and benefit for the Cottesloe community.
 - 5.1 Adopt a policy position on assets that have a realisable value such as the Depot and Sumps.
 - 5.2 Subject to the satisfactory resolution of land tenure, design and funding requirements, progress the development of new joint library facilities.
 - 5.3 Develop an integrated Town Centre plan to improve all aspects of the infrastructure of the Town Centre.
 - 5.6 Develop a long term asset management plan and accompanying financial plan.
 - 6.1 Further improve the community consultation policy in recognition that there are different techniques for different objectives.
 - DP1 Complete the Civic Centre additions and renovations on budget and on time.
 - DP2 Complete the adoption of Local Planning Scheme No. 3 including the preparation of all draft policies to a stage where they have been informally advertised for public comment by the time of the adoption of the LPS3.
 - DP3 Report on the proposed tasks identified in the Climate Change Vulnerability study and their impacts, priorities and applicability to the Town of Cottesloe
- (2) That Council receive the updated *Action Plan* report.

Carried 10/0

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

Nil

15 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY ELECTED MEMBERS/OFFICERS BY DECISION OF MEETING**15.1 CHIEF EXECUTIVE OFFICER****15.1.1 RECRUITMENT OF A CHIEF EXECUTIVE OFFICER**

File No: PER/01
Attachments: [Guidelines for Appointing a CEO](#)
[Model Contract of Appointment](#)
[Cottesloe Contract of Employment](#)
[Performance Criteria](#)
[Salaries & Allowances Tribunal Report](#)
[Lester Blades Proposal](#)

Author: Mr Stephen Tindale
Author Disclosure of Interest: Nil
Report Date: 26 July, 2008
Senior Officer: Mr Stephen Tindale

SUMMARY

Recommendations are made to appoint

- appoint a recruitment consultant to assist Council with the recruitment of a new CEO,
- appoint a Selection Panel comprised of the Mayor, Deputy Mayor, Presiding Member of the Works and Corporate Services Committee and one other elected member, and
- appoint an external Acting CEO to cover the period between the CEO's departure and the starting date of a new CEO.

STATUTORY ENVIRONMENT

The following sections of the *Local Government Act 1995* have direct application.

5.36. LOCAL GOVERNMENT EMPLOYEES

- (1) A local government is to employ —
 - (a) a person to be the CEO of the local government; and
 - (b) such other persons as the council believes are necessary to enable the functions of the local government and the functions of the council to be performed.
 - (2) A person is not to be employed in the position of CEO unless the council —
 - (a) believes that the person is suitably qualified for the position; and
 - (b) is satisfied* with the provisions of the proposed employment contract.

** Absolute majority required.*
 - (3) A person is not to be employed by a local government in any other position unless the CEO —
 - (a) believes that the person is suitably qualified for the position; and
-

- (b) is satisfied with the proposed arrangements relating to the person's employment.
- (4) If the position of CEO of a local government becomes vacant, it is to be advertised by the local government in the manner prescribed, and the advertisement is to contain such information with respect to the position as is prescribed.
- (5) For the avoidance of doubt, subsection (4) does not impose a requirement to advertise a position before the renewal of a contract referred to in section 5.39.

5.39. CONTRACTS FOR CEO'S AND SENIOR EMPLOYEES

- (1) Subject to subsection (1a), the employment of a person who is a CEO or a senior employee is to be governed by a written contract in accordance with this section.
 - (1a) Despite subsection (1) —
 - (a) an employee may act in the position of a CEO or a senior employee for a term not exceeding one year without a written contract for the position in which he or she is acting; and
 - (b) a person may be employed by a local government as a senior employee for a term not exceeding 3 months, during any 2 year period, without a written contract.
 - (2) A contract under this section —
 - (a) in the case of an acting or temporary position, cannot be for a term exceeding one year;
 - (b) in every other case, cannot be for a term exceeding 5 years.
 - (3) A contract under this section is of no effect unless —
 - (a) the expiry date is specified in the contract;
 - (b) there are specified in the contract performance criteria for the purpose of reviewing the person's performance; and
 - (c) any other matter that has been prescribed as a matter to be included in the contract has been included.
 - (4) A contract under this section is to be renewable and subject to subsection (5), may be varied.
 - (5) A provision in, or condition of, an agreement or arrangement has no effect if it purports to affect the application of any provision of this section.
 - (6) Nothing in subsection (2) or (3)(a) prevents a contract for a period that is within the limits set out in subsection 2(a) or (b) from being terminated within that period on the happening of an event specified in the contract.
 - (7) A report made by the Salaries and Allowances Tribunal, under section 7A of the *Salaries and Allowances Act 1975*, containing recommendations as to the remuneration to be paid or provided to a CEO is to be taken into account by the local government before entering into, or renewing, a contract of employment with a CEO.

5.40. PRINCIPLES AFFECTING EMPLOYMENT BY LOCAL GOVERNMENTS

The following principles apply to a local government in respect of its employees —

- (a) employees are to be selected and promoted in accordance with the principles of merit and equity;
- (b) no power with regard to matters affecting employees is to be exercised on the basis of nepotism or patronage;
- (c) employees are to be treated fairly and consistently;
- (d) there is to be no unlawful discrimination against employees or persons seeking employment by a local government on a ground referred to in the *Equal Opportunity Act 1984* or on any other ground;
- (e) employees are to be provided with safe and healthy working conditions in accordance with the *Occupational Safety and Health Act 1984*; and
- (f) such other principles, not inconsistent with this Division, as may be prescribed.

5.41. FUNCTIONS OF CEO

The CEO's functions are to —

- (a) advise the council in relation to the functions of a local government under this Act and other written laws;
- (b) ensure that advice and information is available to the council so that informed decisions can be made;
- (c) cause council decisions to be implemented;
- (d) manage the day to day operations of the local government;
- (e) liaise with the mayor or president on the local government's affairs and the performance of the local government's functions;
- (f) speak on behalf of the local government if the mayor or president agrees;
- (g) be responsible for the employment, management supervision, direction and dismissal of other employees (subject to section 5.37(2) in relation to senior employees);
- (h) ensure that records and documents of the local government are properly kept for the purposes of this Act and any other written law; and
- (i) perform any other function specified or delegated by the local government or imposed under this Act or any other written law as a function to be performed by the CEO.

The following regulations from the *Local Government (Administration) Regulations 1996* also have direct application.

18A. ADVERTISEMENT FOR POSITION OF CEO OR SENIOR EMPLOYEE — S. 5.36(4) AND 5.37(3)

- (1) If a position of CEO, or of senior employee, of a local government becomes vacant, the local government is to advertise the position —
 - (a) on a notice board exhibited to the public at the local government's offices, if the position is —
 - (i) to be filled on a part time basis by a person who is also employed by another local government; or

- (ii) an acting position for a term not exceeding one year;
 - or
 - (b) otherwise, in a newspaper circulating generally throughout the State.
- (2) An advertisement referred to in subregulation (1) is to contain —
- (a) the details of the remuneration and benefits offered;
 - (b) details of the place where applications for the position are to be submitted;
 - (c) the date and time for the closing of applications for the position;
 - (d) the duration of the proposed contract;
 - (e) contact details for a person who can provide further information about the position; and
 - (f) any other information that the local government considers is relevant.

[Regulation 18A inserted in Gazette 31 Mar 2005 p. 1037-8; amended in Gazette 19 Aug 2005 p. 3872.]

18B. MATTERS TO BE INCLUDED IN CONTRACTS FOR CEO'S AND SENIOR EMPLOYEES — S. 5.39(3)(C)

For the purposes of section 5.39(3)(c), a contract governing the employment of a person who is a CEO, or a senior employee, of a local government is to provide for a maximum amount of money (or a method of calculating such an amount) to which the person is to be entitled if the contract is terminated before the expiry date, which amount is not to exceed whichever is the lesser of —

- (a) the value of one year's remuneration under the contract; or
- (b) the value of the remuneration that the person would have been entitled to had the contract not been terminated.

[Regulation 18B inserted in Gazette 13 May 2005 p. 2086.]

18C. SELECTION AND APPOINTMENT PROCESS FOR CEO'S

The local government is to approve a process to be used for the selection and appointment of a CEO for the local government before the position of CEO of the local government is advertised.

BACKGROUND

In accordance with the requirements of his employment contract, the CEO has given three months notice of his resignation in order to take up the position of CEO at the City of Subiaco.

Regulation 18C of the *Local Government (Administration) Regulations 1996* requires Council to approve a process to be used for the selection and appointment of a CEO for the local government before the position of CEO of the local government is advertised.

The Department of Local Government's (DLGRD) operational guidelines for the appointment of a CEO (see attachment) also strongly recommend that the position description (and in particular the selection criteria and performance criteria) be reviewed prior to advertising.

The same guidelines also recommend that the Contract of Employment be reviewed prior to advertising.

The Model Contract of Employment provided by the DLGRD is attached together with the existing Cottesloe Contract of Employment which is based on the Model Contract.

Variances in the Cottesloe Contract as opposed to the Model Contract have been highlighted in blue font or 'struck through'.

The Cottesloe Contract contains a Position Description attached to it as an appendix. The Position Description also sets out the Position Objectives which are similar to (but not the same as) the position objectives set out in the Performance Criteria (which are also attached to this report).

There are no Selection Criteria attached to the Cottesloe Contract.

Under the Act Council is also required to take into account any

“...report made by the Salaries and Allowances Tribunal, under section 7A of the Salaries and Allowances Act 1975, containing recommendations as to the remuneration to be paid or provided to a CEO ... before entering into, or renewing, a contract of employment with a CEO.”

A copy of the most recent report of the Salaries and Allowances Tribunal is attached as well. It shows that the recommended total reward package for a Band 3 local government (which includes Cottesloe) is \$126,912 - \$171,927 excluding any provision for professional development. The current CEO's salary package excluding any provision for professional development is \$153,675 which puts him just over half way along the band.

CONSULTATION

The CEO has had discussions with the Mayor on the appointment of a recruitment consultant and the appointment of an Acting CEO.

STAFF COMMENT

Contract of Employment

The existing Contract of Employment must be reviewed to ensure that it meets the Town of Cottesloe's needs. It should include selection criteria (currently absent and not in existence) and performance criteria (which is also largely absent but in exists in full elsewhere).

The existing performance criteria have been largely cobbled together with additional material from another local government and do not necessarily reflect current best practice. The selection criteria also need to be developed and incorporated into the position description.

Selection Panel and Recruitment Consultant

While the task of settling the Contract of Employment could be done in-house it is considered that it would be more appropriate for a Selection Panel comprised of

elected members to work with an outside recruitment consultant to settle the Contract of Employment free of any potential constraint that might arise with the active involvement of the current CEO - or indeed any other Council employee.

In discussions with the Mayor there was some enthusiasm for appointing a recruitment consultant directly rather than using up precious time in establishing the selection criteria for a recruitment consultant, seeking quotes and submissions from three consultants, analysing the submissions and quotes in light of the selection criteria and then making a recommendation to the next meeting of Council.

As a result of the discussions with the Mayor, a direct proposal has been invited from Lester Blades and a copy of the proposal is attached. Lester Blades have assisted in a number of CEO appointments in recent times (see page 12 of their proposal).

The proposal goes beyond simply settling the Contract of Employment. It sets out a process for the selection and appointment for a CEO.

Council's adoption of the Lester Blades proposal will therefore satisfy the requirements of Regulation 18C which is:

The local government is to approve a process to be used for the selection and appointment of a CEO for the local government before the position of CEO of the local government is advertised.

While Council may have every confidence in the current CEO to assist with the recruitment of a new CEO, the simple fact is that he has three week backlog of work that needs to be attended to. This work includes;

- completion of performance appraisal and salary reviews for staff under his immediate control,
- signing off on performance appraisals and salary recommendation for all other staff,
- recruiting a Community Development Officer,
- preparing a report to Council on improved community consultation,
- organising, preparing and publishing the Annual Report,
- seeking financial support for the repair of the Cottesloe Beach Pylon,
- progressing the WESROC structural reform agenda and finding funds for same,
- oversight of the planned Enquiry by Design charette,
- liaising with the architect on the Civic Centre extensions and renovations,
- reporting on the work of the Station Street Working Group, the Liquor Licensing Working Group and the Civic Centre focus groups,
- liaising with the Scout Association and other volunteer groups,
- dealing with engineering matters whilst the Manager of Engineering Services is on leave (Yeo, Dillon, Syminton, Wheeler, John St pines etc),
- implementing the 15 priorities identified by the Strategic Planning Committee,
- generally planning, leading, organising and co-ordinating the affairs of the organisation and, perhaps more importantly
- leaving the place in a fit state for an Acting CEO and a new CEO.

In other words the current CEO would take no offence if the appointment of a new CEO could be left as much as possible to the CEO Selection Panel and the appointed recruitment consultant.

Acting CEO

If a new CEO is to be appointed from within the existing ranks of local government CEOs, then he/she is likely to have to give three months notice as well. That means that there could be a gap of one to two months before the new CEO starts. Given that the new CEO needs to come up to speed, it could mean that several months are lost in terms of active CEO participation in the affairs of Council.

An Acting CEO is therefore required to keep the momentum up for a number of projects currently underway or about to get underway (e.g. Civic Centre and Library).

Perhaps the most important event in the Town of Cottesloe's calendar this year is the Enquiry by Design (EbD) charette which is attached to the adoption of LPS No.3. The charette will be held right on the eve of the current CEO's departure. The run up to the EbD charette and the results that flow from it suggests that the limited part time participation of an Acting CEO in the current lead up to the EbD charette could be extremely useful in terms of continuity and advancing Council's agenda after the EbD charette is held.

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

The recruitment consultant's fee has been quoted as \$22,500 ex GST. This figure is open to change depending on the Council's specific requirements. Please note that there may be an error with the quote (which will favour the Town of Cottesloe) as the quote appears to have been based on a Band 7 rather than a Band 3 local government.

Funds for the recruitment consultant have not been provided for in the budget which means that an Absolute Majority decision is required.

VOTING

Absolute Majority

OFFICER RECOMMENDATION

That Council:

- (1) Appoint Lester Blades as the recruitment consultancy to assist Council with the recruitment of a new CEO.
- (2) Adopt the selection and appointment process contained in the Lester Blades proposal.

- (3) Appoint a Selection Panel comprised of the Mayor, Deputy Mayor, Presiding Member of the Works and Corporate Services Committee and one other elected member to work with the recruitment consultant.
- (4) Authorise the CEO to find and appoint a qualified and experienced Acting CEO at the soonest opportunity (with a view to involving him/her in the EbD process as soon as possible - albeit in a limited capacity) to provide coverage after the current CEO's departure date.

AMENDMENT

Moved Mayor Morgan, seconded Cr Strzina

That the words 'subject to the cost being reviewed by the CEO' be added to item (1).

Carried 10/0

AMENDMENT

Moved Cr Birnbrauer, seconded Cr Boland

That reference to the Deputy Mayor and Presiding Member of the Works and Corporate Services Committee be removed from the Selection Panel and that it be comprised of the Mayor and three nominated elected members.

Lost 3/7

AMENDMENT

Moved Mayor Morgan, seconded Cr Strzina

That the words 'in consultation with the Mayor' be inserted at item (4) after the word appoint.

Carried 9/1

AMENDMENT

Moved Mayor Morgan, seconded Cr Strzina

That Cr Dawkins be appointed to the Selection Panel.

Carried 8/2

AMENDMENT

Moved Cr Walsh, seconded Cr Utting

That Workplace Solutions be appointed as the recruitment consultancy to assist Council with the recruitment of a new CEO.

Lost on the casting vote of the Mayor 5/6

15.1.1 COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Strzina

That Council:

- (1) Appoint Lester Blades as the recruitment consultancy to assist Council with the recruitment of a new CEO, subject to the cost being reviewed by the CEO.**
- (2) Adopt the selection and appointment process contained in the Lester Blades proposal.**
- (3) Appoint a Selection Panel comprised of the Mayor, Deputy Mayor, Presiding Member of the Works and Corporate Services Committee and Cr Dawkins to work with the recruitment consultant.**
- (4) Authorise the CEO to find and appoint, in consultation with the Mayor, a qualified and experienced Acting CEO at the soonest opportunity (with a view to involving him/her in the EbD process as soon as possible - albeit in a limited capacity) to provide coverage after the current CEO's departure date.**

Carried 8/2

16 MEETING CLOSURE

The Mayor announced the closure of the meeting at 9.25 pm.

CONFIRMED: MAYOR DATE: / /