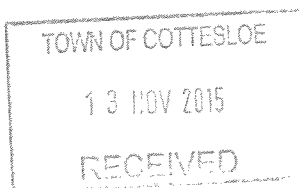
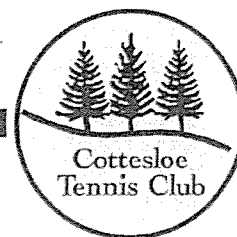


# Cottesloe Tennis Club (Inc.)

PO BOX 12 • COTTESLOE • WA • 6911 TELEPHONE (08) 9385 2789

www.cottesloetennis.com.au • enquiries@cottesloetennis.com.au



Executive Officer  
Town of Cottesloe  
109 Broome Street  
Cottesloe WA

11 November 2015

Dear Matt,

## **Cottesloe Tennis Club – Courts Expansion Project Proposed Lease Amendment and Loan Agreements**

I am writing in regards to the Cottesloe Tennis Club's proposal to develop additional tennis courts, and specifically, the need to amend the Lease of land and the establishment of a loan facility from the Town of Cottesloe.

The development proposal for additional tennis courts was, with the strong support of the Council of the Town of Cottesloe, approved in July 2014.

As you are aware, the Council earlier agreed in principle to an extension of the Club's lease area to accommodate the new courts. The Council subsequently offered the Club a self-supporting loan facility to help finance the development.

Both of these matters have been the subject of constructive discussion which we sincerely appreciate. It is now timely to progress formalities necessary to allow works to commence.

The Club proposes to start works in early 2016 subject to (amongst other matters) completion of the revised lease arrangements and formal establishment of the loan facility with the Town of Cottesloe.

It would be appreciated if Club representatives could meet with you and your officers as soon as practical to enable conclusion and approval of the revised lease agreement in this calendar year, and establishment of a loan facility to be uplifted in 2016.

The Club has established a subcommittee to oversee the development. The subcommittee is chaired by our previous president (David Chadwick) and includes, amongst others, the Club's Treasurer (Liz Peterson) and Director of House and Grounds (Ken Adam). You have, of course, met with David and Ken on more than one occasion. I think all of them are known to you and/or your officers.

The subcommittee has authority to progress all matters necessary to deliver the project, but for major matters such as the lease and loan arrangements, must revert back to the Club's Management Committee for final approval.

While we recognize you have many priorities, it would be most appreciated if we could arrange to meet with your officers to expedite the above items. I have therefore asked David to contact you to make arrangements to progress both matters. You may wish to deal with these together or separately, and we will accommodate your preference.

Yours sincerely

Phil Barron  
President, Cottesloe Tennis Club

**Cottesloe Tennis Club - New Self Supporting Loan**  
**Summary of Submissions Received**

#	Name	Summary of Comments	Staff Comment
1	Elizabeth Peterson	Supports loan of \$420,000. Need for additional courts evidenced by growing membership numbers.	Noted
2	Clair Medhurst	Supports loan of \$420,000.	Noted
3	Moirra Dobson	Supports loan. Need for additional courts due to popularity of night pennant tennis.	Noted
4	Wendy Price	Supports loan. Need for additional courts due to club popularity.	Noted
5	David and Anke Goldschmidt	Supports loan.	Noted
6	Phil Barron	Supports loan.	Noted
7	Elain Adams	Supports loan of \$420,000. Need for additional courts due to popularity of night pennant tennis.	Noted
8	Dale Peterson	Supports loan of \$420,000. Need for additional courts due to club popularity.	Noted
9	Pauline Ibbs	Objects to loan. Residents pay high rates and should not have it spent on unbudgeted expenditure. Grass courts would not be sustainable in current environmental conditions and would not preserve the natural environment.	Self supporting Loan has no net financial impact on ratepayers as all costs incurred by council are paid back by the Tennis Club.
10	George Bray	Objects to loan. Given legal advice that Notice for SGM was invalid. The current number of courts is adequate for the Club's needs including potential tournaments and junior demand. John Black Dune Park should be reserved for community use which saves depleting groundwater stocks. Grass courts would not be sustainable and cause maintenance issues. Concerns that one third will be from Town of Cottesloe, one third from Community Sport and Recreation Facilities and another third from member of Cottesloe Tennis Club through unknown contributions; this may affect long term financial viability of the club. Adverse effect on visual amenity within Civic Centre Precinct. Appendix B refers to arguments in favour of an alternative proposal. Removal of lighting would decrease sense of security to residences that back onto the Tennis Club.	The Club has modelled the financial impact and found the costs to be financially sustainable under a range of different assumptions. Council has previously endorsed the extension of the lease area into John Black Dune Park. The legality of the Meeting of the Tennis Club to approve the loan request to council is an internal matter for the Club to determine.

11	George Bray	<p>Objects to loan. Proposal will have negative environmental and visual impacts on the Civic Centre Precinct. Grass courts would not be environmentally sustainable and would adversely affect the ground water table and in turn the iconic Norfolk Pines (attached newspaper article regarding drought causing stress to pine trees). The Tennis Club can meet playing demand on existing lease area and would not need to take land from John Black Dune Park. Existing courts benefits security of residences that back onto the Tennis Club. Supporting this loan would impede the Council's ability to support community groups in the future. Cottesloe Tennis Club fees would increase and become less affordable to possible new members. Given legal advice that Notice for SGM was invalid.</p>	<p>The granting of the loan request by Council would not impact on any future financial support to local community clubs. The Tennis Club is of the view that the development will not create any significant increases to fees paid by club members.</p> <p>Council does not believe there will be any significant environmental impacts arising from the proposal.</p>
12	George Bray	<p>Objects to loan. Email correspondence between Town of Cottesloe CEO, Mat Humfrey and George Bray. Proposal will have negative environmental and visual impacts on the Civic Centre Precinct. Grass courts would not be environmentally sustainable and would adversely affect the ground water table and in turn the iconic Norfolk Pines (attached newspaper article regarding drought causing stress to pine trees). The Tennis Club can meet playing demand on existing lease area and would not need to take land from John Black Dune Park. Existing courts benefits security of residences that back onto the Tennis Club. Supporting this loan would impede the Council's ability to support community groups in the future. Cottesloe Tennis Club fees would increase and become less affordable to possible new members.</p>	<p>The Tennis Club is not responsible for security of adjoining residences.</p>
13	George Bray	<p>Objects to loan. Email correspondence to Cr Pyvis (carbon copied to all Cottesloe Councillors). Cottesloe Tennis Club can meet playing demand on existing lease area and would not need to extend into John Black Dune Park which should be reserved for community use. Given legal advice that Notice for SGM was invalid. Existing courts benefit security of residences that back onto the Tennis Club. These residents have not been consulted regarding new proposal.</p>	<p>Council has already approved the tennis club lease area be expanded into an area of John Black Dune Park.</p> <p>Lack of consultation with adjoining land owners noted.</p>

**Elizabeth Nicholls**

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**From:** Liz Peterson  
**Sent:** Sunday, 31 January 2016 8:20 PM  
**Subject:** Support for Unbudgeted self supporting loan - Cottesloe Tennis Club

Dear Councillors

I have reviewed the information on the Town of Cottesloe website regarding the loan requested by the Cottesloe Tennis Club to be used towards the funding of the expansion of their lighted hard courts.

The plan to expand the lighted courts towards Napier St is a smart move and the need for the additional courts is evidenced by their growing junior membership ranks as well as high number of pennant teams. The Club has a high number of local residents as members and it is well managed. It has the financial capacity to repay the Town of Cottesloe over the course of the loan period.

I support the Town of Cottesloe making the loan of \$420,000 to the Cottesloe Tennis Club

Regards  
Elizabeth Peterson

**Elizabeth Nicholls**

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**From:** Clair Medhurst  
**Sent:** Thursday, 4 February 2016 10:48 AM  
**Subject:** Proposed Loan to Cottesloe Tennis Club

Dear Cottesloe Council

I refer to the advertisement in the Post Newspaper regarding the proposed loan of \$420,000 to the Cottesloe Tennis Club.

As a member of the Club I wholeheartedly support this loan which will enable the hard court expansion to be completed. This work is long overdue for the Club and will make a fantastic facility that can be enjoyed by Club members and all Cottesloe residents, especially the young, who are particularly keen on hard court tennis.

Yours faithfully

Clair Medhurst

**Elizabeth Nicholls**

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**From:**  
**Sent:** Thursday, 4 February 2016 12:31 PM  
**Subject:** Loan for court expansion Cottesloe Tennis Club

Dear Sirs and Madams of the Council  
I play social tennis and Thursday night Pennants at CTC.  
I thoroughly support the expansion of the club. Night pennant tennis is the most rapidly growing area of tennis in WA.  
Already we have 10 teams. Because we don't have enough hard courts some of us have to use Mosman Park TC as our home.  
I have examined the financial information and as a Cottesloe Ratepayer support this loan.  
Regards  
Moira Dobson

**Elizabeth Nicholls**

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**From:** Wendy Price  
**Sent:** Friday, 5 February 2016 7:35 AM  
**Subject:** Cottesloe Tennis Club loan

To whom it may concern,

I am writing to you as a member of the CTC and resident of Cottesloe for many years. I am involved with management of the club as a duty captain and am very aware (as are all members) of the committee's competence and expertise in the club's financial affairs. It is a very popular club and the expansion is necessary for the changing needs of the younger generation coming through. I am confident this loan will be honoured by our management committee.

Yours faithfully,  
Wendy Price

Sent from my iPhone

**Elizabeth Nicholls**

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**From:** Anke Goldschmidt  
**Sent:** Saturday, 6 February 2016 2:07 PM  
**Subject:** Cottesloe Tennis Club

Hi

We are members of Cottesloe Tennis Club and confirm that we support building the new courts and the debt to do so.

David and Anke Goldschmidt



**Elizabeth Nicholls**

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**From:** Club President  
**Sent:** Monday, 8 February 2016 3:38 PM  
**Subject:** Cottesloe Tennis Club Proposed Self Supporting Loan : FAO Mat Humfrey

Hello Mat,

We understand that Council will shortly be considering the granting to the Cottesloe Tennis Club, of a self-supporting loan of up to \$420,000 to enable the Tennis Club to construct additional all-weather and grass courts on land leased by the council to the Tennis Club.

We acknowledge the magnitude of this anticipated commitment and fully respect the need for Councillors to ensure proper due diligence. While primary accountability for conducting due diligence falls to the Officers, we would like to offer an opportunity for Councillors to be briefed on the Club's plans, including an outline of the Club's financial position, proposed works, funding strategy, and debt repayment, and to answer any other questions you may have regarding the proposed development

In our conversation last week it was suggested that the most transparent way in which to address this would be to use the upcoming Council Briefing Forum on Tuesday 16th June, where the club could be afforded up to 15 minutes of time to brief Councillors.

If this were acceptable, the Club's Treasurer and I would welcome the opportunity to provide a short and succinct summary that addresses the following points:

- 1. Project Background and Scope
- 2. Project Cost, Schedule and Financing
- 3. Club's financial Position and Repayment Plan

If this is agreeable, I will provide you with a briefing package by prior to the meeting.

Kind regards  
Phil Barron  
President - Cottesloe Tennis Club

**Elizabeth Nicholls**

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**From:** Elaine Adams  
**Sent:** Saturday, 13 February 2016 7:09 PM  
**Subject:** self supporting loan for Cottesloe Tennis Club

Dear Councillors

I am an owner occupier at \_\_\_\_\_ and an owner at \_\_\_\_\_

My daughter plays tennis at CTC and thoroughly enjoys the Club.  
I attended the Davis Cup event which was very well run and a great event for Cottesloe.

They want to take out a loan for additional hardcourts which will benefit their junior members and my daughter who plays pennants at night. This year CTC had a junior member who qualified for the Australian Open.

I support their application for the loan for \$420,000.

sincerely  
Elaine Adams

Sent from my iPad

**Elizabeth Nicholls**

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**From:** Dale  
**Sent:** Tuesday, 16 February 2016 7:50 AM  
**Subject:** Self supporting loan for Cottesloe Tennis Club

Dear Council

I refer to the advertised unbudgeted loan up to \$420,000 for the Tennis Club and confirm my support for the Council to arrange this.

My wife plays tennis at the club both on grass and hard court. They have had to hire outside hard courts at night as they don't have enough hard courts.

Cottesloe had one of their star juniors who plays state grade for Cottesloe qualify for the first round of the Australian Open. The juniors want and need the hard courts.

I am a resident of John St Cottesloe.

Sincerely  
Dale Peterson

Sent from Dale's iPad

**Elizabeth Nicholls**

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**From:** John Ibbs  
**Sent:** Sunday, 21 February 2016 12:31 PM  
**Subject:** Submission  
**Attachments:** CTC Submission001.pdf

Attention Garry Bird  
Please find attached a submission in regard to Tennis club loan.  
Regards  
Pauline Ibbs

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This email has been sent from a virus-free computer protected by Avast.  
[www.avast.com](http://www.avast.com)

**Submission to Cottesloe Council in respect to Intention to take out an unbudgeted self supporting loan over \$400,000 to assist the Cottesloe Tennis Club.**

As a resident ratepayer, I wish to state my objection to the Cottesloe Council lending the Cottesloe Tennis Club over \$400,000. This money would be used by the Cottesloe Tennis Club to replace two recently refurbished hard courts (facing Byron Way) with grass courts, and, in turn, replace grass courts on Napier Street with hard courts.

Cottesloe residents pay what are arguably the highest rates in the Metropolitan area. For these substantial rates, Cottesloe residents receive little more than a rubbish collection. Resident requests for services are met with the response that it is impossible to provide a service that is not budgeted expenditure.

It is offensive that Cottesloe Council can find such a large sum for an unbudgeted loan to support enable the needless and illogical plan proposed by the Cottesloe Tennis Club.

I would like to know the actual number of rate paying residents who are members of the Cottesloe Tennis Club – and will benefit from this use of council funds – as opposed to non ratepayers from adjacent suburbs.

Furthermore, I find it incomprehensible that the Council would financially assist in the laying of grass courts in the current environmental conditions of poor rainfall and extremely low dam levels in Perth.

The mission statement of the Town of Cottesloe is 'To preserve and improve Cottesloe's natural and built environment and beach lifestyle by using sustainable strategies in consultation with the community'. The proposed unbudgeted loan to the Cottesloe both defies sustainability, and does nothing to preserve the natural environment.

I therefore request that the Cottesloe Council reconsider this loan, and I wish for this to be noted as an agenda item at the next full Council meeting

Pauline Ibbs

Cottesloe WA 6011

**Elizabeth Nicholls**

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**From:** George and Sylvia  
**Sent:** Monday, 22 February 2016 9:39 AM  
**Subject:** Submission on self-supporting loan to the Cottesloe Tennis Club  
**Attachments:** Letter to Town Council June 2015.docx; Cottesloe Town Council Attachments.zip

This email is the first of four email attachments to a letter to the Acting CEO of the Town of Cottesloe dated 19 February 2016 I hand delivered to the Administration Centre in Broome Street at 9:24 am this morning and has to be read and filed as part of the letter. Please contact me on 9385 8920 if you have any queries.  
George Bray

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**From:** George and Sylvia  
**Sent:** Wednesday, 1 July 2015 9:47 PM  
**To:** 'ceo@cottesloe.wa.gov.au' <[ceo@cottesloe.wa.gov.au](mailto:ceo@cottesloe.wa.gov.au)>  
**Subject:** FW: Cottesloe Tennis Club Expansion Proposals

Chief Executive Officer  
Town of Cottesloe  
109 Broome Street  
Cottesloe WA 6911

Dear Sir  
I have attached for your attention an electronic copy of a letter dated 1 July 2015 with attachments that I delivered by hand to your office this afternoon concerning the Cottesloe Tennis Club Expansion Proposals.  
Please contact me if you have any queries or require further information.  
I would also advise that I would be happy to brief your Administration or elected members on the proposals to facilitate a clear understand of the options I have raised in the correspondence.

Yours sincerely

George Bray

Mr Mat Humfrey  
Chief Executive Officer  
Town of Cottesloe  
109 Broome Street  
COTTESLOE WA 6911

Dear Mr Humfrey

RE: COTTESLOE TENNIS CLUB EXPANSION PROPOSALS

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I refer to the letter I received from the CEO of the Council dated 12 November 2014 (your reference SUB/1873), and wish to bring to the attention of the Council serious concerns that I have with the manner in which the Management Committee of the Cottesloe Tennis Club has dealt with these matters since the Council last dealt with them at its meeting held on 22 September 2014 - item 10.4.1 Cottesloe Tennis Club - Application for Community Sport and Recreation Facilities Fund.

You would have been advised that the application for CSRFF funding referred to in the above Council minute was rejected in March 2015.

A number of issues of concern have arisen since that time and I would request that my correspondence to the Secretary of the Cottesloe Tennis Club (CTC) dated 25 June 2015 and 3 May 2015 and the legal advice from Liscia Legal dated 25 June 2015, which is attached, be listed for the consideration of the Council at the earliest opportunity as the correspondence deals with matters relating to an application the CTC is intending to make to the Town Council for a loan, unsecured by the CTC, of up to \$420,000.00 and in addition, to obtain a grant of up to \$90,000.00 from the Town Council.

I have expressed my serious concerns regarding the impact the Management Committee's (MC) proposals will have, in a report I sent to the CEO with my letter dated 9 November 2014.

In my view, the submissions from the MC of the club for planning and financial support contain false and misleading information and the representations made in these documents warrant a complete review before any decisions are taken by the Council to agree to any form of planning and development approvals or to loan money to the CTC or to provide grant monies to the CTC.

On 14 June 2015 members of the CTC received the attached Notice of Special General Meeting (SGM) to be held on 28 June 2015 at 4 pm. *"for the sole purpose of addressing the Courts Expansion Project."*

Along with a number of members, I had concerns with the contents of the Notice for the SGM and in particular the recommended motion contained in the Notice of

Meeting and sought the independent legal advice dated 25 June 2015, referred to above, which was sent to the MC on 25 June 2015.

**The legal advice concluded that the Notice for the SGM was invalid.**

On the following day, 26 June 2015, the MC sent the attached Agenda for the SGM to all members.

The agenda made no reference to having received the legal advice from me or the matters contained in the Liscia Legal advice, and failed to list the MC's recommended motion that was listed on the Notice of Meeting for the 28 June 2015 meeting.

The agenda should have listed an item for the confirmation of the minutes from the November 2014 SGM's, which is referred to in the legal advice, and as a result the draft minutes were not provided to the meeting for background information or for confirmation as an accurate record.

Under agenda item no.8, a false and misleading statement was made that *"75% approval is required for the motion to be passed."*

The CTC Constitution requires a two thirds majority for part (b) of the motion and many members may have decided not to attend as they may have formed the view that the 75% vote would not be achieved in any event.

The MC then circulated the attached email dated 27 June 2015 which I received at 3:30 pm on that day. The email included my letter to the Secretary and members of the club dated 25 June 2015 along with the legal opinion from Liscia Legal.

It also contained the following statement:

*"Dear member*

*We have received correspondence and accompanying legal advice from a long-standing Club member, Mr George Bray, relating to matters before the club at the forthcoming Special General Meeting. Mr Bray has urged the Management Committee to cancel the SGM. The Management Committee has considered the request, taken advice, and proposes to proceed with the meeting, being of the opinion that the matters under consideration are for members to decide upon."*

No written "advice" or explanation was provided in support of the "advice" for the information and consideration of members, and apart from me tabling my correspondence to the club dated 25 June 2015 along with the legal advice from Liscia Legal dated 25 June 2015 at the commencement of the SGM, nothing was said regarding the legality of the SGM during the meeting

Or in other words the issues raised in relation to the notice of meetings being invalid and the ability of the MC to act on any decisions taken at the SGM were ignored.



**Based on the legal advice referred to above, my understanding is that the notice for the SGM is invalid and as a consequence any motions carried at the SGM are invalid.**

Or in other words the MC does not have any legal authority to apply to the Council for a loan and on this basis the Council will not be able to deal with any application for a loan.

The motion listed on the Notice of Meeting and referred to in the Liscia Legal advice was moved and seconded and the chairman of the SGM, without any explanation, immediately put part (b) to a vote.

Part (b) states

*“(b) to procure a loan of not greater than \$420,000.00 for a period of up to 15 years at a fixed rate of not greater than 4.5%.”*

I immediately raised a point of order that I wished to speak against the motion but voting was already in progress and it was impossible to be heard.

Item 7 on the agenda specifically provided for discussions against the motion and I had prepared notes for the purpose of explaining why the motion should not be agreed to.

I, together with other likeminded members were denied the right to speak against the motion.

Part (b) of the motion was passed.

The other parts of the motion, being (a) and (c) were not put to a vote and therefore the MC does not appear to have any certainty in respect to taking any action on these parts of the motion.

I have attached some other information of relevance to this matter and in addition to considering the groundwater and other planning and development issues I have raised in reports and correspondence, I would request the Council consider taking less land from the John Dune Park as all of the CTCs future needs can be accommodated in a much smaller extension to the land currently leased to the CTC.

In due course I would appreciate the opportunity to discuss in more detail with the relevant Council Committee prior to any decisions being taken by the Council, my concerns in respect to the legality of the MC's actions, the negative impacts the MC's proposal will have on the Civic Centre Precinct (including John Blake Dune Park), the groundwater issues and the opposition from the majority of residents on Bryan Way to the removal of the recently renovated, lit hard courts.

Correspondence to the President of the CTC dated 26 June 2015 from five affected residents backing on to Bryan Way is attached. This letter was tabled by a member and read to the SGM due to it not being tabled by the President.

I would also ask that the residents on Brian Way opposed to the removal of the lights be given an opportunity to speak on this matter.

This court expansion proposal is creating deep divisions within the membership of the CTC and as the elected members of the Council would appreciate, these divisions can only be resolved through good governance practice which requires compliance with the Associations Incorporation Act 1987 and the CTC Constitution.

Dr Penny Oldfield, another long-time member of the CTC, despite months of making requests, has been denied access to some important MC minutes which under the CTC Constitution are required to be made available to all members. This has made it difficult to obtain important financial information as well as details of actions being taken by the MC that warrant proper disclosure.

The Club Treasurer has advised members that the club has around \$400,000.00 in the bank at present, so in my view the club is in a position to meet all its present needs, with the provision of two additional all-weather hardcourts within the existing lease area, and without the need to borrow any money or the need for a significant grant of ratepayer funds.

The intrusion into the John Black Dune Park is seen by many as a gift of land to the club and while some additional land would be a benefit to the club, the Council in its letter to the CTC dated 12 November 2013 stated that "*it was committed to maintain as much of John Black Dune Park as a reserve for community use, as expressed in the Natural Areas Management Plan.*"

The provision of enough land for two additional courts on the northwest corner of the existing lease area is all that is required to meet any future needs of the club, as the Club Coach has stated that ten hard courts is the maximum number that can be managed efficiently for junior tournament and social play, which is the only activity that would warrant any consideration in the future.

I have some difficulty with the MC's clear intention to dig up two existing lit hardcourts on Bryan Way, which the adjoining owners want to remain, and were renovated at a cost of \$116,000.00 three years ago, while at the same time asking the Council for a grant of up to \$90,000.00.

In effect the Council is being asked to contribute towards replacing an excellent asset with no positive economic benefit.

The report in your name to the September 2014 Council meeting on item 10.4.1, pointed out that the Town has a number of sporting facilities most of which could benefit from a grant from the CSRFF process.

In my view, the rejection of the CTC application for CSRFF funding in March 2015 changes the way in which the CTC project should be assessed by the Council, both in terms of the sort of development that is now considered appropriate for the site and the level of financial support that should be provided.

For example the MC received written proposals for additional all-weather lit courts to be constructed on Bryan Way around 3 May 2015 but has not bothered to respond in

any way despite this option having been canvassed in detail the SGM's held on 12 November 2014.

As mentioned in the September report to Council referred to above, there are a number of sporting bodies with facilities in the Town that may be able to provide a better case for CSRFF funding and have not been given the opportunity to put together a proposal.

If this is the case the level of financial assistance being sought by the CTC should be considered in the context of how the scarce financial resources that are available are best utilised.

Please contact me by email or phone if you have any queries

Yours sincerely

George Bray

1 July 2015

Email: [george.br@ctc.org.uk](mailto:george.br@ctc.org.uk)

Attachments

- Notice of Special General Meeting 28 June 2015 at 4:00 pm.
- Correspondence from George Bray to Secretary and all club members dated 25 June 2015
- Legal opinion from Liscia Legal to George Bray dated 25 June 2015
- Correspondence from George Bray to Secretary Cottesloe Tennis Club dated 3 May 2015
- Report How many additional courts does CTC really need.
- Agenda for SGM of Cottesloe Tennis Club (Inc) Sunday 28 June 2015 at 4:00 pm
- Email from Club Secretary to members received by George Bray at 3:03 pm on 27 June 2015 Subject Letter and legal opinion from George Bray
- Cottesloe Tennis Club report by George Bray 10 November 2014
- Extracts from Management Committee's submission for funding under the Community Sport and Recreation Facilities Fund
- Correspondence from five residents in Geraldine Street Cottesloe dated 26 June 2015 to President Cottesloe Tennis Club in relation to the Removal of lights from courts on Bryan Way



ANNA LISCIA

25 June 2015

By Email: ;

Mr George Bray

Dear Mr Bray

### **GOVERNANCE ISSUES – COTTESLOE TENNIS CLUB**

You have asked me to review and provide advice as to whether the Cottesloe Tennis Club (CTC) has complied with its legal obligations in relation to the Special General Meeting (SGM) schedule to be held on 28 June 2015.

For this purpose, I have reviewed the following documents:

1. Constitution of the CTC;
2. Notice of SGM for 12 November 2014;
3. Notice of SGM for 28 June 2015 (**Notice of Meeting**);
4. Draft Minutes of Meeting of SGM held on 12 November 2014 at 7 pm;
5. Draft Minutes of Meeting of SGM held on 12 November 2014 at 8 pm;
6. Extracts from the Submission to the Department of Sports & Recreation (**DSR**);
7. Letter from the Town of Cottesloe dated 28 January 2015 confirming no funding has been committed to funding for the proposed expansion of the CTC facilities;
8. Email from the CTC Secretary to those members of the CTC who have nominated to receive information by email attaching the documents listed below (points 8 to 10) and referring to additional information to be displayed at the CTC premises;
9. CTC Courts Expansion Project Report dated 19 June 2015 sent by email to those members of the CTC who have nominated to receive information by email;
10. Court Expansion Project: Options for Development & Funding dated 6 May 2015 with diagrammatic representation;
11. Table showing estimated loan payments per member if a 15 year loan for \$420,000 were obtained by the CTC.

### **Summary of Conclusions**

12. The proposed resolution to borrow funds fails to comply with Clause 21(e) of the CTC Constitution requiring that any loan to be obtained by the CTC other than from the Local Governing Authority is to be secured by the personal guarantee of such CTC members willing to provide a guarantee.
13. The manner in which the two 2014 SGM were conducted is at best inappropriate and at worst a fraud on the members, by:

- a. attempting to hold 2 SGM on the same evening dealing with the same issues, but separating discussion of the various reports the subject of those meetings;
  - b. by holding two SGM, the effect of the 8 pm meeting is to make the resolutions passed at the 7 pm meeting nugatory and of no effect;
  - c. failing to separately record the attendances for the 2 meetings, thereby failing to record who had left the 7 pm at its conclusion but prior to the commencement of the 8 pm meeting, raising quorum concerns.
14. The Notice of Meeting for 28 June 2015 fails to adequately identify the business of that meeting as it fails to identify in the proposed resolutions the authority to be provided to the Management Committee with sufficient clarity.
15. The various supporting documents contained in the email from the CTC to members by email relate to the proposed resolution in the Notice of Meeting and in fact are crucial to any understanding of the business to be conducted at the SGM, and as such, should have been provided with the Notice of Meeting. Failure to do so is a breach of the law rendering the any business to be conducted at the meeting null and void.

### **Constitutional Requirements – Raising Loans**

There being no express power to borrow money in the CTC Constitution, the CTC must rely upon section 13(1)(d) of the Associations Incorporation Act 1987 (as amended) (**Act**) for this power.

However the CTC Constitution does fetter the power to borrow money set out in the Act by requiring members to guarantee any loan that is not obtained from the Local Governing Authority – see clause 21(e) of the CTC Constitution.

It is noted that the Notice of Meeting fails to identify which members are prepared to provide this guarantee, and therefore the membership is not able to satisfy itself that clause 21(e) has been complied with and importantly, is not able to satisfy itself that the guarantors are able to meet any liability that may arise from the guarantees.

To this extent the resolution to borrow funds is in breach of the CTC Constitution and invalid.

### **2014 SGM**

Firstly it must be stated that calling two SGM on the same evening to deal with the same matter, namely future plans for the expansion of the CTC facilities is illogical and confusing.

The purpose of a notice of meeting is to inform the members of when and where the meeting is to be held, what matters are to be discussed and the resolutions proposed to be moved at the meeting.

Good corporate governance usually requires an agenda to be sent with the notice of meeting and if any reports or other information is to be relied upon, for such reports and information to be sent with the notice of meeting.

This ensures that members can consider the business to be conducted at the meeting and make an informed decision about firstly, whether or not to attend and secondly, form a preliminary opinion, subject to discussion at the meeting.

What is far from clear is how the two meetings were conducted. As there were in fact two back to back meetings, and I am advised by you that some members did not in fact

attend both meetings (especially those who attended the 7 pm meeting who thought due to the resolutions that had been passed there was no need to stay for the second meeting) it appears that the issue of a quorum is not clear and importantly, those who attended the 7 pm meeting were denied the opportunity of being part of the discussion held at the 8 pm meeting.

Whilst it may be the case that the Management Committee thought this approach was fair and reasonable, in fact, it was not. It was unreasonable for the Management Committee to fail to put forward its assessment of the Bray Alternative Plan to the 7 pm SGM, moving if necessary, an amendment to the proposed resolutions, or better still, when issuing the notice of the 2014 SGM, including an alternative motion similar to that passed at the 8 pm SGM. The separation of the two competing reports the subject of the SGM was unfair to the membership who were being asked to deal with the matter at two separate meetings, albeit back to back meetings.

It is difficult to understand how the two sets of resolutions (i.e. 7 pm & 8 pm SGM resolutions) could have been passed on the same evening as they are completely at odds. That could only have occurred if the members present at the 7 pm meeting were not provided the same information as those present at the 8 pm meeting.

In effect, whilst not so worded, the resolution passed at the 8 pm SGM had the effect of rendering the motion passed at the 7 pm SGM ineffective and being the equivalent to a rescission motion, without compliance with the CTC Constitutional requirements for rescission motions and without giving the members the opportunity to consider the effect of the 8 pm resolution on the 7 pm resolutions.

### **2015 Notice of SGM**

It is poor governance not to include with the Notice of Meeting the agenda and any relevant supporting information, including that included with the 20 June email from the CTC and that displayed at the CTC premises (apart from any models if there are any).

Given the history of the matter, the clearly divergent views of the CTC members and the fact the CTC is proposing to borrow significant funds in addition to utilising significant reserves, one would have expected all pertinent information to be sent with and referred to in the Notice of Meeting so that members could properly consider whether to attend the meeting and consider the issues proposed to be discussed in advance of the 28 June SGM.

It is noted that the Notice of Meeting does summarise the full Court Expansion Project which was the subject of the 2014 SGM.

Whilst the failure to provide all relevant information with the Notice of Meeting is not technically a breach of the CTC Constitution or the common law, it is poor governance and fails to display the degree of transparency and accountability expected in this day and age of associations such as the CTC.

More importantly, the proposed resolutions in the Notice of Meeting are so vague as to be meaningless, and if passed in their current form, will be void for uncertainty.

The reference to the "*Court Expansion Project on the basis of the reduced scope*" has no context in the Notice of Meeting, which document governs what business can be transacted at the meeting.

That Court Expansion Project Report, which was supplied after the Notice of Meeting, at page 2 refers to the Management Committee seeking approval from the member to negotiate a 15 year loan of up to \$420,000 at a fixed rate of interest not exceeding 4.5% and to draw down part of the CTC's existing reserves to progress Options 3 & 3a of the Court Expansion Project, as set out in the CEP report.

It is noted there is no reference to or identification of the guarantees required by the CTC Constitution.

The proposal set out in the Court Expansion Project Report is different to the resolution proposed in the Notice of Meeting, raising questions about the validity of the Notice of Meeting and as a consequence any resolutions that may be passed at the 28 June 2015 SGM.

Further, there are issues about whether the provision of the additional information by email to members is valid, given that the CTC Constitution provides that notices of general meetings (including SGM) must be given personally or by post. There is no power to allow for the provision of a notice of meeting (and by implication any material to be considered with that notice of meeting) by email. As a result, the proposed resolutions are thrown into greater doubt because the members will not have received in accordance with the CTC Constitution, the supporting materials to be read with the Notice of Meeting if it is to have any chance of being valid.

Based on the above concerns, it is my view that the Notice of Meeting is invalid as being vague and uncertain in failing to state the business to be attend to at the SGM with sufficient clarity, which defect cannot be cured by the provision of further information via the email dated 20 June 2015 or the display at the CTC premises.

I understand that you intend to present this letter to the CTC membership and stakeholders and authorise you to do so.

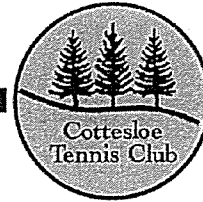
Yours sincerely

Anna Liscia

**LISCIA LEGAL**

M:

E: :



**AGENDA FOR SGM OF COTTESLOE TENNIS CLUB (INC)  
SUNDAY 28 JUNE 2015 AT 4:00PM**

- |   |         |
|---|---------|
| 1. Apologies  | 5 mins  |
| 2. Welcome and opening remarks by the Chairman  | 5 mins  |
| 3. Purpose of the SGM and overview of the Courts Expansion Project – presented by Phil Barron Vice President  | 7 mins  |
| 4. Description of recommended option – John Gillett   | 8 mins  |
| 5. State of Club finances and serviceability of loan Presented by Club Treasurer, Liz Peterson                | 10 mins |
| 6. Questions and clarifications   | 20 mins |
| 7. Motions put – discussions for and against  | 30 mins |
| 8. Ballot regarding loan approval scheduled for 5:30pm (75% approval is required for the motion to be passed) | 15 mins |
| 9. Announcement of result   | 2 mins  |
| 10. Subject to approval, approval of lease amendment  | 2 mins  |
| 11. Refreshments following meeting.   |         |

Note:

This SGM has been scheduled at 4:00pm on a Sunday because the Courts Expansion Project is particularly relevant to our young members. Attending parents will need to return to their families and so every effort will be made to keep to the above schedule.

As advised earlier, Junior and Social Members are not permitted to vote under the terms of the Club Constitution.

When you arrive please ensure that, if eligible, you receive a voting slip and that you sign the attendance book – even if you are not voting.



Secretary and all club members  
Cottesloe Tennis Club  
Broome Street Cottesloe

Without Prejudice

**Notice of Special General Meeting of the Cottesloe Tennis Club to be held on 28 June 2015 at 4:00pm.**

Dear Mr Mc Sweeney

I wish to refer to the Notice of Special General Meeting I received on Sunday 14 June 2015 at 2:21 pm for a Special General Meeting to be held of the Cottesloe Tennis Club on 28 June 2015 for the sole purpose of addressing the Court Expansion Project, and a letter I wrote to the Secretary of the tennis club on 3 May 2015 concerning the same matter.

As you are aware there are deep divisions in the club regarding the Court Expansion Project, therefore I was surprised that an important meeting of this nature was called in this manner.

In the reports and presentations I have made to the Management Committee and the club membership, I have stressed the importance of the Cottesloe Tennis Club Inc. (CTC) as an incorporated body, complying with the Associations Incorporation Act 1987 and the club's Constitution which in turn has to comply with the Act.

I have attached for your consideration and action, independent legal advice from Liscia Legal dated 25 June 2015 concerning Governance issues at the CTC which addresses compliance with the tennis club's legal obligations in relation to the Special General Meeting (SGM) scheduled to be held on 28 June 2015.

**Can you please ensure that this legal advice from Liscia Legal dated 25 June 2015 is distributed to all members prior to the SGM to be held on 28 June 2015**

While there are a number of legal issues canvassed in the legal advice which require the attention of the Management Committee, the view reached by Liscia Legal is that **the notice of meeting (for the SGM called for 28 June 2015) is invalid** as being vague and uncertain in failing to state the business to be attended to at the SGM with sufficient clarity, which defect cannot be cured by the provision of further information via email dated 20 June 2015 or the display at the CTC premises.

I have dealt with similar matters in the past, and in view of the range of serious concerns raised in the legal advice, I would strongly recommend the Management Committee cancel the SGM to be held on 28 June 2015, and put a complete hold on all capital expenditure items, including the Court Expansion Project and the Groundsman's shed and related work on and within the clubhouse, until a new Management Committee is elected at the 2015 Annual General Meeting.

The new Management Committee should then involve all the membership in a review of all the capital works options the membership may wish to examine, with a view to preparing a program of works that has broad support within the membership of the club.

At the two SGM's held on 12 November 2014 the President Mr David Chadwick stated and I quote:

"I hope that you will vote in favour of the resolutions in both SGM's. If you do, we will be informed in March 2015 about the level of funding we can expect. At that time, if we do not receive what we have asked for, we can refocus our efforts and the members will be involved in any changes."

And further

"I hope that whatever the outcome of these meetings, we can heal any divisions that exist and move forward together."

As you know the CSRFF application for funding was rejected.

Any perceived concerns or "urgency" associated with Council amalgamations has disappeared so there is no excuse for cutting corners or rushing into ill-considered decisions based on flawed and insufficient information.

As I stated in my letter of 3 May 2015 it is not difficult to provide the Council with final levels on the western boundary to accommodate an extension to the existing lease for an additional two lit all-weather tennis courts (making a total of four additional courts), which will accommodate all of the club's future needs.

The Council in its letter to the CTC dated 12 November 2013 clearly stated that the Council was committed to retaining as much of the John Black Dune Park as a reserve for community use.

The CTC has 23 grass courts and cannot justify providing any more grass courts as the existing courts are more than adequate to meet its present and future needs.

Tennis is rapidly becoming a popular night time leisure activity and constructing two additional lit courts (within the existing lease area) will provide a benefit to the local community.

Importantly, the club can more than adequately meet any potential tournament and junior demand with the addition of another two all-weather courts on an extension to the lease area on the north western boundary. This would bring the total number of hard courts to ten.

This is a win win situation as the tennis club gets all the courts it can manage and the John Black Dune Park retains more land for community use. This is a sound environmental outcome.

The extension to the lease area is half the area that would be required to accommodate the Court Expansion Project option being pursued by the Management Committee, thereby leaving a lot more land for the dune park development and saving depleting stocks of groundwater.

I see no evidence of the Management Committee "involving the members" and apart from an acknowledgement of receipt of my letter of 3 May 2015, I have not heard anything regarding the proposal I requested be properly assessed.

In my view the Management Committee, in a number of instances, has not provided members and government agencies with accurate information to enable informed assessment and debate, and this could have a bearing on the CTC's ability to obtain the necessary approvals and funding to carry out any works within the tennis precinct.

Can you please advise me of the action the Management Committee intends to take in relation to the legal advice from Liscia Legal dated 25 June 2015 as soon as possible.

Yours sincerely

George Bray

25 June 2015

**Contacts:**

Phone

E mail

## **Cottesloe Tennis Club Report by George Bray - 10 November 2014**

**Background briefing paper to the report entitled "An independent report to members of the Cottesloe Tennis Club concerning the provision of four additional all-weather tennis courts with night lighting" that was submitted with a request for a Special General Meeting on 11 October 2014 and the subsequent actions by parties associated with a submission for funding to the Community Sport and Recreation Facilities Fund.**

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Let me make two important points

Firstly as an incorporated body the Cottesloe Tennis Club is required to comply with the Associations Incorporation Act 1987 and the club's Constitution which has to comply with the Act

Secondly my report was intended to give all the members of the club some time to pause and reflect on what was happening in regard to the expansion of the tennis complex and to have their voices heard.

### **Getting the submission right**

The main thrust of my report is to ensure that the club puts forward the best case it can to get funding for four additional all-weather courts.

It has been suggested to me that some club members may be coming to this meeting spoiling for a fight. I say to these members, you will have an opportunity to express your opinion but this isn't what the business of this meeting has been called for.

The report has been framed with the purpose of achieving two objectives:

- (1) To obtain State and local government funding for 4 additional all-weather courts
- (2) To ensure all club members rights under the Cottesloe Tennis Club's Constitution are recognised and complied with.

At the end of the day it comes down to a very simple proposition. Can the club justify spending \$850,000.00 when I believe the club can get everything it needs for around \$ 450,000.00 and without having to destroy 2 excellent hard courts and 3 excellent grass courts.

In my view, a well constructed submission costing around \$450,000.00 is going to have more chance of being funded than one costing over \$850,000.00 particularly when the submission for the more expensive proposal is open to challenge in a number of ways I will explain later.

Hopefully we can work together as a club to come up with a proposal that will solve the shortfall in lit all-weather courts without incurring wasteful expenditure.

Tonight you are being asked to vote on two questions:

- (1) Do you support the Management Committee assessing the option outlined in my report on a responsible professional basis, which is still to be done.

and

- (2) Do you support putting the Management Committee's proposal on hold and advising the Department of Sport and Recreation as to what the club is doing?

In my view, and indeed the view of many concerned club members, both of these questions should be supported as both are in the club's best interest

Remember the meeting is confined to only dealing with the business specified in the request for the meeting.

It is not for a debate about which proposal is best for the club. That issue will be determined at some time in the future.

### **Meeting the club's legal obligations**

There is a misunderstanding among some members as to how a club like ours is required to operate. As I stated above, firstly there is the Associations Incorporation Act 1987 and below that is the Club's constitution

Under the club's Constitution, and indeed the law, the members direct the Management Committee (MC) and not the other way round.

### *16 POWERS AND DUTIES OF MANAGEMENT COMMITTEE*

#### *The Management Committee*

*(h) Shall comply with all orders, directions and references given to it in accordance with a resolution of members in General Meeting*

The Management Committee cannot represent itself as the club in decisions of this magnitude, which it has done up until now, as in my view the Management Committee does not have a mandate to do what it is doing.

*The Management Committee has to behave in a manner that does not obstruct the association's (club's) pursuit of its objectives*

In all the time this proposal has been progressing, there hasn't been one vote by club members at a General Meeting specifically endorsing or ratifying the Management Committee's submission for funding.

As I said previously, one of the reasons I wrote the report is to give back control of the project to club members which is how the club is required to operate by law.

The Management Committee could have sought endorsement of its actions in submitting its proposal to the Community Sport and Recreation Facilities Fund (CSRFF) at the AGM held on 24 September 2014.

It deliberately chose not to do so. There wasn't an item listed on the agenda for the AGM and club members were bared from discussing their concerns at the meeting.

The motion I will be moving later in this meeting gives you a say in what should happen and making sure your concerns are addressed and not ignored - letting you decide what should or should not happen, and not be bulldozed into following what George Bray or the Management Committee has determined should happen.

### **Taking the club forward**

I will comment further on the way forward later but broadly the position is as follows:

If the meeting carries the motion, in my view the next step would be to develop and cost options based on what the club members believe will meet the club's future needs.

Once a series of options have been prepared and costed then, and only then, should they be put to a meeting of club members to determine a course of action.

If we have to wait another year so be it, because it is better to do that than run the risk of sending the club broke.

Depending on who you talk to, some are saying if we do not get the 1/3, 1/3, 1/3 funding nothing is going to happen anyway. Others say we will borrow the shortfall.

But what if the club members vote against the Management Committees proposal in any event and/or there isn't a 2/3 majority in favour to borrow any money.

Nothing happens anyway

### **Now place yourself in my position**

Who am I and do I know anything about these things. Should you listen to what I am saying ?

Here is part of my background

Local Government grant applications)	CEO City of Stirling and City of Belmont (on both sides of Chief of Staff to the Minister for local government
Engineering	Qualified Civil and local government engineer, qualified local government administrator
Planning	Senior Adviser to four Planning Ministers Director of Statutory Planning WAPC and another more senior position in planning.

### **Court Needs Analysis**

My first consideration was to establish how many hard courts and grass courts were needed to meet the reasonable expectations of club members into the foreseeable future.

This exercise involved clearly identifying the pattern of usage and determining the number of hard courts and grass courts required to achieve the required outcome.

The needs of the club can be summarised as follows

### **Thursday night pennant teams**

This coming season there are 7 pennant teams playing on a Thursday night. One of these teams presently has to play at another club.

With 4 additional all-weather courts with night lighting up to 10 teams can be accommodated on the 10 courts that will be available, given that 5 teams will play at home and 5 teams will play away each night. If the number of teams remains at 7 then alternately 2 or 4 courts will be available for social play. **Requirement met.**

### **Weekend senior pennant teams and social play**

The club is fielding seven (7) Saturday grass court pennant teams and one (1) hard court team this year compared with twelve (12) last summer.(See note 1 below). Six teams played at home each week last year.

The reduction in the number of grass court teams to seven will result in four (4) or six (6) extra grass courts being available for social play on Saturday.

In addition the ladies Division 1 team plays on hard courts (21 and 22)

Demand for social play on Sunday afternoon is much less than on Saturday and there is more than adequate court capacity already existing to meet this need.

The strategy behind building the western grass court bay was always to have three (3) grass courts available on this bay during winter and not two (2) grass courts as currently occurs on a regular basis.

This is mainly due to the groundsman only being contracted to provide a total of six grass courts in winter which results in four (4) on one bay and two (2) on the western bay

It was also originally intended to rest a different bay (1 to 4) each year. **Requirement met.**

(Note 1) There is a difference of opinion as to whether the club fielded 11 or 12 Saturday pennant teams last summer. In any event, for social play this summer, at least four extra grass courts will be available one week and six grass courts the next week.

### **Mid-week social play**

The existing grass courts are able to adequately meet the needs for organised social play on Tuesday and Wednesday over the summer period.

Over the winter period the Management Committee envisages there being a total of twelve (12) grass courts available for social play.

This would require another bay to be opened in winter ie an additional bay compared with what is opened in the winter at present, and would come at an enormous cost.

It is important to appreciate that eleven (11) grass courts can be made available right now at no additional capital cost. **Requirement met**

### **Junior pennant teams**

This coming season there are 29 junior teams playing on Sunday morning. The alternative proposal provides a total of 33 courts. This means that all the junior teams can be accommodated plus an additional 3 teams, bearing in mind that half of the teams play at home and the other half play away.

David Culley does not want to extend the junior program beyond 10 hard courts as it would be too difficult to administer. **Requirement met**

### **Hosting Junior Tournaments**

The alternative plan provides for a total of ten (10) hard courts which are suitable for tournament play. **Requirement met**

### **Tennis Coaching**

David Culley has confirmed that his needs would be met with four (4) additional all-weather courts for coaching purposes and as stated above the coaching requirement is compatible with the junior program. **Requirement met.**

### **Monday night pennant and social group play**

The Monday night social group currently makes use of all the existing hard courts with 2 (three person) pennant teams having to play at other courts. Two "fast 4" teams play at Mosman Park Tennis club. The extra 4 all-weather courts will mean that these pennant teams can play at the club. **Requirement met.**

### **Tuesday and Wednesday night pennant teams**

The demand for hard courts for pennant competition on these two nights is less than on other nights of the week. **Requirement met**

The conclusion I reached was that the construction of four (4) additional all-weather hard courts was all that could be justified, and that the existing grass courts were more than adequate to meet foreseeable demand.

### **Financial sustainability**

Based on my experience, I, along with a large body of long standing members of the club, would argue that the proposal being pursued by the Management Committee is ill conceived and based on what I am hearing, could easily result in the club going bankrupt.

Here are some of the questions that need to be answered

What if it costs a lot more than the estimate given the detailed costing does not cover what is needed ? A project of this scale could easily run \$100,000.00 over budget, if not more.

What will happen if the club has to borrow more than half a million dollars, how is the club going to pay it back ?



What if something else around the club requires expensive unforeseen repair in the next 10 years ?.

How are you going to pay for the increase in ongoing maintenance costs ?  
What if the club membership goes down (it goes up and down now) or the bar profits fall ?

How are you going to pay for the lights on the synthetic grass courts which will cost \$80,000.00. There is no point in having all-weather courts without lights ?

The club only has 14 years to run on its lease. Will a much larger local government that replaces the Town of Cottesloe support this club at the expense of all the other tennis and sporting clubs that will form part of a much larger "Riversea" local government ?

It goes on and on.

I do not believe imposing a levy on members would be the answer as the Royal Kings Park Tennis Club imposed a levy and still went broke.

How would family members find the money ?

### **Trust is the currency in politics**

Make no mistake the allocation of grant money is a political decision both at State level and local government level.

Not only that, it is important to appreciate the both State and local government are bound by much stricter laws governing how they are to operate, particularly in respect to spending revenue.

Here are some extracts from the Town of Cottesloe Minutes of the Council meeting held on 22 September 2014 which shed some light on where the Cottesloe Town Council sits at the present time.

Table extracts

*"It is feasible that the Town's one third could be comprised of a mixture of loan and contribution".*

*"According to the CTC, the reconfiguration of the courts will reduce the water and energy requirements of the facility".*

*"It will also concentrate the "floodlit" court area, reducing the impact of light spilling into nearby John Black Dune Park."*

*"The challenge that this application will face is the cost of the project against the number of additional courts it will deliver."*

*"The Department of Sport and Recreation who administer these grants, have a long held position of not funding replacement facilities."*

*"The CSRFF process is a competitive tender."*

*"The project will also be compared to other similar applications, all competing for the same grant."*

*"The presence of the loan facility and any funding is only an indication and does not represent a final commitment."*

*"The Town has a number of sporting facilities, most of which could benefit from a grant from the CSRFF process."*

*"If the Council agrees to fund one third in this instance, it is likely that other clubs will ask for similar grants in following years to update or expand their own facilities."*

**MOTION CARRIED**

*Endorse the application*

*Include an amount of \$284,000.00 in the Long Term Financial Plan as a self supporting loan for the one third contribution from the Town*

In summary you can see that the Council has not agreed to anything and has more reservations than are being conveyed to club members.

### **State Government funding**

How then does the submission for State Government (CSRFF) funding stake up?

It is important to appreciate that the submission to the CSRFF has been made in your name and on your behalf.

Therefore every statement that is made in it has to be squeaky clean and backed up with cold hard facts.

I will talk later about the flaws that are evident in the Management Committee's funding submission.

But firstly I want to elaborate on my reasons for involvement in this exercise.

Initially I was somewhat dumbfounded at what was being said in support of the Management Committee's proposal and after just a brief amount of enquiry, I could see that the club could get four plexipave hard courts on a better layout plan for half the cost.

In all of its funding submission the Management Committee has represented itself as "the club" when, as I explained earlier, it is not "the club".

I must say I was somewhat surprised that as I began to talk casually to club members there was a higher level of concern and unhappiness with what the Management Committee was doing than I had expected.

Some club members felt helpless despite some attempts to speak or get a vote on what the Management Committee was doing.

**So what do I do ? Do I shut up or do I do something about it?**

I chose to speak up and to write the report that is before you tonight.

I appreciate that many of you will not be familiar with the planning system and how it works, but I would ask you to bear with me while I go through some of the planning jargon that has been used to confuse and mystify many of you, a bit like most of the plans of retaining walls etc you have had thrown at you.

I would expect the last thing many of you would want is for me to spend time on this, but I expect to be asked by government interests whether I raised these issues with you and it is important that I can say that I did in part anyway.

### **A lack of substance in the Management Committee's submission for CSRRF funding**

In respect to the Management Committees submission for CSRRF funding

I don't have to argue against the submission **because it argues against itself.**

Let me give you just a few examples

The first relates to the argument put by the Management Committee that the Council will not agree to night court lights on Bryan Way.

I simply could not believe that to be the case. It simply did not make any sense in planning terms.

Sure enough when I received the costing prepared for the Management Committee by Mr Ken Adam the notes confirmed that "no approval has been sought or received for additional night-use courts on Bay 4."

While the note went on to state "approval is considered unlikely", it did not provide any reason as to why this should be the case.

Only the Council can make that decision and I believe it would be on weak planning grounds if it refused permission.

The funding submission relies on a generalised statement which is used to justify the removal of the existing lights on courts 21 & 22 but then includes provision for night lighting in the NW corner of the same bay.

### **Moving the lights from Bay 4**

*"Removal of these courts and extension of the grass courts along that bay removes the objections to the noise and lighting accompanying the use of all hard courts."*

### **Putting the lights back again onto Bay 4**

*"Project Costing – Version 4 August 2014"*

#### *"8 Court Lighting*

*Supply and install lighting for six (6) courts allowing to reuse eight (8) sets of fittings and cabling for future connection to two (20 courts at NW corner."*

I also referred to the statements in relation to water use in my report

## **Water Use - defying reality**

*"The grouping of all grass courts together not only makes maintenance easier and reduces costs, but will facilitate watering and reduce water consumption."*

*"The new court layout, although it provides a net addition of one grass court, will be more water efficient than the present dispersed layout".*

I countered these arguments in my report so I will leave it to you to judge what the situation will be with watering the grass courts in a wind tunnel.

## **Consultation – there wasn't any meaningful consultation on the CSRFF proposal**

Consultation is a process whereby issues that are raised by members are required to be addressed in a formal way. It is not a process of asking for feedback, ignoring it and doing nothing with it.

It is therefore important to appreciate what actually happened in relation to the proposal submitted for CSRFF funding and the response to questions etc. sought by the Department of Sport and Recreation

*The Club President in an email dated 26 October 2014 to Mr Peter Muir in relation to a complaint Mr Muir made about the display board carrying two different and confusing development proposals advised the following*

*"Regarding your correspondence, the Management Committee has two positions:*

*1 The plan for the expansion of the courts that was accepted by the Town of Cottesloe and WA Planning Commission and has only grass on bay four.*

*2 The submitted plan that was submitted to Sport and Recreation. This plan has two synthetic courts and was the result of consultation at the 2nd July meeting, when we recognised that there was an opportunity to apply for funding. **This was done without consultation**, because of deadlines. It was included in a report to members at the AGM".*

However extracts from the funding submission tell a different story

*" Q7 The club has consulted extensively with its members over a period of more than two years , including surveys of members' views, focus groups , and workshops and meetings of the membership as a whole".*

and elsewhere in the submission

*"Numerous different options were carefully and thoroughly explored, before fixing firmly on the proposed development. These options related to three main issues, the future of two existing hard courts that are poorly located: optimisation of management and use of courts: and the difficult topographical and landscape context".*

*"The club has determined that the proposed development is clearly the best option open to it."*

*"A briefing session on the court expansion proposals , to which all members were invited revealed strong support for the proposals together with a desire for at least two synthetic grass courts, in place of two grass courts"*

In addition a media statement was issued by the Club President to Mr David Cohen at Post Newspapers on Tuesday 4 November 2014 which specifically addresses the court lighting issue.

*"The Management Committee of Cottesloe Tennis Club has a very clear long-term vision for the future development of the club.*

*A plan encompassing this vision was approved by the Town of Cottesloe and the WA Planning Commission, and has been submitted to the Department of Sports and Recreation for possible contribution to funding.*

*This plan consciously precludes night tennis adjacent to the nearby residents along Bryan Way.*

*Some members are concerned by the cost of this plan and have put forward an alternative plan to the Management Committee.*

*This alternative plan will be presented to the members for consideration at a Special General Meeting to be held on 12 Nov.*

*Sincerely,  
David Chadwick  
President Cottesloe Tennis Club"*

You will note from the Presidents email dated 26 October 2014 to Mr Muir referred to above, that the proposal submitted for funding to the Department of Sport and Recreation (S&R) is not the proposal considered by the Town Council or the WAPC.

The proposal for (S&R) funding does not "preclude" night lighting on Bryan Way and actually provides for night lighting on both Bryan Way and Napier Street that will be "adjacent to nearby residents" on both frontages.

You will also note that it is the Management Committee's vision and not the club's vision and that the only concern "some members have" is the cost.

This is not the only concern we have. We will not support digging up hard courts 21 & 22 or the digging up of the western grass court bay.

We do not like the plan at all and have told the President this on numerous occasions.

It also appears to me that the application to the WAPC was primarily for an extension of the lease on the western boundary of the tennis complex, particularly given that the Management Committee has submitted an alternative proposal for funding to Sport and Recreation and not the plan approved by the WAPC.

In other words the Management Committee plan was not submitted to the WAPC for "approval of the vision."

Also for the record we have not “put forward the alternative plan to the Management Committee”.

We had to request a Special General Meeting of members because the Management Committee wasn't listening to members concerns.

The question I would ask is “why is the Management Committee so anxious to keep the discussion on the court expansion project in house if its position can be supported by solid facts and good arguments?”

I answer this by saying the arguments they have put forward do not stack up and are in effect a fabrication to support the construction of a “super grass court bay.”

This view is supported by the Management Committee's attempts to close down the Special General Meeting to be held on 12 November 2014 and in particular how the notice of the meeting has been given.

See notice of meeting at Appendix E. This is nothing more than an attempt to confuse and mislead members and to deny them an opportunity to be fully informed of the options open to them before they have to vote on important motions.

I have expressed my concern in relation to this matter to the Mayor of the Town of Cottesloe who is also a member of this club.

What started out as a single focus on creating this “super bay” has resulted in complete confusion with the imposition of another proposal over the top of the “super bay” proposal.

Based on the reasoning in the Management Committee's various submissions to local and State governments and the President's statement that the Management Committee has two proposals, it is difficult to see how the Management Committee can support what are completely different propositions ie they are not compatible with each other in planning terms.

The Management Committee's first proposal has grass courts on bay4 (Bryan Way frontage) while in the proposal submitted to the CSRFF there are two synthetic courts with provision for night lighting on the N/W corner of bay 4 (Bryan Way frontage).

In my view the Management Committee can only support one or the other and not both.

**I believe it is important to examine in some detail the claims in the funding submission that are based around the “workshop” which was held on 2 July 2014 in more detail**

Here is the heading

*Cottesloe Tennis Club  
Workshop 2 July 2014  
Presentation of Two Court Layout Options to Facilitate Discussion*

However only the Management Committee's plan was displayed and discussed . See appendix D attached.

Let me repeat, the workshop on 2 July 14 was meant to discuss two court layout options. Instead all that happened was a briefing by Mr Ken Adam on the Management Committee's proposal.

**No minutes of the meeting were taken** and importantly no resolution was reached and no vote taken.

Following the workshop on 2 July 2014, Mr Ken Adam on behalf of Courts Project Committee submitted a Courts Expansion Project; Report to the Annual General Meeting of the club which was held on 24 September 2014 in which he stated that *"On 2 July 2014 a workshop, to which all members were invited, endorsed the proposed layout of courts, with the exception of incorporating two synthetic grass courts at the northwest corner of the extended courts area, in lieu of the grass courts shown on the application plans and subsequently approved by the WAPC."*

The question that follows is "how can a workshop where no minutes were taken result in the claim of endorsement for the Management Committee's CSRFF application for funding when there wasn't any form of constitutional endorsement '?

The minutes of the 2014 AGM certainly do not provide any support for the endorsement, as the only relevant reference to Mr Adam's report is in "Other Reports" where there isn't any specific reference to the Courts Expansion Project Report being received or adopted at the meeting.

Another reference to the "workshop endorsement" appears in the report to the second SGM in relation to Mr Adam's costing of the alternative proposal. It is listed for consideration at the SGM number 2 meeting to be held on 12 November 2014

The Associations Incorporation Act contains provisions that may well be relevant in this situation.

As I have said no vote was taken, and it was a "workshop" and therefore there was not a binding agreement of any form from club members that the Management Committee could rely on to support its claims for endorsement by the club.

Under the club's Constitution there would have to have been a General Meeting of club members to obtain a binding agreement and this did not occur.

In light of the above, the Management Committee cannot form the basis of its submission for CSRFF funding, a \$900,000.00 proposal, on the outcomes from this "workshop" which, as stated above has no standing what so ever.

This brings into question the whole process that has been followed by the Management Committee up until now.

Again, this was an informal "workshop" with no standing under the Constitution, no minutes and no voting, that somehow has been used to justify the actions of the Management Committee in forwarding a funding submission to the State Government without the endorsement of club members.

### **Some general observations**

Sometimes when you go through a submission you come across a point you hadn't considered. In this case I wasn't able to find anything to support the expenditure necessary for more than four additional hard courts in the N/W corner

The funding of the Management Committees proposal is reliant on 1/3 coming from the Cottesloe Town Council and 1/3 coming from the Community Sport and Recreation Facilities Fund (CSRFF).

The Management Committee, through the President's email dated 26 October which is referred to above, has confirmed the committee has a number of positions in relation to exactly what it is proposing to construct.

It is also foreshadowing that it intends to find out what is on offer from the State Government before giving club members a say in what should be spent and how.

The Management Committee's intentions are clear in that it is seeking the support of the members at a second SGM on 12 November 2014, to continue funding negotiations on the basis the submitted and approved plans, and upon receipt of the DSR determination on funding support to consider any changes necessary to the plan or for funding, and bring a recommendation to a SGM.

What isn't made clear is what will happen if either of these funding sources do not come up with their 1/3 contributions. Surely this is a critical issue for members to determine now and not be confronted with some sort of fait accompli in a few months time.

Some of the principal members pursuing the current funding application are saying nothing will happen if the full State and local government moneys are not provided, while others are saying the club will borrow the shortfall.

The Management Committee has requested CSRFF funding for one proposal but is telling members (on its display board) that it has two different proposals.

The Cottesloe Town Council as I mentioned earlier in this presentation, hasn't committed itself to anything, and in my view the chances of a CSRFF grant are minimal.

I also doubt whether the Council has fully understood the adverse effect the Management Committees proposal will have on the visual amenity within the Civic Centre Precinct

The Town wrote to affected residents some time ago in relation to the extension of the lease area on the western boundary. Since that time the proposal has changed to provide for two synthetic grass courts on the northwest corner of the tennis complex.

The effect on the visual amenity was substantial initially but has since been increased with the provision for lighting the synthetic courts. Now there is night lighting on the northwest and southwest frontages of the tennis complex.

The S/W corner treatment on Napier Street creates a particularly negative impact on close by residents and the Civic Centre Precinct as there is a retaining wall over three (3) metres in height above the footpath with a high tennis court fence and night lighting perched on top which is directly opposite the civic gardens and at least one private residence.

I would be surprised if the Council did not decide to consult further on the proposal submitted to the CSRFF for funding



The alternative proposal has no impact on the visual amenity within the Civic Centre Precinct

**So what happens if we do not get all the funding from the Council and the CSRFF. Does the club go into debt ?**

As I said above, some members of the Management Committee are saying the project won't go ahead while others are saying the club will borrow more money to cover the shortfall.

If you are going to make statements you need solid evidence to support them. I see little solid evidence to support the claims being made in the funding submission.

My experience would suggest that all of the statements/answers to questions need to be justified in depth on facts in order to have a chance of success.

In my view this submission does not stand up to close scrutiny and this is particularly evident in the way the demand for courts has been assessed.

Using the total number of members as an argument to justify the need for additional courts, for example, is in my view irrelevant as the membership fluctuates from year to year in any event, and its makeup in terms of meeting the needs of playing members will vary depending on how the courts will be used

At this point in time we are seeing a shift away from day use to night use which in itself changes the court use pattern.

The key consideration is how the courts are used ie by what groups and when.

A detailed analysis of court usage is shown in attachment A which clearly summarises what the court requirements are and how they can be fully met with the provision of four additional all-weather courts.

We simply do not need any more grass courts.

**A number of members have asked me "What should we do now."**

I referred to this issue briefly earlier

Firstly we need to put the Management Committee's proposal for CSRFF funding on hold.

Then we need to confirm projected savings that can be achieved by building four plexipave hard courts in the N/W corner on a like for like basis.

**Costing the alternative proposal**

It is relatively easy to work out a rough "like for like costing" of the alternative proposal simply by taking out the items that are not required from the Project Costing which is Attachment 8 in the CSRFF funding submission.

The following items are not required

Demolition and Removal	3000.00
Earthworks	20,000.00 to 32,000.00
Retaining Walls	20,000.00
Grass court surfacing	6000.00
Synthetic court lighting in future	(80,000.00)
Reticulation to new grass courts	15,000.00
Construction of 2 plexipave courts	182,780.00
Construction of 2 Synthetic courts without lights	148,000.00

These are just very rough estimates but they have been assessed in some detail by Mr Ian Hutton an experienced civil engineer (Ex CEO Port Headland Port Authority) and a saving of around \$400,000.00 is clearly obtainable.

While it should be apparent to anyone that the cost savings for the alternative proposal are substantial, the Management Committee is insisting that this is not the case and has submitted an alternative costing prepared by Mr Ken Adam for the consideration of the members.

Contrary to claims by the Management Committee this assessment of the alternative proposal has not been done correctly and is misleading.

Mr Ian Hutton's appraisal of Mr Ken Adam's so called assessment will be presented by Mr Hutton in more detail later.

The appraisal by Mr Hutton has to be done correctly and having Mr Hutton's appraisal verified is precisely what you are being asked to agree to do tonight.

This should not be a problem for any club member as the Management Committee has already agreed in writing to do this (in two items of correspondence) and at a further meeting with the President, Vice President and Secretary being members of the Management Committee, which was held on Wednesday, 22 October 2014.

At this meeting, which was held at the club and involved inspecting the site, we set out what a "like for like" costing would entail in some detail. As a result it was agreed that Mr Ian Hutton, would participate in a joint assessment of the alternative (N/W) proposal with Mr Ken Adam.

While I thought at the time that the project was getting "back on the rails" this thinking proved to be naive.

Mr Adam collected the first draft hard court levels for the alternative proposal from Mr Hutton's home on the 23 October 2014 with the purpose of taking them to the land surveyor to assess the initial earthwork quantities.

Mr Hutton's understanding was that once this information was provided he would come to an agreement with Mr Adam as to what the final court levels for the alternative proposal would be and the levels would then be adjusted accordingly.

This was the first and the last time Mr Hutton saw or heard from Mr Adam.

It was not until members received the notice of the Special General Meeting (Number 2) dated 28 October 2014, with a report of a "so called" assessment by Mr Adam on

the alternative proposal attached to the notice of meeting, were we aware of this breach of faith.

As I said earlier, Mr Hutton is a highly qualified Civil Engineer with a lot of experience in assessing and managing projects of this kind. His response to Mr Adam's assessment is that "the assessment by Mr Adam's is substantially wrong because it is based on incorrect assumptions."

In fact Mr Hutton believes a proper professional assessment will achieve the savings previously forecast in our initial assessment which was based around the work not required to be done on a like for like basis.

Mr Hutton will explain his assessment to you during the question and discussion agenda item.

It is our view that with careful design and management the alternative proposal may achieve greater savings.

Indeed at a further meeting between Grant O'Connell and the President, Vice President, Mr Hutton and myself which was held on Thursday 30 October 2014, the Vice President said words to the effect "didn't we agree to undertake a joint assessment of the alternative proposal "

This is but a further example of the Management Committee working against the best interests of the club, particularly given that the notice of the SGM came out on Tuesday 28 October 2014 in the President's name.

I would also make the point that if the Management Committee was, as stated in the notice of the "first" SGM "recommending a vote FOR the motion" it could immediately write (prior to the SGM being held) to the Department of Sport and Recreation advising of its decision to put the CSRFF submission on hold, particularly as the submission is the Management Committee's submission and not the club's submission.

Despite what the resolution states in the proposed resolution (a), SMG number 2, plans have not been "approved" by the club. The only approval I can locate is from the WAPC, which relates to the lease extension and not to the proposal submitted for funding under the CSRFF.

The alternative proposal does not require tearing up the existing hard courts (21&22) or the western grass court bay so it is the opposite of what the Management Committee is supporting

With the Management Committee having agreed in writing to undertake the assessment of what is the complete opposite to the Management Committee's proposal, and stating in the notice of meeting for the first SGM that it supports the motion to put on hold the present funding submission, it is in the club's best interest to advise the Department of Sport and Recreation of what the club is doing.

If you do not tell the department then the club's credibility will be tarnished

We would then go through a formal process to enable members to provide their views on the form any future development should take with a view to, say, three options being developed and costed for consideration at a Special General Meeting called for that purpose.

It would have been within the power of this Special General Meeting to take steps for the club to move forward in harmony. This was pointed out to the President and the Vice President in the discussion convened by Grant O'Connell on 30 October 2014.

Sadly the Management Committee chose not to support this course of action.

## Appendix A

### Our purpose

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- Put forward the best case for obtaining financial contributions from government for four all weather tennis courts.
- Ensure members decide in general meetings what it is that they want.
- Seek a hold on the Management Committee's application for C.S.R.F.F. funding for six months so we can look at alternative, less costly options. (The Management Committee has been asked to do this and has refused).

## Appendix B

### Arguments in favour of alternative proposal

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- Does not require destruction of hard courts 21 and 22 and western grass court bay.
- Costs around \$400,000.00 less than the Management Committee's submission for C.S.R.F.F funding. (The like for like costing is around \$450,000.00 and not \$597,000.00 as being claimed)
- Meets all the demand for additional courts.
- Complements existing hard court layout which is well located and provides easy access to all hard courts.
- Retains most of the western side windbreak on courts 21 and 22.
- Retains green belt around civic gardens hub.
- Town planning arguments are stronger for night lighting to remain on Bryan Way rather than on both Napier Street and Bryan Way.
- Less impact on the visual amenity of the surrounding residences.
- Ensures members' rights under the club's constitution to determine the future direction of the Cottesloe Tennis Club.

## Appendix C

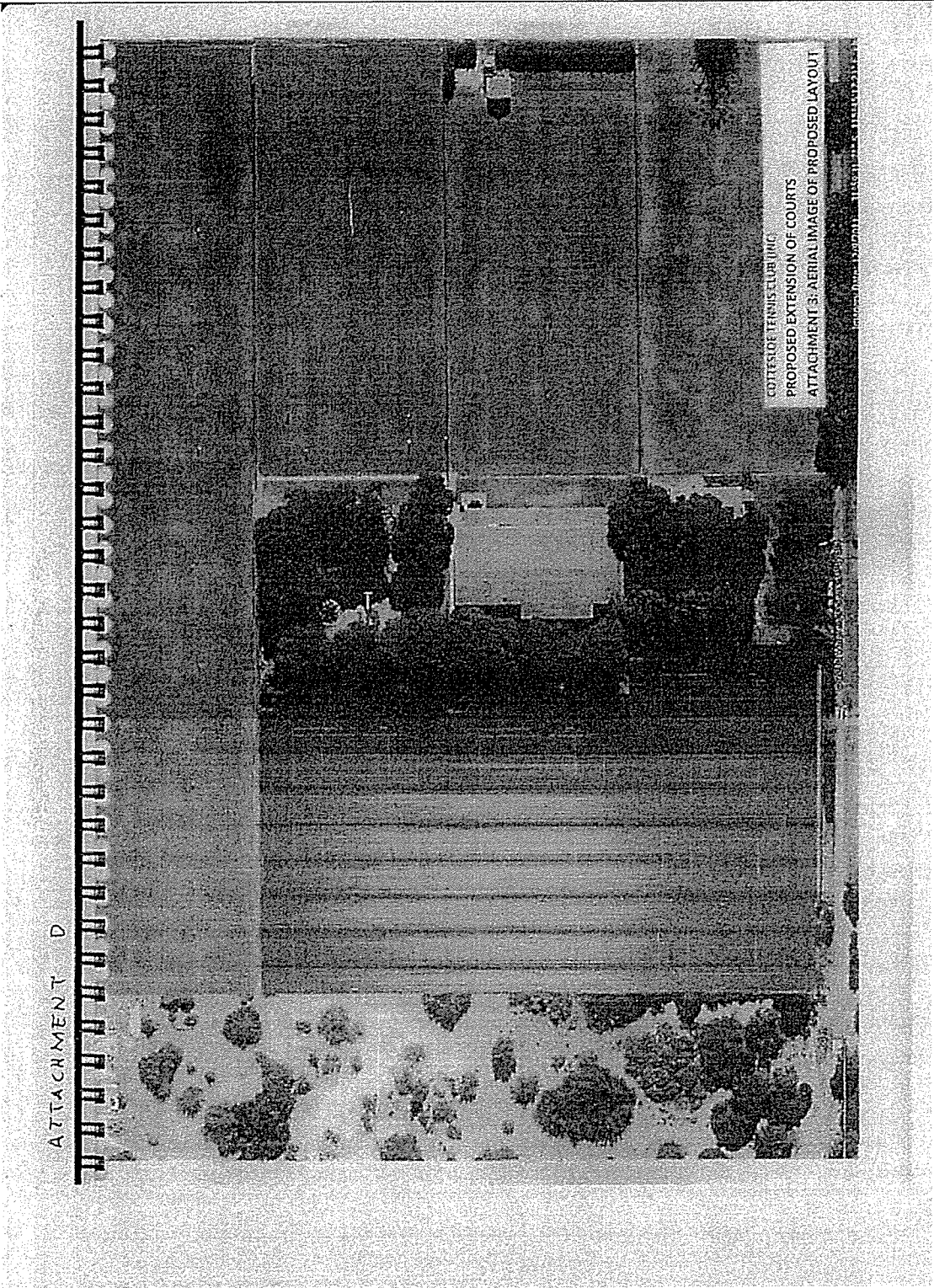
### Arguments against the Management Committee's proposal

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- Entire submission initially based around justifying the construction of a "super bay" on bay 4.
- No evidence to support the statement that the removal of the night lighting on Bryan Way was a condition for the extension of the tennis court lease on the western boundary.
- Cost is around \$400,000.00 more than the alternative "like for like" proposal.
- No justification for the needs analysis assertion that four or more additional hard courts are required and one or more grass courts are required.
- Results in night lighting on southern and northern boundaries. There are no safety issues with courts 21 and 22 as claimed.
- There are significant negative impacts on the visual amenity of the civic gardens and nearby residents.
- Claimed consultation with all members never happened, particularly on the proposal submitted to the CSRFF.
- Concerned members were denied the opportunity to put forward alternative proposals and this is reflected again in the notice of meeting for the Special General Meeting to be held on 12 November 2014.
- May affect the long term financial viability of the club.
- The Council has not approved anything at this time.

Attachment D

Super Bay Proposal





## Attachment E

### Copy of notice of Special General Meeting for 12 November 2014

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Dear Members,

The Management Committee is calling two back-to-back Special General Meetings (SGM's), to be held on 12 November 2014, the first commencing at 7:00 p.m. and the second immediately after the completion of the first, not later than 7:45pm. The meetings will be held at the clubhouse for the purpose of considering the following matters:

#### SGM Number 1:

This SGM has been requested by George Bray, supported by the signatures of more than 15 Members as required in the Constitution. The meeting request is contained in the attached Exhibit 1 (Request for Special General Meeting of the members of Cottesloe Tennis Club).

As detailed in the request, the agenda of the meeting will be as follows:

- a) Presentation by George Bray of a report attached as Exhibit 2 (An independent report to members of the Cottesloe Tennis Club concerning the provision of four additional all weather tennis courts with night lighting). (10 minutes maximum)
- b) Questions and discussion of Exhibit 2. (15 minutes maximum with 3 minutes per speaker)
- c) Summing up by George Bray. (3 minutes maximum)
- d) Consideration of the Motion as detailed in Exhibit 1

The Management Committee recommends a vote FOR the motion because the assessment referred to in the Motion has already been undertaken and the results of that assessment are to be considered in the Special General Meeting held immediately after this meeting.

#### SGM Number 2:

This SGM is being called by the Management Committee with the following agenda:

- a) Presentation by the Management Committee of a report attached as Exhibit 3 (Assessment of George Bray Plan). Included in the discussion is the Report to the 2014 AGM on the Expansion Project (Exhibit 4). (10 minutes maximum)
- b) Questions and discussion of Exhibit 3. (15 minutes maximum with 3 minutes per speaker)
- c) Summing up by the Management Committee (3 minutes maximum)
- d) Consideration of the following Motions:
  - a. Resolved, that funding negotiations with the Department of Sport and Recreation (DSR) continue on the basis of the submitted and approved plans.
  - b. Resolved, that upon receipt of the DSR determination on funding

support, the Management Committee should consider any changes necessary to the plan or for funding, and bring an appropriate recommendation to a Special General Meeting as expeditiously as possible.

If you would like a digital or paper copy of the report outlining the plans that have been submitted to the DSR (Feasibility Report of Sept 2014) please call Amy Oen on , or email to

I encourage your attendance at both of these Special General Meetings to consider these very important matters.

Kind Regards,

David Chadwick  
President, Cottesloe Tennis Club (Inc)

The President

Cottesloe Tennis Club

Napier St

Cottesloe

Dear Sir

Removal of lights from courts on Bryan Way

The residents from the South Side of Geraldine St, backing onto Bryan Way would like it to be noted by the Cottesloe Tennis Club members that never at any stage have any of us been approached by the Club in regard to any issues that may have concerned us about the lighting and noise of play from the courts behind us, and that none of us have ever objected to the lights on these courts or indeed the sound of people enjoying a game of tennis and would be deeply disappointed if they were removed. The lights indeed provide us with a sense of security in what is a dark and potentially dangerous area. We ask that the club reconsider their desire to remove those lights.

P Prindiville

P and J Ibbs

Monty

K Liggins

G Davies

June 26<sup>th</sup> 2015

**Elizabeth Nicholls**

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**From:** News From CTC |  
**Sent:** Saturday, 27 June 2015 3:02 PM  
**To:** Cottesloe Tennis  
**Subject:** SGM - Letter and legal opinion from George Bray  
**Attachments:** 150625\_Ltr\_G Bray\_CTC\_Final.pdf; Correspondence re Notice of SGM of CTC for 28 June 2015.pdf; 150620 Graph Members vs courts from 1920.pdf

*Dear member,*

*We have received correspondence and accompanying legal advice from a long-standing Club member, Mr George Bray, relating to matters before the club at the forthcoming Special General meeting. Mr Bray has urged the Management Committee to cancel the SGM. The Management Committee has considered the request, taken advice, and proposes to proceed with the meeting, being of the opinion that the matters under consideration are for members to decide upon.*

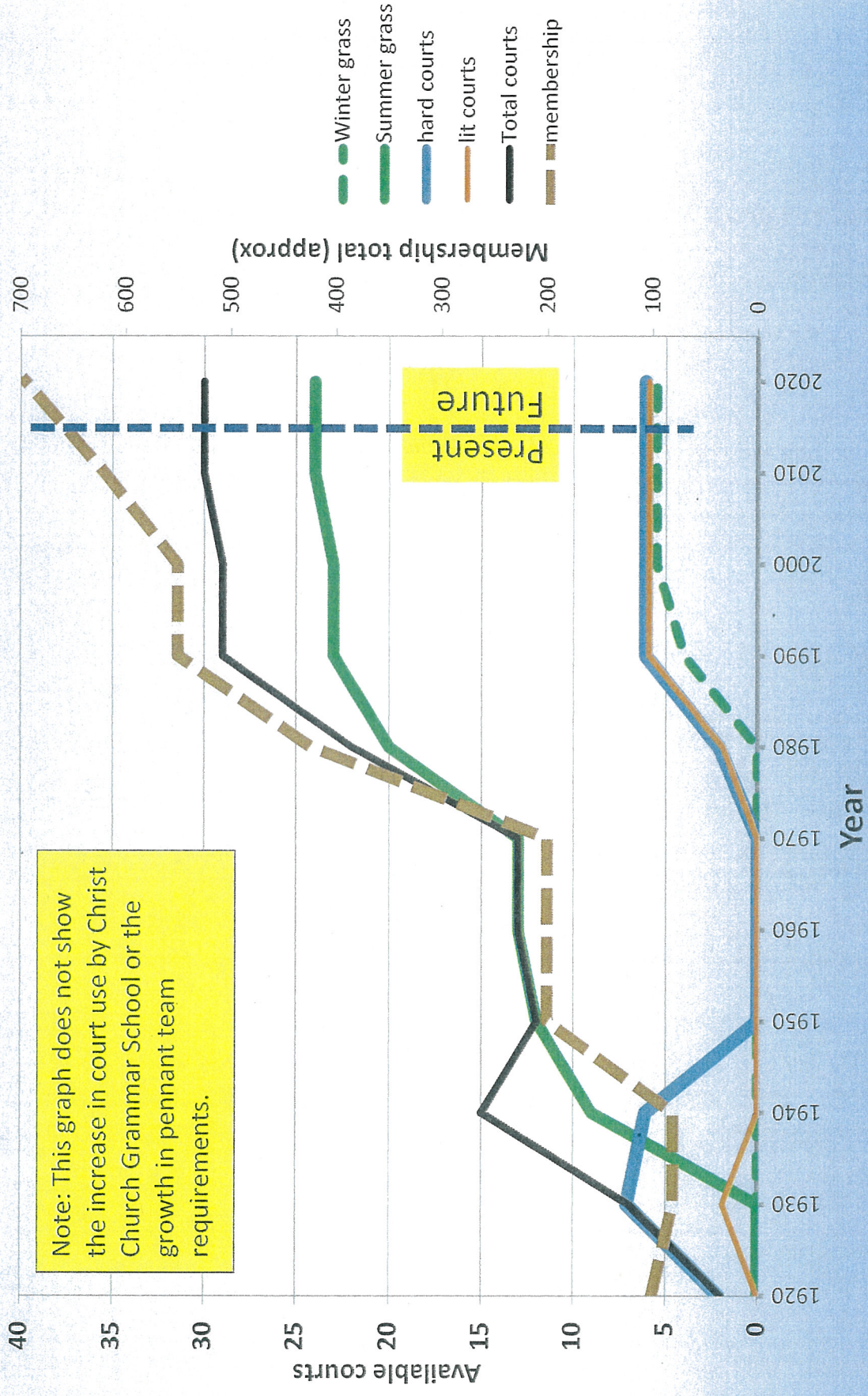
*Therefore the meeting will proceed as planned. Only Senior Members and Patrons may attend without prior approval.*

*Yours faithfully*

*Club Secretary*

*PS: Some members were unable to open the graph sent on 26 June so it is attached hereto as a .PDF file.*

# Membership vs court availability throughout history



Note: This graph does not show the increase in court use by Christ Church Grammar School or the growth in pennant team requirements.

Present  
Future

Source: Membership Director and information contained in the book: *Our Club*. Graph last updated 20/06/15.

## EXTRACTS FROM THE MANAGEMENT COMMITTEES SUBMISSION FOR FUNDING UNDER THE COMMUNITY SPORT AND RECREATION FACILITIES FUND

### WATER

#### Water Use

The grouping of all grass courts together not only makes maintenance easier and reduces costs, but will facilitate watering and **reduce water consumption.**

#### Energy and Water Efficiency

Water is currently sourced from a groundwater well that has produced fresh water for many decades. It is licensed and constantly monitored. In addition, **the new court layout, although it provides a net addition of one grass court, will be more water efficient than the present dispersed layout.**

### COMMENT

Dr Penny Oldfield has been advised by the CTC's pump contactor, Mr Neville Mathews who is the Senior Pumping Consultant at Hydro Engineering, that the water table has dropped half a metre due to the past 15 years of drought.

While the water is currently of a high quality, he has confirmed that the pump cannot be placed any lower as the saline water was only about half and one metre below the pump.

The proposal being pursued by the Management Committee will require at least 10% more water than is currently used depending on the area of additional grass.

We are aware from newspaper reports that climate change is beginning to affect some of the Norfolk Island Pines and that bores are drying up. It simply does not make any sense to place more stress on the groundwater resource.

The water is not metered so it cannot be monitored in a scientific manner.

The logical solution would be to use a synthetic grass surface on any additional courts which is sympathetic to older players and able to be used for night play as well.

### NEED FOR ADDITIONAL COURTS

In summary the Needs Analysis concluded that

- Membership growth, increased pennant and social play, along with **growth in the local population**, has resulted in the need for additional courts
- There are insufficient courts to accommodate all the existing demand, and growth in membership and **demand** for courts is expected to continue, particularly **for junior and senior pennants**

- The pattern of **demand** would be **best met by** the provision of an additional **four** or more **hard courts**, bringing the total to at least ten **and one** or more additional **grass courts**

Subsequently, a **briefing session** on the court expansion proposals, to which all members were invited **revealed strong support** for the proposals, together **with a desire** for at least **two synthetic grass courts, in place of two grass courts**. The plan was modified accordingly.

Membership is stable

## COMMENT

The assessment of the need for additional courts has to be based on when and how the courts are used and not generalised assumptions based on predicted population growth which is not a reliable measure of demand.

There were, to my knowledge, no briefing sessions that indicated in any way support for any proposal.

The two synthetic grass courts were added to the submission after the initial WAPC in principle agreement and before the submission for CSRFF funding.

The President in an email dated 26 October 2014 to Mr Peter Muir confirmed there was no consultation with members on this addition to the proposal.

Any growth in membership, if it does occur at all, will likely come at the expense of other surrounding tennis clubs and be detrimental to the long term development of the sport

## NIGHT LIGHTING

*The Northern (Bryan Way) Bay: Replacement of two Existing Hard Courts with Grass*

For club members one of the most potentially contentious aspects of the proposed development may be the proposal to remove the two hard courts on the northern bay adjoining Bryan Way, because **these courts** were **resurfaced not many years ago**, at **significant cost**. **This decision** only now can be seen to have been **strategically mistaken**. There are **three reasons for removing** these two courts. **Firstly**, removal of the courts **allows the extension on the northern bay of grass courts** to be extended westwards at the present (lower level), consolidating the grass courts in a way **which facilitates their management, both in terms of maintenance and maximising flexibility of moving the playing areas laterally**. Secondly the position of the **lighting poles** is significantly closer to the playing surface than the Tennis Australia recommended minimum distance, **raising potential issues of safety**. Thirdly, the northern bay of courts adjoins the residences along Bryan Way. Removal of these courts and extension of the grass courts along that bay **removes the objections of neighbours to the noise and lighting accompanying the use of all hard courts**.

*The Southern (Napier St) Bay: Replacement of Grass Courts with Hard Courts.*

The proposed development includes replacing the existing three grass courts on the southern (Napier St) bay (bay 1), extending west over the new lease area to provide four lighted hard courts. The reasons are the corollary of those for replacing the hard courts in the northern bay (Bay 4) with grass: for night use proximity to Napier St is strongly preferred to proximity to Bryan Way. In addition the **lighting of these courts** at night will provide an attractive advertisement to their use and **will enhance night time security.**

**COMMENT**

The three reasons for digging up courts cannot be substantiated.

These courts are safe and used day and night for social and pennant play. The Division 1 ladies pennant team played their Saturday matches on these courts.

They are extremely well located close to a shady playground for young children and the cold water drinking fountain drinking.

If they were to be moved to the south west corner of the tennis complex, they would be remote from the social hub of the club and difficult to access.

Locating grass courts on the northern boundary of the tennis complex would incur a significant increase in maintenance costs. This is estimated to cost around \$8,000.00 per annum for the groundsman's time alone.

As stated by five of the adjoining residents, they are opposed to the lit courts being removed and have advised the CTC in writing of their desire to keep the courts in the present location.

Any security concerns can be dealt with by the installation of area lighting anywhere within the tennis complex

Project Costing – Version 4 Aug 2014

8 Court Lighting

**(1) Supply and install** lighting for six (6) courts allowing to reuse eight (8) sets of fittings and **cabling for future connection to two (2) courts at NW corner.**

Court lighting

**The 8 fittings from the courts to be removed are almost new**, having been replaced within the last 6 months and will be reused.

Enhanced access and shade shelters



provide a **2metre wide access way** between Bays 3 and 4. The accessway would continue through to **provide access for maintenance and for spectators to the outside of the western fence**

#### COMMENT

There is no need to place hard courts in a location that would expose children and adults to snakes and other dangerous creatures in the dune area.

The hard courts can be placed in the northwest corner of the tennis complex with easy access to the courts and for spectator viewing without having to enter the dune park.

Despite arguing that the existing lit courts on Bryan Way be relocated the Management Committee funding submission included the supply and cabling for lit courts on the northwest corner of the tennis complex in the future.

This in effect means that lit courts were still being proposed on Bryan Way and were simply being moved sideways a short distance at a very high cost.

#### ONGOING MAINTENANCE

**The Groundsman reported** increasing "wear and tear" on grass courts because of **overuse**.

#### COMMENT

Tennis is quickly moving to a hard court night time activity. The grass courts are underutilised with generally at least seven courts vacant on Saturday afternoons during pennant days which is peak time summer use,.

There is no evidence of "*wear and tear*." as grass play is on the decrease and over time they will be replaced with synthetic surfaces.

Perth has just had the hottest June on record and this is further evidence that groundwater resources are under distress and will continue to diminish due to climate change.

#### SUPPORTING THE REQUIREMENT FOR ADDITIONAL COURTS

Local tennis clubs need to service the needs of a large number of local schools. **Alone** among local clubs **CTC has the ability to fully serve the additional needs**, because of its size and its capacity to expand.

**The alternative** to undertaking this project, increasing the number of tennis courts, **especially the provision of additional lighted hard courts, would be to leave unmet existing and projected increasing demand for courts** by both Club members and the local community.

**Numerous different options were carefully and thoroughly explored, before fixing firmly on the proposed development. These options related to three main issues: the future of two existing hard courts that are poorly located; optimisation of management and use of courts; and the difficult topographical and landscape context.**

**The club has determined that the proposed development is clearly the best option open to it.**

**The design-the layout of the courts and the disposition of court surfaces, including changes of surface in some cases from hard to grass and vice-versa- has been carried out in such a way as to optimise management of the facility. This is achieved by making all grass courts contiguous, all hard courts also contiguous.**

## **COMMENT**

An examination of the process of evaluation clearly shows that only the proposal favoured by the Management Committee was explored and evaluated by the Management Committee and submitted for CSRFF funding without being put to a General Meeting of members for approval.

At no time did the members vote on the proposed development so there was never a determination by the club on any proposal.

Locating new hard courts on the northwest corner of the tennis complex would make all the hard courts contiguous and provide superior access and spectator viewing.

The grass courts would remain exactly as they are which is essential to maintaining the green belt and the visual amenity around the Civic Gardens.

The design proposed by the Management Committee is considered to be very poor in every respect.

## **CONSULTATION WITH MEMBERS**

**The club has consulted extensively with its members over a period of more than two years, including surveys of members' views, focus groups, and workshops and meetings of the membership as a whole.**

**The process followed was exhaustive, as can be seen from the Executive Summary and from the report itself, and included extensive consultation with the membership.**

## **COMMENT**

There is no evidence to support the statement that there was extensive consultation with the membership as a whole. This could only take place through a General Meeting of members and there are no minutes of meetings that support this statement.

In my independent report dated 8 October 2014 which was sent to the Council on 9 November 2014, the issue of members being concerned with the lack of consultation and involvement in the planning process was addressed in detail.

#### **COURTS EXPANSION PROJECT: REPORT TO ANNUAL GENERAL MEETING 2014**

A report was prepared by Ken Adam on behalf of Courts Project Committee dated 18 September 2014 which contained a statement relating to an endorsement of the Management Committee's proposal

On 2 July 2014 a workshop, to which all members were invited, endorsed the proposed layout of the courts, with the exception of incorporating two synthetic grass courts at the northwest corner of the extended courts area, in lieu of the grass courts shown on the application plans and subsequently approved by the WAPC.

#### **COMMENT**

The statement that the proposed layout was endorsed at a workshop is false. The details of what took place at the workshop referred to above is set out in detail in the attached report titled "Cottesloe Tennis Club Report by George Bray 10 November 2014."

## HOW MANY ADDITIONAL COURTS DOES CTC REALLY NEED?

### LIGHTED COURTS

#### Monday Night

Two pennant teams currently use outside courts.

**Need 2 extra courts (if social group continues)**

#### Tuesday Night

Three pennant teams currently use alternately 2 or 4 courts

**Alternately 2 or 4 courts already available**

#### Wednesday Night

Two pennant teams currently use alternately 2 courts

**Four courts already available**

#### Thursday Night

Seven teams currently use all courts plus one team uses outside courts

**Need 2 extra courts**

#### Friday Night

**All courts already available**

### GRASS COURTS

#### Midweek social and pennants

**No extra courts needed**

#### Saturday Afternoon Social

There are 5 fewer grass court pennant teams this year than last year

**On alternate weeks either 4 or 6 more courts are already available for social play than last year**

#### Sunday Afternoon Social

There has never been a shortage of courts on Sunday afternoon

**No extra courts needed**

#### Sunday Morning Junior Pennants

There are currently 29 Junior teams needing 30 courts. We can produce 30 courts for the Junior pennant season

**No extra courts needed**

#### The Present

It can be seen from the above that **just two extra lighted all-weather courts would cover all the current needs**, but in fact the extra needs relate to only 3 pennant teams (2 on Monday night and 1 on Thursday night). We have a total of 56 pennant teams so at the moment the inconvenienced pennant teams represent just over 5% of the pennant teams. ***The Alternate Plan will more than accommodate these players for far less than a million dollars !!!*** (See "The real need for Extra Lighted Courts" below)

#### The Future

As far as future needs go it can be shown that, as one of the biggest clubs in Perth, ***it is actually not in the best interests of tennis as a whole for CTC to grow any more*** for years to come. (See "Pennant Teams by Club" below)

## THE REAL NEED FOR EXTRA LIGHTED COURTS

***4 extra courts will adequately meet our requirements into the foreseeable future because:***

### **Monday night social and pennants:**

The Monday night social group uses the present 6 courts. Together with two teams presently accommodated at an outside venue this makes a total current requirement for 8 courts leaving **2 extra courts for social play** (or, alternatively, 2 more pennant teams) if we had 10 lighted courts – ***requirement met!***

### **Tuesday Night**

This coming season there are 3 pennant teams. This will leave either 6 or 8 courts (on alternate weeks) for hire by members or the public – ***requirement met!***

### **Wednesday night**

This coming season there are 2 pennant teams. This will leave 8 courts for hire by members or the public – ***requirement met!***

### **Thursday night:**

This coming season there are 7 Thursday night teams. 4 extra lit courts will allow for 10 teams total – ***requirement met!***

### **Saturday afternoon:**

This summer we have only 7 grass court Saturday afternoon pennant teams as against 12 last season. This means that **there will be alternately 4 or 6 extra grass courts available for Saturday afternoon social play this summer without spending a cent !!**

### **Juniors:**

This coming season there are 29 Junior teams. 32 teams (3 more than at present) can be accommodated on only 32 courts (16 teams at home each week) – ***requirement met!***

### **Coaching:**

It is believed that the Club Coach would be satisfied with 4 extra all weather courts for coaching – ***requirement met!***

Therefore ***the Management Committee Plan*** means that ***we will be spending an extra \$400,000 on courts that we don't need (and suffering a temporary reduction in court availability while we build them!)***

### **Grass Courts in Winter**

If the "Super Bay" is only going to provide 10 courts on summer spacing it is unlikely to provide more than 8 on increased winter spacing. It is already possible to have 6 or even 7 courts through a normal winter.

**PENNANT TEAMS BY CLUB - 2014/15 SEASON**

<u>Club</u>	<u>All teams</u>			<u>Juniors</u>		
Cottesloe	56	35.44	%	29	37.66	%
Dalkeith	20	12.66	%	6	7.79	%
Nedlands	20	12.66	%	14	18.18	%
Fremantle	20	12.66	%	9	11.69	%
East Fremantle	17	10.76	%	7	9.09	%
Claremont	16	10.13	%	7	9.09	%
Allen Park	9	5.70	%	5	6.49	%
Total:	158	100.00	%	77	100.00	%

**Cottesloe Tennis Club already fields over one third of the total number of pennant teams in all 7 Western Suburbs grasscourt clubs and almost three times as many teams as the next biggest clubs**

**When it comes to Juniors the total is even higher at 37.66%**

**Elizabeth Nicholls**

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**From:** News From CTC  
**Sent:** Sunday, 14 June 2015 2:21 PM  
**To:** Cottesloe Tennis  
**Subject:** Fwd: Notice

Notice of Special General Meeting

28 June 2015

4:00pm at the Clubhouse

Notice is hereby given that the President of the Cottesloe Tennis Club invites attendance at a Special General Meeting for the sole purpose of addressing the Courts Expansion Project.

**The meeting will be held in the Clubhouse on 28 June, 2015, starting at 4:00pm.**

Since notification by the Department of Sport and Recreation earlier in the year that the Club's application for a substantial grant had failed, the Courts Project Committee and the Management Committee have explored seven options for proceeding on the basis of a reduced scope of works. The Management Committee unanimously supports a development which would deliver the key elements of the original plan which has been approved by the Town of Cottesloe and State Planning Commission – the plan that was discussed at the Special General Meetings late last year. The key elements of the long term plan are (i) a total of 10 all-weather courts for night play (currently six), (ii) removal of hard courts 21 and 22, and (iii) construction of new grass courts on Bay 4. An essential component of the plan is the offer by the Town of Cottesloe of a valuable strip of land along the western boundary of the Club's lease – based on the approved development plan.

**The Management Committee recommends the following motion to all Members:**

1. *The Management Committee is authorised:*
  - (a) *to proceed with the Courts Expansion Project on the basis of reduced scope.*
  - (b) *to procure a loan of not greater than \$420,000 for a period of up to 15 years at a fixed interest rate of not greater than 4.5% p.a.*
  - (c) *subject to approval of (a) and (b), to finalise amendment of the Club's lease to include the additional land offered by the Town of Cottesloe for the purpose of implementing the long term courts expansion plan.*

Members are reminded that proxy voting is not permitted under the Club's Constitution. Social Members are welcome to attend but Social and Junior Members are not permitted to vote.

I encourage all Members to attend this important meeting, and have a say in the long-term development of the Cottesloe Tennis Club.

Yours sincerely

David Chadwick

President, Cottesloe Tennis Club (Inc).



Secretary  
Cottesloe Tennis Club  
Broome Street Cottesloe

Dear Ms Oen

I wish to respond to the email sent to club members by the President of the tennis club on Saturday 11 April 2015 advising that the submission to the Community Sport and Recreation Facilities Fund (CSRFF) was unsuccessful.

In view of the State Government not providing any funding for the Management Committee's submission to the CSRFF, and the Town of Cottesloe not having agreed to provide any cash contribution towards the submission, it is an opportune time for the club membership to consider other options including constructing two additional lit all-weather courts on the North West corner of the existing lease area.

It is important to note that the undeveloped land within the existing lease area was always intended to be used for the provision of two additional night lit courts.

These courts can be constructed without disrupting play on any of the existing grass and hard courts. Any development of additional courts on the existing courts would be highly disruptive and result in less courts being available for play in both summer and winter for a considerable period of time.

It is also important that any proposed court development should retain the existing windbreaks on courts 21 and 22 and provide for security area lighting if necessary.

The provision of these two additional courts could be undertaken while negotiations are finalised to construct another two hardcourts on an extension to the existing lease area on the North West corner of the tennis complex should the demand be justified and the necessary finance become available at some time in the future.

Under clause 16(h) of the Constitution, Powers and Duties of Management Committee, the Management Committee "shall comply with all orders, directions and references given to it in accordance with a resolution of members in General Meeting".

At a Special General Meeting held on 12 November 2014 it was resolved that "Upon receipt of the DSR determination on funding support, the Management Committee should consider any changes necessary to the plan or for funding, and bring an appropriate recommendation to a Special General Meeting as expeditiously as possible."

The Management Committee is therefore bound to obtain the approval of a General Meeting before it can commit any money to court expansion development.

The submission for funding to the CSRFF clearly stated that the Management Committee's proposal was difficult to implement in stages, and any proposal that would require the digging up of hard courts 21 & 22 and the western grass court bay would expose the tennis club to having to find around one million dollars to achieve an additional four hard courts.

The tennis club does not have the financial capacity to commit to this level of expenditure.

I have attached the court demand assessment (How many courts does CTC really need) which was presented to club members prior to the SGM on 12 November 2014 and clearly demonstrates that all of the present needs of the club can be met with the provision of two additional lit all weather courts.

By providing space for the future development of another two hard courts, all of the potential future needs of the club can be accommodated in a financially prudent way.

Locating two additional lit all weather courts on the North West corner of the existing tennis complex will cost much less than half of the \$900,000.00 estimated cost to implement the proposal submitted to the CSRFF for funding.

I would envisage the indicative cost to be around \$300,000.00 or less depending on the type of court surface the membership would prefer.

Throughout the negotiation phase for the extension of the lease area on the western boundary of the existing lease, there has been a fixation by the Management Committee on a false premise that the Town of Cottesloe will not approve lighting on Bryan Way.

As stated in the report to the Special General Meeting held on 12 November 2014 by Mr Adam, no approval has been sought or given for the erection of night lights on Bryan Way.

There is no evidence what so ever to support the claim that lights will not receive approval, particularly given that there is a right of appeal against any decision by the relevant planning authorities in this regard.

Importantly, I am also aware the at least one of a very small number of residents potentially affected by additional lit courts on Bryan Way fully supports the retention and extension to the existing night court lighting.

These particular long term residents have never had any problems with the lights or noise from the existing courts (21& 22). They also appreciate the security the lights provide and want the courts to stay where they are.

As you are aware every Management Committee member has an obligation to take all reasonable steps to ensure the association complies with its obligations under the Incorporated Associations Act.

In my view this requires a responsible approach to both prudent financial management and the legal requirements necessary to demonstrate good governance.

The construction of two additional lit all weather courts on the North West corner of the existing tennis complex, within the existing lease area, is clearly the best option to achieve a financially viable and functional outcome for the club.

Yours sincerely

George Bray

3 May 2015

**Elizabeth Nicholls**

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**From:** George and Sylvia  
**Sent:** Monday, 22 February 2016 9:41 AM  
**Subject:** Submission on self-supporting loan to the Cottesloe Tennis Club  
**Attachments:** Post Newspaper article 10 July 2015.pdf; Council Policy - Self Supporting Loans.jpeg; Post article re trees 25 Oct 2014.jpeg; Fwd: Minutes of SGM of CTC approving loan for courts expansion project -... (1.09 MB); Response to Draft SGM Minutes of 28 June 2015.docx; 250727 L G Bray responding to 25 June 15 L.pdf

This email is the second of four email attachments to a letter to the Acting CEO of the Town of Cottesloe dated 19 February 2016 I hand delivered to the Administration Centre in Broome Street at 9:24 am this morning and has to be read and filed with the letter. Please contact me on 9385 8920 if you have any queries.  
George Bray

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**From:** George and Sylvia  
**Sent:** Friday, 7 August 2015 10:14 AM  
**To:** 'ceo@cottesloe.wa.gov.au' <ceo@cottesloe.wa.gov.au>  
**Subject:** FW: Cottesloe Tennis Club Court Expansion proposals

Mr Matt Humfry  
Chief Executive Officer  
Town of Cottesloe  
100 Broome Street  
Cottesloe WA 6911

Re Cottesloe Tennis Club Expansion Proposals

I refer to my letter to you dated 1 July 2015 concerning the Cottesloe Tennis Club Expansion Proposals which I hand delivered to your office on the same day.

I have not received a response or acknowledgement of this letter but assume from the Minutes of the Management Committee meeting held on 18 May 2015, and subsequent correspondence to me from the Management Committee of the tennis club, that negotiations in respect to a Council grant of up to \$90,000.00 and a self-supporting loan from the Council for the project are continuing.

I provided you with an account of what took place at a Special General Meeting of the tennis club which was held on 28 June 2015 in my letter to you which is referred to above, and on Tuesday 4 August I received the attached minutes from the Secretary of the tennis club

I have attached my response, dated 6 August 2015, to the Secretary's draft minutes referred to above that were received on 4 August 2015, in which I have clearly stated that the Management Committee was not given authority by the Special General Meeting held on 28 June 2015 to proceed with the Court Expansion Project despite the fact that the Management Committee claim that it has been given this authority.

In my view the draft minutes of the SGM held on 28 June 2015 are not an accurate and correct record of what took place at the meeting and as a consequence do not meet the requirements that have to be met and/or be complied with to satisfy the conditions for approving a self-supporting loan under the Council's policy on Self-Supporting loans.

When you take into consideration

- the negative environmental and visual impacts the current proposal will have on the Civic Centre Precinct,
- the unnecessary added stress on the diminishing groundwater resources which will adversely affect the iconic Norfolk Island Pines, ( the groundwater level has dropped half a metre)
- the fact that the tennis club can meet its existing hard court demand without taking any land from the John Blake Dune Park as it can locate two additional hard courts within its existing lease area and can pay for the two hard courts it requires from the cash it has in the bank
- the intended destruction of two recently renovated lit hard courts (at a cost of \$116,000.00) and three excellent grass courts only to end up with a much less functional court layout that will cost twice as much as needs to be spent to meet all of the tennis club's present and future needs.
- the fact that five of the residents (all but one) adjoining Bryan Way that are affected by the existing lit hard courts have written to the tennis club in support of the courts remaining as they are and stating the benefit they provide to the residents.
- the fact that the Council is likely to face a cap on its rates, which in turn will, if implemented, severely limit the Council's ability to provide any financial support to community groups in the future and impose constraints on its maintenance budgets and other ongoing commitments.
- the fact that fees to pay tennis at the club will have to rise unnecessarily and therefore become less affordable to many local people who we should be encouraging to take up the sport.
- the risk associated in the Council having to guarantee the loan funds and providing a grant of up to \$90,000.00 towards the project when there isn't any justification for the Council having to contribute any funds at all.

the Council would have a strong argument to undertake a comprehensive review of all the options open to it in regard to the use of this scarce Crown land to ensure the long term environmental and economic sustainability of the Civic Centre Precinct and the tennis club.

This land is intended to be used for the benefit of the whole community and is not provided for the exclusive use of any one user.

The Council has a policy on climate change which is designed to negate the effects of climate change. We already know that climate change is impacting on the pine trees (see attachment, Post 25 Oct 2014) and other sporting grounds in Cottesloe such as the Seaview Golf Course.

Adding extra grass tennis courts when the 23 grass courts the club has now is more than it needs and as tennis moves to being played on hard courts at night under lights the demand for grass courts will continue to contract.

The question needs to be asked as to how can more ground water be taken to maintain the extra grass courts all year around and not deplete the ground water available to the pine trees and other ground water users. Obviously a drying climate and less rainfall will result in the water table continuing to drop, which in turn will adversely affect the pine trees and result in more ground water bores drying up and further restrictions being placed on the use of ground water.

As I stated in my letter to you on 1 July 2015 the submissions from the Management Committee to the Council contain a number of false and misleading statements which have a significant bearing on assessing the viability and credibility of the current proposal and warrant a complete review by the Council before any decisions are taken in regard to any form of development approval and financial assistance.

At present the only proposal the Management Committee of the tennis club can put before the Council is a request for a self- supporting loan, unsecured by the tennis club, for an unspecified amount and for an unspecified purpose.

This in my view is not the best way to achieve an outcome that will benefit the Cottesloe community , the Council and the Cottesloe Tennis Club.

I would therefore request that my letter to you dated 1 July 2015 and this letter be submitted to the next meeting of the Works and Corporate Services Committee and/or the Development Committee with a request that Council undertake a complete review of the development and funding options for the future expansion of the Cottesloe Tennis Complex within the Cottesloe Civic Precinct before considering any applications by the tennis club for financial support, extension to the area leased to the tennis club or for any development approval.

Yours sincerely

George Bray

# Loan row at tennis club

By DAVID COHEN

Conflict continues at the Cottesloe Tennis Club over its expansion plans.

Member George Bray obtained legal advice over a meeting at the club two weeks ago, which ended in a vote to get a \$420,000 loan from Cottesloe council.

Club president David Chadwick said the advice was wrong and more than three-quarters of votes at the meeting were in favour of getting the money.

Mr Bray would not discuss the issue, but in a letter to club members before the June 28 meeting he said: "There are deep divisions in the club regarding the court expansion project."

In the letter he said he had obtained advice from Yokine lawyer Anna Liscia who said the notice of meeting was invalid, as it was "vague and uncertain in failing to state the business to be attended to".

Ms Liscia advised that the

meeting's resolution to borrow money did not comply with the club's constitution, because some members would have to be personal guarantors.

"Given the... clearly divergent views of the CTC members... one would have expected all pertinent information to be sent with and referred to in the notice of meeting," she wrote. "It is my view the notice of meeting is invalid."

Ms Liscia also raised concerns about two meetings held at 7pm and 8pm on the same night in November.

Mr Chadwick said Ms Liscia was "dead wrong" about members having to be guarantors, and that information had been on display since last year.

"It's been on the noticeboard for eight months, since the last special general meeting in November," Mr Chadwick said.

"There are lots of lawyers in our club, prepared to defend the club [against] false information."

Mr Chadwick said 77% of people at the June 28 meeting voted for the council loan.

"Some people put their vote in the box and left [the meeting] - some people think that's invalid," he said.

Mr Chadwick said the \$420,000 council loan was "a formality".

"We've been negotiating with the council for 2½ years. We've been assured it's not a problem," he said.

"They offered us a loan for 20 years, for whatever we wanted. 'Don't write that, I'm sorry I said that.'"

The club - which counts Premier Colin Barnett and Cottesloe mayor Jo Dawkins among its members - wants to build new courts, including four on John Dune Black Park.



Overseeing eye health... Dr Angus Turner bringing vision to the outback.

## From Nedlands with LOV

The Lions Eye Institute in Nedlands has appointed Angus Turner as inaugural McCusker director, Lions Outback Vision (LOV).

It is the first academic role at the University of WA to focus on reducing high rates of preventable blindness and vision loss in the indigenous population.

Compared with the broader Australian community, indigenous people are six times more likely to be blind, 14 more times likely to have diabetes-related blindness and five times more likely to have refractive error.

Dr Turner studied medicine at UWA and Oxford University and trained in ophthalmology in Melbourne.

He joined the Lions Eye Institute in 2010 and founded Lions Outback Vision in 2012, conducting remote-area eye clinics and developing tele-ophthalmology programs to provide specialist medical

support in remote areas.

His work establishing LOV, with its mission to eliminate preventable blindness and vision loss in people living in regional and remote WA, was recognised at this year's 40Under40 awards, when Dr Turner was named "first among equals".

The position is funded by a donation from the McCusker Charitable Foundation, through a grant from Telethon and UWA.

Foundation trustee Malcolm McCusker said the role would provide a platform to bring indigenous eye health issues to the fore.

As part of the new role, Dr Turner will oversee the delivery of eye health-care services in rural and remote WA and will be responsible for managing and leading all operational and clinical aspects of specialist visits, optometry outreach and diabetic retinal screening programs.



Court report... A Cottesloe Tennis Club member got legal advice about meetings at the club.

# SAS radio revamp

A major piece of military communications hardware inside the Special Air Service Regiment base at Campbell Barracks is set to be upgraded.

The Department of Defence is planning an \$8-\$12million rebuild of its long-range patrol radio system at some of its bases, including Swanbourne.

"The works at Campbell Barracks are predominantly replacement of existing masts and antennas, the installation and commissioning of new high-frequency satellite communication antenna and construction

of a new equipment shelter," according to a current notice on the AusTender website.

The upgrade to the communications system will be made as part of a \$223.6million redevelopment of the barracks (POST, June 27).

"The redevelopment project seeks to address problems associated with ageing and obsolete working accommodation, a dysfunctional layout, inadequate storage and poor infrastructure," Department of Defence staff told a public works committee recently.

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- Do you have any of these symptoms: cough, sore throat, headache, runny or blocked nose, body aches and pains, or fatigue?

If you answered yes to all of the above, you may be eligible to participate in a research study for a **new flu medicine**, being conducted at **Claremont Medical Centre**.

Contact the Study Nurse **Fiona Benino** on 0431 269 206 or **Naomi Defazio** on 0478 705 325 or **Claremont Medical Centre** on 9285 5100.

Claremont Medical Centre  
 206 Stirling Highway, Claremont WA 6010  
 Ph: 9285 5100

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## TOWN OF COTTESLOE POLICY

### LOANS - SELF-SUPPORTING

**(1) OBJECTIVE**

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

**(2) PRINCIPLE**

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

**(3) 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.

**(4) 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.

**RESOLUTION NO:** P47  
**ADOPTION:** November, 2010  
**REVIEW:** November, 2018

*(Replaces P50, 21/12/94)*

# Drought stress hits pines

The South-West's drying and warming climate is strongly suspected of killing two more of Cottesloe's famous norfolk island pines.

In a worrying trend, more trees are showing signs of stress.

Cottesloe could have as many as 3000 of the tall trees that define the suburb.

They are visible from well out to sea and used by sailors as navigation marks.

But higher temperatures, a drought lasting more than 30 years, a falling water table and more storms are taking their toll.

Cottesloe engineer Geoff Trigg said it appeared a lack of water was killing some mature trees.

Watering and fertilising had brought some discoloured trees back to health.

He said there were several viruses that affected the pines.

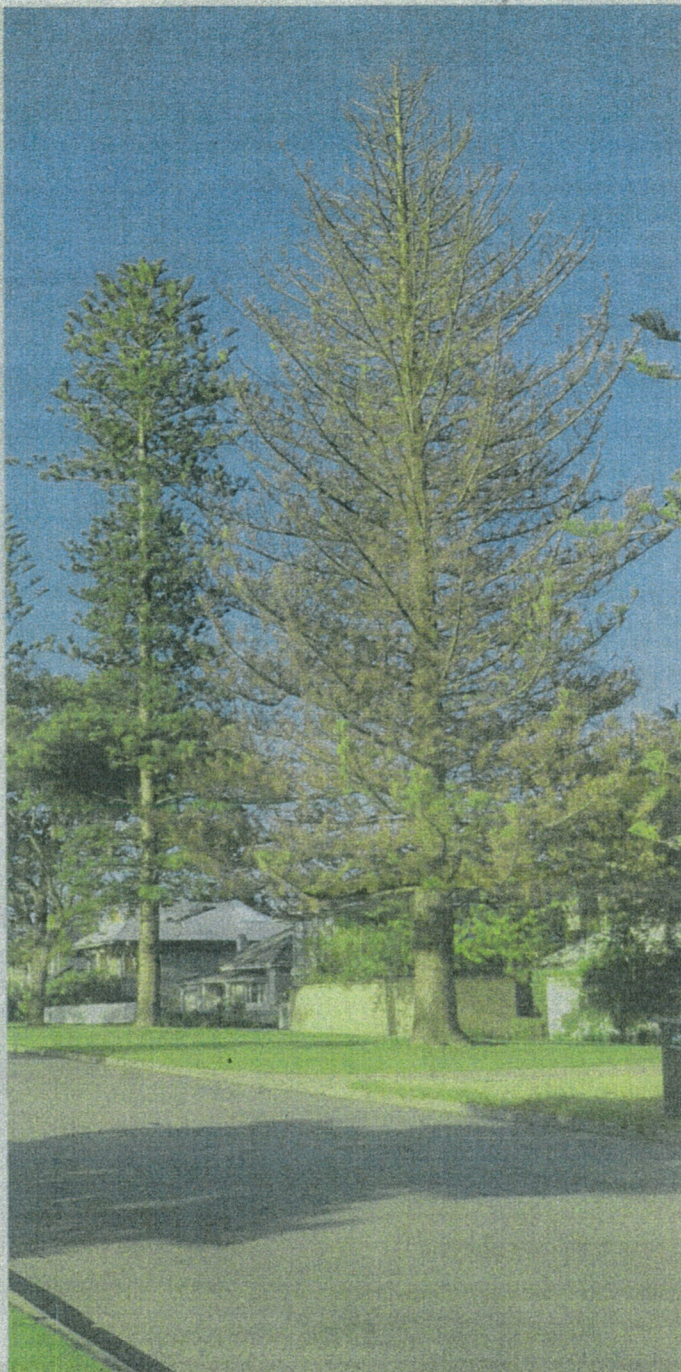
One of the two dead trees, in Marmion Street, was cut down on Wednesday and will be replaced.

Trees on Norfolk Island in the South Pacific did not experience the same extremes as the trees in Cottesloe and grew taller.

One has been measured and estimated to be more than 300 years old.

Cottesloe's mature trees were planted early last century but many young trees are being planted.

"We plant more than we lose," Mr Trigg said.



Climate change is believed to be responsible for the death of this norfolk island pine, in Marmion Street, Cottesloe.



Workers begin to remove the Marmion Street tree.

## PREPARE YOUR CHILD FOR KINDERGARTEN AND BEYOND!

Enrolments are now open for Up and Away Learning, a unique kindy readiness program for 3 to 4 year olds, developed and facilitated by an Occupational Therapist



## New shipment of quality smalls from London



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Supporters h

## Steel S Stainle



Shenton Park



## Elizabeth Nicholls

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**From:** News From CTC  
**Sent:** Tuesday, 4 August 2015 7:41 AM  
**To:** News From CTC  
**Subject:** Fwd: Minutes of SGM of CTC approving loan for courts expansion project - 28 June 2015  
**Attachments:** Att. 2 Apologies and correspondence.pdf; Att. 1 SGM June 2015 Agenda.pdf; Att. 3A G Bray covering letter.pdf; Att. 3B 150625 Liscia Legal advice to G Bray\_Final.pdf; Att. 4 Neighbour's submission.pdf; SGM MINUTES of meeting 28 June 2015.pdf

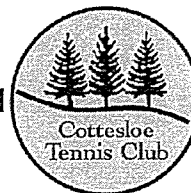
Hello to all CTC Members

Attached for your information

are the minutes from the Special General Meeting of the CTC  
held at the clubhouse from 4:30pm on 28 June 2015.

Secretary

Cottesloe Tennis Club



**AGENDA FOR SGM OF COTTESLOE TENNIS CLUB (INC)  
SUNDAY 28 JUNE 2015 AT 4:00PM**

- |  |         |
|--|---------|
| 1. Apologies   | 5 mins  |
| 2. Welcome and opening remarks by the Chairman   | 5 mins  |
| 3. Purpose of the SGM and overview of the Courts<br>Expansion Project – presented by Phil Barron<br>Vice President         | 7 mins  |
| 4. Description of recommended option – John Gillett  | 8 mins  |
| 5. State of Club finances and serviceability of loan<br>Presented by Club Treasurer, Liz Peterson                          | 10 mins |
| 6. Questions and clarifications  | 20 mins |
| 7. Motions put – discussions for and against   | 30 mins |
| 8. Ballot regarding loan approval scheduled for 5:30pm<br>(2/3 <sup>1</sup> of the members present is required (Cl.21(e))) | 15 mins |
| 9. Announcement of result  | 2 mins  |
| 10. Subject to approval, approval of lease amendment   | 2 mins  |
| 11. Refreshments following meeting.  |         |

Please ensure that, if eligible, you have received a voting slip in the event that a poll is called for.

You should also sign the attendance list – even if you are not voting.

The Chairman may alter the order of agenda items.

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<sup>1</sup> Earlier version of the agenda stated that 75% approval was required. This was hand-corrected on agenda copies made available at the entrance to the SGM for arriving members.



**SGM OF COTTESLOE TENNIS CLUB (INC)  
SUNDAY 28 JUNE 2015 AT 4:00PM**

**Apologies:**

1. Jo Dawkins, Club Patron and Mayor of Town of Cottesloe
2. Ro Hyde
3. Mary Ann Yeats AM
4. Peter O'Dea
5. Ken Gotfried
6. Judy Curran
7. Karen Meredith
8. Michael & Wendy Cusack
9. Mary and Gavan Sullivan
10. David Coffey
11. Peter Muir
12. Bettina Wolff
13. Sue Thomas
14. Gitte Eyres
15. Ken Adam
16. Sue Ward.

Some further members sent automatically generated emails advising they were on leave but the responses did not make it clear that they would not attend the SGM.

**Correspondence:**

- |         |  |
|---------|--|
| 15/6/15 | Peter Muir email to several members was forwarded to the MC. Peter expressed concern that it was not fair to other TCs that the CTC should be contemplating growth – as this would further damage other struggling clubs.                                  |
| various | Penny Oldfield's several emails to members of the MC – mostly requesting documents (which she has been given access to), but also alleging technical breaches of the Act and/or Constitution by the MC.  |
| 25/6/15 | Letter from George Bray and accompanying legal opinion – which has been circulated to all members with valid email addresses.  |
| 26/6/15 | Several members have sent emails objecting to receiving an email directly from members opposed to development and querying access to and use of members' email addresses.  |
| 27/6/15 | Mary and Gavan email from France expressing concern re growth of CTC in face of general decline in TC membership (and concern over proposed changes to the Club entrance area near Napier St – which is not part of today's discussion.) VP has responded. |
| 28/6/15 | Email from former Sec confirming that she had received around 25 email requests for documents from Penny since November last and had supplied everything to which Penny was entitled under the Constitution and the Associations Act.                      |

Secretary and all club members  
Cottesloe Tennis Club  
Broome Street Cottesloe

Without Prejudice

**Notice of Special General Meeting of the Cottesloe Tennis Club to be held on 28 June 2015 at 4:00pm.**

Dear Mr Mc Sweeney

I wish to refer to the Notice of Special General Meeting I received on Sunday 14 June 2015 at 2:21 pm for a Special General Meeting to be held of the Cottesloe Tennis Club on 28 June 2015 for the sole purpose of addressing the Court Expansion Project, and a letter I wrote to the Secretary of the tennis club on 3 May 2015 concerning the same matter.

As you are aware there are deep divisions in the club regarding the Court Expansion Project, therefore I was surprised that an important meeting of this nature was called in this manner.

In the reports and presentations I have made to the Management Committee and the club membership, I have stressed the importance of the Cottesloe Tennis Club Inc. (CTC) as an incorporated body, complying with the Associations Incorporation Act 1987 and the club's Constitution which in turn has to comply with the Act.

I have attached for your consideration and action, independent legal advice from Liscia Legal dated 25 June 2015 concerning Governance issues at the CTC which addresses compliance with the tennis club's legal obligations in relation to the Special General Meeting (SGM) scheduled to be held on 28 June 2015.

**Can you please ensure that this legal advice from Liscia Legal dated 25 June 2015 is distributed to all members prior to the SGM to be held on 28 June 2015**

While there are a number of legal issues canvassed in the legal advice which require the attention of the Management Committee, the view reached by Liscia Legal is that **the notice of meeting (for the SGM called for 28 June 2015) is invalid** as being vague and uncertain in failing to state the business to be attended to at the SGM with sufficient clarity, which defect cannot be cured by the provision of further information via email dated 20 June 2015 or the display at the CTC premises.

I have dealt with similar matters in the past, and in view of the range of serious concerns raised in the legal advice, I would strongly recommend the Management Committee cancel the SGM to be held on 28 June 2015, and put a complete hold on all capital expenditure items, including the Court Expansion Project and the Groundsman's shed and related work on and within the clubhouse, until a new Management Committee is elected at the 2015 Annual General Meeting.

The new Management Committee should then involve all the membership in a review of all the capital works options the membership may wish to examine, with a view to preparing a program of works that has broad support within the membership of the club.

I see no evidence of the Management Committee “involving the members” and apart from an acknowledgement of receipt of my letter of 3 May 2015, I have not heard anything regarding the proposal I requested be properly assessed.

In my view the Management Committee, in a number of instances, has not provided members and government agencies with accurate information to enable informed assessment and debate, and this could have a bearing on the CTC's ability to obtain the necessary approvals and funding to carry out any works within the tennis precinct.

Can you please advise me of the action the Management Committee intends to take in relation to the legal advice from Liscia Legal dated 25 June 2015 as soon as possible.

Yours sincerely

George Bray

25 June 2015

**Contacts:**

Phone

E mail



ANNA LISCIA

25 June 2015

By Email:

Mr George Bray

Dear Mr Bray

### **GOVERNANCE ISSUES – COTTESLOE TENNIS CLUB**

You have asked me to review and provide advice as to whether the Cottesloe Tennis Club (**CTC**) has complied with its legal obligations in relation to the Special General Meeting (**SGM**) schedule to be held on 28 June 2015.

For this purpose, I have reviewed the following documents:

1. Constitution of the CTC;
2. Notice of SGM for 12 November 2014;
3. Notice of SGM for 28 June 2015 (**Notice of Meeting**);
4. Draft Minutes of Meeting of SGM held on 12 November 2014 at 7 pm;
5. Draft Minutes of Meeting of SGM held on 12 November 2014 at 8 pm;
6. Extracts from the Submission to the Department of Sports & Recreation (**DSR**);
7. Letter from the Town of Cottesloe dated 28 January 2015 confirming no funding has been committed to funding for the proposed expansion of the CTC facilities;
8. Email from the CTC Secretary to those members of the CTC who have nominated to receive information by email attaching the documents listed below (points 8 to 10) and referring to additional information to be displayed at the CTC premises;
9. CTC Courts Expansion Project Report dated 19 June 2015 sent by email to those members of the CTC who have nominated to receive information by email;
10. Court Expansion Project: Options for Development & Funding dated 6 May 2015 with diagrammatic representation;
11. Table showing estimated loan payments per member if a 15 year loan for \$420,000 were obtained by the CTC.

### **Summary of Conclusions**

12. The proposed resolution to borrow funds fails to comply with Clause 21(e) of the CTC Constitution requiring that any loan to be obtained by the CTC other than from the Local Governing Authority is to be secured by the personal guarantee of such CTC members willing to provide a guarantee.
13. The manner in which the two 2014 SGM were conducted is at best inappropriate and at worst a fraud on the members, by:

- a. attempting to hold 2 SGM on the same evening dealing with the same issues, but separating discussion of the various reports the subject of those meetings;
  - b. by holding two SGM, the effect of the 8 pm meeting is to make the resolutions passed at the 7 pm meeting nugatory and of no effect;
  - c. failing to separately record the attendances for the 2 meetings, thereby failing to record who had left the 7 pm at its conclusion but prior to the commencement of the 8 pm meeting, raising quorum concerns.
14. The Notice of Meeting for 28 June 2015 fails to adequately identify the business of that meeting as it fails to identify in the proposed resolutions the authority to be provided to the Management Committee with sufficient clarity.
15. The various supporting documents contained in the email from the CTC to members by email relate to the proposed resolution in the Notice of Meeting and in fact are crucial to any understanding of the business to be conducted at the SGM, and as such, should have been provided with the Notice of Meeting. Failure to do so is a breach of the law rendering the any business to be conducted at the meeting null and void.

#### **Constitutional Requirements – Raising Loans**

There being no express power to borrow money in the CTC Constitution, the CTC must rely upon section 13(1)(d) of the Associations Incorporation Act 1987 (as amended) (**Act**) for this power.

However the CTC Constitution does fetter the power to borrow money set out in the Act by requiring members to guarantee any loan that is not obtained from the Local Governing Authority – see clause 21(e) of the CTC Constitution.

It is noted that the Notice of Meeting fails to identify which members are prepared to provide this guarantee, and therefore the membership is not able to satisfy itself that clause 21(e) has been complied with and importantly, is not able to satisfy itself that the guarantors are able to meet any liability that may arise from the guarantees.

To this extent the resolution to borrow funds is in breach of the CTC Constitution and invalid.

#### **2014 SGM**

Firstly it must be stated that calling two SGM on the same evening to deal with the same matter, namely future plans for the expansion of the CTC facilities is illogical and confusing.

The purpose of a notice of meeting is to inform the members of when and where the meeting is to be held, what matters are to be discussed and the resolutions proposed to be moved at the meeting.

Good corporate governance usually requires an agenda to be sent with the notice of meeting and if any reports or other information is to be relied upon, for such reports and information to be sent with the notice of meeting.

This ensures that members can consider the business to be conducted at the meeting and make an informed decision about firstly, whether or not to attend and secondly, form a preliminary opinion, subject to discussion at the meeting.

What is far from clear is how the two meetings were conducted. As there were in fact two back to back meetings, and I am advised by you that some members did not in fact

attend both meetings (especially those who attended the 7 pm meeting who thought due to the resolutions that had been passed there was no need to stay for the second meeting) it appears that the issue of a quorum is not clear and importantly, those who attended the 7 pm meeting were denied the opportunity of being part of the discussion held at the 8 pm meeting.

Whilst it may be the case that the Management Committee thought this approach was fair and reasonable, in fact, it was not. It was unreasonable for the Management Committee to fail to put forward its assessment of the Bray Alternative Plan to the 7 pm SGM, moving if necessary, an amendment to the proposed resolutions, or better still, when issuing the notice of the 2014 SGM, including an alternative motion similar to that passed at the 8 pm SGM. The separation of the two competing reports the subject of the SGM was unfair to the membership who were being asked to deal with the matter at two separate meetings, albeit back to back meetings.

It is difficult to understand how the two sets of resolutions (i.e. 7 pm & 8 pm SGM resolutions) could have been passed on the same evening as they are completely at odds. That could only have occurred if the members present at the 7 pm meeting were not provided the same information as those present at the 8 pm meeting.

In effect, whilst not so worded, the resolution passed at the 8 pm SGM had the effect of rendering the motion passed at the 7 pm SGM ineffective and being the equivalent to a rescission motion, without compliance with the CTC Constitutional requirements for rescission motions and without giving the members the opportunity to consider the effect of the 8 pm resolution on the 7 pm resolutions.

### **2015 Notice of SGM**

It is poor governance not to include with the Notice of Meeting the agenda and any relevant supporting information, including that included with the 20 June email from the CTC and that displayed at the CTC premises (apart from any models if there are any).

Given the history of the matter, the clearly divergent views of the CTC members and the fact the CTC is proposing to borrow significant funds in addition to utilising significant reserves, one would have expected all pertinent information to be sent with and referred to in the Notice of Meeting so that members could properly consider whether to attend the meeting and consider the issues proposed to be discussed in advance of the 28 June SGM.

It is noted that the Notice of Meeting does summarise the full Court Expansion Project which was the subject of the 2014 SGM.

Whilst the failure to provide all relevant information with the Notice of Meeting is not technically a breach of the CTC Constitution or the common law, it is poor governance and fails to display the degree of transparency and accountability expected in this day and age of associations such as the CTC.

More importantly, the proposed resolutions in the Notice of Meeting are so vague as to be meaningless, and if passed in their current form, will be void for uncertainty.

The reference to the "*Court Expansion Project on the basis of the reduced scope*" has no context in the Notice of Meeting, which document governs what business can be transacted at the meeting.

That Court Expansion Project Report, which was supplied after the Notice of Meeting, at page 2 refers to the Management Committee seeking approval from the member to negotiate a 15 year loan of up to \$420,000 at a fixed rate of interest not exceeding 4.5% and to draw down part of the CTC's existing reserves to progress Options 3 & 3a of the Court Expansion Project, as set out in the CEP report.



It is noted there is no reference to or identification of the guarantees required by the CTC Constitution.

The proposal set out in the Court Expansion Project Report is different to the resolution proposed in the Notice of Meeting, raising questions about the validity of the Notice of Meeting and as a consequence any resolutions that may be passed at the 28 June 2015 SGM.

Further, there are issues about whether the provision of the additional information by email to members is valid, given that the CTC Constitution provides that notices of general meetings (including SGM) must be given personally or by post. There is no power to allow for the provision of a notice of meeting (and by implication any material to be considered with that notice of meeting) by email. As a result, the proposed resolutions are thrown into greater doubt because the members will not have received in accordance with the CTC Constitution, the supporting materials to be read with the Notice of Meeting if it is to have any chance of being valid.

Based on the above concerns, it is my view that the Notice of Meeting is invalid as being vague and uncertain in failing to state the business to be attend to at the SGM with sufficient clarity, which defect cannot be cured by the provision of further information via the email dated 20 June 2015 or the display at the CTC premises.

I understand that you intend to present this letter to the CTC membership and stakeholders and authorise you to do so.

Yours sincerely

Anna Liscia

**LISCIA LEGAL**

M:

E:

Att. 8.

This note was tabled by Penny Oldfield.

The President

Cottesloe Tennis Club

Napier St

Cottesloe

Dear Sir

Removal of lights from courts on Bryan Way

The residents from the South Side of Geraldine St, backing onto Bryan Way would like it to be noted by the Cottesloe Tennis Club members that never at any stage have any of us been approached by the Club in regard to any issues that may have concerned us about the lighting and noise of play from the courts behind us, and that none of us have ever objected to the lights on these courts or indeed the sound of people enjoying a game of tennis and would be deeply disappointed if they were removed. The lights indeed provide us with a sense of security in what is a dark and potentially dangerous area. We ask that the club reconsider their desire to remove those lights.

P Prindiville

P and J Ibbs

Monty

K Liggins

G Davies

June 26<sup>th</sup> 2015

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13/11/  
2014

Brian Embleton

to me

Hi, In haste – having a new power board installed.

See my corrections below. Regards, Brian

**From:** Pen Oldfield  
**Sent:** Wednesday, 12 November 2014 4:55 PM  
**To:**  
**Subject:** CBTC hard courts.

Dear Brian,

Thank you very much for your time to explain the City Beach Tennis Club lighting situation.

To ensure I have understood accurately, please can you confirm the following, (if I have anything incorrect please feel free to correct it.)

CBTC currently has 4 synthetic courts with lights available until 10pm Monday to Thursday and no lights Friday, Sat or Sunday. CORRECT

CBTC is taking over an additional 4 Council hard courts. These courts have previously been owned & run by the Council for 20 to 30 yrs. Over that period, CBTC has contributed to their maintenance in return for access during "Club time".

CBTC has re-installed the lights on the 4 Council hard courts & has gained permission from the Council to use lights on these 4 Council courts for 7 days per week until 10pm

All work done on the 4 synthetic courts and the 4 Council courts has been done with the support & approval of the Town of Cambridge & The Dept of Sport & Recreation.

Many thanks Brian.

Kind Regards  
Penny Oldfield

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**Cottesloe Tennis Club, Inc.**  
**Draft Minutes of Special General Meeting**  
held on 28 June 2015 at 4pm at CTC

**Agenda**

The SGM was called to discuss the Courts Expansion Project and seek approval for a loan from the Council for its implementation. Agenda is held as Att. 1.

The Motions before the meeting (as in the Notice of Meeting and also as shown on screen) were as follows:

- (a) *to proceed with the Courts Expansion Project on the basis of reduced scope.*
- (b) *to procure a loan of not greater than \$420,000 for a period of up to 15 years at a fixed interest rate of not greater than 4.5% p.a.*
- (c) *subject to approval of (a) and (b), to finalise amendment of the Club's lease to include the additional land offered by the Town of Cottesloe for the purpose of implementing the long term courts expansion plan.*

**1. Attendance and Apologies**

Matt Macfarlane, Chairman, opened the meeting at 4:00pm. Apologies were received from 15 members (Att.2). 113 voting members were in attendance, which satisfied the requirements for a quorum of 25 members.

**2. Chairman's welcome and opening remarks**

Matt noted there were divergent views within the Club regarding the project under consideration. At this point George Bray said he had obtained legal advice that the SGM was invalid. He then tabled his letter and his legal advice dated 25 June 2015 (Att.3).

**3. Purpose of the SGM and Courts Expansion Project overview**

Phil Barron, Vice President, outlined the purpose of the SGM and overviewed how the Management Committee's ("MC") recommended plan had been developed and the status of the Project using a series of projected slides.

Phil noted that a big volunteer effort had gone into analysis and costing of seven reduced-scope development options, following the 30 March 2015 advice that the Club's 2014 application for a grant from the Dept of Sport and Recreation had been rejected.

Phil noted that members who disagreed with the MC's recommended plan had also put a lot of time into analysing and promoting other options.

The Courts Project Committee, which costed and analysed the seven main reduced-scope options, produced a report dated 6 May 2015 which recommended that Option 2 be pursued. This Option could also be achieved by pursuing Options 3 and 3A – with the latter (3A) intended to be the subject of a further application for a grant from the Dept of Sport and Recreation in a different category to the earlier grant application.

Phil noted that the MC had endorsed the report of the Courts Project Committee and recommended that Option 2 be pursued by breaking the project into two separate components defined as Options 3 and 3A.

Phil advised that the MC, subject to the outcome of the SGM, would resume discussion with Tennis Australia, Town of Cottesloe and Department of Sport and Recreation regarding grants towards the Project.

#### **4. State of Club finances and serviceability of loan**

Liz Peterson, Treasurer, demonstrated that the Club's finances were very healthy and the project was within the Club's capability – even without grants.

A worst case cash-flow showing a substantial cash balance over each of the coming three years was presented. This was the 3 year cash flow result reported by the MC in their report to members supporting the SGM. This worst-case included the following assumptions:

- no grants available
- allowance for relocating the curator's shed and the coach's office
- allowance for major maintenance items such as renewing court surfaces, electrical conduits to existing hard courts, light meters etc
- whole project completed in first financial year
- higher cost estimate than in the report of the Courts Project Committee.

Liz then presented the results of various sensitivity analyses involving a decline in membership of 10% and an increase in contingency – effectively a cost over-run. In one sensitivity case, as well as a 10% membership decline, a contingency increase from the current 5% to 25% and no grants, the cash position of the Club remained positive but a bit less than preferred working capital.

Liz observed that the current low interest rate environment is helpful. Also, following the collapse of the mining boom, the engineering sector more competitive and contracting rates are stable. Investing the Club's reserves at 3% is not very productive when it could be invested in new courts that could also be income-producing for the Club.

#### **5. Description of recommended option**

John Gillett, Acting Director House and Grounds, explained in detail how the project would be implemented and why the recommended option was preferable. Key points made during this presentation were:

- The complete project could be done very efficiently and with minimal disruption to court access.
- If Option 5 was implemented in a first stage and then the remainder of the plan at a later date, the overall cost would increase substantially.

#### **6. Questions and clarifications**

Moira Dobson referred to the urgent need for extra courts for the night pennant teams.

Judith Lauri suggested that under Option 5 the lights could be left on courts 21 & 22 – and this could be referred to as Option 5A.

Clair Medhurst asked what consideration had been given to synthetic surfaces on Bay 4 as they could be available on Mondays and also when the other grass courts are rain-affected.

Derek Walker suggested two hard courts and two synthetic grass courts and leaving the lights on courts 21 & 22 would yield 10 lit all-weather courts.

Mike Green asked why the “affordability case” had not been made available to members much earlier.

David Culley, Club Coach, spoke in support of the need for 10 hard courts. Dinah Terry said there was a need for both hard and grass courts. Some juniors were stood out of teams because of lack of courts. Night league is attracting younger seniors to the club and is the Club’s growth market for new members. Dinah noted that the MC is avoiding an investment risk by not building lit courts on Bay 4 adjacent to neighbours. A neighbour could force the imposition of a curfew which would conflict with the completion of night league matches.

In response to Dinah’s comments, Penny Oldfield tabled a document written by a neighbour requesting retention of lights on courts 21 & 22 for security reasons (Att.4).

Rick Cullen questioned the need for the wind-break across the centre of the lengthened Bay 4.

Another member suggested it would make everyone happy if Option 5 was chosen as a compromise and then carry out the rest of the project at a later date. The Chairman commented that selecting Option 5 does not prevent later completion of the full plan.

George expressed concern regarding long-term water supply security with additional grass courts. David Chadwick, President, commented that the quality and quantity of water available from the Club’s well had not declined since the well was sunk 80 years ago.

Phil noted that there were “lots” of comments from the floor from members supporting a more conservative approach.

## **7. Motions put – discussions for and against**

The Chairman noted that the time allotted for clarifications of the presentations had expired and it was now time to consider the Motions before the meeting.

Allan Wall said there needed to be an outcome “one way or another”. He was concerned that if a vote on Motion (a) was rejected the meeting needed to be able to consider Option 5 in place of Option 2.

George said that the Chair could not proceed because of “legal obligations”. The Chairman responded that minor amendments are acceptable at a General Meeting, though substantial material changes are not. He said that the meeting can make a decision – and he noted that it was the biggest turn-out for a SGM he had seen.

Jane Ward commented that many members were happy with the recommended option and they had not been heard.

Frank Woodmore claimed that there was no clarity regarding what the members want.

Murray Freiberg noted that some members had already cast a vote on item (b) by placing their ballot paper in the container. The Chairman immediately ruled that such votes were invalid as members have to be present to vote.

The Chairman said he would call for a show-of-hands in relation to Motion (a) by asking those supporting Option 2 to first raise their hands, followed by those supporting Option 5. This would determine the outcome of Motion (a) and the meeting could then move on to the more substantive Motion (b).

George challenged the Chairman's approach saying "You are playing a game". The Chairman responded that he was proceeding down the path he had proposed and said "You can challenge later – the Constitution says you have to be present."

Penny sought clarification before this took place. The Chairman said the show-of-hands would clarify Motion (a). George asked "Are we trying to define option (a)?" The Chairman responded that the Option most likely to "get through" will be "put".

A show-of-hands was then called for – first for Options 3 and 3A. The Chairman counted 62 hands in support of Option 3+3A and 27 in support of Option 5 out of the counted 92 people present at that point. He declared that the MC's recommended option had the support of the majority.

## **8. Ballot regarding loan approval**

Allan and Kevin Chatfield both wanted the 2<sup>nd</sup> option to be considered if the 1<sup>st</sup> failed.

After some further discussion, that repeated statements made earlier in the meeting, Ralph Straton moved that Motion (b) be put.

The ballot was then taken and the Chairman totalled the slips that were returned to him. He announced that the vote was 79 in favour of Motion (b) and 21 against. He therefore declared Motion (b) as passed.

Motion (c) was not put to the meeting which immediately began to break up following the announcement of the result.

The Special General Meeting closed at around 6:20pm and the bar was then opened.

## **9. Attachments**

1. Agenda
2. Apologies
3. George Bray's letter and Liscia Legal's advice of 25/6/15
4. Statement by Pauline Ibbs.

Signed:

Matt Macfarlane, Chairman

Signed:

.....  
David Chadwick, President, on behalf of  
Management Committee

Mr C Mc Sweeny

Secretary Cottesloe Tennis Club

I hereby give notice that I intend to challenge the accuracy of the draft minutes circulated on 4 August 2015 at 7:15 am by the email shown below, as not being a true and accurate record of what took place at the Special General Meeting of the Cottesloe Tennis Club held at the club house on the 28 June 2015 at 4:00 pm.

There is no evidence in these draft minutes of any formal motions being moved or seconded and then being put to a formal vote.

In fact the only motion that was moved and seconded **and put to a formal vote** was, and I quote *"The Management Committee is authorised (b )to procure a loan of not greater than \$420,000.00 for a period of up to 15 years at a fixed interest rate of not greater than 4.50 %."*

There wasn't a formal motion put to the vote at the SGM in relation to giving the Management Committee any authority to implement its recommendation *" to proceed with the Courts Expansion Project on the basis of reduced scope."*

For this to have happened there would have to have been a motion moved and seconded with members present being given the opportunity to speak for and against the motion followed by a vote.

This did not occur and there is no evidence in the minutes that this formal process took place.

Therefore the Management Committee does not have any authority *"to proceed with the Court Expansion Project on the basis of reduced scope."*

There are other serious errors in attachments to the draft minutes such as the inclusion of correspondence, other than letters of apology, that were not tabled at the meeting or considered by the meeting.

There wasn't any item for correspondence listed on the agenda for the Special General Meeting and **the items relating to the provision of information to members should be deleted from the record of the meeting** as under the club's Constitution the matters referred to did not form part of the business of the meeting.

These items referred to the provision of information that is required to be freely provided to members under the Associations Incorporation Act 1987 or the Constitution of the Cottesloe Tennis Club.



This brings into serious question how the minutes of the SGM have been drafted and signed off by both the President and the Chairman of the meeting.

There is also a failure to provide a reader of the minutes with an understanding of what took place at the meeting in respect to the Court Expansion options that were considered by the Management Committee as **there is no reference what so ever in the minutes describing/detailing what all of the options (presumably at least seven) were that were considered by the Management Committee as required by the resolution carried at the second SGM held on 12 November 2014, and how each one was dealt with by the meeting.**

Or in other words it isn't possible for a reader to understand what took place at the meeting without knowing what each specific option entailed and the way in which it was dealt with by the SGM.

**The Minutes of the SGM held on 28 June 2015, and referred to in the email below are draft minutes only** until they are approved by members at a meeting of members in accordance with the provisions of the Constitution of the Cottesloe Tennis Club.

I would also refer to the failure to formally approve the draft minutes of the two Special General Meetings held on 12 November 2014 at the Special General meeting held on 28 June 2015

I received an email from the Secretary of the Cottesloe Tennis Club on Thursday 11 December 2014 at 9:23 pm in which she advised me as follows in relation to the minutes for the two SGM's held on 12 November 2014.

*"Re Draft of SGM minutes*

*Hi George*

*Both sets of meeting minutes are draft until they are approved by members at a Members meeting. I sent them to you just in case you wanted to suggest any revisions to the draft. If you don't have any suggestions, both sets of minutes will be posted as 'draft' on the bulletin board in the clubhouse on Saturday, and will be formally approved by Members at the next opportunity.*

*Amy"*

I also consider there to be a serious legal concern in relation to the validity of the notice of the meeting which I set out in my letter to you dated 25 June 2015, along with the Liscia Legal legal opinion, which in turn would mean that any motions carried at the Special General Meeting held on 28 June 2015 would also be invalid.

No discussion took place on this matter at the meeting following my tabling of my letter to you and the Liscia Legal opinion dated 25 June 2015 and no attempt was made at the meeting to question or oppose the views outlined in that independent legal advice.

The recording in the draft minutes of questions and answers to questions raised at the SGM is also inaccurate and does not provide any reader of the minutes with an accurate understanding of what took place at the meeting and a clear understanding of all of the questions raised and the responses provided to the meeting.

In particular I would question the failure to record in the minutes the answer by the President of the club in relation to the question I raised as to why there were no options to construct lit courts on Bryan Way.

The President told the meeting that members were invited to submit proposals but none were received

I raised a point of order and referred to a letter I sent to the Management Committee in early May and a letter Mr Derek Walker sent at the same time proposing lit courts on Bryan Way.

I would also require a correction in respect to the wording in relation to my comment on water security. What I said was that the club's Pump Consultant has advised Dr Oldfield that the water table has dropped half a metre and the recently installed pump cannot be placed any lower as it is only between a half and one metre above saline water.

Dr Oldfield tabled and read out the letter from Mrs Pauline Ibbs dated 26 June 2015 ( included as an attachment to the minutes) which stated that the residents at 1,3,5,7 and 9 Geraldine Street (which back onto Bryan Way) strongly support the retention of the lit hard courts on Bryan Way. The residents have no problems with the lights or noise associated with night tennis.

The Associations Incorporation Act 1987 places a clear responsibility on all office bearers in the club to act in good faith in carrying out their duties and it is important that proper processes and procedures be followed at all times.

This includes strict compliance with the club's Constitution which, as referred to in the Liscia Legal, legal opinion, is not being met to the extent it should.

I would also make a general comment that any application for State and Local Government funding has to be based on factual evidence and as such is subject to close scrutiny regarding its accuracy and compliance with the relevant State laws.

**In summary, the only motion that was formally moved and put to the vote was "(b) to procure a loan of not greater than \$420,000.00 for a period of up to 15 years at a fixed interest rate of not greater than 4.5%" and that as a result the Management Committee has not been given any approval by the SGM held on 28 June 2015 to proceed with the Courts Expansion Project.**

**In addition the Management Committee has no power to act on the draft minutes until they have been confirmed as a true and accurate record of what took place at the Special General Meeting held at the club house on 28 June 2015 at 4:00 pm.**

The minutes which were sent to members on Tuesday 4 August 2015 at 7:41 am remain as unconfirmed or draft minutes until they are accepted and formally approved by members at a General Meeting of Members and having been signed off as such can only be amended at a General Meeting of Members .

George Bray

**Sent:** Tuesday, 4 August 2015 7:41 AM

**To:** News From CTC

**Subject:** Fwd: Minutes of SGM of CTC approving loan for courts expansion project - 28 June 2015

Hello to all CTC Members

Attached for your information

are the minutes from the Special General Meeting of the CTC

held at the clubhouse from 4:30pm on 28 June 2015.

Secretary

Cottesloe Tennis Club

## Cottesloe Tennis Club (Inc.)

PO BOX 12 • COTTESLOE • WA • 6911 TELEPHONE (08) 9385 2789  
www.cottesloetennis.com.au • enquiries@cottesloetennis.com.au



27 July 2015

Mr George Bray  
E mail

Dear George

The Management Committee of the Cottesloe Tennis Club confirms receipt of your letter and accompanying legal advice dated 25th June, 2015, in which you proposed an immediate postponement of the Special General Meeting scheduled for 28th June 2015.

It is unfortunate that the legal advice was distributed to Club Members on the morning of 26th June 2015, before the Management Committee itself had time to take its own advice.

However, as you will be aware from the Management Committee's subsequent notice to Members, the advice it received resulted in a determination to proceed with the Special General Meeting on 28th June 2015.

The Management Committee acknowledges your efforts to investigate and propose alternative court development options. The differing views and interests is a healthy situation, with Club Members having ample opportunity over the last two years to hear and question the various alternatives, both formally and informally.

The Management Committee considers that the nearly 80% endorsement delivered at the SGM on 28th June 2015 is confirmation that sufficient alignment has been achieved within the Club to empower the Management Committee to act in accordance with the recommended development plan.

Courts expansion was always a matter to be decided by Club Members and we trust that the will of the great majority of Members will be respected, allowing us all to focus on the enjoyment and play of tennis.

Yours faithfully

Chris McSweeney  
Club Secretary

**Elizabeth Nicholls**

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**From:** George and Sylvia  
**Sent:** Monday, 22 February 2016 9:42 AM  
**Subject:** Submission on self-supporting loan to Cottesloe Tennis Club

This email is the third of four email attachments to a letter to the Acting CEO of the Town of Cottesloe dated 19 February 2016 which I hand delivered to the Administration Centre in Broome Street this morning at 9:24 am and has to be read and filed with the letter.  
Please call me on 93858920 if you have any queries

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**From:** Mat Humfrey [mailto:CEO@cottesloe.wa.gov.au]  
**Sent:** Friday, 7 August 2015 1:59 PM  
**To:** George and Sylvia  
**Subject:** RE: Cottesloe Tennis Club Court Expansion proposals

Mr Bray,

I am aware (informally) of what the Tennis Club are planning and I would expect a formal application will be presented to either the August or September meeting of Council, for Council's consideration. A thorough report on such an application would be made and supplied to Councillors for them to consider, as per normal Council processes. A part of such a report would look at whether or not the club were properly authorised by the members to undertake such a project and also a thorough analysis of the project (as applied for), which would include a number of the concerns you've raised.

With regards to the information supplied to the Tennis Club, the Club were supplied with a loan schedule so that the Club could consider its own position. It in no way constitutes any form of approval.

The Town previously considered an application for CSRFF funding (2013 and 2014) and provided its endorsement for these applications. At the time, Council was asked for a contribution of \$90,000 in the event the application was successful. As the application was not successful, the grant request went no further.

The Town's only involvement in this process will be to consider an application on the merits of that application. The Town does not involve itself in the internal politics of any local sporting club or association. As your correspondence seems to suggest you do not support the project, I would respectfully suggest that your comments and concerns should be addressed by the club in the first instance.

Kind regards  
Mat Humfrey

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**From:** George and Sylvia  
**Sent:** Friday, 7 August 2015 12:23 PM  
**To:** Mat Humfrey  
**Subject:** RE: Cottesloe Tennis Club Court Expansion proposals

Dear Mt Humfrey

Thank you for your response to my email below.

The concerns I expressed in my email relate to a number of issues and not just the provision of a loan.

I do not agree with your position in relation to "not being in a position to make an assessment of the project" as it was considered by the Council in November 2013 and September 2014.

It is also clear from the Minutes of the Management Committee of the Tennis Club held on 18 May 2015 that you have supplied information to the Management Committee regarding the provision of loans and discussed a Council grant of up to \$90,000.00 to the club for the project.

It is reasonable to assume you could not have done this without having a detailed understanding of what was being proposed by the club .

There are also reports of discussions with other Council staff in relation to the interface between the John Black Dune Park and the land that is proposed to be added to the club's existing lease.

**The responsibility to address the issues I have raised clearly rests with the Council and is not in any way contingent on the tennis club submitting any applications for the Council to assess.**

There is no question in my mind that the Council is not in a position to undertake a comprehensive review of the issues I have raised without first receiving a formal application from the club.

**I again request that the matters I have listed in the email below be submitted to the next meetings of the relevant Council Committees for their consideration.**

It is for the Council to decide what action should be taken in relation to my email below and I would appreciate confirmation of what action you now intend to take.

George Bray

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**From:** Mat Humfrey [<mailto:CEO@cottesloe.wa.gov.au>]  
**Sent:** Friday, 7 August 2015 11:07 AM  
**To:** George and Sylvia  
**Subject:** RE: Cottesloe Tennis Club Court Expansion proposals

Mr Bray,

Please find attached a copy of the letter that was sent on 8 July 2015 in response to your letter. It would appear that in drafting the letter, there was an error made in the address line.

As stated, the Town has not yet received a formal application from the Tennis Club for a loan, the matter has only been discussed in a hypothetical way. In order for the Town to provide a loan, it would need to be approved by the Council, following a formal application from the club. In considering the application, the Town would need to verify that such a loan was appropriately approved within the Club's governance structure and that the project was in accordance with Council's policies.

Until we receive a formal application, we're not in a position to make an assessment of the project.

Kind regards  
Mat Humfrey

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**From:** George and Sylvia  
**Sent:** Friday, 7 August 2015 10:16 AM  
**To:** Mat Humfrey  
**Subject:** FW: Cottesloe Tennis Club Court Expansion proposals

Mr Matt Humfry  
Chief Executive Officer

Town of Cottesloe  
100 Broome Street  
Cottesloe WA 6911

#### Re Cottesloe Tennis Club Expansion Proposals

I refer to my letter to you dated 1 July 2015 concerning the Cottesloe Tennis Club Expansion Proposals which I hand delivered to your office on the same day.

I have not received a response or acknowledgement of this letter but assume from the Minutes of the Management Committee meeting held on 18 May 2015, and subsequent correspondence to me from the Management Committee of the tennis club, that negotiations in respect to a Council grant of up to \$90,000.00 and a self – supporting loan from the Council for the project are continuing.

I provided you with an account of what took place at a Special General Meeting of the tennis club which was held on 28 June 2015 in my letter to you which is referred to above, and on Tuesday 4 August I received the attached minutes from the Secretary of the tennis club

I have attached my response, dated 6 August 2015, to the Secretary's draft minutes referred to above that were received on 4 August 2015, in which I have clearly stated that the Management Committee was not given authority by the Special General Meeting held on 28 June 2015 to proceed with the Court Expansion Project despite the fact that the Management Committee claim that it has been given this authority.

In my view the draft minutes of the SGM held on 28 June 2015 are not an accurate and correct record of what took place at the meeting and as a consequence do not meet the requirements that have to be met and/or be complied with to satisfy the conditions for approving a self-supporting loan under the Council's policy on Self-Supporting loans.

When you take into consideration

- the negative environmental and visual impacts the current proposal will have on the Civic Centre Precinct,
- the unnecessary added stress on the diminishing groundwater resources which will adversely affect the iconic Norfolk Island Pines, ( the groundwater level has dropped half a metre)
- the fact that the tennis club can meet its existing hard court demand without taking any land from the John Blake Dune Park as it can locate two additional hard courts within its existing lease area and can pay for the two hard courts it requires from the cash it has in the bank
- the intended destruction of two recently renovated lit hard courts (at a cost of \$116,000.00) and three excellent grass courts only to end up with a much less functional court layout that will cost twice as much as needs to be spent to meet all of the tennis club's present and future needs.
- the fact that five of the residents (all but one) adjoining Bryan Way that are affected by the existing lit hard courts have written to the tennis club in support of the courts remaining as they are and stating the benefit they provide to the residents.
- the fact that the Council is likely to face a cap on its rates, which in turn will, if implemented, severely limit the Council's ability to provide any financial support to community groups in the future and impose constraints on its maintenance budgets and other ongoing commitments.
- the fact that fees to pay tennis at the club will have to rise unnecessarily and therefore become less affordable to many local people who we should be encouraging to take up the sport.

- the risk associated in the Council having to guarantee the loan funds and providing a grant of up to \$90,000.00 towards the project when there isn't any justification for the Council having to contribute any funds at all.

the Council would have a strong argument to undertake a comprehensive review of all the options open to it in regard to the use of this scarce Crown land to ensure the long term environmental and economic sustainability of the Civic Centre Precinct and the tennis club.

This land is intended to be used for the benefit of the whole community and is not provided for the exclusive use of any one user.

The Council has a policy on climate change which is designed to negate the effects of climate change. We already know that climate change is impacting on the pine trees (see attachment, Post 25 Oct 2014) and other sporting grounds in Cottesloe such as the Seaview Golf Course.

Adding extra grass tennis courts when the 23 grass courts the club has now is more than it needs and as tennis moves to being played on hard courts at night under lights the demand for grass courts will continue to contract.

The question needs to be asked as to how can more ground water be taken to maintain the extra grass courts all year around and not deplete the ground water available to the pine trees and other ground water users. Obviously a drying climate and less rainfall will result in the water table continuing to drop, which in turn will adversely affect the pine trees and result in more ground water bores drying up and further restrictions being placed on the use of ground water.

As I stated in my letter to you on 1 July 2015 the submissions from the Management Committee to the Council contain a number of false and misleading statements which have a significant bearing on assessing the viability and credibility of the current proposal and warrant a complete review by the Council before any decisions are taken in regard to any form of development approval and financial assistance.

At present the only proposal the Management Committee of the tennis club can put before the Council is a request for a self-supporting loan, unsecured by the tennis club, for an unspecified amount and for an unspecified purpose.

This in my view is not the best way to achieve an outcome that will benefit the Cottesloe community, the Council and the Cottesloe Tennis Club.

I would therefore request that my letter to you dated 1 July 2015 and this letter be submitted to the next meeting of the Works and Corporate Services Committee and/or the Development Committee with a request that Council undertake a complete review of the development and funding options for the future expansion of the Cottesloe Tennis Complex within the Cottesloe Civic Precinct before considering any applications by the tennis club for financial support, extension to the area leased to the tennis club or for any development approval.

Yours sincerely

George Bray



**Elizabeth Nicholls**

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**From:** George and Sylvia  
**Sent:** Monday, 22 February 2016 9:43 AM  
**Subject:** Submission on self-supporting loan to Cottesloe Tennis Club  
**Attachments:** 150625\_Ltr\_G Bray\_CTC\_Final.pdf; Court Lights. 1,3,5,7,9, Geraldine St. 26.6.2015.docx

This email is the fourth of four email attachments to a letter to the Acting CEO of the Town of Cottesloe dated 19 February 2016 I hand delivered to the Administration Centre in Broome Street this morning at 9:24 am and has to be read and filed with the letter. Please contact me on 9385 8920 if you have any queries.

George Bray

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**From:** George and Sylvia  
**Sent:** Sunday, 6 December 2015 8:34 PM  
**To:** 'Cr.pyvis@cottesloe.wa.gov.au' <Cr.pyvis@cottesloe.wa.gov.au>  
**Cc:** 'Cr.boulter@cottesloe.wa.gov.au' <Cr.boulter@cottesloe.wa.gov.au>; 'Cr.thomas@cottesloe.wa.gov.au' <Cr.thomas@cottesloe.wa.gov.au>; 'Cr.birnbauer@cottesloe.wa.gov.au' <Cr.birnbauer@cottesloe.wa.gov.au>  
**Subject:** FW: Item 10.2.1 Works and Services Committee Agenda 8 December 2015

Dear Councillor Pyvis

I appreciated your comments in the Post newspaper on 26 September 2015 where you stated that Councillors needed to be *independent, analytical thinkers who challenge what's presented to them in the decision-making process.*

Regarding Item 10.1.2 on the Works and Corporate Services Committee agenda for the meeting to be held on 8 December 2015, which relates to the Cottesloe Tennis Club's request for a Self-Supporting loan, Council Grant and extension to lease area, I would appreciate your consideration of the following points:

- I would bring to your attention the fact that the tennis club can meet all of its present court needs and cater for future growth in a more functional and environmentally and financially sustainable way without the need to borrow any money from the Council or obtain an \$80,000.00 grant from the Council as the club has around \$400,000.00 in the bank. Additionally this can be achieved by reducing the proposed extension to the lease area by half in compliance with Council's resolution of 4 November 2013 where it *reaffirmed its commitment to maintain as much of John Black Dune Park as possible as a reserve for community use.*
- *There are serious deficiencies in both the letter to the Council from the Tennis Club and the report from Council officers to the Committee meeting to be held on 8 December 2015.* I wrote to the CEO, Mr Humphrey, on 1 July 2015 and when I did not receive a reply I wrote again on the 7 August 2015 setting out my concerns with the way the court expansion project was being handled. It is clear in this correspondence which I will send to you separately, that the tennis club application for a Self-Supporting loan does not comply with the Council's policy on Self-Supporting loans in a number of ways with the initial one being the requirement for the meeting authorising the Club to seek the loan from the Council being "legally constituted".
- You will see from the attached independent legal opinion from Liscia Legal dated 25 June 2015 (150625) that the notice for the Special General Meeting was invalid and despite my efforts to have the meeting cancelled it went ahead anyway. In my view this information, which was sent to the CEO on 1 July 2015, should have been addressed in the Officers report to the Committee as Section 5.41 of the Local Government Act requires the CEO to *ensure that advice and information is available to the Council so that informed decisions can be made.*

- It is the Council's responsibility as the representative of the "Owner" to determine what development takes place on the Crown Land in question as the tennis club is a tenant and not a land owner. So it is the Councillors' responsibility to determine if the requirements of the policy on Self-Supporting loans has been complied with.
- There are a number of false and misleading statements in the letter from the club to the Committee as there has been in previous submissions by the club for CSRFF funding. These errors have been addressed in my letters to the CEO on 1 July and 7 August 2015.
- I would also draw your attention to the concerns of residents backing on to Bryan Way who want the excellent lit hardcourts that were refurbished three years ago at a cost of \$116,000.00 retained. Again Council has had the attached letter dated 26 June 2015 from residents in Geraldine Street since 1 July 2015 which completely contradicts the reason given by the club to dig these courts up and yet there is no mention of the affected residents views in the Officer's report to the Committee. I understand that these residents were never consulted on the proposal to dig the hard courts up and replace them with six grass courts when the club already has twenty three grass courts which is more than enough to meet its present and future needs.
- The draft minutes of the Special General Meeting held on 28 June 2015 which form part of the tennis club's letter to the Council in support of the application for the loan and a grant are completely at odds with what took place at that Special General Meeting. In addition you will note that there is no reference what so ever to any motions being moved or seconded yet the Chairman appeared to be able to put a motion to a vote. As you would appreciate it is not possible to put a motion to a vote without having a motion to be spoken for and against and to then be put to a vote. Nor is it possible for the Management Committee to finalise the lease area with the Council as it did not obtain the necessary approval to do this at the Special General Meeting held on 28 June 2015

As you can see there are some serious issues associated with this proposal which should set alarm bells ringing and I would appreciate the opportunity to meet with you prior to the Committee meeting on Tuesday to discuss the issues in more detail with you if this is possible. In my view there is nothing in the tennis club's submission that would justify the Council committing around half a million dollars in the form of loans or grants and given the Liscia Legal legal opinion dated 25 June 2015, I would be advising Councillors to vote against the Officers recommendation and have the vote recorded in the minutes.

I can be contacted on 9385 8920 if you, or any of your fellow Councillors, would like to discuss any of the points I have raised above which only form part of the problems I see with this item.

Yours sincerely  
George Bray



ANNA LISCIA

25 June 2015

By Email:

Mr George Bray

Dear Mr Bray

### **GOVERNANCE ISSUES – COTTESLOE TENNIS CLUB**

You have asked me to review and provide advice as to whether the Cottesloe Tennis Club (**CTC**) has complied with its legal obligations in relation to the Special General Meeting (**SGM**) schedule to be held on 28 June 2015.

For this purpose, I have reviewed the following documents:

1. Constitution of the CTC;
2. Notice of SGM for 12 November 2014;
3. Notice of SGM for 28 June 2015 (**Notice of Meeting**);
4. Draft Minutes of Meeting of SGM held on 12 November 2014 at 7 pm;
5. Draft Minutes of Meeting of SGM held on 12 November 2014 at 8 pm;
6. Extracts from the Submission to the Department of Sports & Recreation (**DSR**);
7. Letter from the Town of Cottesloe dated 28 January 2015 confirming no funding has been committed to funding for the proposed expansion of the CTC facilities;
8. Email from the CTC Secretary to those members of the CTC who have nominated to receive information by email attaching the documents listed below (points 8 to 10) and referring to additional information to be displayed at the CTC premises;
9. CTC Courts Expansion Project Report dated 19 June 2015 sent by email to those members of the CTC who have nominated to receive information by email;
10. Court Expansion Project: Options for Development & Funding dated 6 May 2015 with diagrammatic representation;
11. Table showing estimated loan payments per member if a 15 year loan for \$420,000 were obtained by the CTC.

### **Summary of Conclusions**

12. The proposed resolution to borrow funds fails to comply with Clause 21(e) of the CTC Constitution requiring that any loan to be obtained by the CTC other than from the Local Governing Authority is to be secured by the personal guarantee of such CTC members willing to provide a guarantee.
13. The manner in which the two 2014 SGM were conducted is at best inappropriate and at worst a fraud on the members, by:

- a. attempting to hold 2 SGM on the same evening dealing with the same issues, but separating discussion of the various reports the subject of those meetings;
  - b. by holding two SGM, the effect of the 8 pm meeting is to make the resolutions passed at the 7 pm meeting nugatory and of no effect;
  - c. failing to separately record the attendances for the 2 meetings, thereby failing to record who had left the 7 pm at its conclusion but prior to the commencement of the 8 pm meeting, raising quorum concerns.
14. The Notice of Meeting for 28 June 2015 fails to adequately identify the business of that meeting as it fails to identify in the proposed resolutions the authority to be provided to the Management Committee with sufficient clarity.
15. The various supporting documents contained in the email from the CTC to members by email relate to the proposed resolution in the Notice of Meeting and in fact are crucial to any understanding of the business to be conducted at the SGM, and as such, should have been provided with the Notice of Meeting. Failure to do so is a breach of the law rendering the any business to be conducted at the meeting null and void.

### **Constitutional Requirements – Raising Loans**

There being no express power to borrow money in the CTC Constitution, the CTC must rely upon section 13(1)(d) of the Associations Incorporation Act 1987 (as amended) (Act) for this power.

However the CTC Constitution does fetter the power to borrow money set out in the Act by requiring members to guarantee any loan that is not obtained from the Local Governing Authority – see clause 21(e) of the CTC Constitution.

It is noted that the Notice of Meeting fails to identify which members are prepared to provide this guarantee, and therefore the membership is not able to satisfy itself that clause 21(e) has been complied with and importantly, is not able to satisfy itself that the guarantors are able to meet any liability that may arise from the guarantees.

To this extent the resolution to borrow funds is in breach of the CTC Constitution and invalid.

### **2014 SGM**

Firstly it must be stated that calling two SGM on the same evening to deal with the same matter, namely future plans for the expansion of the CTC facilities is illogical and confusing.

The purpose of a notice of meeting is to inform the members of when and where the meeting is to be held, what matters are to be discussed and the resolutions proposed to be moved at the meeting.

Good corporate governance usually requires an agenda to be sent with the notice of meeting and if any reports or other information is to be relied upon, for such reports and information to be sent with the notice of meeting.

This ensures that members can consider the business to be conducted at the meeting and make an informed decision about firstly, whether or not to attend and secondly, form a preliminary opinion, subject to discussion at the meeting.

What is far from clear is how the two meetings were conducted. As there were in fact two back to back meetings, and I am advised by you that some members did not in fact

attend both meetings (especially those who attended the 7 pm meeting who thought due to the resolutions that had been passed there was no need to stay for the second meeting) it appears that the issue of a quorum is not clear and importantly, those who attended the 7 pm meeting were denied the opportunity of being part of the discussion held at the 8 pm meeting.

Whilst it may be the case that the Management Committee thought this approach was fair and reasonable, in fact, it was not. It was unreasonable for the Management Committee to fail to put forward its assessment of the Bray Alternative Plan to the 7 pm SGM, moving if necessary, an amendment to the proposed resolutions, or better still, when issuing the notice of the 2014 SGM, including an alternative motion similar to that passed at the 8 pm SGM. The separation of the two competing reports the subject of the SGM was unfair to the membership who were being asked to deal with the matter at two separate meetings, albeit back to back meetings.

It is difficult to understand how the two sets of resolutions (i.e. 7 pm & 8 pm SGM resolutions) could have been passed on the same evening as they are completely at odds. That could only have occurred if the members present at the 7 pm meeting were not provided the same information as those present at the 8 pm meeting.

In effect, whilst not so worded, the resolution passed at the 8 pm SGM had the effect of rendering the motion passed at the 7 pm SGM ineffective and being the equivalent to a rescission motion, without compliance with the CTC Constitutional requirements for rescission motions and without giving the members the opportunity to consider the effect of the 8 pm resolution on the 7 pm resolutions.

### **2015 Notice of SGM**

It is poor governance not to include with the Notice of Meeting the agenda and any relevant supporting information, including that included with the 20 June email from the CTC and that displayed at the CTC premises (apart from any models if there are any).

Given the history of the matter, the clearly divergent views of the CTC members and the fact the CTC is proposing to borrow significant funds in addition to utilising significant reserves, one would have expected all pertinent information to be sent with and referred to in the Notice of Meeting so that members could properly consider whether to attend the meeting and consider the issues proposed to be discussed in advance of the 28 June SGM.

It is noted that the Notice of Meeting does summarise the full Court Expansion Project which was the subject of the 2014 SGM.

Whilst the failure to provide all relevant information with the Notice of Meeting is not technically a breach of the CTC Constitution or the common law, it is poor governance and fails to display the degree of transparency and accountability expected in this day and age of associations such as the CTC.

More importantly, the proposed resolutions in the Notice of Meeting are so vague as to be meaningless, and if passed in their current form, will be void for uncertainty.

The reference to the "*Court Expansion Project on the basis of the reduced scope*" has no context in the Notice of Meeting, which document governs what business can be transacted at the meeting.

That Court Expansion Project Report, which was supplied after the Notice of Meeting, at page 2 refers to the Management Committee seeking approval from the member to negotiate a 15 year loan of up to \$420,000 at a fixed rate of interest not exceeding 4.5% and to draw down part of the CTC's existing reserves to progress Options 3 & 3a of the Court Expansion Project, as set out in the CEP report.

It is noted there is no reference to or identification of the guarantees required by the CTC Constitution.

The proposal set out in the Court Expansion Project Report is different to the resolution proposed in the Notice of Meeting, raising questions about the validity of the Notice of Meeting and as a consequence any resolutions that may be passed at the 28 June 2015 SGM.

Further, there are issues about whether the provision of the additional information by email to members is valid, given that the CTC Constitution provides that notices of general meetings (including SGM) must be given personally or by post. There is no power to allow for the provision of a notice of meeting (and by implication any material to be considered with that notice of meeting) by email. As a result, the proposed resolutions are thrown into greater doubt because the members will not have received in accordance with the CTC Constitution, the supporting materials to be read with the Notice of Meeting if it is to have any chance of being valid.

Based on the above concerns, it is my view that the Notice of Meeting is invalid as being vague and uncertain in failing to state the business to be attend to at the SGM with sufficient clarity, which defect cannot be cured by the provision of further information via the email dated 20 June 2015 or the display at the CTC premises.

I understand that you intend to present this letter to the CTC membership and stakeholders and authorise you to do so.

Yours sincerely

Anna Liscia

**LISCIA LEGAL**

The President

Cottesloe Tennis Club

Napier St

Cottesloe

Dear Sir

Removal of lights from courts on Bryan Way

The residents from the South Side of Geraldine St, backing onto Bryan Way would like it to be noted by the Cottesloe Tennis Club members that never at any stage have any of us been approached by the Club in regard to any issues that may have concerned us about the lighting and noise of play from the courts behind us, and that none of us have ever objected to the lights on these courts or indeed the sound of people enjoying a game of tennis and would be deeply disappointed if they were removed. The lights indeed provide us with a sense of security in what is a dark and potentially dangerous area. We ask that the club reconsider their desire to remove those lights.

P Prindiville

P and J Ibbs

Monty

K Liggins

G Davies

June 26<sup>th</sup> 2015