

TOWN OF COTTESLOE



FULL COUNCIL MEETING MINUTES

**SPECIAL MEETING OF COUNCIL
HELD IN THE
WAR MEMORIAL TOWN HALL, COTTESLOE CIVIC CENTRE
109 BROOME STREET, COTTESLOE
7.00 PM, THURSDAY, 02 DECEMBER, 2004**

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DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS

The Mayor announced the meeting opened at 7.00pm.

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

Present

Mayor Robert Rowell (Chairperson)
Cr Daniel Cunningham
Cr Arthur Furlong
Cr Peter Jeanes
Cr Kevin Morgan
Cr William Robertson
Cr Anthony Sheppard
Cr Victor Strzina
Cr John Utting
Cr Jack Walsh
Cr Bryan Miller

Mr Stephen Tindale
Mr Simon Bain
Ms Georgina Cooper

Chief Executive Officer
A/Manager Development Services
Development Services Secretary

Apologies

Nil

Leave of Absence (previously approved)

Nil.

RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil.

PUBLIC QUESTION TIME

Mr John Davis (resident)

The proposal exceeds the 12m height limit which is what the residents of Cottesloe are object to. Why haven't Multiplex been asked to submit revised plans?

The Chief Executive Officer stated that Council has to consider the application before it, and look at all the issues including bulk, overshadowing, views and what makes good town planning sense rather than focussing on an arbitrary height limit.

The Mayor stated that Council is unable to stop developers buying land and submitting development applications. Council is obliged to consider all the applications.

Cr Kevin Morgan

Asked the Mayor to clarify his position on a statement attributed to him by the Post newspaper on 30 November 2004 where he indicated that if called upon to do so, he would exercise a casting vote in favour of maintaining the status quo.

The Mayor stated that he would support the status quo all things being equal.

Mr Michael Huston (resident)

At the recent Design Advisory Panel meeting, electors and the general public were excluded from attending. Who made the decision and why was it supported?

The Chief Executive Officer advised that he made the decision. The Design Advisory Panel is a small group of professional people appointed to advise Council on design issues and other matters relating to town planning. It is not a decision making body. The meeting was closed because Council wanted the unfettered advice of panel members free from political pressure that could be brought to bear by developers and electors alike.

APPLICATIONS FOR LEAVE OF ABSENCE

Nil.

CONFIRMATION OF MINUTES OF PREVIOUS MEETING

Nil.

ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

Mayor Rowell advised that the 60 day time limit on dealing with the application for the Cottesloe Beach Hotel will expire on 4 December 2004. Council is currently awaiting comments from the State Planning Commission and he has been told that the advice is imminent. Under the Heritage Act, Council is not allowed to make a decision until it has received the Heritage Council's comments. The Mayor stressed the need for Councillors to follow due process.

PUBLIC STATEMENT TIMEMr Ben McCarthy – (resident)

The people of Cottesloe have very clearly stated that they do not want any buildings over 12m. How many times do the people of Cottesloe have to comment on these issues before Council will listen?

Mr John Hammond – (Keep Cott Low)

Stated that he represents 404 members of the Keep Cott Low group and asks Councillors to do the honest thing. Requests Council to stop the charade of public meetings to express the same thing time and time again. Asks Councillors not to defer the matter again and just refuse the application.

Mr Chris Wiggins (SOS)

Stated that he is speaking on behalf of members of SOS Cottesloe. SOS have reviewed the situation and there are three major issues for Council to consider:

- The wishes and concerns of the community;
- Impact on the streetscape and amenity of the area;

- Town plan.

An increase in 12m height limit is against the wishes of the community and if Council is in doubt please hold a referendum or a representational survey. If Council overrule this without a very good reason then ratepayers would have cause for no confidence in Council.

The streetscape will stick out and there are no overall benefits to community with reduction in parking and the issue of public nuisance with the hotel as it is will not be resolved by a major development. Several thousand people enjoy the amenity of the hotel and the nuisance issues have reduced in the last 6 years. The current town planning scheme has discretion for heritage buildings and discretion means '*discrete, cautious and judicious*'. The current development application proposes changes to the façade and Council cannot grant further concessions because there is a new owner and they will be setting a very dangerous precedent to buildings listed as Schedule 1 buildings on the town planning scheme.

How can Council approve a 20m high building in a 12m height limit zone? For Council to consider a revised application leading up to Christmas would be a nonsense.

Asked Council to represent the wishes of the community and defend our current town planning scheme. If the developer goes to appeal then so be it.

PETITIONS/DEPUTATIONS/PRESENTATIONS

Nil.

DECLARATION OF INTEREST

Cr Victor Strzina declared an indirect financial interest in the matter due to his son working on a part-time basis for Multiplex from 1/2 day to 1 day per week while he is carrying out his university studies, earning up to \$100 per week during the study term and working 3-4 days per week during the holidays earning about \$150 per day. Cr Strzina does not receive any of this money. It is for his son's personal use only.

Cr Strzina left the meeting at 7.28pm.

Cr Sheppard declared a proximity interest in the matter and said that it would be prudent that he not take part in the debate.

Cr Sheppard left the meeting at 7:30pm.

Moved Cr Morgan, seconded Cr Walsh

That the interest of Cr Strzina be deemed to be so trivial or insignificant as to be unlikely to influence Cr Strzina's conduct in relation to the matter and that he be allowed to participate in the debate and vote on the matter.

Carried 8/1

Cr Walsh requested that all the voting be recorded:

For: Cr Cunningham; Cr Furlong; Cr Jeanes; Cr Miller; Cr Morgan;
Cr Robertson; Cr Utting; Cr Walsh.

Against: Mayor Rowell

Cr Strzina returned to the meeting at 7.30pm.

REPORTS OF COMMITTEES AND OFFICERS**1 DEVELOPMENT SERVICES COMMITTEE****1.1 NO 104 (LOT 39) MARINE PARADE - PROPOSED ADDITIONS AND ALTERATIONS TO THE EXISTING COTTESLOE HOTEL****File No:** No. 104 Marine Parade**Author:** Mr Simon Bain**Author Disclosure of Interest:** Nil**Report Date:** 29 November, 2004**Senior Officer:** Mr Stephen Tindale**Property Owner:** Multiplex (Marine Parade) Pty Ltd**Applicant:** Greg Rowe and Associates**Date of Application:** 6 October 2004**Zoning:** Hotel**Use:** P - A use that is permitted under this Scheme**Density:** N/A**Lot Area:** 3336m²**M.R.S. Reservation:** Zoned Urban under Metropolitan Region Scheme. Site abuts Park and Recreation Reserve.

SUMMARY

An application has been received for additions and alterations to the Cottesloe Hotel. It is proposed to demolish part of the existing hotel and provide 39 hotel suites to the rear of the remaining section of the Hotel.

The development application involves substantial variation to the Scheme provisions on the basis that the proposed development involves work in relation to the 1937 brick rendered façade of the hotel. As the façade is listed in the heritage section of the Town Planning Scheme text, Part VI of the Town Planning Scheme text allows Council the discretion to vary the requirements and standards of the Town Planning Scheme text. In deciding whether to exercise that discretion or not, Council is required to consider the consequences and implications in exercising that discretion in terms of its impact on the amenity of the locality.

PROPOSAL

The proposal involves the demolition of the rear section of the hotel. It is proposed to develop the site with:

- (i) a basement car parking area (88 cars), including service and staff facilities;
- (ii) 6 storey addition of 39 hotel suites (3 storeys above the existing hotel section);
- (iii) modifications to the existing bar and café.
- (iv) total of 78 bays for hotel guests and 10 for visitors.

It has been confirmed in writing by the applicant that the proposed suites are hotel suites and are not permanent residential units, which are prohibited in this zone.

The proposal does not include:

- al fresco dining in Warnham Road and Marine Parade;
- changes to the road pavements in Warnham Road, Marine Parade and John Street.

STATUTORY ENVIRONMENT

- Town of Cottesloe Town Planning Scheme No 2
- Metropolitan Region Scheme
- Heritage of Western Australia Act 1990

Council is required to issue three separate planning approvals. Approvals are required to be issued under:

- Part VI of the Town of Cottesloe Town Planning Scheme No. 2;
- Part VII of the Town of Cottesloe Town Planning Scheme No. 2; and
- the Metropolitan Region Scheme, from delegated authority by the Western Australian Planning Commission to Council.

The site was listed on the State Register of Heritage Places on the 12 November, 2004. The Heritage Council has advised that the Cottesloe Beach Precinct is now on the Interim Register of State Heritage Places. Therefore, Council cannot make a determination on the application under Town Planning Scheme No. 2 or the Metropolitan Region Scheme until comments from the Heritage Council have been received by Council.

POLICY IMPLICATIONS

N/A.

HERITAGE LISTING

- | | |
|-------------------------------------|------------|
| • State Register of Heritage Places | Permanent |
| • Town Planning Scheme No 2 | Schedule 1 |
| • Town Planning Scheme Policy No 12 | N/A |
| • Draft Heritage Strategy Report | N/A |
| • Municipal Inventory | Category 4 |
| • National Trust | N/A |

APPLICATION ASSESSMENT

AREAS OF NON-COMPLIANCE

These are discussed in the report.

STRATEGIC IMPLICATIONS

N/A.

FINANCIAL IMPLICATIONS

N/A.

CONSULTATION

REFERRAL

Internal

- Building
- Engineering
- Health

External

- Heritage Council
- Department for Planning and Infrastructure
- Ken Adam and Associates
- Ecotect
- GHD
- Mr Ian Oldfield

ADVERTISING OF PROPOSAL

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

The advertising consisted of:

- Sign on Site
- Advertisement in Paper
- Letter to Surrounding Property Owners

Submissions

There were just over 470 submissions received. These are still being analysed and a summary will be presented to the meeting. There was a majority of submissions in support of the application (258), most of which were a standard letter. There were 200 submissions against the proposal with 19 providing qualified support or opposition.

Cr Morgan also distributed a survey form seeking comments in relation to heights along the beachfront with particular reference to the Cottesloe Hotel site and the OBH site. Three hundred and thirty three submissions did not support an increase in height and twenty five supported an increased height.

There has been no attempt to determine whether there is any doubling up of submission between the two processes.

BACKGROUND

The development site has been included on the State Register of Heritage Places as a permanent listing. The Cottesloe Beach Precinct has been included on the interim Register.

In late 2003, Multiplex sought the support of the Minister for Heritage to over-ride Council's Town Planning Scheme to allow the site to be developed for residential units. The Minister advised Multiplex that it would not use the Heritage Act to over-ride the Council's Town Planning Scheme

In December 2003, Multiplex sought community feedback on a proposal for the site.

Council sought legal advice from Mr Chris Edmunds (QC) in relation to the application of Part VI of the Town Planning Scheme text. That advice indicated that Council could not grant approval to the development as two approvals were required under the Town Planning Scheme text – Part VI and VII. As there was no discretion to vary the Scheme provisions under Part VII, the legal view was that Council was required to refuse the application.

A development application was submitted to Council in earlier part of this year, which was a modified version of the December 2003 proposal. This application was subsequently withdrawn.

A revised development application was lodged during September 2004. Additional information was submitted and was subsequently deemed to be complete in early October 2004.

A second legal opinion was sought from Mr Ken Martin (QC) as Mr Chris Edmunds was taking leave for 12 months and would not be available to represent Council in the event of an appeal being made to the Town Planning Appeal Tribunal. Mr Martin, having Mr Edmunds opinion, provided his advice in relation to the interpretation of Part VI of the Town Planning Scheme text. His opinion, which is the opposite to Mr Edmunds, indicates that there is a relationship between the façade and the proposed development and therefore, the Scheme is open to Council to exercise discretion in relation to the proposed development.

STAFF COMMENT

The following comments are made:

1. Heritage Consideration – (State)

The development site is on the State Register of Heritage Places. Therefore, Council cannot make a determination on the development application (under the local Town Planning Scheme or the Metropolitan Region Scheme) until Council has received the comments of the Heritage Council. Those comments are now to hand.

The Heritage Council has advised:

"i That the current proposal does not minimise the impact on the significant fabric of the place.

- ii *That the current development application (including Conservation/Demolition plans D1 and D2) will have an adverse and irreversible impact on the assessed heritage significance of the Cottesloe Beach Hotel, in particular the 1905 fabric from the original hotel and the 1937 remodelling and additions as outlined in the Heritage Council's Register Entry and Assessment Documentation, and that the Heritage Council recommends refusal on heritage grounds."*

Multiplex have advised that revised plans are being prepared to address the Heritage Council concerns. These revised plans have not been received by the Town of Cottesloe nor has the Heritage Council revised its comments to the Town of Cottesloe.

Matters have been further complicated by the interim listing on Cottesloe Beach on the State Heritage Register on 23 November, 2004. As a consequence the application has had to be represented to the Heritage Council for additional comments as the proposed development impacts on the beach.

2. Consideration under the Metropolitan Region Scheme

Council is required to consider the development proposal under the Metropolitan Region Scheme. Following receipt of advice from the Department for Planning and Infrastructure, Council can then make a decision under Metropolitan Region Scheme, with powers delegated from the Western Australian Planning Commission.

To guide Council in this decision making process, the application is required to be referred to the Department for Planning and Infrastructure for comments. The Department has 30 days in which to provide comments when it receives the application (application sent on the 11 October, 2004). At this stage, Council does not have the advice from the Department for Planning and Infrastructure.

Council is also required to have regard to any relevant Statement of Planning Policies. In this situation, council is required to have regard to Statement of Planning Policy No. 1 – State Planning Framework Policy.

Under Part 5A of that Statement of Planning Policy, General Principles for Land Use Planning and Development, the document sets out the primary aim of planning which:

"...is to provide for the fair, orderly, economic and sustainable use and development of land."

Five key principles are identified including:

Environment:

-
- *To protect and enhance the key natural and cultural assets of the State and deliver to all West Australian a high quality of life which is based on environmentally sustainable principles.*

Part 5B State and Regional Provisions, makes reference to the fact that:

The State Planning Framework includes Statements of Planning Policy prepared by the Commission under Section 5AA Town Planning and Development Act as well as....strategic policies... prepared from time to time and endorsed by the Commission.

Part 5B4 identifies Strategic Policies. The document states the following:

Strategic policy statements deal with particular strategic planning issues and, in some cases, refine and expand upon aspects of a regional strategy. Strategic policies endorsed by the Commission are as follows:

One of those documents referred to is called Coastal Planning and Development in Western Australia – Draft 1996. It is specifically referred to in Statement of Planning Policy No. 1 (State Planning Framework Policy) as a strategic policy and therefore, due regard should be had to the content of the document. Verbal advice from DPI Officers is this Policy should be used for determining the application.

The Executive Summary of the policy includes a reference to tall buildings and structures and states the following:

The height and bulk of buildings within the coastal view shed need to be carefully assessed to take account of any justified impacts as a result of development.

Part 4.2 of the document considers the issue of tall buildings and structures in greater detail and set out the criteria for considering developments over 12m in height. Section 4.2.1 is reproduced below:

SUGGESTED POLICIES

4.2.1 Tall building and structures (above 12m) within coastal view sheds on the coast may be permitted where they have been justified in the context of an approved policy or plan or designated in a town planning scheme, and generally when the proposed development meets the following guidelines:

- (i) is consistent with the visual amenity of the foreshore and should as far as possible not unduly affect views to and from the beaches;*
- (ii) maintains and enhances the coastal landscape character of the area as expressed in the dominant forms of the surrounding environment;*
- (iii) does not cause overshadowing of the beach, or increase wind velocities by means of the venturi effect;*
- (iv) takes account of the varying ability of portions of the coast to visually absorb change (e.g. height, building bulk site-lines, visual amenity, scale, built form, materials, colours, site coverage, shadows and open space);*

- (v) *maintains natural landscape, with the development of management plans to guide revegetation works and provision of facilities; and*
- (vi) *provides for the visually co-ordinated design of structures, outdoor furniture, signs and utilities.*

In the case of the Town of Cottesloe Town Planning Scheme No. 2, it is not envisaged that the height of any development in the Hotel Zone will be above 12m. The height for the Hotel Zone has been set at 12m, with Council still having to consider “the effect of shadow on the foreshore and neighbouring properties” at that height.

It is through the provisions of the Part VI that the applicant is seeking to increase the height of development on this site above 12m to 19.7m.

Part 4.2.1(i) seeks to ensure that the proposed development is consistent with the visual amenity of the foreshore and should as far as possible not unduly affect views to and from the beaches.

Part 4.2.1(iii) states that the proposed should not overshadow the beach. It has been established that the proposed development before Council will overshadow the beach all year round as well as the southern side of John Street during the winter solstice.

In making the determination under the Metropolitan Region Scheme, Council is required to have regard to any Statement of Planning Policies and Clause 30 of the Metropolitan Region Scheme, which states the following:

The Commission or a Local Authority exercising the powers of the Commission so delegated to it under the Scheme Act may consult with any authority that in the circumstances it thinks appropriate; and having regard to the purpose for which the land is zoned or reserved under the Scheme, the orderly and proper planning of the locality and the preservation of the amenities of the locality may, in respect of that application for approval to commence development, refuse its approval or may grant its approval subject to such conditions if any as it may deem fit.

Council, acting as the Western Australian Planning Commission, is required to consider the development application on a regional basis. It is required to have regard to the local authority Town Planning Scheme, but it is not bound by the Local Authorities Town Planning Scheme.

On a regional basis, Council will be required to give consideration to the:

- purpose of the zone under the Metropolitan Region Scheme (it is zoned Urban);
- orderly and proper planning of the locality; and
- preservation of the amenities of the locality.

3. Consideration under the No. 2 Town Planning Scheme

The following comments are made:

(a) Legal Aspect

Council has sought legal advice from a Senior Counsel in relation to the proposed development. As stated in the background section, Council has received two conflicting opinions.

Council could take either of the opinions as the basis for the decision making. However, as the second opinion was made in full knowledge of the first opinion, it is considered that the second opinion should be used for the basis for decision making. That is, there is discretion to vary the standards and requirements of the Town Planning Scheme text on the basis that the work to be carried out is in relation to the structure listed in Schedule 1 of the Town Planning Scheme text.

In deciding whether or not to exercise that discretion, the second opinion stated the following:

Para 29

*“...In this stage of consideration, it seems to me that clause 6.2.3 does give the Council some discretion concerning what would otherwise be non-compliance with other provisions of the Scheme text. That is not to say that the fact of such non-compliance is rendered insignificant, or is to be ignored. On the contrary, these matters are highly material to the issue of the Council’s approval *(written consent). The critical distinction however, is that the exercise now becomes one of evaluation by the Council of the overall merits of the proposal as a whole – rather than the Council simply being compelled by the fact of non-compliance to reject the proposal.*

In relation to the discretion to vary the development standards, like any exercise of discretion, Council is required to carefully consider the extent of those variations and the likely impact of those variations in terms of the orderly and proper planning of the locality and the preservation of the amenities of the area.

(b) Heritage

The 1937 brick rendered façade of the Cottesloe Hotel is listed in Schedule 1 of the Town Planning Scheme text as being identified in a list of Places Of Natural Beauty And Historic Buildings And Objects Of Historical Or Scientific Interest.

Part VI of the Town Planning Scheme text applies. The purpose of including places or properties on the list is so that Council can seek to preserve and conserve these properties, places or structure. It is only the 1937 brick rendered façade that is heritage listed with a view towards preservation and conservation, not the hotel or the site.

In addition, the Norfolk Island Pine trees in John Street are also listed in Schedule 1 of the Town Planning Scheme text – with a view to being preserved and conserved.

The proposed development will result in a crossover for the southern car parking entry being constructed between two of the John Street Norfolk Island pine trees. The development also involves the excavation and construction of a basement along the John Street boundary and the development being six storeys in height close to these trees.

These works have the potential to affect the western most pine tree, which is some 24m in height. An arborculturalist has been engaged to consider the impact of the proposed works and building on the heritage listed trees. This advice is awaited.

(c) Scheme Objectives – Hotel Zone

The development site is located within the Hotel Zone and the objective for the Hotel Zone is shown below:

The intention of the Hotel Zone is to control the use of hotels within the Scheme Area and to guide the further development or redevelopment of land within the Zone.

A hotel is defined in the Town Planning Scheme text as meaning:

“... land and buildings providing accommodation for the public the subject of a Hotel Licence granted under the provisions of the Liquor Act, 1970 (as amended);”

In order to guide development within the Zone, the Scheme Text has specified certain matters which Council must consider when dealing with a development application in that Zone. Those matters are set out below:

In its consideration of applications to commence development the Council shall have regard to -

- * the preservation of the foreshore as a primary marine recreation and tourist attraction where land within the Zone is adjacent to the foreshore;*
- * the social consequences of the effect of the size of bars, the number of patrons, the type of entertainment, the hours of operation, the effect of car parking and other related matters on the adjacent area that is essentially of a quiet residential nature;*
- * the integration of parking areas and vehicular access thereto, with total land usage so as to secure the most convenient, safe and efficient use of land;*
- * the traffic impact of any development;*

- * *the preservation of privacy, views and quiet in nearby residential developments and areas;*
- * *the effect of shadow on the foreshore and neighbouring properties;*
- * *the effect of a development to impede or accelerate air flows;*
- * *the amenity provisions and policies contained in Part V - General Provisions - of this Scheme.*

(d) Scheme Development Standards – Hotel Zone

Clause 3.4.5(b) sets out the major development standards for the Hotel Zone. These controls and the non-compliance will be discussed in the report.

(e) Other Standards and requirements of the Town Planning Scheme text

Apart from those development standards identified in Clause 3.4.5 of the Town Planning Scheme text, Council will also be required to consider the following:

Clause	Matter for consideration
5.1.2	Various amenity matters that Council is required to have regard to when considering the development application – refer to Attachment 2
5.1.3	Likely impact on privacy of neighbouring developments
5.1.4	Maximum permitted height of retaining walls near a common boundary – 1.8m
5.1.5	Appearance and design of buildings
5.3(a)	Nil street setback - setback of buildings from site boundaries greater than 6.0m in height
5.5	Sets out minimum parking standards. Includes requirements for provision of cash-in-lieu for shortfall of parking
5.7	Controls relating to advertising

4. Independent Assessment of the Application

The application has been assessed by others in order to obtain independent comment on the proposal.

Mr Ken Adam has provided comments and advice in relation to the planning and design issues associated with the proposed development. A copy of Mr Adam's advice is attached.

Mr Gary Baverstock from Ecotect has commented on the overshadowing of the beachfront by the proposed development. This includes comparing the impact of heights at 12m and the proposed height of the development before Council. A copy of the report from Mr Baverstock is attached.

5. Comments on Proposal

It is difficult to make comments on the proposal in relation to State Heritage considerations or in terms of the decision to be made under the Metropolitan Region Scheme as further advice from these bodies is still outstanding at this stage.

Further comments on heritage and MRS aspects can only be made when that advice is received.

The following comments are made in relation to the proposed development under the Town Planning Scheme No. 2:

(a) Scheme considerations

The Scheme sets out a number of matters to be considered by Council when assessing a development application in Clause 3.4.5. These are discussed below:

Dot point 1

- * *the preservation of the foreshore as a primary marine recreation and tourist attraction where land within the Zone is adjacent to the foreshore;*

The continued use of the site for hotel purposes will contribute to the preservation of the foreshore as a primary marine and tourist attraction. The definition of Hotel under the existing Town Planning Scheme makes reference to accommodation being provided and that accommodation being made available to the public.

In terms of public amenity, concern is expressed at the loss of that accommodation to private accommodation. This is in relation to ensuring that accommodation is available to any visitor (tourist) to enjoy Cottesloe Beach and its environs, which is a very highly regarded local and regional facility.

In addition, there appears to be an increasing conflict in mixed use development between the commercial and residential components, in particular noise and patron behaviour. Problems in the eastern states, East Perth and the Swan Brewery site highlight the problems between the expectations of residents living permanently in residential units and the desire of the commercial operators to provide services and facilities for use by the general public. The need to go beyond the current standards to ensure that noise attenuation between the commercial and residential components is occurs is paramount. This includes the surrounding properties, especially if and when the al fresco component is considered in the future by Council and the Western Australian Planning Commission.

Multiplex have indicated their intention to seek a town planning scheme amendment at a later date to allow residential use in the Hotel Zone.

Dot point 2

- * *the social consequences of the effect of the size of bars, the number of patrons, the type of entertainment, the hours of operation, the effect of car parking and other related matters on the adjacent area that is essentially of a quiet residential nature;*

It is anticipated that the removal of the beer garden is likely to have a major reduction in terms of the impact of anti-social behaviour in the area on weekends.

Dot point 3

- * *the integration of parking areas and vehicular access thereto, with total land usage so as to secure the most convenient, safe and efficient use of land;*

A traffic engineering report has been received from the developers and it indicates that there should be no problems with the new development in terms of traffic movement, volumes and effect on intersections. This has been reviewed by consultants engaged by Council and they have agreed with those findings.

Dot point 4

- * *the traffic impact of any development;*

This was considered in the traffic studies and no problems were identified in terms of traffic movement.

Dot point 5

- * *the preservation of privacy, views and quiet in nearby residential developments and areas;*

The proposed development will have a detrimental impact on the views from the surrounding properties. The scheme requires Council to have regard to the impact that development may have on views, when there is a height restriction of 12m. The proposal will be increasing the height of the development above the current controls from 12m to 19.7 - an increase of 7.7m.

Dot Point 6

- * *the effect of shadow on the foreshore and neighbouring properties;*

The proposed development, based on the modelling provided by the applicant and Ecotect will overshadow the beach.

Cottesloe Beach and its environs are seen as having an iconic status. The beach is a local and regional facility. It is well used by the locals and the public, whether it is for swimming, walking or jogging. It is a well known and popular tourist attraction. It is one of the few beaches in the metropolitan region that is located in close walking distance to the railway line.

It is felt that any development of private land along the beachfront should overshadow the beach.

The Cottesloe Beach environs has been interim listed on the State Heritage Register by the Heritage Council.

The modelling shown by the applicant shows that during the summer solstice, the development will overshadow the beach from approximately 6:00am through to 6:40am. The equinox results in shadowing from 7:00am through to 7:30am. During winter, the shadow on the beach and grassed areas occurs from 8:00am through to approximately 9:50am.

It should be noted that the applicant's architect has stated in correspondence dated the 11 October 2004 in relation to the issue of overshadowing of the beach, the following:

"The overshadowing model has been submitted to council. We are of the opinion that overshadowing in relation to the foreshore and neighbouring properties is of no concern with regard to this development. Should council require further documentation with regard to shadow diagrams we would be pleased to provide these on request."

The opinion that the overshadowing is of no concern to the foreshore or adjoining properties is very open to debate. It is considered that there is a substantive issue to be addressed in relation to the impact that the proposed development will have on the beach and the surrounding area.

The modelling undertaken by Ecotect shows the beach will be overshadowed for 40 minutes in the middle of winter.

Dot point 7

* *the effect of a development to impede or accelerate air flows;*

Initially, it was considered that this was unlikely to be an issue. However, attempts have been made to discuss this matter in further detail with people with experience in this field.

Dot point 8

* *the amenity provisions and policies contained in Part V - General Provisions - of this Scheme.*

These issues will be discussed later in the report.

(b) Development Standards

The development standards contained within the town planning scheme text are very restrictive. The plot ratio, site coverage and building heights seek to control development along the beachfront so as to ensure any new development will fit into the beachside village like nature that currently exists

along this section of Marine Parade, without adversely impacting the beach and surrounding areas.

The proposed development seeks to vary those standards to a considerable degree. It is the consequences of these variations which contribute to the detrimental impact that the proposed development will have on the beachfront and surrounding properties.

The town planning scheme seeks to limit the impact of a development through various controls, with the primary controls being as follows:

Control	Scheme	Proposed	Difference
Plot Ratio	1.0 (3336m ²)	2.63 (8790m ²)	1.63 (5,451m ²)
Site Coverage	0.5 (1669m ²)	0.92 (3067m ²)	0.42 (1,398m ²)
Building Height	12m	19.75	7.75

These three development controls provide control over the scale and form of the development. The variations are substantial and therefore need to be carefully considered by Council.

The consequence of these primary controls will increase the impact on the area in the following ways:

Overshadowing:

The increased height will result in shadowing of the beachfront throughout the year and at different times of the year, based on the modelling carried out by Ecotect. Council should be considering the consequences of the differences in the impact between the overshadowing of the beachfront on the existing gazetted 12m height and the proposed height of development at 19.73m (measured from the main entrance along Marine Parade).

This will include whether overshadowing of the beach should occur or not, and if so, at what time of the year, for how long and what areas.

The existing hotel has a height of approximately 10m from the main entrance to the primary roof ridge line.

Impact on views from the beach and to the beach

The building bulk of the development is substantially greater than that permitted by the Scheme. The combination of plot ratio, site coverage, setbacks and height control building bulk.

The increase in these controls above the scheme provisions requires Council to carefully consider the impact of the proposed difference between the two on the amenity of the beachfront and the surrounding properties.

People do not own views. However, when the Council is called on to vary the height controls which seek to limit the height of development, the effect on views become a very important and proper planning consideration.

The view from the shoreline east towards the Cottesloe Hotel reveals that the building ridge lines along Marine Parade are fairly constant. It is the primarily the roofs of the buildings that are seen and there are no dominant buildings that project above the other buildings.

Even Constantia, is not readily visible from the beachfront with its height. A view of the lift motor room is possible just to the north of the Indiana, from the shoreline.

However, the increased height proposed for the existing hotel site will become very dominant in the view shed from the beach towards to the Cottesloe Hotel.

The increased height and bulk will also impact on the surrounding residential properties in terms of loss of ocean views. This will impact on their amenity. Again, it is the difference between the Scheme provisions and the proposed development that Council is required to consider.

Impact on John Street

The variation to the controls based on the proposed development will adversely impact on John Street and the residential properties on the southern side of John Street. This can be seen from the overshadowing modelling provided by Ecotect.

The principle of protecting the south side of the east-west streets running off Marine Parade should be a key outcome for the benefit of the community. These sites will become important as key alfresco areas.

The increased height and bulk of the development will result in the shadowing of John Street during the winter solstice period. The John Street footpath is used and has the potential to be used by the commercial operators of the café on the corner of Marine Parade and John Street for alfresco dining.

It would appear that this area will be in shadow from early morning through to about 11:30am when the shadow from the proposed development starts moving away from the corner of Marine Parade and John Street. It is not till about 12:30pm when this area of alfresco will not be affected from the shadowing of the proposed development. Critical would be the comparison between the existing shadowing effects based on the current Town Planning Scheme and the proposed development.

This shadowing effect then continues along John Street before it commences the encroachment into the residential properties to the east.

Although not part of the proposal, the Multiplex proposal shows the concept of al fresco dining on the south side of streets, by showing Warnham Road as an

extension of the café operations of the Cottesloe Hotel. However, the proposed development results in a detrimental impact on the operations of No. 94 Marine Parade through overshadowing, which is a consequence of the increased height and bulk of the proposed development.

Effect on No. 6 John Street

No. 6 John Street is a group of 17 units. Approval was granted in the 1980s for this development. A previous search of the records revealed that the development was approved for residential purposes with no restrictions on the occupation of those units. Therefore, they are treated as multiple dwellings.

This site abuts the eastern boundary of the Cottesloe Hotel site. The complex consists of two rows of units, with each row fronting either John Street or Warnham Road. The space between the two rows of dwellings is used for access to the parking spaces. A swimming pool is located next to the common boundary of the two sites.

The Town Planning Scheme allows the building to be built up to the street boundary, provided that the building is not higher than 6.0m. The Scheme then allows Council to require a greater setback to other boundaries having considered the zoning and current use of adjoining properties.

Whilst supporting the development, an objection was lodged by three property owners of the site (who own 12 units out of the 17 units) in relation to the adverse impact that they believed the proposed development would have on their property. The concern related to:

- impact of parapet wall;
- loss of view;
- loss of afternoon sun;
- shadowing of pool;

The development on No. 6 John Street abuts the common boundary and varies in height from 6.0m (existing wall abutting swimming pool is solid for half the height and glass the remaining height) up to the peak of the gable end of the residential dwellings of 11.5m. The applicants are proposing a boundary along the full length of the common boundary, varying in height from 8.5m to 13.5m. The building is then set back in 5.5/7.0m and increases to the full height of the development (17.2m measured from the ground level of No. 6 John Street).

The height and length of the proposed boundary wall and the implications for the height of the development and overshadowing are issues that need to be addressed by the applicant.

On-site Parking

The development does not comply with the parking standards set out in the Town of Cottesloe Town Planning Scheme No. 2. The traffic consultants reports have sought to substantiate a variation to the parking standards.

If the existing hotel was re-developed now to the current licensed numbers, then there would have been a requirement for 892 bays. The site does not provide for on-site parking apart from the possibility of providing a couple of car parking spaces in the service area.

The current Town Planning Scheme standards would require 205 bays for the current proposal.

The applicants are seeking to provide:

- a maximum of two car parking spaces for each dwelling unit (78);
- 10 for staff and residential visitors; and
- no on-site parking for visitors to the restaurant/bar areas.

The net effect is that the proposed development will provide a total of 88 on-site car parking spaces, rather than the 205 specified in the Town Planning Scheme text.

This will be exacerbated if and when the applicants seek to apply for the alfresco dining in Marine Parade and Warnham Road.

Council has commenced a parking and traffic study to:

- consider the consequences of lack of on-site parking spaces for those development along the beachfront, the demand for increased intensity of development; the continuing growth of Perth's population and the increased pressure by the general public wanting to access Cottesloe beaches;
- review existing parking standards for inclusion in the proposed No. 3 Town Planning Scheme; and
- consider options to address the demand for parking in the future along the beachfront.

Whatever, the results, it is the residents of the community that will ultimately be responsible for the costs of addressing this problem.

Through history, the numbers of patrons in the hotel has increased without the provisions of on-site parking. The current Town Planning Scheme demands that on-site parking be provided. Alternatively, Council can accept cash-in-lieu for the provision of parking.

The Valuer Generals Office (VGO) have been requested to provide a land valuation for the purposes of determining the cash-in-lieu payment. The value has been determined by the VGO to be \$5,100 per square metre. Based on a parking space and half the reversing area (on a flat site with no consideration to decked parking and with the space being 2.5m x 5.5m and 3.0m for reversing), the value is \$108,375 per parking space.

The development is short by 117 spaces based on scheme requirements and therefore, the cash-in-lieu payment should be \$12,679,875. The modified parking standard presented by the traffic engineers is short by 74 bays, which is a cash-in-lieu payment of \$8,019,750.

The plans have modified the bar area. This will impact on the car parking required. This issue needs to be clarified.

Cottesloe Beachfront Development Objectives

The Cottesloe beachfront Development Objectives document is the most current expression of the Council's policy in relation to development within the beachfront zone, defined as "those private properties and Council reserves adjacent to and including Marine Parade between Forrest Street and Grant Street". A draft of the document was adopted by Council in December, 2003, and released for public comment with submissions closing in May 2004.

Following consideration of public submissions and the outcomes of Special Elector's meetings the Council resolved in June 2004 to affirm the height provisions of TPS 2; to delete sections of the draft Beachfront Objectives Report relating to increased heights above 12m; and to request the staff to develop a revised Report. The revised Objectives were formally adopted at the September 2004 meeting of Council, with the inclusion of an additional point.

The relevant built form objectives set out in the document include:

- continuity of built edge on the front boundary along Marine Parade, with active frontages;
- a height constraint on the street edge, with potential for some higher development behind;
- new development to respond sympathetically to adjoining existing development and to limit overshadowing; and
- new development to be low rise at street frontage onto Marine Parade.

These objectives have been commented on elsewhere in this report and by the Design Advisory Panel.

Time Limit on Application

Council has 60 days in which to determine the application, unless a further period of time is agreed between the applicant and the Council. Multiplex, via a facsimile dated 24 November 2004, have requested an extension of time. Given the outstanding information it would be reasonable to agree to a 60 day extension in time. Revised plans are proposed to be submitted and the 60 days will commence from that time.

Amenity considerations under Clause 5.1.2

These matters, which include such matters as consideration of impact on views, building bulk, access to higher standards of daylight and sunshine, etc, have been generally covered in the report.

Design Advisory Panel

A Design Advisory Panel meeting was held on 23 November 2004.

Members of the Design Advisory Panel indicated significant concerns with respect to:

- adverse impact on the amenity of John Street
- adverse impact on the amenity of Cottesloe Beach
- the use is residential and not hotel
- no upgrading of the amenity of the public domain
- overshadowing impacts on the surrounding area
- precedents the development would set
- excessive height, bulk and scale
- impact on views from surrounding areas

Multiplex advised the Design Advisory panel that it would like the opportunity to meet with Council to discuss the potential upgrading of the surrounding area.

CONCLUSION

The proposed development will result in benefits to the community in terms of reduced parking demand and reduction in antisocial behaviour associated with seasonal use of the hotel by large crowds. However, there are very important consequences associated with this proposed development that must be carefully considered by Council.

Due to the heritage provisions of the Town Planning Scheme text, discretion exists for Council to vary the development standards of the Town Planning Scheme. The issue is whether the retention of the 1937 brick rendered façade warrants the extent of concessions and variations sought by the applicant.

Council is required to carefully consider these variations and the consequences of those variations above the scheme provisions, when coming to a conclusion on the proposed development.

As Council is also the decision maker in relation to the Metropolitan Region Scheme, Council is required to carefully consider the impact of the proposed development on the regional Park and Recreation Reserve and take into account the considerations under Clause 30 of the Metropolitan Region Scheme and any Statement of Planning Policies or other relevant documents.

No decision can be made on the application pending the WAPC and Heritage Council advice. The applicant is preparing revised plans for the Heritage Council's consideration. These have as yet not been submitted for Council consideration. The development cannot properly be considered until such time as these are submitted.

Multiplex have requested Council defer consideration on the application. Council should agree to this request and advise the applicant it agrees to a 60 day time extension, from receipt of the revised plans that satisfy the Heritage Council of WA requirements.

OFFICER RECOMMENDATION (OLD)

That Council:

Defer the application for a period of 60 days, pending receipt of revised plans and advice from the Heritage Council of WA in terms of the Interim Listing of Cottesloe Beach Precinct and the State Register Listing of the Cottesloe Beach Hotel.

Advise the applicants of the above and that the issues, inter alia, to be addressed include:

Upgrading of the public domain;

Greater setback from John Street to ensure reduced overshadowing of the southern side of John Street;

Stepping back of the western façade to ensure no overshadowing of Cottesloe beach in winter;

Preservation of the Norfolk Island Pines in John Street;

Stepping back of the eastern façade to reduce the visual impact of the eastern wall on the adjoining property;

Use be for a hotel and not permanent residential;

Clarification of the car parking associated with the bar;

Cash in lieu of car parking;

Submission of the revised plans submitted to the heritage Council of WA;

Cottesloe beachfront development objectives; and

Comments from Manager Engineering Services.

AMENDMENT

Moved Cr Morgan, seconded Cr Walsh

That Council REFUSE the application for the following reasons:

The Heritage Council has recommended refusal of the application on heritage grounds.

The proposal:

Exceeds the statutory height requirements under TPS 2;

Would unduly affect views to and from Cottesloe Beach;

Would (as shown by the applicant's modelling) overshadow the beach and neighbouring properties, and this is significantly more than would be the case if the proposal did not exceed 12 metres;

Would have a detrimental impact on views from surround properties;

Would negatively affect the adjoining properties and the streetscape due to the proposed building height and bulk;

Would not comply with the parking standards in TPS 2;

Would not comply with plot ratio standards in TPS 2;

Would not comply with site coverage standards in TPS 2;

Heritage considerations do not warrant concessions or variation to the TPS requirements as regards height, nor as regards the other factors in (2) above, and the amenity of the neighbouring area would be unreasonably diminished and the area's orderly and proper planning negatively impacted, if such concessions or variations were granted.

Concessions or variation to the factors set out in (2) above are not warranted by any impact of the proposal in terms of:

Reduction in:

Anti-social behaviour associated with removal of the existing beer garden; and

Existing parking demand and the existing lack of on-site parking for the site;

Any contribution to tourism and hospitality facilities in the area; and

Any conformity with aspects of the Council's Beachfront Development Objectives.

Lost 6/5

Voting:

For: Cr Morgan; Cr Walsh; Cr Miler; Cr Strzina; Cr Utting.

Against: Mayor Rowell; Cr Jeanes; Cr Cunningham; Cr Robertson; Cr Furlong

Casting vote: Mayor Rowell against.

OFFICER RECOMMENDATION (NEW)

The following recommendation was tabled at the meeting by the Chief Executive Officer.

(1) That Multiplex Developments be advised that:

- (A) The Town of Cottesloe supports a deferral noting that Council staff will require a maximum of a further two weeks, pending the receipt of the advice from the WA Planning Commission and the Heritage Council, to assess and report on their advice and give local public notice of a Council meeting to make a determination on the application – provided the Acting Manager Development Services does not deem the revised plans to be a new planning application;
- (B) The very latest date for the convening of Council meeting to determine the current application will be Thursday 23 December 2004 failing which the matter will not be considered by Council until a date in the first/second week of February 2005 to be determined by the Mayor.
- (2) That the local planning issues, inter alia, to be addressed in the interim include:

Upgrading of the public domain;

Setback from John Street with respect to the overshadowing of the southern side of John Street;

Potential stepping back of the western façade to minimise overshadowing of Cottesloe beach in winter;

Preservation of the Norfolk Island Pines in John Street;

Potential stepping back of the eastern façade to reduce the visual impact of the eastern wall on the adjoining property;

Use as a hotel rather than permanent residential;

Clarification of car parking issues associated with licensed areas;

Cash in lieu of car parking;

Cottesloe Beachfront Development Objectives;

Comments from Manager Engineering Services.

AMENDMENT

Moved Cr Walsh, Seconded Cr Morgan

Amended section (1)(B) to read as follows:

Given the importance of the matter, the very latest date for the convening of a Council meeting to determine the current application will be Wednesday 22 December failing that, the matter will not be considered by Council until 21 February 2005 unless all Councillors are available to attend an earlier meeting.

Carried 6/4

For: Cr Walsh; Cr Utting; Cr Miller; Cr Strzina; Cr Robertson; Cr Cunningham.
Against: Mayor Rowell; Cr Morgan; Cr Jeanes; Cr Furlong.

1.1 COUNCIL RESOLUTION

Moved Mayor Rowell, seconded Cr Furlong

(1) That Multiplex Developments be advised that:

- (A) The Town of Cottesloe supports a deferral noting that Council staff will require a maximum of a further two weeks, pending the receipt of the advice from the WA Planning Commission and the Heritage Council, to assess and report on their advice and give local public notice of a Council meeting to make a determination on the application – provided the Acting Manager Development Services does not deem the revised plans to be a new planning application;**
- (B) Given the importance of the matter, the very latest date for the convening of a Council meeting to determine the current application will be Wednesday 22 December failing that, the matter will not be considered by Council until 21 February 2005 unless all Councillors are available to attend an earlier meeting.**

(2) That the local planning issues, inter alia, to be addressed in the interim include:

- Upgrading of the public domain;**
- Setback from John Street with respect to the overshadowing of the southern side of John Street;**
- Potential stepping back of the western façade to minimise overshadowing of Cottesloe beach in winter;**
- Preservation of the Norfolk Island Pines in John Street;**
- Potential stepping back of the eastern façade to reduce the visual impact of the eastern wall on the adjoining property;**
- Use as a hotel rather than permanent residential;**
- Clarification of car parking issues associated with licensed areas;**
- Cash in lieu of car parking;**
- Cottesloe Beachfront Development Objectives;**
- Comments from Manager Engineering Services.**

Carried: 8/2

**For: Mayor Rowell; Cr Furlong; Cr Miller; Cr Strzina; Cr Robertson;
Cr Cunningham; Cr Jeanes; Cr Utting.**
Against: Cr Morgan; Cr Walsh.

ELECTED MEMBERS' MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil.

NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY ELECTED MEMBERS/OFFICERS BY DECISION OF MEETING

Nil

MEETING CLOSURE

The Mayor announced the closure of the meeting at 8.30pm.

CONFIRMED: MAYOR DATE:/...../.....