

# TOWN OF COTTESLOE



## SPECIAL COUNCIL MEETING

# ATTACHMENT 3

### ITEM 9.1

## REDACTED SUBMISSIONS RECEIVED



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**From:**  
**Sent:** Friday, 8 September 2017 12:57 PM  
**To:** council  
**Subject:** Town Of Cottesloe Indiana Toilets Submission

## Please find below my SUBMISSION - INDIANA PUBLIC TOILETS

### 1. MANAGEMENT OF PUBLIC TOILETS

I support the proposal that the care, control and management of public toilets located under the Indiana building be transferred to the Town of Cottesloe.

History demonstrates that Indiana Pty Ltd has failed to manage these toilets to an acceptable public health standard and that, being located at Perth's most popular tourist beach, I believe the Town has a responsibility to provide the visiting public with clean, safe, functional toilet facilities.

I am a regular beach user and often hear public complaint regarding the Indiana toilets.

As for Indiana Architect Mr Scanlon's independent engineering assessment of the cause of the ongoing toilet odour, I trust the Town will confirm his assessment and ensure the matter is resolved prior to the Town resuming control of the toilets. This appears to be a simple maintenance issue.

I also reserve concerns for the current state of the maintenance of the Indiana building which I understand is the responsibility of the Lessee. The Indiana building infrastructure asset owned by the Town and, as such, should be subject to regular maintenance inspections.

### 2. RENT REVIEW

I assume the current market rent review of \$195,000 p/a offers some compensation to the Town of Cottesloe transferred management of the public toilets. At what appears to be very reasonable rent, I am surprised the Lessee cannot offer better restaurant amenity to the visiting public.

Thank you for the opportunity to comment.

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**From:**  
**Sent:** Friday, 8 September 2017 10:23 AM  
**To:** council  
**Subject:** Call for Submissions - Indiana  
**Attachments:** TOC\_Indiana.04.03.11.pdf; TOC\_Indiana.24.11.11.pdf; TOC\_Indiana.13.12.11.pdf; IMG\_2271.JPG; Indiana.Feb.2011.jpg; Indiana.040311.jpg; IMG\_2276.jpg; IMG\_2274.jpg

**Attention: Mr Mat Humfrey (CEO)**

**Subject: Indiana - Rent Review and Management of the Public Toilets**

Dear Sir

Firstly, thank you for the opportunity to comment on the question of Rent Review and Management of the Public Toilets at Indiana.

I was of the understanding that the ToC had mounted a legal challenge regarding the validity of the option to extend the lease exercised by the tenant since it had not been lodged in accordance with the T&C of the lease.

In addition, as previously stated in Council Meetings/ Minutes, I understood that there was some question that the 25-year extension of the lease had been granted in contravention to the Local Government Act.

In calling for submissions I assume that that these issues regarding dispute over the tenure rights of the existing tenant to continue has been resolved.

That being the case, I would like to make the following comments:

**Q1 - Setting the rent of the premises, following a market rent review, at \$195,000 per annum.**

I note with some concern that the tenant initially offered a rental of \$100,000pa based on their own 'valuation' vs a Valuation by ToC of \$219,000pa

This is a very significant difference which in my view demonstrates a certain lack of 'good faith' on the part of the tenant by offering a 'low ball' rent which no doubt framed around their dismal business performance and profitability. This is further evidenced by the fact that the tenant has now offered to nearly double its original offer.

I am not a property valuer but I would feel confident in saying that \$195,000pa for this size of premises (I estimate approx. 1,000m<sup>2</sup> net lettable area) in what is the premier location in WA is a bargain – I realise it has been 'valued' but has this rent been benchmarked with other waterfront restaurants and/or on its potential rental value in a free market if the lease of the premises was able to be put out for tender for a 25-year term?

The fact is that the lessee has not demonstrated an ability to capitalize on this location in the last 10 years or so and you only must look at Odyssey in City Beach and The Shorehouse in Swanbourne to see what can be done with the right offering and service.

Furthermore, from reading the Council Minutes, the tenant has also failed to fulfil their maintenance and other obligations during their tenure – all things being considered, not what a tenant that inspires confidence for their future tenancy.

In my view, it is a great pity that this organisation has retained exclusive control over this iconic site for another 25 years or so!

This building takes pride of place on the ToC website and is featured on most tourist advertisement for the State but the reality is that this restaurant does not live up to the image projected. They do not deserve to hold this lease, the food, service and overall presentation is tired and unappealing and, in my view, would no doubt leave visitors unimpressed and disappointed with the restaurant (as are most locals) and Cottesloe itself.

***In my humble opinion, the restaurant per se detracts rather than adds to the experience of a visit to Cottesloe Beach.***

However, if it is the case that the lease term is no longer in question then I believe that the ToC should seek to negotiate certain conditions precedent to any lease rental agreement reached, relating to:

### **1. Garbage compound**

This area is an eyesore at best and at busy times a disgrace.

Please refer previous emails/photos on this subject (enclosed) from 2011 and I am aghast at the fact that the only responses by ToC was from Councillor Jeanes that “*he would look into it*” and from the Principal EHO as follows:

*“I have received the email below along with the attachments and am writing to inform you that a letter has been sent to Indiana requesting regular maintenance and removal of rubbish from the bin area. The letter also requested that they consider a re-design of their bin area”.*

Six years later, nothing has been done by the tenant (no surprise here).

Even more worrying is the fact that nothing has been done by the ToC to address the issue. This leads me to believe that nobody in ToC seems to care what it looks like or certainly not care enough to address the issue otherwise something would have been done by now as there have been at least 5 opportunities to make budget provisions.

Image **IMG\_2274** above taken 7/9/17 shows this area at its very best – in fact I have never seen it look this good in the 10 years I have lived here and I pass it every day!

Image **Indiana.040311** above taken 4/3/11 shows this area at its worst – and at the worst possible time ie Sculptures by the Sea which prompted me to write to ToC in 2011.

Surely, the ToC can do better than this – Cottesloe is becoming jaded and when compared to the modernisation being undertaken &/or completed in City Beach, Scarborough and Trigg, Cottesloe is being well and truly put in the shade!

### **Proposed actions**

- A. Place an **obligation on the tenant to construct** an approved enclosed garbage compound on the south side of the building

Note: There is ample room and scope to do this in the existing garbage area and/or in the area below the south side of the front of the facility which has not been used in 10 years and could be covered with a suitable roof sympathetic to the architecture of the existing building and serve not only as a garbage room but also a furniture store (see photos IMG\_2274 + 2276 attached)

- B. ToC delegate responsibility and accountability for cleanliness and presentation of this facility to a specified officer, publish a mobile telephone number and make that person accessible and accountable to the public [see also note re toilets below]

In my view, the enclosed garbage compound must be done and if the tenant won't agree then in my view the ToC should build it and factor the cost into an increased rental over say 5 years

## 2. Ongoing Building Maintenance issues

### Proposed actions

- A. Place an obligation on the tenant to **fulfil maintenance responsibilities in accordance with the lease** around strengthened and enforceable lease conditions relating to their building maintenance obligations
- B. ToC implement clearly defined ToC management procedures to ensure that these obligations are met and delegate responsibility and accountability to a nominated officer to oversee tenant obligations as per point 1B above.

## 3. Trading hours and service obligations

**Proposed actions** - Place an obligation on the tenant around more clearly defined obligations regarding trading day and hours of opening to ensure service to community – this business should be trading strongly enough to support all day trading 7 days per week and the fact that it isn't reflects the poor management and offering (it certainly can't be put down to the location)

- 4. **Future Market Rent Reviews** - Clarify and strengthen process for future rental reviews to market value

## **Q2 - Care, control and management of the public toilets located underneath the building become the responsibility of the Town of Cottesloe.**

I absolutely support that the ToC should be responsible for the maintenance and cleaning of these essential service facilities BUT in saying this the current standard of the presentation and maintenance of these premises is at an **unacceptable level**.

I constantly hear that Cottesloe is the premier beach location in Western Australia but these facilities do NOT match this claim.

- 1. These amenities are in urgent need of physical upgrade and refurbishment – when is this going to happen?

2. These amenities need a higher standard of cleaning specification and frequency – at busy times, the toilets and change rooms should be serviced at least 3 times per day which will undoubtedly cost more but is necessary to achieve the required level of hygiene and presentation.

**Note:** I cannot tell you how many times I have personally called Indiana to inform them of deficiencies in the toilets only to get through to voice message – this arrangement has proved to be totally ineffective and remained in place even when ToC took over summer cleaning. This arrangement is dysfunctional and future arrangements must be designed to achieve service objectives to community and not for the convenience of ToC rosters – if you post a number someone must be available to answer the call.

3. Strengthen the ToC management and inspection regime to achieve the stated objectives – assign responsibility to a specified position, publish a mobile telephone number and make that person accessible and accountable to the public.

Note: Perhaps the Rangers &/or Parking Inspectors could be multi-skilled to take on this task – clean amenities would do more for the image of Cottesloe than issuing parking fines to visitors.

## In Summary

The existing tenant has failed miserably to capitalize on the best restaurant site in WA!

They have had 10 years to get it right so they will need to make some radical changes to their business plan and performance to lift this business/facility out of the doldrums – I hope they can, but I am not overly optimistic.

Given, the parlous state of the operation, it has occurred to me in writing this submission that the perhaps the best way forward for the both parties would be if they sold the business to an approved/experienced/focussed professional operator (yes, I realise that the tenant fits this description BUT it is not performing)

**Note:** Has the ToC considered this possibility ie that once the tenant has agreed the lease rental terms that they will seek to sell the business with the benefit of a long lease with terms agreed.

Reverting to the quantum of the lease rental, it appears that the increase the tenant is offering will be cost neutral to them and will relieve them of a lot of headaches ie no real increase in rent at all to ToC.

They have benefited from a 'free kick' by avoiding its responsibilities for care and maintenance of the toilets to the required standard over the years particularly over the last 2 years by the ToC assuming the total cost of cleaning over the busier summer months – a big cost saving for Indiana! I believe it is also highly optimistic for the ToC to believe that it can provide the level of cleaning and maintenance required for 50% of the \$55,000pa increase in rental proposed (as indicated in Council Minutes dated 22/8/17) – a 'back of the envelope' calculation will show that this will prove insufficient to fund cleaning labour and materials let alone maintenance of fixtures & fittings and other factors.

Accordingly, I should believe it is open for ToC to seek to negotiate these additional conditions and if the tenant does not agree to the proposed conditions attached to acceptance of the revised rental proposed then perhaps the ToC should:

**Either** stand its ground on ToC rental valuation of \$219,000pa (which I assume places responsibility for care and maintenance of toilets with ToC) AND negotiate best outcome of proposed additional conditions (preferred option)

**Or** revert to a market adjustment of the existing rent with the responsibility for care and maintenance of toilets with Tenant. I understand and agree that this is not the preferred option BUT can be used as leverage with ToC signalling its stated intention to more rigorously enforce the tenant's cleaning and maintenance obligations under the lease as leverage.

As a last resort, the rental could be subjected to arbitration if necessary.

## In Conclusion

I have taken a considerable amount of time to make this submission and I sincerely hope that these comments are useful to the ToC's deliberations to finalize these questions.

I also hope and trust that my comments and suggestions will be given due consideration and where appropriate implemented.

Regards





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**From:**  
**Sent:** Friday, 4 March 2011 12:53 PM  
**To:** 'council@cottesloe.wa.gov.au'  
**Subject:** Indiana - Garbage Area  
**Attachments:** Indiana.Feb.2011.jpg; Indiana.040311.jpg

**Attention: CEO or delegate**

Dear Sir/Madam

The purpose of my email is to bring to your attention the state of the garbage area at Indiana's today at 1030 Friday 05/03/11 – refer attached photo Indiana.040311

I have been meaning to bring this to the attention of the council executive for several weeks [see earlier photo] but the Sculptures by the Sea exhibition has prompted to me to act today

I am sure will agree that this garbage area is an eyesore and in my view something needs to be done about it because it is seriously detracting from the area

I don't know whose responsibility this is under the lease but as the Lessor I am sure you have an interest in ensuring that lease conditions, hygiene standards and aesthetic considerations of the facility are met

Hopefully someone can be directed to **collect the garbage and clean up the area asap today** – check out the photo, this is unacceptable!

In terms of a solution, surely this garbage area **should be enclosed in a suitable building** sympathetic to Indiana – surely an iconic building like this should add not detract from the area

I would appreciate some feedback

Many thanks



**Subject:** Indian Tea House - garbage compound  
**Date:** Thursday, 24 November 2011 at 5:04:51 pm Australian Western Standard Time  
**From:**  
**To:** 'Cr.jeanes@cottesloe.wa.gov.au'  
**CC:** 'council@cottesloe.wa.gov.au'  
**BCC:**  
**Attachments:** Indiana.Feb.2011.jpg, Indiana.040311.jpg, Indiana.04.03.11.pdf

Dear Mr Jeanes

We are residents of Cottesloe being the owners & occupiers of

I understand that you are the Councillor for Central Ward as well as being on the Foreshore Committee and as such I ask that you consider our suggestion for improvements to be made to the Indian Tea House garbage compound in the interests of improving hygiene and appearance of this iconic building and surrounds

I attach a copy of a self explanatory email that I sent to the Town of Cottesloe in March 2011 along with the 2 photographs that were attached to the email [one dated Feb 2011 and the other dated 4<sup>th</sup> March 2011]

The purpose of this email was to alert the EHO to the disgraceful and unhygienic state of the bin 'compound' on what was possibly the busiest visitor day of the year for Cottesloe – I am sure that you will agree with comments contained in my email in this regard

Other than verbal confirmation on the day that action had been taken I have not received any feedback to this email so I am unaware as whether any longer term steps have been taken to rectify this situation by considering the construction of some form of enclosure to screen this 'garbage' area from public view

Accordingly, the purpose of this email is:

- To ascertain whether the Council has any plans are in hand to do something about this area and if not;
- To reiterate my suggestion to improve the appearance of the area adjacent as suggested

I understand that there may be commercial and legal responsibilities of the lessor/lessee under the lease of the premises to be considered but this building is going to be there for a long time and in my view somebody needs to take responsibility to sort this out - I am sure that if we had a mess like this outside our property we would be required to rectify it without delay

Summer is here and Sculptures by the Sea is only months away so I would very grateful if you would advise whether Council will consider taking appropriate steps to rectify this eyesore

Many thanks

Kind regards

**Subject:** Re: Indiana Tea House - Garbage compound  
**Date:** Tuesday, 13 December 2011 at 3:51:00 pm Australian Western Standard Time  
**From:** Darrell Monteiro  
**To:**  
**Attachments:** image001.jpg

Dear

I have received the email below along with the attachments and am writing to inform you that a letter has been sent to Indiana requesting regular maintenance and removal of rubbish from the bin area. The letter also requested that they consider a re-design of their bin area.

The situation will also be monitored occasionally to try and ensure that we do not have a repeat of last year. While I agree that a long-term solution would be the best thing, it might take time especially because of Indiana's location.

Should you wish to discuss the matter further, please feel free to contact me.

Regards

**Darrell Monteiro**  
**Principal Environmental Health Officer**



**Town of Cottesloe**  
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E [peho@cottesloe.wa.gov.au](mailto:peho@cottesloe.wa.gov.au)  
W [www.cottesloe.wa.gov.au](http://www.cottesloe.wa.gov.au)

Dear Mr Jeanes

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required to rectify it without delay

Summer is here and Sculptures by the Sea is only months away so I would very grateful if you would advise whether Council will consider taking appropriate steps to rectify this eyesore

Many thanks

Kind regards

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**From:** Mat Humfrey  
**Sent:** Thursday, 31 August 2017 9:19 AM  
**To:** Samantha Hornby  
**Subject:** FW: Indiana Tea House Submission  
  
**Importance:** High

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**From:**  
**Sent:** Wednesday, 30 August 2017 8:15 PM  
**To:** Mat Humfrey  
**Cc:** DL CR Sandra Boulter  
**Subject:** Indiana Tea House Submission  
**Importance:** High

Dear Mr. Humfrey,

WITHOUT PREJUDICE

I have experience in commercial property and Indiana is not a good tenant. Too much of rates have been spent on this lease already.

They also failed to perform their toilet obligation.

If still possible, to terminate the lease to prevent future litigation and expenses and find a new and reputable tenant.

It also shows a Council should not own commercial property and this one was built under controversial circumstances under the direction of the then lady Town Clerk Jan Grimoldby who pushed for it.

I also don't think a Hydraulic"" report is what was needed whatever this inflated term means. Any licensed plumber would have solved the problem in no time. In my opinion I am not impressed about the quality of work by architect Scanlon who designed the building which got us ratepayers into trouble and Cottesloe into disrepute.

Sincerely

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**From:**  
**Sent:** Saturday, 26 August 2017 9:28 AM  
**To:** council  
**Subject:** Submission re Indiana Tea House Rental rental proposal

Attention Mat Humfrey, Chief Executive Officer.

I strongly support the transfer of the Indiana toilet management to the Council.

Public toilet management is not congruent with restaurant management. It will never be a priority for the Indiana Restaurant management and staff.

Redrock/Frazers's management in relation to the Indiana is highly dysfunctional. In the 10 years that they have owned the Indiana lease, they have been unable to make a success of the restaurant operation. In addition they have failed to properly maintain the premises. The mismanagement of the Indiana and its toilets has contributed to the groups bad reputation in Cottesloe.

There is a very strong public interest in the management being transferred. Should the Redrock/Frazer's management not agree to the transfer in return for a fair commercial rental adjustment, I recommend that Council take the matter up with the State Government and WA Ombudsmen on the basis that the public toilets in this iconic location have failed to meet health and safety standards and have had a negative impact on the WA as a tourist destination. It is a most shameful state of affairs. The Council should ensure that the matter receives as much press coverage as possible at both the local and national level.

The Council should avoid legal conflict with major commercial groups such as Redrock in the Courts. Their management expertise in commercial law and access to legal resources vastly exceeds that available to The Cottesloe Council. Use the public domain where the Council has a strategic advantage. Community opinion wins in the long run.

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**From:**  
**Sent:** Thursday, 7 September 2017 7:34 AM  
**To:** council  
**Subject:** Mr Mat Humfrey, CEO

Dear Mr Humfrey,

**RE: Public Toilets – Indiana Tearooms**

I am in favour of the care, control and management of public toilets within Cottesloe becoming the responsibility of the Town of Cottesloe.

*Regards,*

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**From:**  
**Sent:** Wednesday, 6 September 2017 5:31 PM  
**To:** council  
**Subject:** Rent review and management of public toilets at Indiana's

**HAVE YOUR SAY - INDIANA**  
**(RENT REVIEW AND MANAGEMENT OF PUBLIC TOILETS)**

To the Town of Cottesloe, CEO

I am writing in support of the lessee's proposal that;

- for the purposes of the market rent review currently being undertaken, the current annual market rent be agreed at \$195,000 per annum; and
- the care, control and management of the public toilets located underneath the building become the responsibility of the Town and the lessee be relieved of its obligations under the lease in that regard.

Hopefully this will go some way towards resolving some of the major issues that have been surrounding the Indiana lease agreement and stinking toilets for a number of years.

Yours sincerely



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**From:**  
**Sent:** Monday, 4 September 2017 9:13 PM  
**To:** council  
**Subject:** Indiana lease and toilets

Amended submission

Sent from my Samsung GALAXY S5

----- Original message -----

**From:**  
**Date:** 09/03/2017 09:03 (GMT-05:00)  
**To:**  
**Subject:** Indiana lease and toilets

Hello,

My submission is via email as I am currently travelling overseas.

1. Lease - if fair valuation has been received and considered by both parties to accept the higher rental value.
2. Toilets - indianans are restauranteurs not toilet cleaners. This responsibilty of upkeep must fall back to Cottesloe council.
3. Building maintenance - an annual inspection to be carried out by a qualified staff member adhering to strict maintenance guidelines, or a suitably qualified consultant be appointed to conduct annual inspections.

Query - I would like to know if annual building rental plus the terms and conditions fall within the scope of like beachfront areas such as Leighton, City Beach and Scarborough?

Sent from my Samsung GALAXY S5

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**From:**  
**Sent:** Monday, 4 September 2017 5:55 PM  
**To:** council  
**Cc:** Mat Humfrey  
**Subject:** Indiana Toilets

Mr Mat Humphry,

Indiana toilets.

On careful consideration I think the proposal for the Indiana lease is a reasonable one.

After listening to a talk re a possible solution to some of the problems with the toilets there minor work may reduce the cleaning problem there and is worth investigating. This could perhaps lower the cleaning costs.

Arbitration over the Red Rock valuation and the TOC valuation could be drawn out and expensive.

I support accepting the offer.